

Hungary

Mid-term Implementation Assessment



*Promoting and strengthening
the Universal Periodic Review*
<http://www.upr-info.org>

Introduction

1. Purpose of the follow-up programme

The second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the development of the human rights situation in the State under review.

A/HRC/RES/16/21, 12 April 2011 (Annex I C § 6)

The Universal Periodic Review (UPR) process takes place every four and one half years; however, some recommendations can be implemented immediately. In order to reduce this interval, we have created a follow-up process to evaluate the human rights situation two years after the examination at the UPR.

Broadly speaking, *UPR Info* seeks to ensure the respect of commitments made in the UPR, but also, more specifically, to give stakeholders the opportunity to share their opinion on the commitments. To this end, about two years after the review, *UPR Info* invites States, NGOs, and National Institutions for Human Rights (NHRI) to share their comments on the implementation (or lack thereof) of recommendations adopted at the Human Rights Council (HRC) plenary session.

For this purpose, *UPR Info* publishes a Mid-term Implementation Assessment (MIA) including responses from each stakeholder. The MIA is meant to show how all stakeholders are disposed to follow through on and to implement their commitments. States should implement the recommendations that they have accepted and civil society should monitor that implementation.

While the follow-up's importance has been highlighted by the HRC, no precise directives regarding the follow-up procedure have been set until now. Therefore, *UPR Info* is willing to share good practices as soon as possible and to strengthen the collaboration pattern between States and stakeholders. Unless the UPR's follow-up is seriously considered, the UPR mechanism as a whole could be adversely affected.

The methodology used by *UPR Info* to collect data and to calculate the index is described at the end of this document.

Geneva, 13 June 2014

Follow-up Outcomes

1. Sources and results

All data are available at the following address:

<http://followup.upr-info.org/index/country/hungary>

We invite the reader to consult this webpage since all recommendations, all stakeholders' reports, as well as the unedited comments can be found at the same internet address.

7 stakeholders' reports were submitted for the UPR. 20 NGOs were contacted. 2 UN agencies were contacted. The Permanent Mission to the UN was contacted. The National Human Rights Institution (NHRI) was contacted as well.

17 NGOs responded to our enquiry. 1 UN agency responded. The State under Review responded to our enquiry. The NHRI did not respond to our enquiry.

The following stakeholders took part in the report:

1. **State** of Hungary
2. **UN Agency:** (1) United Nations High Commissioner for Refugees (UNHCR)
3. **NGOs:** (1) Chance for Children Foundation, European Roma Rights Center, Háttér Society, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Hungarian Women's Lobby with contribution of its member organizations (NANE Women's Rights Association, People Opposing Patriarchy-PATENT, Foundation for the Women of Hungary-MONA, Jol-let Foundation), Hungarian LGBT Alliance, Mental Disability Advocacy Center, Minority Rights Group, Working Group Against Hate Crimes (Amnesty International, Háttér Society, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Legal Defence Burro for National and Ethnic Minorities) (Joint)
(2) Reporters sans frontières (RSF)

IRI: 28 recommendations are not implemented, 58 recommendations are partially implemented, and 62 recommendations are fully implemented. No answer was received for 2 out of 151 recommendations and voluntary pledges (full list of unanswered recommendations is available at the end of this document).

2. Index

Hereby the issues that the MIA covers:

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145	Argentina	International instruments, Labour, Migrants	not impl.	page 106
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37	Austria	Civil society, UPR process	fully impl.	page 100
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74	Belarus	Trafficking	fully impl.	page 131
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85	Canada	Justice	fully impl.	page 111
95	Canada	Minorities, Right to education	partially impl.	page 76
109	Canada	Minorities, Racial discrimination	fully impl.	page 85
20	Chile	NHRI	fully impl.	page 144
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4	Denmark	Detention conditions, International instruments, Torture and other CID treatment	fully impl.	page 97
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22	Ecuador	NHRI	partially impl.	page 144
39	Ecuador	International instruments, Women's rights	fully impl.	page 123
59	Ecuador	Disabilities, International instruments	fully impl.	page 102
115	Ecuador	Detention conditions, Enforced disappearances, International instruments, Torture and other CID treatment	partially impl.	page 104
142	Ecuador	Migrants	partially impl.	page 97
75	Egypt	Trafficking	fully impl.	page 132
98	Egypt	Women's rights	fully impl.	page 139
144	Egypt	International instruments, Labour, Migrants	not impl.	page 106
66	Finland	Rights of the Child, Women's rights	fully impl.	page 128
94	Finland	Minorities, Right to education	partially impl.	page 65
96	Finland	Right to education	fully impl.	page 28
127	Finland	Rights of the Child, Women's rights	partially impl.	page 140
5	France	Detention conditions, Enforced disappearances, International instruments, Torture and other CID treatment	partially impl.	page 98
52	France	Sexual Orientation and Gender Identity	partially impl.	page 117
118	France	Death penalty	not impl.	page 114
102	Germany	Minorities	partially impl.	page 77
93	Greece	Minorities, Right to education, Rights of the Child	partially impl.	page 65
147	Guatemala	International instruments, Labour, Migrants	not impl.	page 106
60	Holy See	Minorities, Women's rights	fully impl.	page 73
69	Honduras	Trafficking	partially impl.	page 129
126	Honduras	Rights of the Child, Women's rights	partially impl.	page 140
151	Hungary	International instruments	fully impl.	page 107
17	India	NHRI	fully impl.	page 144
61	Indonesia	Minorities	partially impl.	page 74
81	Indonesia	Racial discrimination	partially impl.	page 28
86	Indonesia	Civil society, Minorities, Racial discrimination	partially impl.	page 76
133	Indonesia	Racial discrimination	fully impl.	page 31
40	Iran	ESC rights - general	fully impl.	page 12
57	Iran	Minorities, Right to education, Rights of the Child, Women's rights	partially impl.	page 73
63	Iran	Detention conditions	partially impl.	page 107
68	Iran	Rights of the Child, Trafficking, Women's rights	partially impl.	page 128
87	Iran	Justice, Rights of the Child	not impl.	page 137
88	Iran	Torture and other CID treatment	not impl.	page 114
112	Iran	Asylum-seekers - refugees	fully impl.	page 88
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99	Mexico	Minorities	fully impl.	page 67
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139	Mexico	Asylum-seekers - refugees, Detention conditions, Migrants	not impl.	page 91
19	Moldova	NHRI	fully impl.	page 144
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72	Moldova	Rights of the Child, Trafficking, Women's rights	partially impl.	page 130
130	Moldova	Women's rights	partially impl.	page 142
92	Morocco	Women's rights	fully impl.	page 138
103	Morocco	Minorities	partially impl.	page 78
9	Netherlands	Freedom of the press	fully impl.	page 8
14	Netherlands	Rights of the Child, Women's rights	fully impl.	page 121
125	Netherlands	International instruments, Women's rights	not impl.	page 140
16	Norway	Minorities	fully impl.	page 36
50	Norway	Minorities, Right to education	partially impl.	page 65
58	Norway	Racial discrimination	partially impl.	page 23
82	Norway	Justice	fully impl.	page 111
121	Norway	Freedom of opinion and expression, Freedom of the press	partially impl.	page 105
128	Norway	Sexual Orientation and Gender Identity, Women's rights	not impl.	page 141
137	Norway	Minorities	not impl.	page 91
49	Pakistan	Minorities, Racial discrimination	fully impl.	page 59
56	Pakistan	Rights of the Child	fully impl.	page 125
134	Pakistan	Women's rights	fully impl.	page 140
34	Palestine	Special procedures	fully impl.	page 102
45	Palestine	Racial discrimination	fully impl.	page 19
122	Palestine	Freedom of opinion and expression	not impl.	page 11
24	Poland	NHRI	partially impl.	page 144
31	Poland	Asylum-seekers - refugees, Migrants	fully impl.	page 41
33	Poland	Civil society, UPR process	fully impl.	page 100
47	Republic of Korea	Minorities, Racial discrimination	fully impl.	page 54
129	Republic of Korea	NHRI	partially impl.	page 150
21	Russian Federation	NHRI	partially impl.	page 144
36	Russian Federation	Special procedures, Treaty bodies	not impl.	page 102
43	Russian Federation	Minorities, Racial discrimination, Special procedures, Women's rights	not impl.	page 42
76	Russian Federation	Rights of the Child, Torture and other CID treatment, Treaty bodies	not impl.	page 133
100	Russian Federation	Minorities, Right to health, Treaty bodies	fully impl.	page 67
149	Russian Federation	Minorities, Treaty bodies	-	page 106
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105	Slovenia	Freedom of the press, Minorities	fully impl.	page 79
138	Slovenia	Minorities	fully impl.	page 79
7	Spain	Enforced disappearances, International instruments	not impl.	page 99

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116	Spain	ESC rights - general, International instruments	not impl.	page 104
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132	Spain	Other	partially impl.	page 150
67	Sweden	Rights of the Child, Women's rights	partially impl.	page 128
107	Sweden	Minorities, Racial discrimination	fully impl.	page 80
8	Switzerland	Freedom of religion and belief, Minorities	fully impl.	page 32
29	Switzerland	Minorities, Racial discrimination	not impl.	page 39
30	Switzerland	Disabilities, Sexual Orientation and Gender Identity, Women's rights	partially impl.	page 40
111	Switzerland	Asylum-seekers - refugees	fully impl.	page 86
120	Switzerland	Freedom of the press, International instruments	not impl.	page 105
54	Thailand	Minorities, Racial discrimination	not impl.	page 69
65	Thailand	Detention conditions, Technical assistance, Women's rights	partially impl.	page 127
77	Thailand	Detention conditions, International instruments, Rights of the Child	partially impl.	page 135
106	Thailand	Minorities	partially impl.	page 56
12	United Kingdom	Disabilities, Sexual Orientation and Gender Identity, Women's rights	partially impl.	page 35
53	United Kingdom	Minorities, Racial discrimination	fully impl.	page 67
62	United Kingdom	Freedom of association and peaceful assembly, Minorities	partially impl.	page 75
135	United Kingdom	Freedom of the press	partially impl.	page 11
10	United States	Justice, Women's rights	fully impl.	page 118
13	United States	Human rights education and training, Sexual Orientation and Gender Identity	partially impl.	page 115
90	United States	Freedom of opinion and expression, Freedom of the press	partially impl.	page 10
110	United States	Minorities	partially impl.	page 81
55	Uruguay	Minorities, Racial discrimination	fully impl.	page 71
79	Uruguay	Right to education, Rights of the Child, Torture and other CID treatment	not impl.	page 133
91	Uruguay	Disabilities, Elections, International instruments	fully impl.	page 104
97	Uruguay	Disabilities, Right to education, Rights of the Child	fully impl.	page 138
78	Uzbekistan	Right to education, Rights of the Child, Torture and other CID treatment	not impl.	page 133
80	Uzbekistan	Human rights violations by state agents, Torture and other CID treatment	partially impl.	page 109

3. Feedback on recommendations

CP Rights

Recommendation n°9: *Engage with the United Nations, the Organization for Security and Cooperation in Europe and the Council of Europe to ensure that their concerns about the media law are accommodated* (Recommended by Netherlands)

IRI: *fully implemented*

Chance for Children Foundation, European Roma Rights Center, Háttér Society, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Hungarian Women's Lobby with contribution of its member organizations (NANE Women's Rights Association, People Opposing Patriarchy-PATENT, Foundation for the Women of Hungary-MONA, Jol-let Foundation), Hungarian LGBT Alliance, Mental Disability Advocacy Center, Minority Rights Group, Working Group Against Hate Crimes (Amnesty International, Háttér Society, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Legal Defence Burro for National and Ethnic Minorities) (Joint) response:

Hungarian Civil Liberties Union: The media laws have been amended two times to comply with the suggestions of the UN, the OSCE and the Council of Europe, but these organizations were not fully satisfied with these amendments.

'In an interview published on June 7 in the Budapest weekly Figyelő, Neelie Kroes, the EU commissioner for the digital agenda and vice president of the European Commission, said the recent changes "failed to address the concerns of the EU and of the Council of Europe." Kroes called the Media Law "embarrassing," noting that the revisions addressed just 11 of 66 recommendations made by the Council of Europe.'

'Dunja Mijatović, the OSCE Representative on Freedom of the Media today said that the new Hungarian media legislation can still curb media pluralism and put the media at the risk of political control.

The Parliament adopted a new media package on 24 May 2012, following a Constitutional Court decision in December 2011 which ruled several provisions of the laws unconstitutional.

"I welcome that the revised provisions provide broader protection of sources, annul the ban of certain content from print and online media, and abolish the right of the Media and Communications Commissioner to interfere with editorial decisions in case of complaints. These are important improvements," said Mijatović. "Unfortunately, other elements that I raised as problematic already in 2010 have not been improved."

"These include the ways of nomination and appointment of the President and members of the Media Authority and Media Council, and their power over content in the broadcast media, as well as the prospect of very high fines that can lead to self-censorship among journalists," she stressed. "Key provisions of the legislation are not clearly defined, and the financial and editorial independence of the public broadcasters is not guaranteed."

However, the Council of Europe agreed on changes to the media legislation in January 2013 with the Hungarian Government that based on the [Expertise released by the Directorate General](#). "We have been able to change fundamentally the laws regarding two indispensable institutions in a system of checks and balances and rule of law, namely the judiciary and the media," Thorbjørn Jagland, secretary general of the intergovernmental group, told a press briefing in Brussels today.

The reforms will result in fewer powers and more accountability for the president of the National Judicial Office in Hungary, including an agreement that the president can no longer be re-elected, Jagland said. The NJO president also may not initiate legislation, only make suggestions, he said.

Jagland said discussions with Hungary also led to several proposed amendments to the nation's media law, including limiting the mandate of the president of the media authority and media council to one nine-year term. In addition, journalistic sources are now adequately protected in Hungarian law in line with the European Convention on Human Rights, the Council of Europe said.

Cooperation between Hungary and the council will continue on media law "to further improve the legislation," the council said.

State of Hungary response:

Since the adoption of the media regulation the Hungarian Government has been ready to cooperate with international organisations in order to address the concerns raised by them related to that regulation. Close cooperation was established with the European Commission and the Council of Europe, but discussions also took place between the Government and the representatives of the United Nations and the Organization for Security and Co-operation in Europe. Besides ministerial and expert level consultations with the Secretary General of the Council of Europe, professional roundtable discussions and an international conference were organized on the status and challenges of the Hungarian and European media law. As a result it was concluded that the media regulation is in line with the European and international human rights requirements.

Recommendation n°89: Ensure that the recently enacted media laws are implemented in full respect for the fundamental right to freedom of opinion and expression (Recommended by Austria)

IRI: fully implemented

Joint response:

The media laws did not have the expected direct impact on freedom of expression in Hungary. Nevertheless the new media legislation resulted in a chilling effect. While

the newly elected Media Council had a power to impose high fines even on the field of content regulation, it rarely used this mean to sanction media outlets. This does not mean that the possibility of being fined did not caused self-censorship among journalists, which is one of the biggest problems of freedom of expression in Hungary and which is supported by many factors, for example by the media regulation. [Analysis provided] by the Hungarian Civil Liberties Union.

Reporters sans frontières (RSF) response:

Malgré plusieurs amendements apportés à la Loi sur les médias adoptées en 2010, celle-ci demeure très problématique sur certaines points, notamment le mode de nomination des membres du Conseil des médias, ainsi que son pouvoir d'interférence dans la politique éditoriale des médias hongrois. Par ailleurs, le recours à cette loi en décembre 2011 pour retirer sa fréquence à la station indépendante Klubradio démontre le pouvoir excessif qu'elle confère aux autorités vis-à-vis des médias. Le cas de Klubradio semble être un exemple de l'utilisation par le parti au pouvoir de cette législation à des fins politiques, afin de faire taire les critiques mises en avant par la station. De telles pratiques représentent de graves entraves aux libertés d'opinion et d'expression, essentielles au bon fonctionnement d'un état de droit.

State of Hungary response:

Current rules contain exclusively such limitations on the right to the freedom of expression which are fully recognized by international law. For example members of the press may only be obliged to reveal the information source by a decision of a court and only in exceptional cases. If right to freedom of expression conflicts with the fundamental rights of individuals the media authority (National Media and Info-communications Authority, NMIA) can only take measures when the core content of human dignity is violated. All decisions of the NMIA may be challenged before the courts. Hungary was and will remain ready for dialogue, in case there are concrete questions and observations related to the specific provisions of the laws.

Recommendation n°90: Comply fully with its obligations and commitments related to freedom of expression, including for members of the press (Recommended by United States)

IRI: partially implemented

Joint response:

Legislation connecting journalism is not in favor of freedom of expression. The Fundamental Act of Hungary has many restricting regulations, for example related to political campaign. Article IX paragraph 3 states: 'For the appropriate dissemination of information necessary for the formation of democratic public opinion and to ensure the equality of opportunity, political advertisements may only be published in media services free of charge. In the campaign period prior to the election of Members of Parliament and of Members of the European Parliament, political advertisements published by and in the interest of nominating organizations setting up country-wide candidacy lists for the general election of Members of Parliament or candidacy lists for the election of Members of the European Parliament may only be published by way of public media services and under equal conditions, as provided for by a cardinal Act.' This rules resulted in the fact that no political campaign was aired in

commercial media outlets during the 2014 electoral campaign, while the public service media outlets reach very few people (the public service television channel had a 10% reach of the audience lately).

Article IX paragraph 5 regulates: 'The right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Members of such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates the community, invoking the violation of their human dignity, as provided for by an Act.' This rule protects the dignity of any group and the Hungarian majority as well.

The new Civil Code introduced a rule concerning the criticism of public figures. According to the legislation, public figures have to tolerate a higher level of criticism, but only in cases when this criticism does not violate their human dignity, is necessary and proportionate and serves legitimate public interest. The last condition was ruled unconstitutional and was annulled by the Constitutional Court.

[Analysis provided] by the Hungarian Civil Liberties Union

State of Hungary response:

[See response to recommendation n°89]

Recommendation n°122: *Reconsider legislation and laws in connection with freedom of opinion and expression and general freedoms* (Recommended by *Palestine*)

IRI: *not implemented*

RSF response:

[See response to recommendation n°89]

State of Hungary response:

[See response to recommendation n°89]

Recommendation n°135: *Monitor the functioning of media regulatory bodies and the application of penalties in order to ensure they remain separated from outside influence* (Recommended by *United Kingdom*)

IRI: *partially implemented*

Joint response:

There was no such monitoring from the Hungarian state in the last years. Such activity would be difficult to carry on, since there is no independent body in Hungary that has the power to monitor the functioning of the namely independent Media Council. [Analysis provided] by the Hungarian Civil Liberties Union.

RSF response:

La décision en décembre 2011 de retirer sa fréquence à la station indépendante Klubradio démontre le pouvoir excessif dont dispose le Conseil des médias vis-à-vis des organismes d'information hongrois. Le cas de Klubradio, marqué par des pratiques administratives sujettes à caution, semble être un exemple de l'utilisation par le parti au pouvoir de cet organe à des fins politiques. Il est à craindre que le Conseil des médias ait été un moyen officieux de faire taire les critiques politiques

souvent mises en avant par la station. Le gouvernement hongrois doit réformer la Loi sur les médias de 2010 s'il entend garantir l'objectivité et l'intégrité du Conseil des médias.

State of Hungary response:

The NMIA was set up by the Fundamental Law and regularly reports (including information on its regulatory role) to the Parliament which has no influence on the authority's day-to-day operation. As a guarantee of independence, the Government has no legal means to exercise influence on the operation of the NMIA. Decisions of the NMIA may be challenged before courts, which constitutes full safeguard to provide for the correction of any unlawful decision.

ESC Rights

Recommendation n°40: Adopt measures to combat discrimination and promote equal economic and social opportunities for disadvantaged and marginalized individuals and groups (Recommended by Iran)

IRI: *fully implemented*

Joint response:

European Roma Rights Centre (Based on reports by a group of NGOs who analysed the implementation of the NSIS (Civil Society Monitoring Report and Update Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012): During the follow up period, the Hungarian Government adopted a National Social Inclusion Strategy (NSIS) in December 2011 and an Action plan, Government Resolution No. 1430/2011. (XII. 13.) for the implementation of the NSIS. The Hungarian Strategy targets several vulnerable groups, for example children, people living in less developed regions and also Roma. Thus, it follows the “explicit but not exclusive targeting” principle, congruent with the 10 Common Basic Principles of Roma Inclusion. Nevertheless, the lack of a very clear Roma focus may pose challenges to a successful and robust policy-making, while various interventions in sectoral policies (for example, change of legislation, launching of programmes, etc.) and partial interventions launched in parallel may further weaken the efforts made in favour of Roma inclusion and the Strategy's implementation.

During the follow up period policy changes, such as abolishing the institution of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and moving this function to the portfolio of the deputy of the Commissioner for Fundamental Rights, have resulted in far less powerful institutional tools for combating discrimination. Hungarian authorities do little to sanction hate speech, and criminal law provisions designed to protect groups facing bias are more often applied by the authorities to sanction Roma rather than non-Roma. In case of most hate crimes, no proper criminal procedure is launched. At the local level, the powerless position of minority self-governments has been further weakened: their consent is not obligatory any longer to decide on matters affecting the local Romani community (while, on the other hand, numerous governmental tasks which go far beyond the

legitimate political role of national minority self-governments have been assigned to the National Roma Self-Government).

Whereas the NSIS contains goals on the four key areas of the EU Framework (education, employment, housing, health), desegregation on the area of housing and education is a taboo for the Government, moreover school segregation in education labeled as “catch-up opportunity” is a supported approach by the Government.

Education

The process of exclusion through the education system will most probably speed up.

The issues which have been of great concern in this sector are school segregation and lack of access for Roma to early child development, as well as pre-school services and quality education on both primary and secondary level. As a consequence, early school leaving and low level of participation in tertiary education have not improved either. Some of these issues have been targeted by mainstream education policies, but, generally, with very poor impact on Roma. Moreover, the policy direction taken is clearly working towards the diminishing of the potential impacts of equal treatment policies that were put into practice in 2010. For example, school segregation is among the supported approaches in schooling and is identified as offering a “catch-up opportunity”, according to official political statements. Several declarations reinforce this approach, and the steps taken back up the presumption that the Government does not support active desegregation.

All these policy changes contradict both the conclusions of, and the goals set up in, the NSIS, as well as the massive experience gathered in the past two decades in relation to the situation of Roma in the education system.

Actions taken that contradict the NSIS goals:

- The reduction of the mandatory age-limit in compulsory education from 18 to 16 will increase the number of low-skilled youth with fewer chances in the labour market.
- The uniform educational programme made obligatory for schools will most probably also deliver less individualized needs-based education for the neediest.
- The significant change to the university admission system and reduction in the number of places financed by the state will most probably further cut the very low share of Roma in tertiary education, too. Obviously, this step will further foster the “early selection” nature of the Hungarian education system, especially impacting children from disadvantaged social backgrounds.
- The Hungarian education system not only reflects but also promotes the development of social inequalities, i.e., it increases concomitant disadvantages arising from social background, because strong selection and segregation mechanisms prevail at all levels of public education while the capacity of that education to compensate for background is quite meagre.
- Because of the change according to the definition on disadvantaged children it is highly possible that many Roma will fall out of the scope of allowances, and/or many will be reclassified from the category of multiply disadvantaged into the

category of disadvantaged; the scope of services available will therefore be narrowed.

- As of 1 September 2014, it will be mandatory for all children to enrol in kindergarten from the age of 3. Even though we consider this a very positive approach towards disadvantaged children, including Romani children, the fact is that the distribution of kindergarten places and the condition of their equipment and facilities is quite uneven; many Roma-populated villages or parts of cities are still without sufficient kindergarten places; in the past half-year no crucial changes were implemented.
- The state-financed scholarship programmes for Roma and/or disadvantaged children continue in 2013 with a further reduction of resources. Data on follow-up and the proportion of Roma students participating in these programmes are still not available.

During the follow period the European Court of Human Rights has ruled that Hungary has violated the European Convention on Human Rights in the case of the segregated education of Roma children (Mr Horváth and Mr Kiss) who were educated in a school for the mentally disabled. The court's decision underlined that the Hungarian practice of (mis)diagnosing Roma is considered indirect discrimination. The judgment is awaiting for implementation.

Employment:

The increasing employment of Roma is foreseen by public work instead of the job market or social economy.

After 2009, the main focus employment policy included reducing the amounts of various benefits (e.g., merging and reducing benefits based on disability or infirmity); the strengthening of job-seekers' activity; and offering services through Public Employment Services. The proportion of funds spent on public employment from the fund available for labour market instruments has risen to a record high amount in 2012–2013. The amount of the financial benefits (and access to them) has been further reduced. The current public work system was created in 2012, involving the introduction of the Employment Replacement Subsidy (ERS), a reduction in the amount of aid, and stricter entitlement criteria.

In 2011, only one-quarter of Roma aged between 15-64 were employed in Hungary. The employment rate of Romani women is reported by surveys to have been between 13 and 16%. Compared to non-Roma there is a high proportion of casual work and informal or hidden employment among the Roma of active age. This causes a much higher vulnerability and uncertainty compared to non-Romani employees in general: Roma, as a result, have a lower level of income because no protection mechanism is in place for workers in informal or occasional employment. The increasing employment of Roma is foreseen by public work instead of the job market or social economy. The number of participants in public work was 186,000 in 2010, 265,600 in 2011, and 311,500 in 2012. In 2013 the objective is to involve 300,000 individuals in public work. Large-scale as it actually is, this expensive public work system tends to draw resources away from active labour market programmes and state subsidies.

As the only solution, people are forced into public work which involves severe conditions and sanctions violating basic rights and dignity and which, in their current form, involve vulnerability, inequitable working conditions and often pointless work, representing a dead-end for most of the people participating in public work. Moreover, Roma are reportedly discriminated when applying for public work and thus are highly affected by the risk of being excluded from social services. As a consequence of restrictions introduced by the government, the number of adults not receiving social benefits and being excluded from welfare services has increased in Hungary since 2011, a tendency particularly affecting Romani communities living in deep poverty. The findings of a recent survey of public work agencies clearly reinforces the fact that public work in its current form is less of a labour market reintegration instrument than it once was and that Roma frequently suffer from the discriminatory attitudes of decision-makers (employers, job supervisors) when applying for and taking part in public work.

Health:

Another area of exclusion of Roma is access to health services. It has been demonstrated that the health condition of Roma is significantly worse than the average health condition of non-Roma in Hungary. There are major regional inequalities, and public health measures are not effective in reaching out to the most disadvantaged. Special attention needs to be paid to children whose health condition is heavily impacted by the socio-economic status of their parents. Moreover, women in disadvantaged communities are significantly affected by the negative health consequences of abortions, as well as early pregnancies, while children in disadvantaged communities are significantly affected by foetal health problems and by health consequences of premature birth, malnutrition and insufficient living conditions. The sectoral policy has witnessed severe cut-backs and reorganisation in this area, and although the Action Plan (AP) of the NSIS has formulated numerous fields for interventions, for example, facilitating the employment of Romani women in the fields of social services, child welfare, decreasing the number of vacant general practitioner's / paediatrician's positions, so far there has been little result. The modification of the system of social/unemployment benefits to introduce the "30 days rule" (an additional eligibility criterion that the recipient has to have had an employment relationship of at least 30 days in the previous year) regarding "benefits for people of active age" ("regular social aid" and the "employment substituting allowance") could mean disadvantaged people who are no longer eligible for social benefits might lose their entitlement to primary health care as well. People of active age will be required to cover their health insurance contributions out-of-pocket, a monthly amount of approximately EUR 23.

Housing:

Bad health conditions are reinforced, among various other conditions, by the general housing situation of Roma. The structural problems within the housing sector, such as an unfavourable tenure structure which includes only a 3% social rental sector, has forced large numbers of the poor into the home ownership sector. Affordability issues are exacerbated by various forms of housing exclusion, such as housing in peripheral locations and/or of low quality, illegal arrangements or uncertain legal

situations. Moreover, decreasing job opportunities result in many families falling into arrears with mortgage loan repayments and having unpaid public utilities bills. Despite all this, Hungary has been without any coherent housing policy since the transition. Most measures target the middle class and very limited funds have been left available for addressing the housing problems of the poorest, including the Roma. The transformation of the housing allowance and other more general social benefits has resulted in a situation where the poorest have less income for satisfying their minimum needs, a fact deepening their housing problems. Furthermore, no steps have been taken to initiate a growth in the social rental sector except for the one related to the mortgage rescue programme which does not target the poorest families. In the field of social housing, no substantial measures have been taken. In light of all this, it may be concluded that housing policy measures have produced no tangible improvements in the housing situation of those living in deep poverty, including Romani families.

[Evaluation provided by] European Roma Rights Center.

United Nations High Commissioner for Refugees (UNHCR) response:

Initiatives by the Government to combat hate crimes

1. The National Police Headquarters established a specialized hate-crime unit with a member present in each of the Hungarian counties. These units operate under a specialized stream dealing with hate crimes exclusively. Such streamlining is meant to increase the effectiveness and quality of hate crime investigations.
2. On 18 September 2013, the Government adopted a new National Crime Prevention Strategy for the next 10 years, as well as an Action Plan for 2013-2015. However, the document does not include any specific measures aimed at combating crimes motivated by bias or hatred and so the lack of governmental strategy and protocol on the investigation of hate crimes remained a problematic issue.
3. On 27 January 2013, Prime Minister Orban issued a statement on the International Holocaust Memorial Year declaring that “the government protects all citizens of Hungary and condemns all forms of anti-Semitism.” He added, “It must never happen again in Hungary that people be humiliated for their origin and religion.”

On 30 January 2013, the Budapest Metropolitan Tribunal upheld the Pest Central District Court’s ruling issued in June 2012 in the first Holocaust denial case since the introduction of this offence into the Criminal Code in 2010. According to the case, the defendant held up a sign at a demonstration in 2011 saying in Hebrew that “the Holocaust did not happen.” The court sentenced the offender to an 18-month prison term suspended for three years and ordered him placed on probation. The judge also ordered the perpetrator to visit either the Budapest based Holocaust Memorial Documentation Centre (HDKE) three times during the probation, or the memorial site in Auschwitz, or the Yad Vashem memorial park in Jerusalem one time and express his thoughts in writing.

State of Hungary response:

Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities is a general anti-discriminative legal source that made the already existing rules

coherent. It is in line with the EU law and contains consistent, comprehensive and detailed anti-discrimination provisions. In addition to the general provisions the law deals with the enforcement of equal treatment in specific areas. It prohibits both direct and indirect discrimination. The Equal Treatment Authority is entitled to deal with individual cases all over the country that are to be used as precedents. The Authority also issues general information, launches training and research programmes in order to promote equal treatment in all aspects of public life.

The EU is home to some 10 million Roma, who are exposed to deep poverty, unemployment, discrimination and segregation. That is why the adoption of the EU Framework for National Roma Integration Strategies up to 2020 was one of the priority areas for the Hungarian Presidency of the Council of the European Union in 2011. The Framework provides a unique opportunity to make a real difference in the lives of Roma people throughout Europe and requested member states to adopt before the end of 2011 their National Roma Integration Strategies which determine the medium-term challenges and targets of the social and labour market integration of the Roma, as well as the necessary interventions, over a period of 10 years. On 30 November 2011 Hungary sent its National Social Inclusion Strategy 2011-2020 (NSIS) as the first one to the European Commission. The Strategy is complex: it lays down an immediate action plan, and also assigns long term tasks. In addition, it systemizes all those areas and actors which deal with inclusion policies such as state measures, specified programmes, institutions and other actors. The aim of the Strategy and its Action Plan for the period of 2012- 2014 is to improve the social and living conditions of people living in extreme poverty. The two special target groups are the Roma and children. Both documents deal with child well-being, education, employment, health, housing as well as involvement, awareness-raising and fight against discrimination. A framework agreement with the National Roma Self-Government which designates concrete numerical targets for Roma in the most important fields is annexed to the Strategy.

387,069 people participated in public employment programs in 2013, with most of them having no more than primary school education, among them an estimated number of 77 000 Roma (20%). 27.6% managed to find a job within 180 days after leaving public employment. Living allowance is given to those participating in EU-funded training programs. In order to facilitate access to the labour market, decentralised employment programmes, EQUAL ESF funded programmes (Social Renewal Operational Programme) and public employment programmes have been launched. Moreover, support programmes were also started with the contribution of the National Public Foundation for Employment. In addition, employment of the Roma is promoted by grants supporting job creation projects, as well as by training subsidies.

The social land program is a social policy tool for those (including Roma families) living in an environment suitable for agricultural production. The employability of disadvantaged people such as the Roma is promoted by several programs such as the employment of Roma women in embedded training, training of participants in public works programs, or the competency development training of disadvantaged people.

The Anti-segregation Roundtable – in cooperation with civil partners – analyses the current situation and identifies common proposals for desegregation in education in the immediate, short, medium and long terms. The Roundtable also examines methods for the recognition, assessment and prevention of educational segregation.

The Fundamental Law declares the prohibition of every form of discrimination between men and women, the protection of women, the promotion of equal treatment and equality between women and men. The Act on Health declares that its purpose is to contribute to ensuring equal access to health care services for all members of society, and equal opportunities and equality should be observed throughout the provision of healthcare services. A new National Centre for Patients' Rights and Documentation was set up in 2012 which through its countrywide patients' rights advisors network handles the complaints by the patients. The ministry responsible for health issues (EMMI) through its regional offices (ÁNTSZ) provides supervision over health care providers and ensures health care services without discrimination. As the life expectancy at birth of Roma people is shorter by 10 years than the national average the NSIS devotes a special chapter to improve the health of socially excluded population, in particular the Roma by enhancing their access to health care and by encouraging health-conscious behaviour. Main tools are the organised public health screening programs (breast, cervix, colorectal), the Health Visitors Network for pre and prenatal care and the Health Promotion Pilot Project against segregation.

Hungary was the first country to incorporate studies on Roma culture and history including the Roma Holocaust in its National Curriculum. As a result, no member of the future generations will complete his or her studies without having acquired basic knowledge of the Roma.

The new electoral law introduced preferential mandates for nationalities (including the Roma) unprecedented in Hungarian history. In order to obtain a preferential parliamentary mandate, nationalities' candidates need one quarter of the number of votes required for a mandate from majority party lists. Should a nationality fail to achieve this number, they may delegate a nationality advocate or spokesperson to Parliament. The new system was applied for the first time during the elections in April 2014.

In order to promote the integration of the Roma, the National Police Headquarters (NPH), as well as the county police departments provide scholarships (and subsequently job opportunities) for Roma high school and university students in law enforcement education institutions.

The local basis of social inclusion is manifested in local equal opportunity programs. Based on the Law on Equal Treatment and the Promotion of Equal Opportunities five year local equal opportunity programs should be adopted by municipalities. As of 1 July 2013 municipalities can only be supported by either EU or national funds based on individual decisions or open tenders if they adopted a local equal opportunity program. The preparation of programs is assisted by a mentoring network. During the preparation of these plans the local governments – taking into consideration inter alia

the aspects of anti-discrimination – prepare a situation analysis about disadvantaged social groups in social services, education, employment, health and housing, and they prepare a complex action plan to solve the identified problems. The programs are prepared along uniform principles.

A training project of the Ministry of Human Resources targets the more effective implementation of EU and national anti-discrimination laws regarding the main protected target groups including the Roma, the strengthening of national anti-discrimination and equal opportunity policies, the provision of information on a wide range of measures, as well as the collection of good practices. Since 2013 the Equal Treatment Authority organised 16 trainings, 6 workshops and 5 conferences on “Combating discrimination, shaping society attitude and strengthening the work of the Authority” throughout the country. One of the main topics was the promotion of employment of Roma people (TÁMOP-5-5-5 project). In the framework of the same project several studies were published in 2013 about discrimination on the grounds of ethnic origin (particularly discrimination against Roma people): Gender pay gap and segregation at present in Hungary, Employee selection practice in the light of discrimination, Exploring exclusionary mechanisms in municipal administration and legislation.

Recommendation n°45: *Continue to take necessary measures to combat racism and hate crimes* (Recommended by *Palestine*)

IRI: *fully implemented*

Joint response:

Partially implemented. Racism: The government decision on measures to implement the National Social Inclusion Strategy ("Roma Strategy") prescribes that in locations with ethnic conflicts programs aiming at mediation, conflict resolution, crime prevention and community development programs have to be launched. Submitting organisations are not aware of such programs implemented. In its 2013 report on the implementation of the strategy the government acknowledged that the implementation of these measures remain at the preparatory phase.

Hate crime: A new provision that sanctions bias motivated rowdyism (disorderly conduct) was introduced in the Criminal Code in 2011 (Act No. IV of 1978, Art. 174/B par. 1a) and then later kept in the new Criminal Code (Act No. C of 2012, Art. 216 par. 1).

In June 2012, the Parliament adopted a new Criminal Code (Act No. C of 2012, which entered into force on 1 July 2013) that specifically includes sexual orientation, gender identity and disability as protected characteristic in the hate crime (Art. 216) and hate speech (Art. 332) provision. Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

In March April 2011 extremist vigilante groups started illegally „patrolling” and harassing Roma living in Gyongyospata and police and government failed to intervene for 2 months. Finally a new provision was included in the Criminal Code in May 2011 (Act No. IV of 1978, Art. 174/B par. 1a), and the new Criminal Code also

includes this part (Act No. C of 2012, Art. 216 par. 1) which sanctions bias motivated rowdiness. Another new provision introduced in 2011 (Act No. IV of 1978, Art. 217; in the new Criminal Code: Act No. C of 2012, Art. 352) aimed at vigilante and other groups organizing activities to protect public security or public order without being authorized by law to do so (following Gyongyosata events). However these provisions have rarely been enforced.

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. In spite of this, there is a widely reported case, where hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups, that was interpreted by the court as an anti- Hungarian hate crime. (The judgement will be revised by the Supreme Court).

Evaluation provided by the Working Group Against Hate Crimes.

UNHCR response:

Although the new Penal Code entered into force on 1 July 2013 introduced some changes in the field of criminalizing hate crime, however a number of deficiencies have remained. The application of hate crime legislation seems to be still inadequate (systematic under-classification of hate crimes, high degree of latency due to mistrustfulness towards the investigating authorities, lack of relevant data). Although in September 2013 the Government adopted a new National Crime Prevention Strategy as well as an Action Plan for 2013-2015, nevertheless the document failed to include any specific measures aimed at combating crimes motivated by bias or hatred. Asylum-seekers and refugees – who are visibly different, as well as Roma and LGBTI people – find themselves in a double-disadvantaged situation when it comes to the 'root causes' of hate crime in Hungary. UNHCR and its interlocutors found discriminatory attitudes on behalf of the Police, health care providers, schools and employers. Refugees have reported suffering discrimination, physical and verbal harassment in all areas of their lives. In 2013 an official Government policy on migration has been adopted by the Hungarian Government, which highlights the fact that very little has been done by the Government itself in communicating and generating community understanding, awareness and acceptance of migrants, nonetheless the Migration Strategy fails to elaborate on a Government communication strategy aiming at generating community understanding, awareness and acceptance about migrants, asylum-seekers and refugees in order to increase social coherence.

State of Hungary response:

The Roma Population forms the largest ethnic minority in Hungary, an estimated number of 500,000 to 600,000 of them (their total number is approximately 750,000) live in disadvantaged regions. Demographic change in Hungary is characterised by an ageing, falling population while the number of people of Roma origin is rising and the age composition of the Roma population is much younger than that of the overall population. During the last comprehensive census held in Hungary (2011) the 13 domestic nationalities constituted 6% of the 10 million population. The new Fundamental Law states that the "freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic,

racial or religious community” and individuals can file a law suit on grounds of hate speech.

Protection of minorities ensured in the Criminal Code which renders the following crimes to be punished: genocide (Section 142), crime against humanity (Section 143), apartheid (Section 144), violence against a member of a community (Section 216), incitement against a community (Section 332), public denial of the crimes of the national socialist or communist regimes (Section 333), use of symbols of despotism (Section 335). In addition racist motive and/or purpose is considered malicious motive which results a more severe punishment judging crimes like homicide (Section 160), battery (Section 164), violation of personal liberty (Section 194), libel (Section 226), unlawful detention (Section 304), insult of a subordinate (Section 449).

State victim support services include facilitating the protection of victims’ interests, granting instant monetary aid etc. (Act CXXXV of 2005 on Crime Victim Support and State Compensation). Legal aid is free of charge depending on the victim’s financial situation.

After the UPR session of Hungary in 2011, the Government made a proposal to the Hungarian Judicial Academy of the National Office for Judiciary in order to include in its training programmes the issue of racially motivated crimes. According to the Act on the status and revenue of Judges, since 1 January 2014 a judge is obliged to participate in free and regular courses organised by the Hungarian Judicial Academy including those on hate crimes.

The eligibility tests performed during the selection procedure of law enforcement education institutions include the examination of personal skills (i.e. tolerance) needed for the profession and the curricula contains communication studies in multicultural environment. Communication and conflict management trainings led by psychologists and hate crimes specialists are being organized regularly for the police personnel in particular in regions with ethnic minorities aimed at improving the preparation level of the police force, promoting better knowledge and understanding people living in multicultural environment, strengthening the prevention of crime and mutual assistance. Further trainings are held for the police for detecting hate crimes and for the judiciary with regards to court proceedings in relation to hate crimes.

According to the Hungarian Law on Police and a regulation published by the National Police Headquarters (NPH), the police officer must take action unbiasedly. Furthermore an unprejudiced and conflict-free relation between the Police and the Roma minority is a professional and social fundamental expectation which requires an active and continuous involvement of all actors. The Police regard the Roma as victims of the hate-crimes and if the racist motive and/or purpose has been identified, the investigation process moves accordingly.

The Government issued a “zero tolerance policy” towards anti-Semitism and anti-Roma attitudes. Incidents of anti-Semitism have been promptly followed-up by high-level official condemnations on the part of the Hungarian government or by legislative changes. In combating anti-Semitism, the government focuses on 1. Law

enforcement and legal measures - the public denial of Holocaust is a criminal offence punishable with up to 3 years of imprisonment; 2. Holocaust education - the National Curriculum and frame curricula contain information on the Holocaust, students both in primary and in secondary schools learn about it and since last January about the common Jewish-Hungarian history that spans over a thousand years and which gave rise to many great achievements. The Holocaust Memorial Day (16 April) was included among the secondary school memorial days; 3. Support for Jewish cultural renaissance in Hungary; 4. Holocaust remembrance- as a continuation of commemorations organised under Raoul Wallenberg Year 2013 and Holocaust Memorial Year 2014, both initiated by the Government, Hungary will take over the Presidency of the International Holocaust Remembrance Alliance (IHRA) in 2015.

The rules of the Criminal Code and the Act on Administrative offences have been tightened regarding paramilitary organizations. The Government enforces this decision by penalizing participation in disbanded organizations as well as the use of non-official uniform-like clothing to avoid intimidation by paramilitary groups. The Parliament has tightened the House Rules on hate speech by MPs with the introduction of strict disciplinary measures and waiving of immunity in cases of incitement against a community or denial of crimes of totalitarian regimes.

The hate crimes staff unit of the NPH is monitoring extremist communication channels and forums in conformity with data protection regulations. If they recognise mobilization against vulnerable groups, in particular in connection with planned demonstrations by such groups, they inform immediately the territorial police forces, and other involved law enforcement authorities.

A “hate-crime expert net” has been operated since 2012 by The Hungarian National Police Force. Its tasks are to follow up, register and manage crimes and criminal processes, evaluate the data of investigations, and establish integrated legal practise, aiming also to reduce the high level of latency. The hate-crime expert net organise trainings to improve the efficiency of the investigation process, in addition providing expertise for such investigations.

The Government initiated the development of a monitoring system to provide a comprehensive professional analysis of anti-Semitic phenomena in Hungary. The monitoring of anti-Semitic acts of hate is performed by the Brussels Institute of the Action and Protection Foundation (TEV), an independent non-governmental organization founded in 2012 and is carried out according to methods developed and recommended by the Organization for Security and Co-operation in Europe (OSCE).

The NPH has created a new platform for efficient evaluation of disputes in cooperation with NGOs. In addition to the central and regional police services various civil rights organizations (Roma organisations, Amnesty International Hungary, the Hungarian Helsinki Committee, Association for Human Rights, Background Society for Homosexuals and others) and independent experts strive to reveal the deficiencies.

Thematic school programs of the Police contain tolerance topic for different age of students (12-14, 14-18 years old). To improve the different level of protection mechanism of the most vulnerable groups (women, children, youth) the police crime prevention units started programs, organised conferences and forums on hate-crime prevention and sensitisation.

Recommendation n°58: *Strengthen measures to prevent, combat and sanction inequality, discrimination and racially motivated violence* (Recommended by Norway)

IRI: *partially implemented*

Joint response:

Partially implemented.

Integration:

The National Social Inclusion Strategy ("Roma Strategy") has been adopted in (2011) but in essence it lacks a human rights approach. The government decision on measures to implement the National Social Inclusion Strategy ("Roma Strategy") prescribes that in locations with ethnic conflicts programs aiming at mediation, conflict resolution, crime prevention and community development programs have to be launched. Submitting organisations are not aware of such programs implemented. In its 2013 report on the implementation of the strategy the government acknowledged that the implementation of these measures remain at the preparatory phase.

Submitting organizations are not aware of any other measures or awareness raising campaigns to combat racism, anti-Semitism or homophobia.

On the contrary, some recent actions (no actions, respectively) of the government provoked resistance in the Jewish community, among others. For instance, the German occupation memorial which is currently being built. It denies by its symbolic means the responsibility of the Hungarian leadership for murdering Hungarian Jewish Holocaust victims. Or, for example, that there were no consequences that the director of the Veritas History Research Institute, Sándor Szakály, classified the deportation of thousands of Jews to Kamyanyets-Podilsky as an "aliens policing procedure".

Symbolic steps were made against the Roma people in Hungary as well. Although the Prime Minister distanced himself in many cases from calling slurs to Roma people – in response to racist remarks made by members of the Parliament of the party Jobbik –, there were some cases where he also made anti Roma statements, such as in his speech at the Hungarian Chamber of Commerce and Industry's Economic Season Opener 12th, March 2013. After that a member of a far right extremist band and an openly racist journalist received an award from the Minister of Human Resources (the latter was revoked).

Preventing and combating hate crimes:

In March and April 2011 extremist vigilante groups started to "patrol" illegally and harass Roma people living in Gyöngyöspata. Police and government failed to intervene for 2 months. Finally, as a consequence, a new provision was included in the Criminal Code in May 2011 (Act No. IV of 1978, Art. 174/B par. 1a), and the new Criminal Code also includes this part (Act No. C of 2012, Art. 216 par. 1) which

sanctions bias motivated rowdiness. Another new provision was introduced in 2011 in the Criminal Code as a consequence of the far-right "patrollings" in Gyöngyös. This provision aims at sanctioning illegal performance of activities maintaining or protecting public order. However these provisions have rarely been enforced, despite reports to the police and even despite incidents that happened in presence of the police (e.g. Devecser, 5 August 2012).

The Parliament adopted a new Criminal Code in June 2012 (Act No. C of 2012, which entered into force on 1 July 2013) that specifically mentions sexual orientation, gender identity and disability as grounds for protection under the hate crime provision 'violence against a member of a community' (Art. 216).

Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

Civil society groups also criticized the inclusion of ("other social groups") as a protected characteristic that carries the risk of too loose interpretation and legal uncertainty.

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crimes provisions:

- Police often fails to take effective measures on the spot when they are present during hate incidents (e.g. at different demonstrations).
- Law enforcement agencies are often reluctant to acknowledge bias motivation behind hate incidents against minority groups while it is more likely to prosecute Roma for hate crimes against Hungarians.
- In case bias motivation is recognized investigation is regularly ineffective (the police fails to explore the background of the perpetrator, fails to analyze CCTV footage, fails to interview witnesses, etc.)

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. There is a widely reported case however where despite this decision, hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups that was interpreted by the court as an anti-Hungarian hate crime. (The judgement will be revised by the Supreme Court).

Education:

1. According to the Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012, the lowering of the compulsory school age to 16 from 18 made it more likely that disadvantaged and Romani students will leave school earlier than before. Also, re-introducing the possibility to fail after the first grade re-enforces early selection hence making it more difficult for disadvantaged children (many of them being Roma) to advance in their education. The report also highlights that the government had failed to use the opportunities that the nationalization of schools offers: to redraw the school districts in a way that would dismantle or decrease segregation and to thwart local forces that support segregation. The report also says that the government allocated less money

on compensatory and scholarship programs for the Roma and underlined that there is also no monitoring system which could indicate how many Roma students have been helped by these programs. The report criticises that integration methods are not widespread enough in mainstream education. In fact, it can be concluded that while the law prohibits the segregation of Roma children, the minister responsible for public education actively supports segregation. The nationalization of public schools did not promote equal opportunities, in some cases it resulted in resegregation. Long term educational plans do not tackle school segregation. Several provisions in the new act on public education have a detrimental effect on social disadvantaged and/or Roma children.

2. The new public education act

A new act on public education has been adopted in 2011 (Act CXC of 2011 on National Public Education) which worsen the situation of multiply disadvantaged and/or Roma students. First, the new educational act does not prohibit discrimination expressis verbis, it only refers to the right to equal treatment as a principle that governs education. It reintroduced failing which affects mainly disadvantaged and Roma children while repeating a school year is one of the main reasons for early selection. The new act reduced the compulsory school age from 18 to 16 years as of 1 January 2013. This can potentially result in leaving secondary education without qualification, which mostly affect Roma. Schools already made efforts to get rid of students considered to be problematic (mostly Roma). There was no impact evaluation presented by the government on the benefit of the change in compulsory school age.

3. Nationalization of public schools

Public schools have been nationalized as of 1 January, 2013. A new centralized body, the Klebelsberg School Maintainer Centre is the sole maintainer of all primary and secondary schools handed over by municipalities. When taking over the school, the Centre had the historic opportunity to inspect all schools and take steps against unlawful practices, such as segregation of Roma children. The Centre however left segregated schools intact and failed to map the situation of Roma children in the nationalized schools.

4. Legalizing segregation: through minority education

The Government made several attempts to legalise segregation. First, the Government and the National Roma Self-government (NRSG) agreed to deepen the NRSG's involvement in the education of the Roma. A new act has been adopted on national minorities in 2011 (Act CLXXIX of 2011 on the rights of minorities) which gives floor to the takeover of primary schools by national minority self-governments in case 75% of the students of the respective school already receive minority education. In Hungary segregated schools are the most likely to provide Roma minority education. As of September 2012, already three schools had been transferred to the NRSG. Rumors have emerged that all segregated schools would be transferred to Roma self-governments. Those who expressed such fears referred to the increased budgetary allocations available for schools maintained by minority self-governments. On 27 March, 2014 the Ombudsman published a report on the situation of minority secondary schools. According to the Ombudsman Roma minority education is in a

special situation compared to other minorities in Hungary, since Roma minority education often serves segregation, moreover Roma minority schools provide a lower quality of education compared to other minority schools due to the fact that it cumulates the disadvantage arising out of the socio-economic status of its students.

Legalising segregation for remedial aims

Second, on 29 March, 2013 the Minister for Justice submitted a proposal to the Parliament for the amendment of the Act CXXV on equal treatment and the promotion of equal opportunities of 2003. According to the proposal, the provisions on positive measures (exceptions from discrimination) would have been amended to allow discrimination (and segregation) for remedial aims. A coalition of NGOs called MPs to vote NO for the amendment. Finally, the amendment has been revoked. NGOs expressed their concern that the proposal would have created a situation on which- contrary to the Racial Equality Directive- segregation would have been legal in case it served remedial aims. The State Secretary responsible for social inclusion admitted that the ministry is currently working on a new legislation on social inclusion.

Minister Zoltan Balog responsible for public education expressed his concerns about the law currently prohibiting segregation completely. He believes integration is a two-step effort: first the disadvantaged, mostly Roma children shall be put into segregated schools where “they will catch up”, and then once they achieve the knowledge and skills in these segregated schools equal to that of students in the “white” schools, the Roma children can be integrated into the mainstream population. Mr Balog volunteered to testify in a court in defense of the Greek Catholic Church which maintains a segregated school in Nyiregyhaza. The Court of Nyiregyhaza established that the Church was segregating its students based on their Roma origin in a judgment of 28 February 2014. The judgment is not final. After the judgement has been delivered, Mr. Balog expressed his dislike of the judgement and said that the verdict “is a sad commentary on the judiciary, which denies parents’ right to a free choice of schools.”

5. The new school maintainer preserves segregation

The Centre expressed its position towards integration in a lawsuit on 17 February 2014, maintaining that it is not its duty to promote integration in a proactive manner and to monitor segregation in schools. There are 8 pending segregation lawsuits in which the Centre was invoked after the nationalisation of the schools. In none of the pending cases took the Centre any action to settle the case out of court and to end segregation. In some cases the Centre is resegregating, putting an end to the desegregation process started by the former school maintainer. In Piliscsaba the Centre launched a new class in a segregated school which was about to closed down by the municipality because of its unlawful operating being a Roma- only school.

6. There is no effective remedy against segregation

Since 2006 Hungarian courts adjudged 7 Roma education cases in which they held that Roma children were unlawfully segregated. However, Hungarian courts have not yet ordered the desegregation of the impugned schools; therefore there is no effective remedy available against systematic and structural discrimination in

education of Roma children. There is no effective school inspection either, and as it was revealed by the Ombudsman, Klebelsberg School Maintainer Centre's procedure of remedy is in deficiency and controversial (Report of the Commissioner for Fundamental Rights, No. AJB-922/2013.)

On May 16, 2012 the Supreme Court established that the Lajos Kossuth Primary School of Győr is segregates, but it dismissed CFCF's claim on the elimination of the unlawful situation in Győr by saying that the court cannot order to close down a school. The Supreme Court argued that such an order would violate the rights of the parents to freely choose the school for their children and it would endanger the functioning of the school. CFCF challenged the judgment before the Constitutional Court which dismissed its complaint on 17 June 2013. The Constitutional Court did not examine the petition on the merits, it took the position that there is no room for *actio popularis* petition in front of the Constitutional Court.

Evaluation provided by the Working Group Against Hate Crimes

UNHCR response:

Although the new Penal Code entered into force on 1 July 2013 introduced some changes in the field of criminalizing hate crime, a number of deficiencies have remained. The application of hate crime legislation seems to be still inadequate (systematic under-classification of hate crimes, high degree of latency due to mistrustfulness towards the investigating authorities, lack of relevant data). There is still no protocol for due classification and effective investigation of hate crimes and no monitoring system for incidents that may constitute racial violence. Asylum-seekers and refugees as well as Roma and LGBTI people find themselves in a double-disadvantaged situation refugees have reported suffering discrimination, physical and verbal harassment in all areas of their lives. In its concluding observations on Hungary, the UN Committee on the Elimination of Discrimination against Women raised concerns about the insufficient provision of human, financial and technical resources for the Equal Treatment Authority and the lack of effective remedies in cases of discrimination. The Committee was also concerned about the fact that – in the absence of a comprehensive plan of action protecting their rights – women belonging to ethnic minorities, such as Roma women and women with disabilities are subjected to multiple discrimination. In 2013 an official Government policy on migration has been adopted by the Hungarian Government, however failed to elaborate on a Government communication strategy aiming at generating community understanding, awareness and acceptance about migrants, asylum-seekers and refugees in order to increase social coherence. In September 2013 the Government adopted a new National Crime Prevention Strategy as well as an Action Plan for 2013-2015, nevertheless the document failed to include any specific measures aimed at combating crimes motivated by bias or hatred. The National Police Headquarters established a specialized hate-crime unit with a member present in each of the Hungarian counties. These units operate under a specialized stream dealing with hate crimes exclusively. Such streamlining is meant to increase the effectiveness and quality of hate crime investigations.

State of Hungary response:

[See response to recommendation n°45]

Recommendation n°81: *Ensure that racially motivated violence and other hate crimes are fully and effectively investigated and that those responsible are prosecuted under the laws providing for sanctions which reflect the gravity of the human rights abuses* (Recommended by Indonesia)

IRI: *partially implemented*

Joint response:

Partially implemented.

Effective investigation: In January 2012, a hate crime network was set up by the police consisting of (at least) one investigator at each county police station responsible for hate crime investigations, large fluctuation within the network, the workload of the officers and the lack clear institutional processes, however, limit the effectiveness of the network. Police often fails to take effective measures on the spot when the police is present during hate incidents. Incidents are frequently underclassified (not prosecuted, or prosecuted as a crime without a bias motive). In case bias motivation is recognised authorities often fail to take all investigative steps to prove the motivation (failure to explore the background of perpetrator, use CCTV footage, or interview witnesses).

Evaluation provided by the Working Group Against Hate Crimes.

UNHCR response:

The application of hate crime legislation seems to be still inadequate (systematic under-classification of hate crimes, high degree of latency due to mistrustfulness towards the investigating authorities, lack of relevant data). There is still no protocol for due classification and effective investigation of hate crimes and no monitoring system for incidents that may constitute racial violence. In September 2013 the Government adopted a new National Crime Prevention Strategy as well as an Action Plan for 2013-2015, nevertheless the document failed to include any specific measures aimed at combating crimes motivated by bias or hatred. The National Police Headquarters established a specialized hate-crime unit with a member present in each of the Hungarian counties. These units operate under a specialized stream dealing with hate crimes exclusively. Such streamlining is meant to increase the effectiveness and quality of hate crime investigations.

State of Hungary response:

[See response to recommendation n°45]

Recommendation n°96: *Aim to eliminate segregated education, which is not based on strict individual assessment, and draft a national strategy for the introduction of an inclusive education* (Recommended by Finland)

IRI: *fully implemented*

Joint response:

Chance for Children Foundation (CFCF): Partially implemented. While there has been several changes in the diagnostic protocols used by expert committees to assess the mental abilities of children, Romani children are still overrepresented in special education. The European Court of Human Right delivered its judgment on 29 January, 2013 in the Horváth and Kiss v. Hungary case which concerned misdiagnosis of two Roma men, who were put to special schools because of their

Roma origin. The Court has ruled that Hungary violated Article 2 of Protocol No. 1 (right to education) to the European Convention on Human Rights read in conjunction with Article 14 (prohibition of discrimination). The Court underlined that there was a long history of wrongful placement of Romani children in special schools in Hungary and that the State must change this practice. The Court noted that as a result of this practice the applicants had been isolated and had received an education which made their integration into society at large difficult. It concluded that 'positive obligations incumbent on the State in a situation where there is a history of discrimination against ethnic minority children' would have required Hungary to 'provide the necessary safeguards against misdiagnosis'. The Court 'shares the disquiet of the other Council of Europe institutions who have expressed concerns about the more basic curriculum followed in these schools and, in particular, the segregation which the system causes'.

Currently the Committee of Ministers examines the implementation of the judgement. While the Government introduced a number of changes in the diagnostic protocols and the procedure of the entry-testing, in view of CFCF and ERRC general measures that apply to all students in special education are therefore incapable of constituting compliance with the judgment under art.46 § 1 and do not constitute the positive measures the ECtHR prescribed. In order to fulfil their obligations under art.46 § 1 of the Convention, the Hungarian Government must take measures which tackle the systematic misdiagnosis of Romani children and their overrepresentation in special education. The Government of Hungary did not and could not provide any evidence that the measures adopted - regardless of the judgment - had or will have a significant impact on the number of Romani children in special education. One of the main reason why the impact of these general measures could not assessed is the lack of data on the ethnic origin of students put in special schools. It is essential to have ethnic data of the children tested by the expert committees, in order to be able to monitor whether as a result of the general measures implemented recently the number of Romani children among the mildly mentally disabled children decrease. The collection of disaggregated data by ethnicity would provide a guarantee for monitoring the adopted measures and would enable correction and further review.

The Roma Education Fund commissioned a study in Hungary, the Czech Republic, Serbia and Slovakia on school readiness assessment (school entry testing) in order to examine the link between such testing and the overrepresentation of Romani children in special education (Julia M. White and al: Pitfalls and bias: Entry testing and the overrepresentation of Romani children in special education, Roma Education Fund, 2012). The study concluded that "in the Czech Republic, Hungary, Serbia and the Slovak Republic the tests of school readiness and intelligence used by the multidisciplinary bodies that diagnose intellectual disability are largely under-normed on Romani populations, making them inappropriate instruments to measure the intelligence of Romani children. In addition, testing conditions are often not culturally relevant and tests are often administered in ways that do not follow testing protocol, with the results of the tests interpreted through the examiner's own cultural biases." Ms White outlined two different approaches to eliminating the discriminatory testing of Romani children. Primarily, she recommended that the entry testing be abolished altogether. Secondly, she recommended that in case it would remain, it should be

used to assess special education needs with a view to integrating rather than segregating children in public education. The Roma Education Fund submitted this report as an amicus brief in July 2013 to the City Court of Eger in an ongoing litigation against – among others - the Ministry of Human Resources challenging the misdiagnosis of Romani children in Heves county. The Ministry criticized the study and did not act in line with recommendations. The full ban of special education system for the mildly mentally ill is not envisaged by the Government.

State of Hungary response:

Act on Public Education and Act on Equal Treatment prohibit segregation; all discriminative measures and measures violating the interest of the child taken by institutions (schools) or their maintainers are considered null and void. In 2013 the state took over the maintenance responsibilities of all public schools from municipalities in order to ensure coherent public education. In this way providing equal opportunities and requirements for all students including Roma become more efficient.

The regulation of primary school admission districts serves to terminate or prevent school segregation: school districts must be designed with taking into account students' social background (disadvantaged and multiple disadvantaged children and students) – they cannot be separated in one school or class. Definitions of disadvantaged and multiple disadvantaged persons are composed on the basis of family income and school qualification of parents, which indicators are in strong correlation with Roma students' social backgrounds. Statutory classifications define groups in need of special treatment and attention (socially disadvantaged, children with multiple disadvantages, children in need of special education) in order to appropriately attribute programmes and measures, as well as to prevent unlawful segregation. Important test-level developments serve the access to quality education of children with special educational needs and the prevention of unreasonable classification as disabled (i.e. unreasonable classification and segregation of multiply disadvantaged (including Roma) children).

Public Education Equal Opportunity Action Plan is an obligation at school-district level. Objectives and measures of equality in public education and inclusion were involved into National Strategy on Public Education prepared in 2013. The possibility of organizing “corrective classes” for children with learning difficulties, operated formerly, ceased to exist. Students may not be segregated owing to their adaptation or any learning or behavioural irregularity; compulsory education may be fulfilled only with the others, in the school at the place of residence, or in any selected school. Alleged cases of educational segregation are examined by courts. Pursuant to rules applicable to official supervision, including the revelation and termination of the practice of unlawful segregation, government offices shall take measures in the interest of the termination of the irregularities revealed in connection with the compliance with the requirement of equal treatment.

The Integrated Education System (IPR) was introduced in 2003. It is a pedagogical framework giving disadvantaged children a chance to compensate for the differences in social situation. The On the Road scholarship programs ("Road to High School",

"Road to graduate", "Road to the profession", "Road to higher education") includes more than 17,500 students – at least 50% of them are Roma – that receive a monthly scholarship and mentoring services. The extra-curricular learning facilities and „second chance” programmes are continued in the interest of promoting the successful study of Roma students with multiple disadvantages, reducing drop-out rates and re-integrating young people prematurely dropping out of the educational system into training in the school system (7.59 billion HUF). The newly launched study hall and second chance programmes offer more than 3100 students the chance of progress in school. The Network of Christian Roma Vocational Boarding Schools (KRSZH) involves more than 170 students. Programmes for disadvantaged children and youth offer recreational sports and music courses. Partner school relationships also foster integration.

The Government supports pilot programmes within the framework of the ‘School Net’ programme which aims to discover courses of study that may shape the overall school system, mentality of teachers and the pedagogic trends. These courses are set up in schools where disadvantaged pupils are overrepresented and where their wider environment faces the same social and economic problems. In the framework of the School Net program, development of methods, services aiming to improve the basic and communication skills of disadvantaged pupils. It also aims to implement projects focusing on the “bridge between schools” and school reintegration. The program financially facilitates restorations, restructuring and acquisition of low-value assets, as well. In the organization of events and recreational activities inclusion of parents is obligatory.

The Anti-segregation Roundtable was established with the specific aim to prepare a document in cooperation with civil partners that identifies common proposals for desegregation in the immediate, short, medium and long terms. The roundtable also examines methods for the recognition, assessment and prevention of educational segregation.

Recommendation n°133: *Establish and operate a country-wide system to monitor and record racist incidents and hate crimes* (Recommended by Indonesia)

IRI: fully implemented

Joint response:

Partially implemented. There is no specialized data collection by public authorities on hate crimes. Data on crimes reported to the authorities are collected in the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (Egységes Nyomozóhatósági és Ügyészési Bűnügyi Statisztika, ENYÜBS). A basic problem of this system is that the categorization of crimes is based solely on the decision of the authorities. Even if a crime is perceived by the victim or other witnesses to be motivated by hate, if the authorities disregard this information when deciding on the legal qualification, the report of a hate crime is rendered “invisible” in the system. Furthermore, the system contains a hierarchy of protected characteristics: while marking the protected characteristics is compulsory for race, ethnicity, nationality and religions, marking sexual orientation, gender identity and disability is optional; and for crimes do not fitting the sui generis hate crimes provision (such as homicide), only racist crimes are specifically marked,

crimes motivated by other prejudice are not. A further general problem of ENYÜBS is that data on registered crimes is entered into the system upon closing or suspending the investigation; therefore, a long investigation means that the crime appears in the system only months or years after its occurrence. Due to the lack of interoperability between police, prosecution and court systems, it is impossible to trace a hate crime case from the time of reporting to that of prosecuting and sanctioning. Evaluation provided by the Working Group Against Hate Crimes

State of Hungary response:

[See response to recommendation n°45]

Recommendation n°143: *Bring official development assistance (ODA) up to the internationally committed 0.7 per cent of GDP (Recommended by Bangladesh)*

IRI: *not implemented*

State of Hungary response:

The 12 new EU Member States ODA target was set to 0.33 per cent by 2015. None of the countries managed to meet this obligation, Malta (0,25%), Cyprus (0,17%), Slovenia (0.13%) and the Czech Republic (0.125%) getting closest to the target ratio. Hungary is making every effort to maintain its ODA contribution despite austerity measures adopted each year since 2006. The current level is 0,10%.

Minorities

Recommendation n°8: *Continue to revise the criminal law to bring it fully in line with relevant international and regional obligations and in particular to ensure the protection of national, ethnic, religious or linguistic minorities (Recommended by Switzerland)*

IRI: *fully implemented*

Joint response:

Partially implemented. A new provision that sanctions bias motivated rowdyism (disorderly conduct) was introduced in the Criminal Code in 2011 (Act No. IV of 1978, Art. 174/B par. 1a) and then later kept in the new Criminal Code (Act No. C of 2012, Art. 216 par. 1).

In June 2012, the Parliament adopted a new Criminal Code (Act No. C of 2012, which entered into force on 1 July 2013) that specifically includes sexual orientation, gender identity and disability as protected characteristic in the hate crime (Art. 216) and hate speech (Art. 332) provision. Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

Civil society groups also criticized the inclusion of ("other social groups") as a protected characteristic that carries the risk of loose interpretation and legal uncertainty.

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crime provisions.

Evaluation provided by the Working Group Against Hate Crimes

State of Hungary response:

The Roma Population forms the largest ethnic minority in Hungary, an estimated number of 500,000 to 600,000 of them (their total number is approximately 750,000) live in disadvantaged regions. Demographic change in Hungary is characterised by an ageing, falling population while the number of people of Roma origin is rising and the age composition of the Roma population is much younger than that of the overall population. During the last comprehensive census held in Hungary (2011) the 13 domestic nationalities constituted 6% of the 10 million population. The new Fundamental Law states that the “freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community” and individuals can file a law suit on grounds of hate speech.

Protection of minorities ensured in the Criminal Code which renders the following crimes to be punished: genocide (Section 142), crime against humanity (Section 143), apartheid (Section 144), violence against a member of a community (Section 216), incitement against a community (Section 332), public denial of the crimes of the national socialist or communist regimes (Section 333), use of symbols of despotism (Section 335). In addition racist motive and/or purpose is considered malicious motive which results a more severe punishment judging crimes like homicide (Section 160), battery (Section 164), violation of personal liberty (Section 194), libel (Section 226), unlawful detention (Section 304), insult of a subordinate (Section 449).

State victim support services include facilitating the protection of victims’ interests, granting instant monetary aid etc. (Act CXXXV of 2005 on Crime Victim Support and State Compensation). Legal aid is free of charge depending on the victim’s financial situation.

After the UPR session of Hungary in 2011 the Government made a proposal to the Hungarian Judicial Academy of the National Office for Judiciary in order to include in its training programmes the issue of racially motivated crimes. According to the Act on the status and revenue of Judges, since 1 January 2014 a judge is obliged to participate in free and regular courses organised by the Hungarian Judicial Academy including those on hate crimes.

The eligibility tests performed during the selection procedure of law enforcement education institutions include the examination of personal skills (i.e. tolerance) needed for the profession and the curricula contains communication studies in multicultural environment. Communication and conflict management trainings led by psychologists and hate crimes specialists are being organized regularly for the police personnel in particular in regions with ethnic minorities aimed at improving the preparation level of the police force, promoting better knowledge and understanding people living in multicultural environment, strengthening the prevention of crime and

mutual assistance. Further trainings are held for the police for detecting hate crimes and for the judiciary with regards to court proceedings in relation to hate crimes.

According to the Hungarian Law on Police and a regulation published by the National Police Headquarters (NPH), the police officer must take action unbiasedly. Furthermore an unprejudiced and conflict-free relation between the Police and the Roma minority is a professional and social fundamental expectation which requires an active and continuous involvement of all actors. The Police regard the Roma as victims of the hate-crimes and if the racist motive and/or purpose has been identified, the investigation process moves accordingly.

The Government issued a “zero tolerance policy” towards anti-Semitism and anti-Roma attitudes. Incidents of anti-Semitism have been promptly followed-up by high-level official condemnations on the part of the Hungarian government or by legislative changes. In combating anti-Semitism, the government focuses on 1. Law enforcement and legal measures - the public denial of Holocaust is a criminal offence punishable with up to 3 years of imprisonment; 2. Holocaust education - the National Curriculum and frame curricula contain information on the Holocaust, students both in primary and in secondary schools learn about it and since last January about the common Jewish-Hungarian history that spans over a thousand years and which gave rise to many great achievements. The Holocaust Memorial Day (16 April) was included among the secondary school memorial days; 3. Support for Jewish cultural renaissance in Hungary; 4. Holocaust remembrance- as a continuation of commemorations organised under Raoul Wallenberg Year 2013 and Holocaust Memorial Year 2014, both initiated by the Government, Hungary will take over the Presidency of the International Holocaust Remembrance Alliance (IHRA) in 2015.

The rules of the Criminal Code and the Act on Administrative offences have been tightened regarding paramilitary organizations. The Government enforces this decision by penalizing participation in disbanded organizations as well as the use of non-official uniform-like clothing to avoid intimidation by paramilitary groups. The Parliament has tightened the House Rules on hate speech by MPs with the introduction of strict disciplinary measures and waiving of immunity in cases of incitement against a community or denial of crimes of totalitarian regimes.

The hate crimes staff unit of the NPH is monitoring extremist communication channels and forums in conformity with data protection regulations. If they recognise mobilization against vulnerable groups, in particular in connection with planned demonstrations by such groups, they inform immediately the territorial police forces, and other involved law enforcement authorities.

A “hate-crime expert net” has been operated since 2012 by The Hungarian National Police Force. Its tasks are to follow up, register and manage crimes and criminal processes, evaluate the data of investigations, and establish integrated legal practise, aiming also to reduce the high level of latency. The hate-crime expert net organise trainings to improve the efficiency of the investigation process, in addition providing expertise for such investigations.

The Government initiated the development of a monitoring system to provide a comprehensive professional analysis of anti-Semitic phenomena in Hungary. The monitoring of anti-Semitic acts of hate is performed by the Brussels Institute of the Action and Protection Foundation (TEV), an independent non-governmental organization founded in 2012 and is carried out according to methods developed and recommended by the Organization for Security and Co-operation in Europe (OSCE).

The NPH has created a new platform for efficient evaluation of disputes in cooperation with NGOs. In addition to the central and regional police services various civil rights organizations (Roma organisations, Amnesty International Hungary, the Hungarian Helsinki Committee, Association for Human Rights, Background Society for Homosexuals and others) and independent experts strive to reveal the deficiencies.

Thematic school programs of the Police contain tolerance topic for different age of students (12-14, 14-18 years old). To improve the different level of protection mechanism of the most vulnerable groups (women, children, youth) the police crime prevention units started programs, organised conferences and forums on hate-crime prevention and sensitisation.

Recommendation n°12: *Ensure that the cardinal laws, resulting from the new Fundamental Law, do not contain provisions that discriminate against people with disabilities, women and LGBT people* (Recommended by United Kingdom)

IRI: *partially implemented*

Joint response:

Hungarian LGBT Alliance: Not implemented. In December 2011, a cardinal law on the protection of families (Act No. CCXI of 2011) was adopted that contained an exclusionary definition of family and restricting statutory inheritance to spouses and blood relatives. The bill was submitted by four individual MPs so that duty for public consultations could be circumvented. The bill was rushed through Parliament in three weeks time. In June 2012, the Commissioner for Fundamental Rights turned to the Constitutional Court claiming the legislation is unconstitutional on several grounds, one being that it amounts to discrimination based on sexual orientation that (same-sex) registered partners are not considered family members and their inheritance rights are curtailed. In December 2012, the Constitutional Court annulled both provisions of the legislation. The governing parties responded with including the criticized definition of family in the Fundamental Law itself to avoid judicial review. The Venice Commission, the CEDAW Committee, the European Parliament, as well as international human rights NGOs such as Amnesty International and Human Rights Watch criticized the move. The new constitutional provision was used to argue for the removal of (same-sex) registered partnership from the new Civil Code (Act No. V of 2013). The Commissioner for Fundamental Rights turned to the Constitutional Court claiming the removal is discriminatory and creates legal uncertainty, the decision of the Court is pending.

In February 2013, a new Civil Code was adopted (Act No. V of 2013) that contains a provision on hate speech that allows members of communities whose dignity was violated to launch civil law cases concerning such statements (2:54. § (5)). The

legislation, however, contains a closed list of such communities and does not extend to groups based on sexual orientation or gender identity, thus creating a hierarchy of protected grounds unacceptable under the standards of the European Court of Human Rights. Evaluation by Háttér Society Although the Fundamental Law's provision on the protection of the foetus from the moment of conception has not driven to legal changes yet, statements made and initiatives taken or supported by the government/governing parties conveyed anti-abortion messages.

State of Hungary response:

Regarding the fears that the cardinal acts deriving from the Fundamental Law would restrain the rights of certain groups of persons (for example women, people with disabilities or LGBT people) it has to be emphasized that none of the cardinal acts adopted since the entry into force of the Fundamental Law contain any measures or dispositions that has the purpose or the result of discriminating women, people with disabilities or LGBT people.

Recommendation n°16: Take steps to ensure that the constitutional changes concerning minority rights will not entail lowered guarantees compared to the current legal framework (Recommended by Norway)

IRI: fully implemented

Joint response:

Minority Rights Group: After the adoption of the UPR final report on 23 September 2011 (Human Rights Council, 18th Session), the Fundamental Law of Hungary (the country's new Constitution) entered into force as of 1 January 2012 and was subsequently amended five times. The Fourth Amendment (adopted in 1 March 2013) was widely criticized by the Venice Commission, the European Union, national and international NGOs and other actors because it entailed lower guarantees concerning human and minority rights compared to the legal framework previously in force. The state later rectified some of the controversial provisions through the Fifth Amendment (adopted in 1 Oct 2013) but left most of the problematic sections unaddressed.

Hungary has terminated the mandate the Parliamentary Commissioner for National and Ethnic Minority Rights as a result of constitutional changes. In the new Fundamental Law (entered into force on 1 January 2012 and replacing the 1949 Constitution) the State replaced the Parliamentary Commissioner for Citizens' Rights, the Parliamentary Commissioner for National and Ethnic Minority Rights and the Parliamentary Commissioner for Future Generations with a newly established position, namely the Commissioner for Fundamental Rights. The Fundamental Law rendered the latter two to become the deputies of the new Commissioner. Preceding the constitutional changes, the Parliamentary Commissioner for National and Ethnic Minority Rights and the Parliamentary Commissioner for Future Generations were nominated by the President of Hungary (and elected by the Parliament), could conduct investigations and were obliged to report directly to the Parliament. As a result of the New Fundamental Law, however, the two deputy commissioners will be nominated by the new Commissioner who is also their employer, they can recommend but not conduct investigations and they are obliged to report to the new

Commissioner (Point 16 of the Closing and miscellaneous provisions of the Fundamental Law).

Hungary has violated Article 9 and Article 11 of the European Convention of Human Rights, infringing on the rights of several religious communities as a result of constitutional changes. A recent judgement of the European Court of Human Rights (Case of Magyar Keresztény Mennonita Egyház and others v. Hungary, 8 April 2014) has concluded that difference in treatment of religious communities in Hungary amounts to the violation of Article 9 and Article 11 of the ECHR. Constitutional (Article 7(1) of the Fundamental Law) and other legislative changes which led to these violations of international law has been an illustrative example of the instrumental use of the Fundamental Law since its entry into force. As a result of the adoption of the 2011 Church Act, several churches were de-registered, deprived of budgetary subsidies and were rendered ineligible to accept voluntary tax donations, and left with the opportunity to be transformed into associations. Only those entities qualified as churches which the Parliament recognised as such. However, in December 2012 the Constitutional Court repealed those rules of the Transitional Provisions of the Fundamental Law which had granted the Parliament the right to identify recognised churches. On 26 February 2013, it also annulled those provisions of the 2011 Church Act which had led to the applicants' deprivation, by the force of law, of their church status. Partly in response to the above-mentioned Constitutional Court decisions, the power of Parliament to grant special church status was re-enacted into the Fundamental Law itself, notably by its Fourth Amendment, which entered into force on 1 April 2013. After wide national and international criticism of this provision (see the assessment of the Venice Commission), Hungary amended its Fundamental Law for the fifth time, and declared that everyone is entitled to establish special legal entities ("religious communities") designed for the performance of religious activities, thus uniformising the name of these institutions. However, the state can still bestow on some of these communities the status of "incorporated church," thus enabling some churches to enjoy preferential treatment, in particular in the field of taxation and subsidies. The European Court of Human Rights concluded that this difference in treatment was a violation of the right to freedom of religion and the freedom of association.

Through constitutional changes, Hungary failed to guarantee the right to family life, by failing to protect the rights of lesbian, gay, bisexual and transgender people in Hungary. Hungary fails to recognize the diverse forms taken by families, including the right for all families to be free from discrimination on the basis of the sexual orientation or gender identity of any of its members (Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity). In the current form of the Fundamental Law (Article L of the Fundamental Law), Hungary defines the concept of marriage as a relationship between a man and a woman and the family as the basis of the survival of the nation. It determines the concept of family as a system of relations between parents and their children based on the marriage of a man and a woman. By doing so, Hungary fails to protect all families without discrimination, including those relationships in which the couples raise and take care of each other's children, or couples who do not have any children or are not able to have any children, grandchildren cared for by

grandparents, same-sex couples, homoparental families etc. Constitutional and other legislative changes leading to this violation of human rights has been an illustrative example of the instrumental use of the Fundamental Law since its entry into force. The narrow concept of the family was incorporated into the Fundamental Law through the Fourth Amendment and upheld through the Fifth Amendment after the Hungarian Constitutional Court had annulled in 2012 relevant section of the Act on Protection of Families establishing this narrow concept of the family. The amendment was adopted despite wide national and international criticism (see the assessment of the Venice Commission).

Hungary has failed to continue efforts to include the possibility for persons belonging to other groups than the thirteen recognised national minorities to enjoy the protection of the national legislation on minorities, as a result of constitutional changes. As a result of the Fourth Amendment of the Fundamental Law (upheld in the Fifth Amendment), it has been incorporated into the Fundamental Law that the recognition of a nationality shall be subject to a certain length of time of presence and to the initiative of a certain number of persons declaring themselves to be members of the nationality concerned (Article 29(1) of the Fundamental Law). This condition has been part of the national legislation since (1993 Act on Minorities), but not at a constitutional level. This goes against the recommendations of the Advisory Committee on the Framework Convention for the Protection of National Minorities for Hungary to continue its efforts to include in the personal scope of application of the Framework Convention persons belonging to groups other than the recognised national minorities (no. 36., 17 Sept 2010).

Hungary has failed to take effective steps to ensure the parliamentary representation of numerically smaller minorities vested with the right to vote, as a result of constitutional and other legislative changes. The Fundamental Law has provided a constitutional level of protection for national and ethnic minorities (called nationalities in the Fundamental Law) of their right to be represented in the National Assembly (Article 2(2) of the Fundamental Law). Previously, this right was guaranteed in the 1993 Act on Minorities. By creating the legal framework for the election of minority candidates, the State rectified a long-lasting omission in the Hungarian Constitution. However, the nature of the election procedure prevents most of the minorities from gaining a reserved seat; therefore, the right enshrined in the Fundamental Law remains symbolic for most of the minorities.

As set in the 2011 Act on the Elections of Parliamentary Representatives, national minority self-governments have the right to present minority lists provided they collected the recommendation of at least 1 per cent of minority voters registered in the minority election register, or a maximum of 1 500 recommendations. Only voters registered in the minority election register are vested with the right to vote to minority lists (similarly to the minority self-government elections). After presenting minority lists, minorities who manage to collect enough votes gain reserved seats (a maximum of 1 for each minority), otherwise, in return for one symbolic vote, they are entitled to have a spokesperson in the Parliament without the right to vote. However, despite some concessions, the election procedure for minority representatives poses such obstacles to the 13 minorities that most of them were not able to overcome

them due to their relatively small number in the 2014 general elections. According to preliminary calculations, a minority candidate would need at least 24 000 votes to meet the threshold and gain a reserved seat. As only 5 minority communities exceed this threshold in number and out of the 5, only 2 have the realistic opportunity to collect the sufficient number of votes, Hungary has failed to take effective steps to ensure the parliamentary representation of numerically smaller minorities vested with the right to vote. In addition, in contrast with non-minority parties, minority appointing organisations cannot present a joint list and cannot link their national lists either. Furthermore, minority voters are not given additional suffrage; therefore, they would face the choice of giving their second vote to either a party list or a minority list, having them deprived of the opportunity to practise their full-fledged voting rights.

Hungary continues to violate the right of disabled people to vote as a result of constitutional and other legislative changes. According to the Fundamental Law (Point 24 of the Closing and miscellaneous provisions of the Fundamental Law), anyone under guardianship restricting or excluding his or her capacity to act under a final judgement at the entry into force of the Fundamental Law shall not have the right to vote and to run for an election until such guardianship is terminated or until a court establishes the existence of his or the right to vote and to be elected. Although this has been a minor progress compared to the 1949 Constitution which immediately excluded anyone under guardianship from voting without offering the person to challenge the decision at the Court, Hungary still violates the Convention on the Rights of Persons with Disabilities, which the State ratified in 2007, and which stipulates that the right of persons with disabilities to participate in political and public life on an equal basis with others including to vote by secret ballot in elections and public referendums should be protected.

State of Hungary response:

On the basis of the new Fundamental Law new legislation was adopted on the rights of national minorities in 2011. This law further developed the rights enshrined in the previous Act of 1993 on minorities. The new act expands the educational and cultural autonomy of the minorities living in Hungary, regulates the operation of the self-governments of national minorities which are the representative organs of cultural autonomy, and – based on the census data – supports the actual minority presence.

The most important constitutional development provides for national minorities the opportunity to gain a special representation in the Parliament. From the 2014 general elections onwards national minorities can elect parliamentary representatives according to preferential rules. Even if the preferential (lower than general) number of votes needed for a seat in the national assembly is not achieved, the nominee on the first place of the nationality's election list will gain a status of the 'spokesman' of that nationality in the Parliament.

Recommendation n°29: Establish as soon as possible a plan of action to prevent racist attacks, so that members of vulnerable groups, including Roma, can live in safety and dignity (Recommended by Switzerland)

IRI: not implemented

Joint response:

Not implemented. A civil society initiative was launched to prepare such an action plan. Invited public authorities participated in the research phase and commented on the draft background study, but no action plan has been formulated yet. A National Crime Prevention Strategy was adopted in September 2013, but it has no provision whatsoever in relation to hate crimes.

Evaluation provided by the Working Group Against Hate Crimes

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°30: Introduce the necessary measures to ensure full respect for the rights of persons with disabilities and women, as well as persons with a different sexual orientation (Recommended by Switzerland)

IRI: *partially implemented*

Joint response:

Hungarian LGBT Alliance: Not implemented. De jure discrimination based on sexual orientation (access to marriage, adoption (including second parent adoption), and artificial insemination) as well as based on gender identity (forced divorce, lack of funding for gender reassignment treatments) are still in place. While evidence of widespread discrimination and violence against LGBTI people is abundant, there are no comprehensive equality policies (strategies or action plans) to cover sexual orientation and/or gender identity; while such policies do exist for most other equality grounds (gender equality, Roma inclusion, disability, youth). Similarly, there are no departments or units within the government with a clear mandate on LGBTI equality. The Commissioner for Fundamental Rights criticized the National Basic Curriculum and the very detailed (over 6,000 pages long) framework curricula for not including at all issues concerning sexual minorities which carries the risk that societal prejudices will be reproduced.

State of Hungary response:

The Fundamental Law guarantees the prohibition of discrimination for all persons by reciting the conditions eligible for protection, while also applying a 'miscellaneous' category, allowing lawmakers to specify new reasons for protection. These conditions for protection are more specifically included Act on Equal Treatment, containing practically all possible conditions and reasons. In Hungary, standalone acts of legislation are in place on equal treatment and the promotion of equality (Act CXXV of 2003) and on the rights and equal opportunities of persons with disabilities (Act XXVI of 1998). The extension of the autonomy of the Equal Treatment Authority in 2012, also contributes to the elimination of the discrimination. The Equal Treatment Authority adopts an innovative approach to pursuing the shaping of public attitudes and the promotion of access to public services via the creation and maintaining of a network of equal treatment advisors at county level.

See also reference to the Human Rights Working Group (HRWG) above operating the Human Rights Roundtable to strengthen the dialogue with NGOs. It has 12 sub-working groups including on persons with disabilities, on women and on LGBT persons.

Recommendation n°31: *Establish and implement a comprehensive integration strategy for an early-stage integration of migrants, refugees and asylum-seekers* (Recommended by Poland)

IRI: *fully implemented*

Joint response:

Partially implemented. The Hungarian Government adopted an official Migration Strategy, also determining strategic priorities for the use of the European Asylum and Migration Fund between 2014 and 2020. Integration was prioritized as one of the pillars of the [Migration Strategy](#).

Notwithstanding this relatively positive development, the integration of refugees and other beneficiaries of international protection remain of serious concern. The recent amendments to the asylum legislation introduced a new integration support scheme, moving away from camp-based integration to community-based integration. As of January 2014, integration support is provided via an integration contract concluded by the asylum authority and the person granted international protection, upon request of the latter within 4 months following the recognition of their status. The amount of integration support is set in the integration contract and the services are provided through the family care service of local municipalities. A social worker is appointed to support the beneficiary throughout the integration process.

In principle, these amendments strived to respond to long-standing criticism by civil society actors and the UNHCR concerning the ineffectiveness of the previous integration support framework. However, the change lacked any proper planning and preparation; the family care services were not properly prepared and equipped to carry out this new task, they were not even informed about this change on time. It is of particular concern that despite most social workers involved do not speak foreign languages, interpretation services are not arranged and costs for translation are not covered. Persons granted international protection can stay in a reception facility for only two months, but it often takes more than that to obtain all necessary documents. Lack of documentation then can hinder access to medical services or employment. Those who sign the integration contract are obliged to report every week to the family care service, which constitutes an undue burden on those concerned and infringes their right to freedom of movement. The application of the new integration support scheme remains to be closely monitored.

Evaluation provided by the Hungarian Helsinki Committee.

UNHCR response:

In 2013, an official Government policy on migration has been adopted by the Hungarian Government in support of the EU Asylum and Migration Fund 2014-2020 where integration of legal migrants and beneficiaries of international protection has been identified as one of the cornerstones of the strategy. Nevertheless, no standalone integration strategy has been elaborated laying down a comprehensive framework for all dimensions of integration. As of 1 January 2014 a completely new integration model was introduced moving away from camp-based to community based integration on the basis of integration contract between the beneficiary of international protection and the refugee authority. This shift is welcomed as it has the

potential to better respond to special needs of beneficiaries of international protection. It is of concern that no proper impact assessment of the new integration model including a budgetary impact analysis accompanying the amendments was carried out in the absence of which the functioning and efficiency of the new integration model cannot be assessed. It is to be emphasized that the new integration regime system needs be supported by an integration network and by engaging new partners such as local municipalities. It is worrisome that the current mainstream social support system has not been appropriately prepared to carry out the tasks foreseen under national legislation.

State of Hungary response:

The Migration Strategy and the seven-year strategic document related to Asylum and Migration Fund established by the European Union for the years 2014-20 was adopted by the Hungarian Government in October 2013 (see: Annex to Government Decision No. 1968 of 2013). The Migration Strategy lays down the action trail and the tools for achieving the goals in the field of visas, admission and residence, integration, international protection as well as fight against illegal migration and return policies in a comprehensive manner.

Recommendation n°43: *Ensure the collection of necessary statistical data disaggregated by ethnicity and gender in order to measure, monitor, and remedy ethnic discrimination as proposed by the independent expert on minority issues* (Recommended by Russian Federation)

IRI: not implemented

Joint response:

European Roma Rights Center: The Hungarian government has made no effort in collection of data disaggregated by ethnicity.

Child protection: As highlighted in the submission for the UPR review, ERRC report revealed that Romani children are over-represented in the Hungarian child protection system. However data disaggregated by ethnicity is not collected in the child protections system, Roma children appear to be removed from their families more frequently for economic reasons. No measures have been adopted to address this phenomenon until today.

Trafficking in Human Beings: Although ERRC research (not representative) revealed that Romani women are over-represented amongst victims of trafficking, the Government made no steps in order to collect data disaggregated by ethnicity on this field. The National Strategy against Trafficking in Human Beings for 2013–2016 provides an estimation (supported by several references) that “80-85% of the female victims of trafficking for the purpose of sexual exploitation are Roma women”. However, comprehensive research or systematic data collection disaggregated by ethnicity is not planned by Government.

Chance for Children Foundation: Not implemented.

In the field of education the lack of data on the ethnicity of students in primary education is a barrier to desegregation and planning. There is no official data on the

overall number of Roma students in public education; however researchers estimate that 15% of students belong to the Roma minority.

Currently, integration policies are targeting children with multiply disadvantaged status. 2/3 of Roma students are estimated to have multiply disadvantaged status. Roma children however, even in case they qualify for multiply disadvantaged status, are under-registered and remain invisible for officials.

In 2013 a new definition for multiply disadvantaged status has been adopted, while the new legislation left the procedure intact where children could be registered (Art. 67/§. of the Act XXXI of 1997). There is no development in the registration procedure of the multiply disadvantaged children, the new provisions left intact the procedural aspect which maintains invisibility of Roma.

Public schools have been nationalized as of 1 January, 2013. A new centralized body, the Klebelsberg School Maintainer Centre is the sole maintainer of all primary and secondary schools handed over by municipalities. When taking over the school, the Centre had the historic opportunity to inspect all schools and take steps against unlawful practices, such as segregation of Roma children. The Centre however left segregated schools intact and failed to map the situation of Roma children in the nationalized schools.

A research conducted by the Educational Authority in 2010 showed that Roma children are 4 times more likely to have private student status compared to non Roma students. The proportion of children with private student status is 0.4 % in the whole students body, while 1.54 % of Roma students have private students status. The Educational Authority found that only 29% of the students with private student status complete their studies in time, the rest of the students are over aged. 30% of private students in 8th grade were 18 years old by the time the research was conducted. The State secretary for public education openly criticized the findings of the Educational Authority by stressing, that there is no official data on the number of Roma children in public education, therefor, the findings are not adequate.

The Centre- similar to the municipalities- refuses to use the proxies and the methodology elaborated by the ombudsmen in 2009. The equality body, the ombudsman and some courts however rely on this methodology in order to establish the perceived number of Roma children.

A landmark judgment has been delivered by the Supreme Court on May 29, 2012 in the “Tiszavasvári segregation case”, in which the Supreme Court recognized the methodology elaborated by the ombudsmen as an adequate tool to establish the proportion of Roma students when examining school segregation.

Long term plans on public education fail to address segregation and desegregation. In May 2013 Governmental Agencies responsible for education prepared and published educational development plans for each county in which they assessed the current situation of public education and set forth development trends and desirable measures (Art. 21. of Government Decree 229/2012. (VIII. 28.)). Unfortunately the

development plans do not include information about the estimated proportion of Roma children in schools and as a consequence do not tackle racial segregation in schools.

The Committee of Ministers of the Council of Europe in its decision of 6 March 2014 invited the Hungarian Government to provide specific information on the impact of the new policy on diagnostic procedures, in particular as regards the reduction of the high proportion of Roma children in special schools.

The Hungarian Government refuses to collect ethnic data of children in special education based on third party identification. There is however an on-going negotiation between CFCF and the Ministry of Human Resources about the collection of ethnic data based on self-identification.

State of Hungary response:

The last comprehensive census held in Hungary took place in 2011. During past years, the number and ratio within the population of those declaring their nationality identity has started to increase – according to the census data, almost 6% of the population of the country have affiliation to a nationality. According to data protection regulations disclosure of ethnic affiliation is only possible on a voluntary basis and is recorded ensuring anonymity. Ethnic affiliation is not disclosed in any list or personal identity document.

Recommendation n°44: *Intensify measures to tackle extremism and discrimination against religious and ethnic minority groups, including the Roma people* (Recommended by Australia)

IRI: partially implemented

Joint response:

Partially implemented. In March and April 2011 extremist vigilante groups started to "patrol" illegally and harass Roma people living in Gyöngyöspata. Police and government failed to intervene for 2 months. Finally, as a consequence, a new provision was included in the Criminal Code in May 2011 (Act No. IV of 1978, Art. 174/B par. 1a), and the new Criminal Code also includes this part (Act No. C of 2012, Art. 216 par. 1) which sanctions bias motivated rowdiness. Another new provision was introduced in 2011 in the Criminal Code as a consequence of the far-right "patrollings" in Gyöngyöspata. This provision aims at sanctioning illegal performance of activities maintaining or protecting public order. However these provisions have rarely been enforced, despite reports to the police and even despite incidents that happened in presence of the police (e.g. Devecser, 5 August 2012).

The parliament adopted a new Criminal Code in June 2012 (Act No. C of 2012, which entered into force on 1 July 2013) that specifically mentions sexual orientation, gender identity and disability as grounds for protection under the hate crime provision 'violence against a member of a community' (Art. 216).

Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

Civil society groups also criticized the inclusion of ("other social groups") as a protected characteristic that carries the risk of to lose interpretation and legal uncertainty.

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crimes provisions:

- Police often fails to take effective measures on the spot when they are present during hate incidents (e.g. at different demonstrations).
- Law enforcement agencies are often reluctant to acknowledge bias motivation behind hate incidents against minority groups while it is more likely to prosecute Roma for hate crimes against Hungarians.
- In case bias motivation is recognized investigation is regularly ineffective (the police fails to explore the background of the perpetrator, fails to analyze CCTV footage, fails to interview witnesses, etc.)

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. In spite of this, there is a widely reported case, where hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups, that was interpreted by the court as an anti- Hungarian hate crime. (The judgement will be revised by the Supreme Court).

The new Civil Code (Act No. V of 2013) that entered into force on March 15, 2014 provides a new civil law mechanism against hate speech: it provides a closed list of communities (nationality, race, religion and ethnicity) who can launch such proceedings, this opportunity is not available to groups based on sexual orientation, gender identity or disability. Since this legal tool is very recent, its applicability is hard to assess.

The Fourth Amendment of the Fundamental Law adopted on 11 March 2013, introduced a new provision into its corpus (Art IX par (5) which provides that the right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Amnesty International, the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee is however concerned that the broad wording of this provision could lead to violations of the right to freedom of expression contrary to Hungary's obligations under International Covenant on Civil and Political Rights and the European Convention on Human Rights (as also the CoE Venice Commission shed light on the problem in its Opinion adopted at its 95th Plenary Session).

Discrimination of Roma students: It can be concluded that while the law prohibits the segregation of Roma children, the minister responsible for public education actively supports segregation. The nationalization of public schools did not promote equal opportunities, in some cases it resulted in resegregation. Long term educational plans do not tackle school segregation. Several provisions in the new act on public education have a detrimental effect on social disadvantaged and/or Roma children.

1. Hungarian National Social Inclusion Strategy

No specific measure had been adopted to decrease segregation of Roma children. Not even the Hungarian National Social Inclusion Strategy mentions the need to eliminate school segregation of Roma children, therefore combating racial segregation is not a priority nor a long term goal in Hungary.

2. The new public education act

A new act on public education has been adopted in 2011 (Act CXCV of 2011 on National Public Education) which worsens the situation of multiply disadvantaged and/or Roma students. First, the new educational act does not prohibit discrimination *expressis verbis*, it only refers to the right to equal treatment as a principle that governs education. It reintroduced failing which affects mainly disadvantaged and Roma children while repeating a school year is one of the main reasons for early selection. The new act reduced the compulsory school age from 18 to 16 years as of 1 January 2013. This can potentially result in leaving secondary education without qualification, which mostly affects Roma. Schools already made efforts to get rid of students considered to be problematic (mostly Roma). There was no impact evaluation presented by the government on the benefit of the change in compulsory school age.

3. Nationalization of public schools

Public schools have been nationalized as of 1 January, 2013. A new centralized body, the Klebelsberg School Maintainer Centre is the sole maintainer of all primary and secondary schools handed over by municipalities. When taking over the school, the Centre had the historic opportunity to inspect all schools and take steps against unlawful practices, such as segregation of Roma children. The Centre however left segregated schools intact and failed to map the situation of Roma children in the nationalized schools.

4. Legalizing segregation: through minority education

The Government made several attempts to legalise segregation. First, the Government and the National Roma Self-government (NRSG) agreed to deepen the NRSG's involvement in the education of the Roma. A new act has been adopted on national minorities in 2011 (Act CLXXIX of 2011 on the rights of minorities) which gives floor to the takeover of primary schools by national minority self-governments in case 75% of the students of the respective school already receive minority education. In Hungary segregated schools are the most likely to provide Roma minority education. As of September 2012, already three schools had been transferred to the NRSG. Rumors have emerged that all segregated schools would be transferred to Roma self-governments. Those who expressed such fears referred to the increased budgetary allocations available for schools maintained by minority self-governments. On 27 March, 2014 the Ombudsman published a report on the situation of minority secondary schools. According to the Ombudsman Roma minority education is in a special situation compared to other minorities in Hungary, since Roma minority education often serves segregation, moreover Roma minority schools provide a lower quality of education compared to other minority schools due to the fact that it cumulates the disadvantage arising out of the socio-economic status of its students.

Legalising segregation for remedial aims

Second, on 29 March, 2013 the Minister for Justice submitted a proposal to the Parliament for the amendment of the Act CXXV on equal treatment and the promotion of equal opportunities of 2003. According to the proposal, the provisions on positive measures (exceptions from discrimination) would have been amended to allow discrimination (and segregation) for remedial aims. A coalition of NGOs called MPs to vote NO for the amendment. Finally, the amendment has been revoked. NGOs expressed their concern that the proposal would have created a situation on which- contrary to the Racial Equality Directive- segregation would have been legal in case it served remedial aims. The State Secretary responsible for social inclusion admitted that the ministry is currently working on a new legislation on social inclusion.

Minister Zoltan Balog responsible for public education expressed his concerns about the law currently prohibiting segregation completely. He believes integration is a two-step effort: first the disadvantaged, mostly Roma children shall be put into segregated schools where “they will catch up”, and then once they achieve the knowledge and skills in these segregated schools equal to that of students in the “white” schools, the Roma children can be integrated into the mainstream population. Mr Balog volunteered to testify in a court in defense of the Greek Catholic Church which maintains a segregated school in Nyiregyhaza. The Court of Nyiregyhaza established that the Church was segregating its students based on their Roma origin in a judgment of 28 February 2014. The judgment is not final. After the judgement has been delivered, Mr. Balog expressed his dislike of the judgement and said that the verdict “is a sad commentary on the judiciary, which denies parents’ right to a free choice of schools.”

5. The new school maintainer preserves segregation

The Centre expressed its position towards integration in a lawsuit on 17 February 2014, maintaining that it is not its duty to promote integration in a proactive manner and to monitor segregation in schools. There are 8 pending segregation lawsuits in which the Centre was invoked after the nationalisation of the schools. In none of the pending cases took the Centre any action to settle the case out of court and to end segregation. In some cases the Centre is resegregating, putting an end to the desegregation process started by the former school maintainer. In Piliscsaba the Centre launched a new class in a segregated school which was about to be closed down by the municipality because of its unlawful operating being a Roma- only school.

6. There is no effective remedy against segregation

Since 2006 Hungarian courts adjudged 7 Roma education cases in which they held that Roma children were unlawfully segregated. However, Hungarian courts have not yet ordered the desegregation of the impugned schools; therefore there is no effective remedy available against systematic and structural discrimination in education of Roma children. There is no effective school inspection either, and as it was revealed by the Ombudsman, Klebelsberg School Maintainer Centre’s procedure of remedy is in deficiency and controversial (Report of the Commissioner for Fundamental Rights, No. AJB-922/2013.)

On May 16, 2012 the Supreme Court established that the Lajos Kossuth Primary School of Győr is segregated, but it dismissed CFCF's claim on the elimination of the unlawful situation in Győr by saying that the court cannot order to close down a school. The Supreme Court argued that such an order would violate the rights of the parents to freely choose the school for their children and it would endanger the functioning of the school. CFCF challenged the judgment before the Constitutional Court which dismissed its complaint on 17 June 2013. The Constitutional Court did not examine the petition on the merits, it took the position that there is no room for *actio popularis* petition in front of the Constitutional Court.

Aim to eliminate segregated education, which is not based on strict individual assessment, and draft a national strategy for the introduction of an inclusive education. Evaluation provided by the Working Group Against Hate Crimes

UNHCR response:

Although the new Penal Code entered into force on 1 July 2013 introduced some changes in the field of criminalizing hate crime, however a number of deficiencies have remained. The application of hate crime legislation seems to be still inadequate (systematic under-classification of hate crimes, high degree of latency due to mistrustfulness towards the investigating authorities, lack of relevant data). Although in September 2013 the Government adopted a new National Crime Prevention Strategy as well as an Action Plan for 2013-2015, nevertheless the document failed to include any specific measures aimed at combating crimes motivated by bias or hatred. Asylum-seekers and refugees – who are visibly different, as well as Roma and LGBTI people – find themselves in a double-disadvantaged situation when it comes to the 'root causes' of hate crime in Hungary. UNHCR and its interlocutors found discriminatory attitudes on behalf of the Police, health care providers, schools and employers. Refugees have reported suffering discrimination, physical and verbal harassment in all areas of their lives. In 2013 an official Government policy on migration has been adopted by the Hungarian Government, which highlights the fact that very little has been done by the Government itself in communicating and generating community understanding, awareness and acceptance of migrants, nonetheless the Migration Strategy fails to elaborate on a Government communication strategy aiming at generating community understanding, awareness and acceptance about migrants, asylum-seekers and refugees in order to increase social cohesion.

State of Hungary response:

Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities is a general anti-discriminative legal source that made the already existing rules coherent. It is in line with the EU law and contains consistent, comprehensive and detailed anti-discrimination provisions. In addition to the general provisions the law deals with the enforcement of equal treatment in specific areas. It prohibits both direct and indirect discrimination. The Equal Treatment Authority is entitled to deal with individual cases all over the country that are to be used as precedents. The Authority also issues general information, launches training and research programmes in order to promote equal treatment in all aspects of public life.

The EU is home to some 10 million Roma, who are exposed to deep poverty, unemployment, discrimination and segregation. That is why the adoption of the EU Framework for National Roma Integration Strategies up to 2020 was one of the priority areas for the Hungarian Presidency of the Council of the European Union in 2011. The Framework provides a unique opportunity to make a real difference in the lives of Roma people throughout Europe and requested member states to adopt before the end of 2011 their National Roma Integration Strategies which determine the medium-term challenges and targets of the social and labour market integration of the Roma, as well as the necessary interventions, over a period of 10 years. On 30 November 2011 Hungary sent its National Social Inclusion Strategy 2011-2020 (NSIS) as the first one to the European Commission. The Strategy is complex: it lays down an immediate action plan, and also assigns long term tasks. In addition, it systemizes all those areas and actors which deal with inclusion policies such as state measures, specified programmes, institutions and other actors. The aim of the Strategy and its Action Plan for the period of 2012- 2014 is to improve the social and living conditions of people living in extreme poverty. The two special target groups are the Roma and children. Both documents deal with child well-being, education, employment, health, housing as well as involvement, awareness-raising and fight against discrimination. A framework agreement with the National Roma Self-Government which designates concrete numerical targets for Roma in the most important fields is annexed to the Strategy.

387,069 people participated in public employment programs in 2013, with most of them having no more than primary school education, among them an estimated number of 77,000 Roma (20%). 27.6% managed to find a job within 180 days after leaving public employment. Living allowance is given to those participating in EU-funded training programs. In order to facilitate access to the labour market, decentralised employment programmes, EQUAL ESF funded programmes (Social Renewal Operational Programme) and public employment programmes have been launched. Moreover, support programmes were also started with the contribution of the National Public Foundation for Employment. In addition, employment of the Roma is promoted by grants supporting job creation projects, as well as by training subsidies.

The social land program is a social policy tool for those (including Roma families) living in an environment suitable for agricultural production. The employability of disadvantaged people such as the Roma is promoted by several programs such as the employment of Roma women in embedded training, training of participants in public works programs, or the competency development training of disadvantaged people.

The Anti-segregation Roundtable – in cooperation with civil partners – analyses the current situation and identifies common proposals for desegregation in education in the immediate, short, medium and long terms. The Roundtable also examines methods for the recognition, assessment and prevention of educational segregation.

The Fundamental Law declares the prohibition of every form of discrimination between men and women, the protection of women, the promotion of equal treatment and equality between women and men. The Act on Health declares that its purpose is to contribute to ensuring equal access to health care services for all members of society, and equal opportunities and equality should be observed throughout the provision of healthcare services. A new National Centre for Patients' Rights and Documentation was set up in 2012 which through its countrywide patients' rights advisors network handles the complaints by the patients. The ministry responsible for health issues (EMMI) through its regional offices (ÁNTSZ) provides supervision over health care providers and ensures health care services without discrimination. As the life expectancy at birth of Roma people is shorter by 10 years than the national average the NSIS devotes a special chapter to improve the health of socially excluded population, in particular the Roma by enhancing their access to health care and by encouraging health-conscious behaviour. Main tools are the organised public health screening programs (breast, cervix, colorectal), the Health Visitors Network for pre and prenatal care and the Health Promotion Pilot Project against segregation.

Hungary was the first country to incorporate studies on Roma culture and history including the Roma Holocaust in its National Curriculum. As a result, no member of the future generations will complete his or her studies without having acquired basic knowledge of the Roma.

The new electoral law introduced preferential mandates for nationalities (including the Roma) unprecedented in Hungarian history. In order to obtain a preferential parliamentary mandate, nationalities' candidates need one quarter of the number of votes required for a mandate from majority party lists. Should a nationality fail to achieve this number, they may delegate a nationality advocate or spokesperson to Parliament. The new system was applied for the first time during the elections in April 2014.

In order to promote the integration of the Roma, the National Police Headquarters (NPH), as well as the county police departments provide scholarships (and subsequently job opportunities) for Roma high school and university students in law enforcement education institutions.

The local basis of social inclusion is manifested in local equal opportunity programs. Based on the Law on Equal Treatment and the Promotion of Equal Opportunities five year local equal opportunity programs should be adopted by municipalities. As of 1 July 2013 municipalities can only be supported by either EU or national funds based on individual decisions or open tenders if they adopted a local equal opportunity program. The preparation of programs is assisted by a mentoring network. During the preparation of these plans the local governments – taking into consideration inter alia the aspects of anti-discrimination – prepare a situation analysis about disadvantaged social groups in social services, education, employment, health and housing, and they prepare a complex action plan to solve the identified problems. The programs are prepared along uniform principles.

A training project of the Ministry of Human Resources targets the more effective implementation of EU and national anti-discrimination laws regarding the main protected target groups including the Roma, the strengthening of national anti-discrimination and equal opportunity policies, the provision of information on a wide range of measures, as well as the collection of good practices. Since 2013 the Equal Treatment Authority organised 16 trainings, 6 workshops and 5 conferences on “Combating discrimination, shaping society attitude and strengthening the work of the Authority” throughout the country. One of the main topics was the promotion of employment of Roma people (TÁMOP-5-5-5 project). In the framework of the same project several studies were published in 2013 about discrimination on the grounds of ethnic origin (particularly discrimination against Roma people): Gender pay gap and segregation at present in Hungary, Employee selection practice in the light of discrimination, Exploring exclusionary mechanisms in municipal administration and legislation.

Recommendation n°46: *Take effective measures to curb racial hatred and discrimination against the Roma population* (Recommended by Bangladesh)

IRI: fully implemented

Joint response:

Partially implemented.

Racism: The National Social Inclusion Strategy ("Roma Strategy") has been adopted in (2011) but in essence it lacks a human rights approach. The government decision on measures to implement the National Social Inclusion Strategy ("Roma Strategy") prescribes that in locations with ethnic conflicts programs aiming at mediation, conflict resolution, crime prevention and community development programs have to be launched. Submitting organisations are not aware of such programs implemented. In its 2013 report on the implementation of the strategy the government acknowledged that the implementation of these measures remain at the preparatory phase.

Hate crimes: In March and April 2011 extremist vigilante groups started to "patrol" illegally and harass Roma people living in Gyöngyöspata. Police and government failed to intervene for 2 months. Finally, as a consequence, a new provision was included in the Criminal Code in May 2011 (Act No. IV of 1978, Art. 174/B par. 1a), and the new Criminal Code also includes this part (Act No. C of 2012, Art. 216 par. 1) which sanctions bias motivated rowdiness. Another new provision was introduced in 2011 in the Criminal Code as a consequence of the far-right “patrollings” in Gyöngyöspata. This provision aims at sanctioning illegal performance of activities maintaining or protecting public order. However these provisions have rarely been enforced, despite reports to the police and even despite incidents that happened in presence of the police (e.g. Devecser, 5 August 2012).

The Parliament adopted a new Criminal Code in June 2012 (Act No. C of 2012, which entered into force on 1 July 2013) that specifically mentions sexual orientation, gender identity and disability as grounds for protection under the hate crime provision 'violence against a member of a community' (Art. 216).

Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

Civil society groups also criticized the inclusion of ("other social groups") as a protected characteristic that carries the risk of too loose interpretation and legal uncertainty.

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crime provisions:

- Police often fail to take effective measures on the spot when they are present during hate incidents (e.g. at different demonstrations).
- Law enforcement agencies are often reluctant to acknowledge bias motivation behind hate incidents against minority groups while it is more likely to prosecute Roma for hate crimes against Hungarians.
- In case bias motivation is recognized, investigation is regularly ineffective (the police fails to explore the background of the perpetrator, fails to analyze CCTV footage, fails to interview witnesses, etc.)

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. In spite of this, there is a widely reported case where the hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups, which was interpreted by the court as an anti-Hungarian hate crime. (The judgement is under revision by the Supreme Court).

Evaluation provided by the Working Group Against Hate Crimes see All

The Hungarian Helsinki Committee is concerned that in the new Criminal Code, still only the most extreme form of hate speech is outlawed, namely, incitement liable to provoke immediate violent acts (Art 332). This provision on incitement, however, typically has not been invoked by investigative or judicial authorities. In a case (Tyrityán-case, 2011), the police relied on the argument that the above provision demands actual violence as a consequence of incitement, in another case (Bayer-case, 2013), the Prosecution argued that at least the real danger of violence must be present while hate speech is given. Although in one case (Tomcat blogpost-case, 2009), the Prosecution deemed it sufficient to proceed if the perpetrator is aware of the possible consequences of hate speech, due to the extreme length of the trial, the sanction imposed by the second-instance court in 2013 was 50 days of community service. In the Devecser-case of 2012, where hate speech was in fact followed by violent acts committed against members of the local Roma community, the police, while terminating the investigation, argued that these speeches were morally unacceptable but were not able to provoke actions driven by passion, hate or instincts.

Education: The Chance for Children Foundation is concerned that there has been no effective measures taken against segregation of Roma children in the reporting period. On the contrary, legislative changes and governmental policies are attempting to legalise segregation. The Government made several attempts to legalise segregation. First, the Government and the National Roma Self-government (NRSG) agreed to deepen the NRSG's involvement in the education of the Roma. A new act has been adopted on national minorities in 2011 (Act CLXXIX of 2011 on the

rights of minorities) which gives floor to the takeover of primary schools by national minority self-governments in case 75% of the students of the respective school already receive minority education. In Hungary segregated schools are the most likely to provide Roma minority education. As of September 2012, already three schools had been transferred to the NRSG. Rumors have emerged that all segregated schools would be transferred to Roma self-governments. Those who expressed such fears referred to the increased budgetary allocations available for schools maintained by minority self-governments. On 27 March, 2014 the Ombudsman published a report on the situation of minority secondary schools. According to the Ombudsman Roma minority education is in a special situation compared to other minorities in Hungary, since Roma minority education often serves segregation, moreover Roma minority schools provide a lower quality of education compared to other minority schools due to the fact that it cumulates the disadvantage arising out of the socio-economic status of its students.

Legalising segregation for remedial aims

Second, on 29 March, 2013 the Minister for Justice submitted a proposal to the Parliament for the amendment of the Act CXXV on equal treatment and the promotion of equal opportunities of 2003. According to the proposal, the provisions on positive measures (exceptions from discrimination) would have been amended to allow discrimination (and segregation) for remedial aims. A coalition of NGOs called MPs to vote NO for the amendment. Finally, the amendment has been revoked. NGOs expressed their concern that the proposal would have created a situation on which- contrary to the Racial Equality Directive- segregation would have been legal in case it served remedial aims. The State Secretary responsible for social inclusion admitted that the ministry is currently working on a new legislation on social inclusion.

Minister Zoltan Balog responsible for public education expressed his concerns about the law currently prohibiting segregation completely. He believes integration is a two-step effort: first the disadvantaged, mostly Roma children shall be put into segregated schools where “they will catch up”, and then once they achieve the knowledge and skills in these segregated schools equal to that of students in the “white” schools, the Roma children can be integrated into the mainstream population. Mr Balog volunteered to testify in a court in defense of the Greek Catholic Church which maintains a segregated school in Nyiregyhaza. The Court of Nyiregyhaza established that the Church was segregating its students based on their Roma origin in a judgment of 28 February 2014. The judgment is not final. After the judgement has been delivered, Mr. Balog expressed his dislike of the judgement and said that the verdict “is a sad commentary on the judiciary, which denies parents’ right to a free choice of schools.”

Moreover, the new school maintainer preserves segregation. The Centre expressed its position towards integration in a lawsuit on 17 February 2014, maintaining that it is not its duty to promote integration in a proactive manner and to monitor segregation in schools. There are 8 pending segregation lawsuits in which the Centre was invoked after the nationalisation of the schools. In none of the pending cases took the Centre any action to settle the case out of court and to end segregation. In some cases the Centre is resegregating, putting an end to the desegregation process

started by the former school maintainer. In Piliscsaba the Centre launched a new class in a segregated school which was about to be closed down by the municipality because of its unlawful operating being a Roma-only school.

And finally, a decision of the Supreme Court of 2012 shows that there is no effective remedy against segregation. Since 2006 Hungarian courts adjudged 7 Roma education cases in which they held that Roma children were unlawfully segregated. However, Hungarian courts have not yet ordered the desegregation of the impugned schools; therefore there is no effective remedy available against systematic and structural discrimination in education of Roma children. There is no effective school inspection either, and as it was revealed by the Ombudsman, Klebelsberg School Maintainer Centre's procedure of remedy is in deficiency and controversial (Report of the Commissioner for Fundamental Rights, No. AJB-922/2013.)

On May 16, 2012 the Supreme Court established that the Lajos Kossuth Primary School of Győr is segregated, but it dismissed CFCF's claim on the elimination of the unlawful situation in Győr by saying that the court cannot order to close down a school. The Supreme Court argued that such an order would violate the rights of the parents to freely choose the school for their children and it would endanger the functioning of the school. CFCF challenged the judgment before the Constitutional Court which dismissed its complaint on 17 June 2013. The Constitutional Court did not examine the petition on the merits, it took the position that there is no room for *actio popularis* petition in front of the Constitutional Court.

Evaluation provided by the Working Group Against Hate Crimes

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°47: Take concrete measures to prevent and combat violence against members of other minorities and vulnerable groups, especially racially motivated hate crimes against and discrimination of the Roma and to promote their integration into society (Recommended by Republic of Korea)

IRI: *fully implemented*

Joint response:

Partially implemented.

Prevent and combat: In March and April 2011 extremist vigilante groups started to "patrol" illegally and harass Roma people living in Gyöngyöspata. Police and government failed to intervene for 2 months. Finally, as a consequence, a new provision was included in the Criminal Code in May 2011 (Act No. IV of 1978, Art. 174/B par. 1a), and the new Criminal Code also includes this part (Act No. C of 2012, Art. 216 par. 1) which sanctions bias motivated rowdiness. Another new provision was introduced in 2011 in the Criminal Code as a consequence of the far-right "patrollings" in Gyöngyöspata. This provision aims at sanctioning illegal performance of activities maintaining or protecting public order. However these provisions have rarely been enforced, despite reports to the police and even despite incidents that happened in presence of the police (e.g. Devecser, 5 August 2012).

The Parliament adopted a new Criminal Code in June 2012 (Act No. C of 2012, which entered into force on 1 July 2013) that specifically mentions sexual orientation, gender identity and disability as grounds for protection under the hate crime provision 'violence against a member of a community' (Art. 216).

Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

Civil society groups also criticized the inclusion of ("other social groups") as a protected characteristic that carries the risk of to loose interpretation and legal uncertainty.

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crimes provisions:

- Police often fails to take effective measures on the spot when they are present during hate incidents (e.g. at different demonstrations).
- Law enforcement agencies are often reluctant to acknowledge bias motivation behind hate incidents against minority groups while it is more likely to prosecute Roma for hate crimes against Hungarians.
- In case bias motivation is recognized investigation is regularly ineffective (the police fails to explore the background of the perpetrator, fails to analyze CCTV footage, fails to interview witnesses, etc.)

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. In spite of this, there is a widely reported case where the hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups, which was interpreted by the court as an anti- Hungarian hate crime. (The judgement is under revision by the Supreme Court).

Integration: The National Social Inclusion Strategy ("Roma Strategy") has been adopted in (2011) but in essence it lacks a human rights approach. The government decision on measures to implement the National Social Inclusion Strategy ("Roma Strategy") prescribes that in locations with ethnic conflicts programs aiming at mediation, conflict resolution, crime prevention and community development programs have to be launched. Submitting organisations are not aware of such programs implemented. In its 2013 report on the implementation of the strategy the government acknowledged that the implementation of these measures remain at the preparatory phase.

Submitting organizations are not aware of any other measures or awareness raising campaigns to combat racism, anti-Semitism, homo- or transphobia.

On the contrary, some recent actions (no actions, respectively) of the government provoked resistance in the Jewish community, among others. For instance, the German occupation memorial which is currently being built. It denies by it's symbolic means the responsibility of the Hungarian leadership for murdering Hungarian Jewish Holocaust victims. Or, for example, that there were no consequences that the

director of the Veritas History Research Institute, Sándor Szakály, classified the deportation of thousands of Jews to Kamyanyets-Podilsky as an “aliens policing procedure”.

Symbolic steps were made against the Roma people in Hungary as well. Although the Prime Minister distanced himself in many cases from calling slurs to Roma people – in response to racist remarks made by members of the Parliament of the party Jobbik –, there were some cases where he also made anti Roma statements, such as in his speech at the Hungarian Chamber of Commerce and Industry’s Economic Season Opener 12th, March 2013. After that a member of a far right extremist band and an openly racist journalist received an award from the Minister of Human Resources (the latter was revoked).

Chance for children foundation: With respect to discrimination of Roma children in schools, there have been no effective measures taken against widespread segregation of Roma students. There was no awareness raising campaign introduced either. Since 2006 Hungarian courts adjudged 7 Roma education cases in which they held that Roma children were unlawfully segregated. However, Hungarian courts have not yet ordered the desegregation of the impugned schools; therefore there is no effective remedy available against systematic and structural discrimination in education of Roma children. There is no effective school inspection either, and as it was revealed by the Ombudsman, Klebelsberg School Maintainer Centre’s procedure of remedy is in deficiency and controversial (Report of the Commissioner for Fundamental Rights, No. AJB-922/2013.)

On May 16, 2012 the Supreme Court established that the Lajos Kossuth Primary School of Győr is segregates, but it dismissed CFCF’s claim on the elimination of the unlawful situation in Győr by saying that the court cannot order to close down a school. The Supreme Court argued that such an order would violate the rights of the parents to freely choose the school for their children and it would endanger the functioning of the school. CFCF challenged the judgment before the Constitutional Court which dismissed it complaint on 17 June 2013. The Constitutional Court did not examine the petition on the merits, it took the position that there is no room for *actio popularis* petition in front of the Constitutional Court. Evaluation provided by the Working Group Against Hate Crimes

UNHCR response:

[See response to recommendation n°44]

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°48: *Strengthen measures directed towards the protection from discrimination and further integration of the Roma* (Recommended by Belarus)

IRI: *partially implemented*

+

Recommendation n°106: *Place special emphasis on addressing the socio-economic disadvantages of the Roma, particularly in the areas of employment, education,*

housing and access to health services. Segregation in school should be eliminated through both incentives and sufficient penalty in case of violation (Recommended by Thailand)

IRI: *partially implemented*

Joint response:

European Roma Rights Center: Not implemented.

It can be concluded that while the law prohibits the segregation of Roma children, the minister responsible for public education actively supports segregation. The nationalization of public schools did not promote equal opportunities, in some cases it resulted in re-segregation. Long term educational plans do not tackle school segregation. Several provisions in the new act on public education have a detrimental effect on social disadvantaged and/or Roma children.

1. Hungarian National Social Inclusion Strategy

No specific measure had been adopted to decrease segregation of Roma children. Not even the Hungarian National Social Inclusion Strategy mentions the need to eliminate school segregation of Roma children, therefore combating racial segregation is not a priority nor a long term goal in Hungary.

2. The new public education act

A new act on public education has been adopted in 2011 (Act CXCV of 2011 on National Public Education) which worsens the situation of multiply disadvantaged and/or Roma students. First, the new educational act does not prohibit discrimination expressis verbis, it only refers to the right to equal treatment as a principle that governs education. It reintroduced failing which affects mainly disadvantaged and Roma children while repeating a school year is one of the main reasons for early selection. The new act reduced the compulsory school age from 18 to 16 years as of 1 January 2013. This can potentially result in leaving secondary education without qualification, which mostly affects Roma. Schools already made efforts to get rid of students considered to be problematic (mostly Roma). There was no impact evaluation presented by the government on the benefit of the change in compulsory school age.

3. Nationalization of public schools

Public schools have been nationalized as of 1 January, 2013. A new centralized body, the Klebelsberg School Maintainer Centre is the sole maintainer of all primary and secondary schools handed over by municipalities. When taking over the school, the Centre had the historic opportunity to inspect all schools and take steps against unlawful practices, such as segregation of Roma children. The Centre however left segregated schools intact and failed to map the situation of Roma children in the nationalized schools.

4. Legalizing segregation: through minority education

The Government made several attempts to legalise segregation. First, the Government and the National Roma Self-government (NRSG) agreed to deepen the NRSG's involvement in the education of the Roma. A new act has been adopted on national minorities in 2011 (Act CLXXIX of 2011 on the rights of minorities) which gives floor to the takeover of primary schools by national minority self-governments in

case 75% of the students of the respective school already receive minority education. In Hungary segregated schools are the most likely to provide Roma minority education. As of September 2012, already three schools had been transferred to the NRSG. Rumors have emerged that all segregated schools would be transferred to Roma self-governments. Those who expressed such fears referred to the increased budgetary allocations available for schools maintained by minority self-governments. On 27 March, 2014 the Ombudsman published a report on the situation of minority secondary schools. According to the Ombudsman Roma minority education is in a special situation compared to other minorities in Hungary, since Roma minority education often serves segregation, moreover Roma minority schools provide a lower quality of education compared to other minority schools due to the fact that it cumulates the disadvantage arising out of the socio-economic status of its students.

Legalising segregation for remedial aims

Second, on 29 March, 2013 the Minister for Justice submitted a proposal to the Parliament for the amendment of the Act CXXV on equal treatment and the promotion of equal opportunities of 2003. According to the proposal, the provisions on positive measures (exceptions from discrimination) would have been amended to allow discrimination (and segregation) for remedial aims. A coalition of NGOs called MPs to vote NO for the amendment. Finally, the amendment has been revoked. NGOs expressed their concern that the proposal would have created a situation on which- contrary to the Racial Equality Directive- segregation would have been legal in case it served remedial aims. The State Secretary responsible for social inclusion admitted that the ministry is currently working on a new legislation on social inclusion.

Minister Zoltan Balog responsible for public education expressed his concerns about the law currently prohibiting segregation completely. He believes integration is a two-step effort: first the disadvantaged, mostly Roma children shall be put into segregated schools where “they will catch up”, and then once they achieve the knowledge and skills in these segregated schools equal to that of students in the “white” schools, the Roma children can be integrated into the mainstream population. Mr Balog volunteered to testify in a court in defense of the Greek Catholic Church which maintains a segregated school in Nyiregyhaza. The Court of Nyiregyhaza established that the Church was segregating its students based on their Roma origin in a judgment of 28 February 2014. The judgment is not final. After the judgement has been delivered, Mr. Balog expressed his dislike of the judgement and said that the verdict “is a sad commentary on the judiciary, which denies parents’ right to a free choice of schools.”

5. The new school maintainer preserves segregation

The Centre expressed its position towards integration in a lawsuit on 17 February 2014, maintaining that it is not its duty to promote integration in a proactive manner and to monitor segregation in schools. There are 8 pending segregation lawsuits in which the Centre was invoked after the nationalisation of the schools. In none of the pending cases took the Centre any action to settle the case out of court and to end segregation. In some cases the Centre is resegregating, putting an end to the desegregation process started by the former school maintainer. In Piliscsaba the

Centre launched a new class in a segregated school which was about to be closed down by the municipality because of its unlawful operating being a Roma-only school.

6. There is no effective remedy against segregation

Since 2006 Hungarian courts adjudged 7 Roma education cases in which they held that Roma children were unlawfully segregated. However, Hungarian courts have not yet ordered the desegregation of the impugned schools; therefore there is no effective remedy available against systematic and structural discrimination in education of Roma children. There is no effective school inspection either, and as it was revealed by the Ombudsman, Klebelsberg School Maintainer Centre's procedure of remedy is in deficiency and controversial (Report of the Commissioner for Fundamental Rights, No. AJB-922/2013.)

On May 16, 2012 the Supreme Court established that the Lajos Kossuth Primary School of Győr is segregated, but it dismissed CFCF's claim on the elimination of the unlawful situation in Győr by saying that the court cannot order to close down a school. The Supreme Court argued that such an order would violate the rights of the parents to freely choose the school for their children and it would endanger the functioning of the school. CFCF challenged the judgment before the Constitutional Court which dismissed its complaint on 17 June 2013. The Constitutional Court did not examine the petition on the merits, it took the position that there is no room for *actio popularis* petition in front of the Constitutional Court.

State of Hungary response:

[See response to recommendation n°44]

Recommendation n°49: *Take concrete and stern action to ensure equal treatment for all in the society, in particular to remove de facto discrimination against Roma people* (Recommended by Pakistan)

IRI: *fully implemented*

Joint response:

European Roma Rights Center (Based on reports by a group of NGOs who analysed the implementation of the NSIS (Civil Society Monitoring Report and Update Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012): During the follow up period, the Hungarian Government adopted a National Social Inclusion Strategy (NSIS) in December 2011 and an Action plan, Government Resolution No. 1430/2011. (XII. 13.) for the implementation of the NSIS. The Hungarian Strategy targets several vulnerable groups, for example children, people living in less developed regions and also Roma. Thus, it follows the "explicit but not exclusive targeting" principle, congruent with the 10 Common Basic Principles of Roma Inclusion. Nevertheless, the lack of a very clear Roma focus may pose challenges to a successful and robust policy-making, while various interventions in sectoral policies (for example, change of legislation, launching of programmes, etc.) and partial interventions launched in parallel may further weaken the efforts made in favour of Roma inclusion and the Strategy's implementation.

During the follow up period policy changes, such as abolishing the institution of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and moving this function to the portfolio of the deputy of the Commissioner for Fundamental Rights, have resulted in far less powerful institutional tools for combating discrimination. Hungarian authorities do little to sanction hate speech, and criminal law provisions designed to protect groups facing bias are more often applied by the authorities to sanction Roma rather than non-Roma. In case of most hate crimes, no proper criminal procedure is launched. At the local level, the powerless position of minority self-governments has been further weakened: their consent is not obligatory any longer to decide on matters affecting the local Romani community (while, on the other hand, numerous governmental tasks which go far beyond the legitimate political role of national minority self-governments have been assigned to the National Roma Self-Government).

Whereas the NSIS contains goals on the four key areas of the EU Framework (education, employment, housing, health), desegregation on the area of housing and education is a taboo for the Government, moreover school segregation in education labeled as “catch-up opportunity” is a supported approach by the Government.

Education

The process of exclusion through the education system will most probably speed up.

The issues which have been of great concern in this sector are school segregation and lack of access for Roma to early child development, as well as pre-school services and quality education on both primary and secondary level. As a consequence, early school leaving and low level of participation in tertiary education have not improved either. Some of these issues have been targeted by mainstream education policies, but, generally, with very poor impact on Roma. Moreover, the policy direction taken is clearly working towards the diminishing of the potential impacts of equal treatment policies that were put into practice in 2010. For example, school segregation is among the supported approaches in schooling and is identified as offering a “catch-up opportunity”, according to official political statements. Several declarations reinforce this approach, and the steps taken back up the presumption that the Government does not support active desegregation.

All these policy changes contradict both the conclusions of, and the goals set up in, the NSIS, as well as the massive experience gathered in the past two decades in relation to the situation of Roma in the education system.

Actions taken that contradict the NSIS goals:

- The reduction of the mandatory age-limit in compulsory education from 18 to 16 will increase the number of low-skilled youth with fewer chances in the labour market.
- The uniform educational programme made obligatory for schools will most probably also deliver less individualized needs-based education for the neediest.
- The significant change to the university admission system and reduction in the number of places financed by the state will most probably further cut the very low share of Roma in tertiary education, too. Obviously, this step will further foster the

“early selection” nature of the Hungarian education system, especially impacting children from disadvantaged social backgrounds.

- The Hungarian education system not only reflects but also promotes the development of social inequalities, i.e., it increases concomitant disadvantages arising from social background, because strong selection and segregation mechanisms prevail at all levels of public education while the capacity of that education to compensate for background is quite meagre.
- Because of the change according to the definition on disadvantaged children it is highly possible that many Roma will fall out of the scope of allowances, and/or many will be reclassified from the category of multiply disadvantaged into the category of disadvantaged; the scope of services available will therefore be narrowed.
- As of 1 September 2014, it will be mandatory for all children to enrol in kindergarten from the age of 3. Even though we consider this a very positive approach towards disadvantaged children, including Romani children, the fact is that the distribution of kindergarten places and the condition of their equipment and facilities is quite uneven; many Roma-populated villages or parts of cities are still without sufficient kindergarten places; in the past half-year no crucial changes were implemented.
- The state-financed scholarship programmes for Roma and/or disadvantaged children continue in 2013 with a further reduction of resources. Data on follow-up and the proportion of Roma students participating in these programmes are still not available.

During the follow period the European Court of Human Rights has ruled that Hungary has violated the European Convention on Human Rights in the case of the segregated education of Roma children (Mr Horváth and Mr Kiss) who were educated in a school for the mentally disabled. The court’s decision underlined that the Hungarian practice of (mis)diagnosing Roma is considered indirect discrimination. The judgment is awaiting for implementation.

The Chance for Children Foundation:

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lower quality of education compared to other minority schools due to the fact that it cumulates the disadvantage arising out of the socio-economic status of its students.

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Employment:

The increasing employment of Roma is foreseen by public work in stead of the job market or social economy.

After 2009, the main focus employment policy included reducing the amounts of various benefits (e.g., merging and reducing benefits based on disability or infirmity); the strengthening of job-seekers' activity; and offering services through Public Employment Services. The proportion of funds spent on public employment from the fund available for labour market instruments has risen to a record high amount in 2012–2013. The amount of the financial benefits (and access to them) has been further reduced. The current public work system was created in 2012, involving the introduction of the Employment Replacement Subsidy (ERS), a reduction in the amount of aid, and stricter entitlement criteria.

In 2011, only one-quarter of Roma aged between 15-64 were employed in Hungary. The employment rate of Romani women is reported by surveys to have been between 13 and 16%. Compared to non-Roma there is a high proportion of casual work and informal or hidden employment among the Roma of active age. This causes a much higher vulnerability and uncertainty compared to non-Romani employees in general: Roma, as a result, have a lower level of income because no protection mechanism is in place for workers in informal or occasional employment. The increasing employment of Roma is foreseen by public work in stead of the job market or social economy. The number of participants in public work was 186,000 in 2010, 265,600 in 2011, and 311,500 in 2012. In 2013 the objective is to involve 300,000 individuals in public work. Large-scale as it actually is, this expensive public work system tends to draw resources away from active labour market programmes and state subsidies.

As the only solution, people are forced into public work which involves severe conditions and sanctions violating basic rights and dignity and which, in their current form, involve vulnerability, inequitable working conditions and often pointless work, representing a dead-end for most of the people participating in public work. Moreover, Roma are reportedly discriminated when applying for public work and thus are highly affected by the risk of being excluded from social services. As a consequence of restrictions introduced by the government, the number of adults not

receiving social benefits and being excluded from welfare services has increased in Hungary since 2011, a tendency particularly affecting Romani communities living in deep poverty. The findings of a recent survey of public work agencies clearly reinforces the fact that public work in its current form is less of a labour market reintegration instrument than it once was and that Roma frequently suffer from the discriminatory attitudes of decision-makers (employers, job supervisors) when applying for and taking part in public work.

Health:

Another area of exclusion of Roma is access to health services. It has been demonstrated that the health condition of Roma is significantly worse than the average health condition of non-Roma in Hungary. There are major regional inequalities, and public health measures are not effective in reaching out to the most disadvantaged. Special attention needs to be paid to children whose health condition is heavily impacted by the socio-economic status of their parents. Moreover, women in disadvantaged communities are significantly affected by the negative health consequences of abortions, as well as early pregnancies, while children in disadvantaged communities are significantly affected by foetal health problems and by health consequences of premature birth, malnutrition and insufficient living conditions. The sectoral policy has witnessed severe cut-backs and reorganisation in this area, and although the Action Plan (AP) of the NSIS has formulated numerous fields for interventions, for example, facilitating the employment of Romani women in the fields of social services, child welfare, decreasing the number of vacant general practitioner's / paediatrician's positions, so far there has been little result. The modification of the system of social/unemployment benefits to introduce the "30 days rule" (an additional eligibility criterion that the recipient has to have had an employment relationship of at least 30 days in the previous year) regarding "benefits for people of active age" ("regular social aid" and the "employment substituting allowance") could mean disadvantaged people who are no longer eligible for social benefits might lose their entitlement to primary health care as well. People of active age will be required to cover their health insurance contributions out-of-pocket, a monthly amount of approximately EUR 23.

Housing:

Bad health conditions are reinforced, among various other conditions, by the general housing situation of Roma. The structural problems within the housing sector, such as an unfavourable tenure structure which includes only a 3% social rental sector, has forced large numbers of the poor into the home ownership sector. Affordability issues are exacerbated by various forms of housing exclusion, such as housing in peripheral locations and/or of low quality, illegal arrangements or uncertain legal situations. Moreover, decreasing job opportunities result in many families falling into arrears with mortgage loan repayments and having unpaid public utilities bills. Despite all this, Hungary has been without any coherent housing policy since the transition. Most measures target the middle class and very limited funds have been left available for addressing the housing problems of the poorest, including the Roma. The transformation of the housing allowance and other more general social benefits has resulted in a situation where the poorest have less income for satisfying their minimum needs, a fact deepening their housing problems. Furthermore, no

steps have been taken to initiate a growth in the social rental sector except for the one related to the mortgage rescue programme which does not target the poorest families. In the field of social housing, no substantial measures have been taken. In light of all this, it may be concluded that housing policy measures have produced no tangible improvements in the housing situation of those living in deep poverty, including Romani families.

State of Hungary response:

[See response to recommendation n°44]

Recommendation n°50: *Introduce national measures to reduce school segregation and actively promote participation in society through education among the Roma community* (Recommended by Norway)

IRI: *partially implemented*

+

Recommendation n°93: *Take all necessary measures to promote equality in education in favour of all members of minority groups, especially Roma children* (Recommended by Greece)

IRI: *partially implemented*

+

Recommendation n°94: *Take measures to guarantee the right to equal education for Roma children* (Recommended by Finland)

IRI: *partially implemented*

Joint response:

[See response to recommendation n°48]

State of Hungary response:

Act on Public Education and Act on Equal Treatment prohibit segregation; all discriminative measures and measures violating the interest of the child taken by institutions (schools) or their maintainers are considered null and void. In 2013 the state took over the maintenance responsibilities of all public schools from municipalities in order to ensure coherent public education. In this way providing equal opportunities and requirements for all students including Roma become more efficient.

The regulation of primary school admission districts serves to terminate or prevent school segregation: school districts must be designed with taking into account students' social background (disadvantaged and multiple disadvantaged children and students) – they cannot be separated in one school or class. Definitions of disadvantaged and multiple disadvantaged persons are composed on the basis of family income and school qualification of parents, which indicators are in strong correlation with Roma students' social backgrounds. Statutory classifications define groups in need of special treatment and attention (socially disadvantaged, children with multiple disadvantages, children in need of special education) in order to appropriately attribute programmes and measures, as well as to prevent unlawful segregation. Important test-level developments serve the access to quality education of children with special educational needs and the prevention of unreasonable

classification as disabled (i.e. unreasonable classification and segregation of multiply disadvantaged (including Roma) children).

Public Education Equal Opportunity Action Plan is an obligation at school-district level. Objectives and measures of equality in public education and inclusion were involved into National Strategy on Public Education prepared in 2013. The possibility of organizing “corrective classes” for children with learning difficulties, operated formerly, ceased to exist. Students may not be segregated owing to their adaptation or any learning or behavioural irregularity; compulsory education may be fulfilled only with the others, in the school at the place of residence, or in any selected school. Alleged cases of educational segregation are examined by courts. Pursuant to rules applicable to official supervision, including the revelation and termination of the practice of unlawful segregation, government offices shall take measures in the interest of the termination of the irregularities revealed in connection with the compliance with the requirement of equal treatment.

The Integrated Education System (IPR) was introduced in 2003. It is a pedagogical framework giving disadvantaged children a chance to compensate for the differences in social situation. The On the Road scholarship programs ("Road to High School", "Road to graduate", "Road to the profession", "Road to higher education") includes more than 17,500 students – at least 50% of them are Roma – that receive a monthly scholarship and mentoring services. The extra-curricular learning facilities and „second chance” programmes are continued in the interest of promoting the successful study of Roma students with multiple disadvantages, reducing drop-out rates and re-integrating young people prematurely dropping out of the educational system into training in the school system (7.59 billion HUF). The newly launched study hall and second chance programmes offer more than 3100 students the chance of progress in school. The Network of Christian Roma Vocational Boarding Schools (KRSZH) involves more than 170 students. Programmes for disadvantaged children and youth offer recreational sports and music courses. Partner school relationships also foster integration.

The Government supports pilot programmes within the framework of the ‘School Net’ programme which aims to discover courses of study that may shape the overall school system, mentality of teachers and the pedagogic trends. These courses are set up in schools where disadvantaged pupils are overrepresented and where their wider environment faces the same social and economic problems. In the framework of the School Net program, development of methods, services aiming to improve the basic and communication skills of disadvantaged pupils. It also aims to implement projects focusing on the “bridge between schools” and school reintegration. The program financially facilitates restorations, restructuration and acquisition of low-value assets, as well. In the organization of events and recreational activities inclusion of parents is obligatory.

The Anti-segregation Roundtable was established with the specific aim to prepare a document in cooperation with civil partners that identifies common proposals for desegregation in the immediate, short, medium and long terms. The roundtable also

examines methods for the recognition, assessment and prevention of educational segregation.

Recommendation n°51: *Take further efforts aimed at broad social inclusion, in particular in the labour market, of Roma populations* (Recommended by Brazil)

IRI: *fully implemented*

+

Recommendation n°99: *Take the necessary measures to reduce the unemployment rate among Roma minority in the public and private sectors, including if necessary taking affirmative actions* (Recommended by Mexico)

IRI: *fully implemented*

+

Recommendation n°100: *Investigate, and in the future prevent, cases mentioned by CESCR of the denied access of Roma to health services and their segregation in hospitals, including the existence of separate maternity wards for Roma women in some hospitals* (Recommended by Russian Federation)

IRI: *fully implemented*

State of Hungary response:

[See response to recommendation n°44]

Recommendation n°53: *Make efforts to actively combat homophobic, anti-Semitic and anti- Roma rhetoric, including by ensuring law enforcement and judicial authorities are made aware of guidelines on identifying and investigating racially motivated crime* (Recommended by United Kingdom)

IRI: *fully implemented*

Joint response:

Hungarian LGBT Alliance: Partially implemented.

Hate rhetoric: Hate speech provision is included in the Criminal Code (incitement to hatred) but not enforced. According to Hungarian Helsinki Committee, it is highly problematic that hate speech prohibition is actually not applied almost at all. A number of recent cases have been dropped from prosecution or investigation based on the argument that hate speech requires actual violence or at least the real danger of violence as its consequence to qualify as a criminal offence.

The Fourth Amendment of the Fundamental Law adopted on 11 March 2013, introduced a new provision into its corpus (Art IX par (5) which provides that the right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Amnesty International, the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee is however concerned that the broad wording of this provision could lead to violations of the right to freedom of expression contrary to Hungary's obligations under International Covenant on Civil and Political Rights and the European Convention on Human Rights (as also the CoE Venice Commission shed light on the problem in its Opinion adopted at its 95th Plenary Session).

Based on this constitutional provision, the new Civil Code that entered into force on March 15, 2014 provides a new civil law mechanism against hate speech (Act No. V of 2013, Art. 2:54 par. 5): it provides a closed list of communities (nationality, race,

religion and ethnicity) who can launch such proceedings, this opportunity is not available to groups based on sexual orientation, gender identity or disability. Since this legal tool is very recent, its applicability is hard to assess.

In response to anti-Semitic, anti-Roma and homophobic rhetoric in the Parliament, opposition MPs proposed to set up an ethical committee to investigate such incidents. While members of the governing parties put the proposal on the agenda, at the end of the debate all the substantial provisions of the proposal were removed, and the final text of the parliamentary decision simply praises the achievements of the government in countering such rhetoric.

Some recent actions (non-actions) of the government however also provoked resistance in the Jewish community, among others. For instance, the German occupation memorial which is currently being built. It denies by its symbolic means the responsibility of the Hungarian leadership for murdering Hungarian Jewish Holocaust victims. Or, for example, that there were no consequences that the director of the Veritas History Research Institute, Sándor Szakály, classified the deportation of thousands of Jews to Kamyanets-Podilsky as an “aliens policing procedure”.

Symbolic steps were made against the Roma people in Hungary as well. Although the Prime Minister distanced himself in many cases from calling slurs to Roma people – in response to racist remarks made by members of the Parliament of the party Jobbik –, there were some cases where he also made anti Roma statements, such as in his speech at the Hungarian Chamber of Commerce and Industry’s Economic Season Opener 12th, March 2013. After that a member of a far right extremist band and an openly racist journalist received an award from the Minister of Human Resources (the latter was revoked).

The Hungarian Helsinki Committee is concerned that in the new Criminal Code, still only the most extreme form of hate speech is outlawed, namely, incitement liable to provoke immediate violent acts (Art 332). This provision on incitement, however, typically has not been invoked by investigative or judicial authorities. In a case (Tyirityán-case, 2011), the police relied on the argument that the above provision demands actual violence as a consequence of incitement, in another case (Bayer-case, 2013), the Prosecution argued that at least the real danger of violence must be present while hate speech is given. Although in one case (Tomcat blogpost-case, 2009), the Prosecution deemed it sufficient to proceed if the perpetrator is aware of the possible consequences of hate speech, due to the extreme length of the trial, the sanction imposed by the second-instance court in 2013 was 50 days of community service. In the Devecser-case of 2012, where hate speech was in fact followed by violent acts committed against members of the local Roma community, the police, while terminating the investigation, argued that these speeches were morally unacceptable but were not able to provoke actions driven by passion, hate or instincts.

UNHCR response:

The application of hate crime legislation seems to be still inadequate (systematic under-classification of hate crimes, high degree of latency due to mistrustfulness towards the investigating authorities, lack of relevant data). There is still no protocol for due classification and effective investigation of hate crimes and no monitoring system for incidents that may constitute racial violence. Asylum-seekers and refugees as well as Roma and LGBTI people find themselves in a double-disadvantaged situation refugees have reported suffering discrimination, physical and verbal harassment in all areas of their lives. While in 2013 an official Government policy on migration has been adopted by the Hungarian Government, highlighting the fact that very little has been done by the Government itself in communicating and generating community understanding, awareness and acceptance of migrants, the Migration Strategy fails to elaborate on a Government communication strategy aiming at generating community understanding, awareness and acceptance about migrants, asylum-seekers and refugees in order to increase social coherence. Regarding positive developments, in September 2013 the Government adopted a new National Crime Prevention Strategy as well as an Action Plan for 2013-2015, nevertheless the document failed to include any specific measures aimed at combating crimes motivated by bias or hatred. The National Police Headquarters established a specialized hate-crime unit with a member present in each of the Hungarian counties these units operate under a specialized stream dealing with hate crimes exclusively in order to increase the effectiveness and quality of hate crime investigations.

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°54: Strengthen the implementation of non-discrimination and hate crime legislation by continuing to monitor incidents, by ensuring that racially motivated violence is fully and effectively investigated, and by implementing measures to encourage Roma and other victims to report hate crimes and to ensure their protection from reprisal when they do (Recommended by Thailand)

IRI: not implemented

Joint response:

Partially implemented. Implementation of non-discrimination legislation – we are limiting our evaluation to issues of hate crimes.

Implementation of hate crime legislation: there are serious concerns with the implementation of the legislation, double standards are widespread in the practice of law enforcement agencies, and underclassification of cases is common. Law enforcement are often reluctant to acknowledge bias motivation against minority groups while they are more likely prosecute Roma for hate crimes against Hungarians.

Jovánovics Eszter: valamivel alá kéne támasztani a double standard megjegyzést, mert ez így elég általános. Mit gondolsz?

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crimes provisions:

- Police often fails to take effective measures on the spot when they are present during hate incidents (e.g. at different demonstrations).
- Law enforcement agencies are often reluctant to acknowledge bias motivation behind hate incidents against minority groups while it is more likely to prosecute Roma for hate crimes against Hungarians.
- In case bias motivation is recognized investigation is regularly ineffective (the police fails to explore the background of the perpetrator, fails to analyze CCTV footage, fails to interview witnesses, etc.)

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. In spite of this, there is a widely reported case where the hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups, which was interpreted by the court as an anti- Hungarian hate crime. (The judgement is under revision by the Supreme Court).

Monitoring: there is no specific data collection on hate crimes, data is collected as part of the general criminal statistics system. The official criminal statistics system is inconsistent and untrustable.

Effective investigation: In January 2012, a hate crime network was set up by the police consisting of (at least) one investigator at each county police station responsible for hate crime investigations, large fluctuation within the network, the workload of the officers and the lack clear institutional processes, however, limit the effectiveness of the network. Police often fails to take effective measures on the spot when the police is present during hate incidents. Incidents are frequently underclassified (not prosecuted, or prosecuted as a crime without a bias motive). In case bias motivation is recognised authorities often fail to take all investigative steps to prove the motivation (failure to explore the background of perpetrator, use CCTV footage, or interview witnesses).

Encourage reporting: there have been no initiatives to encourage reporting. Submitting organisations have experienced rather discouraging attitude of the police both aimed at individual victims, as well as in their public communication (ethnic profiling against Roma, banning LGBT Pride events). Performance indicators of the police provide an institutional incentive for the police to keep cases unreported.

Protection from reprisal: victims often face difficulties when trying to make use of measures to protect them (such as protection of personal data of victims, or avoiding confrontation). Evaluation provided by the Working Group Against Hate Crimes

UNHCR response:

[See response to recommendation n°53]

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°55: *Continue its efforts to achieve full social integration of minorities, especially the Roma and take urgent measures to combat and prevent racist incidents and hate crimes* (Recommended by Uruguay)

IRI: *fully implemented*

Joint response:

Partially implemented. Integration: The National Social Inclusion Strategy ("Roma Strategy") has been adopted in (2011) but in essence it lacks a human rights approach. The government decision on measures to implement the National Social Inclusion Strategy ("Roma Strategy") prescribes that in locations with ethnic conflicts programs aiming at mediation, conflict resolution, crime prevention and community development programs have to be launched. Submitting organisations are not aware of such programs implemented. In its 2013 report on the implementation of the strategy the government acknowledged that the implementation of these measures remain at the preparatory phase.

Submitting organizations are not aware of any other measures or awareness raising campaigns to combat racism, anti-Semitism, homo- or transphobia.

On the contrary, some recent actions (no actions, respectively) of the government provoked resistance in the Jewish community, among others. For instance, the German occupation memorial which is currently being built. It denies by it's symbolic means the responsibility of the Hungarian leadership for murdering Hungarian Jewish Holocaust victims. Or, for example, that there were no consequences that the director of the Veritas History Research Institute, Sándor Szakály, classified the deportation of thousands of Jews to Kamyansky-Podilsky as an "aliens policing procedure".

Symbolic steps were made against the Roma people in Hungary as well. Although the Prime Minister distanced himself in many cases from calling slurs to Roma people – in response to racist remarks made by members of the Parliament of the party Jobbik –, there were some cases where he also made anti Roma statements, such as in his speech at the Hungarian Chamber of Commerce and Industry's Economic Season Opener 12th, March 2013. After that a member of a far right extremist band and an openly racist journalist received an award from the Minister of Human Resources (the latter was revoked).

Preventing and combating hate crimes: In March and April 2011 extremist vigilante groups started to "patrol" illegally and harass Roma people living in Gyöngyöspata. Police and government failed to intervene for 2 months. Finally, as a consequence, a new provision was included in the Criminal Code in May 2011 (Act No. IV of 1978, Art. 174/B par. 1a), and the new Criminal Code also includes this part (Act No. C of 2012, Art. 216 par. 1) which sanctions bias motivated rowdiness. Another new provision was introduced in 2011 in the Criminal Code as a consequence of the far-right "patrollings" in Gyöngyöspata. This provision aims at sanctioning illegal performance of activities maintaining or protecting public order. However these provisions have rarely been enforced, despite reports to the police and even despite incidents that happened in presence of the police (e.g. Devecser, 5 August 2012).

The parliament adopted a new Criminal Code in June 2012 (Act No. C of 2012, which entered into force on 1 July 2013) that specifically mentions sexual orientation, gender identity and disability as grounds for protection under the hate crime provision 'violence against a member of a community' (Art. 216).

Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

Civil society groups also criticized the inclusion of ("other social groups") as a protected characteristic that carries the risk of to loose interpretation and legal uncertainty.

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crimes provisions:

- Police often fails to take effective measures on the spot when they are present during hate incidents (e.g. at different demonstrations).
- Law enforcement agencies are often reluctant to acknowledge bias motivation behind hate incidents against minority groups while it is more likely to prosecute Roma for hate crimes against Hungarians.
- In case bias motivation is recognized investigation is regularly ineffective (the police fails to explore the background of the perpetrator, fails to analyze CCTV footage, fails to interview witnesses, etc.)

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. In spite of this, there is a widely reported case where the hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups, which was interpreted by the court as an anti- Hungarian hate crime. (The judgement is under revision by the Supreme Court).

Evaluation provided by the Working Group Against Hate Crimes

UNHCR response:

In September 2013 an official Government policy on migration was adopted by the Hungarian Government in support of the EU Asylum and Migration Fund 2014-2020 where integration has been identified as one of the cornerstones of the strategy. As of 2014, significant changes are expected with shifting away from camp-based integration to a community-based system.

It is of concern that at the national parliamentary elections which took place on 6 April 2014, Jobbik, the radical right wing party increased its share of the votes to 20.5% (compared to 16.7% in 2010). This may have a potential negative impact on social cohesion in terms of refugee integration (increase of xenophobia).

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°57: *Prevent violence against Roma women and girls, including their harassment at school, and fill the gaps in Roma women's formal education* (Recommended by Iran)

IRI: *partially implemented*

Joint response:

European Roma Rights Center: While the Hungarian National Social Inclusion Strategy includes analysis of the situation of Romani women and their multiple disadvantaged situation and general ideas about how to improve their situation, it lacks specific targeted measures, deadlines, and financial resources addressing these problems. According to the 'Analysis of the Current Situation' section of the NSIS, Romani women have a lower education level even compared to Romani men; only 5.8% of Romani women have vocational qualifications, in contrast to 17.5% among Romani men. The educational gap stems from ethnic and gender discrimination, including social and economical exclusion and traditional gender roles; however, during the follow up procedure no steps have been taken by the Government to improve the situation.

Despite the widespread perception held by relevant experts that Roma are over-represented among trafficked persons in the country, no measures have been adopted and implemented to prevent and combat trafficking of Roma women and girls. Although the National Social Inclusion Strategy admits the high vulnerability of Romani women in trafficking, it does not identify any concrete plan for programmes to prevent and combat trafficking and/or provide appropriate services for women, including Romani girls and women who became victims of trafficking for sexual exploitation and are forced into prostitution. The related Action Plan only adopts one measure to tackle trafficking: No. 11 in Section VI requests a targeted police action to reduce usury, trafficking and forced prostitution. However there is no specific deadline and funding allocated to this measure.

The National Strategy against Trafficking in Human Beings for 2013–2016 provides an estimation (supported by several references) that “80-85% of the female victims of trafficking for the purpose of sexual exploitation are Roma women”. However this estimate was never been confirmed by either comprehensive research or systematic data collection. The National Strategy against Trafficking in Human Beings for 2013–2016 provides for a pilot programme aiming to involve former victims in victim support activities as volunteers, and the strategy emphasizes the need to involve former victims of Roma origin in support mechanisms where Roma victims are significantly overrepresented. However, no systematic prevention programs are adopted or planned targeting Romani communities.

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°60: *Continue to be committed, via its Equal Treatment Authority, to implement and train its citizens as regards to equal treatment for all, and to eradicate violence and discrimination against women and offer greater protection and equal opportunities to the Roma community* (Recommended by Holy See)

IRI: *fully implemented*

Joint response:

No wide-scale public awareness campaigns have been organized by the state on the elimination of violence and discrimination against women.

The Equal Treatment Authority - in the framework of an EU supported project - offered free of charge 30-hours accredited trainings on equal treatment between 2010 and 2013, and discrimination based on sex - among other grounds of discrimination - was included in this program. No specific training/awareness raising initiatives on discrimination against women has been conducted, however. The Authority conducted a representative research on legal awareness as regards to equal treatment, focusing on women, Roma, people living with disability and LGBT, covering the period of 2010-2013.

Evaluation provided by the Hungarian Women's Lobby and Háttér Society

State of Hungary response:

[See response to recommendation n°44]

Recommendation n°61: *Ensure that the members of the Roma community, but also of other vulnerable groups, are protected from violence and attacks* (Recommended by Indonesia)

IRI: *partially implemented*

Joint response:

Partially implemented. The government decision on measures to implement the National Social Inclusion Strategy ("Roma Strategy") prescribes that in locations with ethnic conflicts programs aiming at mediation, conflict resolution, crime prevention and community development programs have to be launched. Submitting organisations are not aware of such programs implemented. In its 2013 report on the implementation of the strategy the government acknowledged that the implementation of these measures remains at the preparatory phase.

In March and April 2011 extremist vigilante groups started to "patrol" illegally and harass Roma people living in Gyöngyöspata. Police and government failed to intervene for 2 months. Finally, as a consequence, a new provision was included in the Criminal Code in May 2011 (Act No. IV of 1978, Art. 174/B par. 1a), and the new Criminal Code also includes this part (Act No. C of 2012, Art. 216 par. 1) which sanctions bias motivated rowdyism. Another new provision was introduced in 2011 in the Criminal Code as a consequence of the far-right "patrollings" in Gyöngyöspata. This provision aims at sanctioning illegal performance of activities maintaining or protecting public order. However these provisions have rarely been enforced, despite reports to the police and even despite incidents that happened in presence of the police (e.g. Devecser, 5 August 2012).

The parliament adopted a new Criminal Code in June 2012 (Act No. C of 2012, which entered into force on 1 July 2013) that specifically mentions sexual orientation, gender identity and disability as grounds for protection under the hate crime provision 'violence against a member of a community' (Art. 216).

Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

Civil society groups also criticized the inclusion of ("other social groups") as a protected characteristic that carries the risk of too loose interpretation and legal uncertainty.

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crimes provisions:

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- Law enforcement agencies are often reluctant to acknowledge bias motivation behind hate incidents against minority groups while it is more likely to prosecute Roma for hate crimes against Hungarians.
- In case bias motivation is recognized investigation is regularly ineffective (the police fails to explore the background of the perpetrator, fails to analyze CCTV footage, fails to interview witnesses, etc.)

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. In spite of this, there is a widely reported case where the hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups, which was interpreted by the court as an anti-Hungarian hate crime. (The judgement is under revision by the Supreme Court).

Evaluation provided by the Working Group Against Hate Crimes

UNHCR response:

[See response to recommendation n°53]

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°62: Ensure that members of the Roma community, and members of other vulnerable groups, are protected from violence and attack, including when these groups wish to assemble, hold events or organize demonstrations (Recommended by United Kingdom)

IRI: *partially implemented*

Joint response:

[See response to recommendation n°107 below]

[+]

In 2011 and 2012 the Police banned the annual Budapest Pride LGBTQ March, but the courts annulled these decisions and the March could take place. Such police measures, however, sent the message to the wider public that the March should not take place, and extremist groups felt encouraged to stop the March in their own way, i.e. using violence. Since 2007 when the Pride March was first attacked, the police got better at securing the March itself, but every year several participants were assaulted when going to or leaving the premises. Several victims reported that police on the spot failed to act when they reported they have been victimized. In 2014 the court found that banning the March in 2012 was discriminatory and amounted to

harassment based on sexual orientation. Evaluation provided by the Working Group Against Hate Crimes

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°86: *Work with the Roma self-governments, NGOs and human rights organizations to implement measures to encourage Roma and other victims to report hate crimes and, when they do, to protect them from reprisals* (Recommended by Indonesia)

IRI: *partially implemented*

Joint response:

Not implemented.

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°95: *Commit to improving school results of Roma pupils by 2015* (Recommended by Canada)

IRI: *partially implemented*

Joint response:

Chance for Children Foundation: Not implemented. A recent study of 2012 assessed the achievement gap and its potential causes between Roma and non-Roma students in Hungary. The report showed that one of the main reasons of lower achievement of Roma students is that they receive education of a lower quality. Segregated education provides a lower quality education, therefore Roma students enrolled to segregated school or classes are at risk of lower achievement in tests. The gap between Roma and non-Roma students is almost entirely explained by social differences in income, wealth and parental education, and ethnic factors do not play a significant role. Other factors, as health and social disadvantages of Roma children lead to lower skills through two major mechanism. The first one is that due to their home environment cannot help their cognitive development and the other one is that they get a lower quality education in school. Ethnic differences in home environment are, again, explained by social differences, and ethnicity seems to play no additional role. While access to higher quality schools is strongly related to social differences, Roma students seem to face additional disadvantages. The results suggest that besides policies that aim at alleviating poverty, well designed interventions influencing the transmission mechanisms can also improve the skill development of Roma and other disadvantaged children. (See: [The Roma/non Roma test score gap in Hungary, Gábor Kertesi-Gábor Kézdi](#) (2012))

Another study of 2011 (Papp Z. Attila: "Romani students in primary schools") examined the number of Romani students in primary schools based on the national competency tests in which the teachers are supposed to give an estimate about the number of Romani students in their schools. According to this, in certain micro-regions the proportion of Romani students have risen to as high as 50 or higher percent. According to the study, approximately 20% of all primary schools have a nearly 50% or higher percentage of Romani students – most of these schools are in

the North-eastern part of Hungary. The study shows that the competency results are better at schools that apply the “integration pedagogical system” (“IPR”) than those comparable schools that do not, especially if the proportion of Romani students (who have) are between 1 to 30% in the school. The study also makes it clear that there is a strong correlation between competency results and the social background of the family; hence as a large proportion of Roma students are socially marginalized, the increase in the number of Romani students means the increase in the number of socially disadvantaged students, which has an impact on competency results.

It can be concluded that school results of Roma students are highly dependent on the quality of education they receive, especially whether they are enrolled to integrated or to segregated schools. As a consequence the first step shall be according to eliminate segregated education of Roma students which will- according to the referred studies- result in increase of their test results.

State of Hungary response:

[See response to recommendation n°50]

Recommendation n°101: *Continue the implementation of the measures to effectively protect minorities* (Recommended by Chile)

IRI: *partially implemented*

Joint response:

[See response to recommendation n°16]

State of Hungary response:

A range of positive measures were implemented during the past period in order to consummate cultural autonomy of minorities. The new Fundamental Law defines these minorities as a constituent part of the state and as part of the Hungarian nation. The new Act on the Rights of Nationalities improved the legal environment creating wider opportunities for minorities, with regard to public education, the public institutional use of language and other fields. It also resulted in the growing importance of national minority self-governments with their developing institutional establishment and increased economic independence. The international recognition of the minority policy of Hungary is continuous: both the experts of the Venice Commission, and the Committee of Experts monitoring the Hungarian implementation of the European Charter for Regional or Minority Languages of the Council of Europe have expressed their appreciation with regard to the minority policy of Hungary.

Recommendation n°102: *Intensify the fight against prejudices towards minority groups, the Roma in particular* (Recommended by Germany)

IRI: *partially implemented*

Joint response:

European Roma Rights Center: The Government has failed to adopt measures to intensify the fight against prejudices towards Roma. Fewer funds are being allocated by the government for those measures launched before 2010 to reduce the impacts of discrimination (e.g., the Equal Treatment Authority and the Scholarship Programme for Roma in Public Administration).

Since the NSIS was adopted, no programmes have been implemented to reduce labour market discrimination of Roma. The Strategy itself fails to properly emphasize and specify efficient instruments the Government could use for acting against the discrimination of Roma and groups exposed to multiple discrimination (e.g., Roma women). During the follow up period policy changes, such as abolishing the institution of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and moving this function to the portfolio of the deputy of the Commissioner for Fundamental Rights, have resulted in far less powerful institutional tools for combating discrimination. Hungarian authorities do little to sanction hate speech, and criminal law provisions designed to protect groups facing bias are more often applied by the authorities to sanction Roma rather than non-Roma. In case of most hate crimes, no proper criminal procedure is launched.

State of Hungary response:

[See response to recommendation n°44]

Recommendation n°103: *Persevere in its policy of promotion and protection of the rights of minorities and vulnerable persons* (Recommended by Morocco)

IRI: *partially implemented*

Joint response:

Minority Rights Group: See recommendation 16. Hungary has failed to protect the rights of vulnerable persons when it incorporated the punishment of unavoidable living of homeless people in public areas in the Fundamental Law and amended the Petty Offence Act accordingly. Through its Fourth Amendment, the Fundamental Law of Hungary now stipulates that an Act or a local government decree can repress the mere presence of homeless people in public areas. Constitutional and other legislative changes leading to this violation of international law (Article 22(1) of the Fundamental Law) has been an illustrative example of the instrumental use of the Fundamental Law since its entry into force. On 14 November 2011, Parliament passed the amendment of the Penal Code with effect from 1 December, which made it an offense to reside habitually in public spaces or to store belongings there. Repeat offenders face imprisonment for up to 60 days or a fine of up to 150 000 HUF (approx. 700 USD). In November 2012, the Constitutional Court ruled that penalizing homelessness is unconstitutional and annulled the aforementioned act. The Constitutional Court deemed homelessness a social issue, which the State must handle in the framework of social administration and social care instead of punishment. By a complementary decree of the court, all penalty fees have to be paid back to those who had been fined under the law. The Fourth Amendment (as of 1 March 2013) was a reaction to this decision of the Hungarian Constitutional Court. On 30 September 2013, the 2012 Petty Offence Act was amended once again to allow local governments to create homeless-free zones, i.e. areas where living in public space is considered an offence. Wide national and international criticism accompanied all the legislative changes (see the assessment of the Venice Commission).

The new domestic violence provision in the Hungarian Criminal Code provides limited protection to victims of domestic violence and remains weak without other

policy changes. Hungary introduced a new domestic violence provision in its Criminal Code on 1 July 2013 which provides stiffer penalties for assaults in the domestic sphere and makes the prosecutor, not the victim, responsible for initiating criminal action against the abuser. However, the provision only offers protection after two separate instances of domestic violence, and it doesn't protect women who do not live with their abusive partner, unless they have children with the abuser. According to a report of Human Rights Watch (HRW), inaction or lack of effective action of law enforcement officials and the victim-blaming attitudes among social workers, judges, doctors, police and prosecutors also result in a low number of cases of domestic violence effectively prosecuted. HRW says Hungary should provide specific training for police officers, prosecutors, judges, social workers, and doctors, and increase the capacity of shelters for victims of domestic violence. Hungary should also ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

State of Hungary response:

[See response to recommendation n°101]

Recommendation n°104: *Ensure urgently, through stable and systematic funding, continued functioning of the two bilingual Slovenian-Hungarian schools in Gornji Senik/Felsőszölnök and Stevanovic/Apátistvánfalva* (Recommended by Slovenia)

IRI: *fully implemented*

+

Recommendation n°105: *Ensure stable and systematic funding for the media of the Slovenian minority in Hungary, namely for Radio Monoster/Szentgotthárd, the Porabje weekly and the Slovenian TV programme* (Recommended by Slovenia)

IRI: *fully implemented*

+

Recommendation n°138: *Implement fully the Agreement on Guaranteeing Special Rights of the Slovenian Minority in the Republic of Hungary and the Hungarian National Community in the Republic of Slovenia and the recommendations of the mixed Slovenian-Hungarian Commission tasked with the monitoring of the implementation of the Agreement* (Recommended by Slovenia)

IRI: *fully implemented*

State of Hungary response:

The National Slovene Self-Government (hereinafter: NSS) took over the maintenance of the Slovene nationality educational institutions in Felsőszölnök and in Apátistvánfalva on 1 July 2012. The additional costs related to the institution takeover were covered by the Hungarian Government (8.5 million HUF support for the takeover process). The two public educational institutions are operating under the maintenance of the NSS as of the academic year 2012/13; the additional support due to institution maintenance was gradually incorporated into the annual budget of the self-government. The NSS receives the normative support pro rata according to the central budget, from the Hungarian State Treasury (the operational and institutional budgetary support in 2013 increased to 43.4 million HUF, from 21.9 million HUF). According to new rules applicable from October 2013 financing of minority educational institutions took a turn for a better: teachers' salary (financing 1 teacher / 8 pupils – for comparison: in general education the ratio is 1 teacher/12 pupils) and

financial support per student (160.000 HUF/student/year) both increased. Minority educational institutions with few students in number are getting additional support, which is 540.000 HUF/student/year for NSS. Taking account these changes, the operation of NSS' two educational institutions is secure.

The central budgetary support of the "Radio Monošter", operating in Szentgotthárd and broadcasting in Slovenian language, was 16.9 million HUF both in 2011 and in 2012; the support was incorporated into the budget of the self-government. Besides this support, the Radio received an additional support of 10 million HUF from the Government in 2011. In 2012 – in order to maintain the daily 4-hour broadcast that had been introduced – the Radio received a 15 million HUF support for operation. The 5.5 million HUF grant in 2011 and the 8.5 million HUF grant in 2012, provided by the Media Service Support and Asset Management Fund, also helped the smooth operation of the Radio. The budgetary support for the NSS increased to 64.0 million HUF in 2011, because from this year on – besides the 41.6 million HUF support for operation – the 22.4 million HUF budgetary support for the weekly paper Porabje was also incorporated into the budget of the self-government. The broadcast of nationality programmes at the Hungarian National Television began more than 30 years ago. The German and Serbian-Croatian programme started in 1978 (in Pécs). Today Serbian, Croatian and Slovene magazine programmes are operated separately. The NSS received a 64.0 million HUF operation and media support from the central budget again in 2012.

The Hungarian–Slovene Minority Joint Committee held its XII session on 15 June 2011 in Budapest – passed by the Government in Resolution no. 1326/2012. (IX.7.) – , session XIII took place on 26 September 2012 in Ljubljana – passed by the Government in Resolution no. 1720/2013. (X.11.) –, and the subsequent session XIV took place on 1 October 2013. The Committee – bearing in mind the principles and provisions of the agreement on the enforcement of the special rights of the Slovene national minority living in the territory of Hungary, and the Hungarian national community living in the territory of the Republic of Slovenia – reviews the current issues of the Hungarian and Slovenian national minorities living in the two countries, and constantly monitors the implementation of the recommendations.

Recommendation n°107: Take further measures to ensure that Roma people fully enjoy their human rights, including by preventing and combating discrimination and racially motivated crimes against Roma people (Recommended by Sweden)

IRI: fully implemented

Joint response:

Partially implemented. In March and April 2011 extremist vigilante groups started to "patrol" illegally and harass Roma people living in Gyöngyöspata. Police and government failed to intervene for 2 months. Finally, as a consequence, a new provision was included in the Criminal Code in May 2011 (Act No. IV of 1978, Art. 174/B par. 1a), and the new Criminal Code also includes this part (Act No. C of 2012, Art. 216 par. 1) which sanctions bias motivated rowdyism. Another new provision was introduced in 2011 in the Criminal Code as a consequence of the far-right "patrollings" in Gyöngyöspata. This provision aims at sanctioning illegal performance of activities maintaining or protecting public order. However these provisions have

rarely been enforced, despite reports to the police and even despite incidents that happened in presence of the police (e.g. Devecser, 5 August 2012).

The parliament adopted a new Criminal Code in June 2012 (Act No. C of 2012, which entered into force on 1 July 2013) that specifically mentions sexual orientation, gender identity and disability as grounds for protection under the hate crime provision 'violence against a member of a community' (Art. 216).

Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

Civil society groups also criticized the inclusion of ("other social groups") as a protected characteristic that carries the risk of too loose interpretation and legal uncertainty.

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crime provisions:

- Police often fail to take effective measures on the spot when they are present during hate incidents (e.g. at different demonstrations).
- Law enforcement agencies are often reluctant to acknowledge bias motivation behind hate incidents against minority groups while it is more likely to prosecute Roma for hate crimes against Hungarians.
- In case bias motivation is recognized, investigation is regularly ineffective (the police fails to explore the background of the perpetrator, fails to analyze CCTV footage, fails to interview witnesses, etc.)

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. In spite of this, there is a widely reported case where the hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups, which was interpreted by the court as an anti-Hungarian hate crime. (The judgement is under revision by the Supreme Court).

Evaluation provided by the Working Group Against Hate Crimes see All

State of Hungary response:

[See response to recommendation n°8]

Recommendation n°108: *Take further measures to ensure that Roma people fully enjoy their human rights, including by preventing and combating discrimination and racially motivated crimes against Roma people* (Recommended by Spain)

IRI: *fully implemented*

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Recommendation n°110: *Strengthen its efforts to improve the social, political, living, and health conditions for Romani citizens through legal, administrative and socioeconomic means* (Recommended by United States)

IRI: *partially implemented*

Joint response:

European Roma Rights Center: During the follow up period, the Hungarian Government adopted a National Social Inclusion Strategy (NSIS) in December 2011 and an Action plan, Government Resolution No. 1430/2011. (XII. 13.) for the implementation of the NSIS. The Hungarian Strategy targets several vulnerable groups, for example children, people living in less developed regions and also Roma. Thus, it follows the “explicit but not exclusive targeting” principle, congruent with the 10 Common Basic Principles of Roma Inclusion. Nevertheless, the lack of a very clear Roma focus may pose challenges to a successful and robust policy-making, while various interventions in sectoral policies (for example, change of legislation, launching of programmes, etc.) and partial interventions launched in parallel may further weaken the efforts made in favour of Roma inclusion and the Strategy’s implementation.

During the follow up period policy changes, such as abolishing the institution of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and moving this function to the portfolio of the deputy of the Commissioner for Fundamental Rights, have resulted in far less powerful institutional tools for combating discrimination. Hungarian authorities do little to sanction hate speech, and criminal law provisions designed to protect groups facing bias are more often applied by the authorities to sanction Roma rather than non-Roma. In case of most hate crimes, no proper criminal procedure is launched. At the local level, the powerless position of minority self-governments has been further weakened: their consent is not obligatory any longer to decide on matters affecting the local Romani community (while, on the other hand, numerous governmental tasks which go far beyond the legitimate political role of national minority self-governments have been assigned to the National Roma Self-Government).

Whereas the NSIS contains goals on the four key areas of the EU Framework (education, employment, housing, health), desegregation on the area of housing and education is a taboo for the Government, moreover school segregation in education labeled as “catch-up opportunity” is a supported approach by the Government.

Education

The process of exclusion through the education system will most probably speed up.

The issues which have been of great concern in this sector are school segregation and lack of access for Roma to early child development, as well as pre-school services and quality education on both primary and secondary level. As a consequence, early school leaving and low level of participation in tertiary education have not improved either. Some of these issues have been targeted by mainstream education policies, but, generally, with very poor impact on Roma. Moreover, the policy direction taken is clearly working towards the diminishing of the potential impacts of equal treatment policies that were put into practice in 2010. For example, school segregation is among the supported approaches in schooling and is identified as offering a “catch-up opportunity”, according to official political statements. Several declarations reinforce this approach, and the steps taken back up the presumption that the Government does not support active desegregation.

All these policy changes contradict both the conclusions of, and the goals set up in, the NSIS, as well as the massive experience gathered in the past two decades in relation to the situation of Roma in the education system.

Actions taken that contradict the NSIS goals:

- The reduction of the mandatory age-limit in compulsory education from 18 to 16 will increase the number of low-skilled youth with fewer chances in the labour market.
- The uniform educational programme made obligatory for schools will most probably also deliver less individualized needs-based education for the neediest.
- The significant change to the university admission system and reduction in the number of places financed by the state will most probably further cut the very low share of Roma in tertiary education, too. Obviously, this step will further foster the “early selection” nature of the Hungarian education system, especially impacting children from disadvantaged social backgrounds.
- The Hungarian education system not only reflects but also promotes the development of social inequalities, i.e., it increases concomitant disadvantages arising from social background, because strong selection and segregation mechanisms prevail at all levels of public education while the capacity of that education to compensate for background is quite meagre.
- Because of the change according to the definition on disadvantaged children it is highly possible that many Roma will fall out of the scope of allowances, and/or many will be reclassified from the category of multiply disadvantaged into the category of disadvantaged; the scope of services available will therefore be narrowed.
- As of 1 September 2014, it will be mandatory for all children to enrol in kindergarten from the age of 3. Even though we consider this a very positive approach towards disadvantaged children, including Romani children, the fact is that the distribution of kindergarten places and the condition of their equipment and facilities is quite uneven; many Roma-populated villages or parts of cities are still without sufficient kindergarten places; in the past half-year no crucial changes were implemented.
- The state-financed scholarship programmes for Roma and/or disadvantaged children continue in 2013 with a further reduction of resources. Data on follow-up and the proportion of Roma students participating in these programmes are still not available.

During the follow period the European Court of Human Rights has ruled that Hungary has violated the European Convention on Human Rights in the case of the segregated education of Roma children (Mr Horváth and Mr Kiss) who were educated in a school for the mentally disabled. The court’s decision underlined that the Hungarian practice of (mis)diagnosing Roma is considered indirect discrimination. The judgment is awaiting for implementation.

Employment:

The increasing employment of Roma is foreseen by public work instead of the job market or social economy.

After 2009, the main focus employment policy included reducing the amounts of various benefits (e.g., merging and reducing benefits based on disability or infirmity); the strengthening of job-seekers' activity; and offering services through Public Employment Services. The proportion of funds spent on public employment from the fund available for labour market instruments has risen to a record high amount in 2012–2013. The amount of the financial benefits (and access to them) has been further reduced. The current public work system was created in 2012, involving the introduction of the Employment Replacement Subsidy (ERS), a reduction in the amount of aid, and stricter entitlement criteria.

In 2011, only one-quarter of Roma aged between 15-64 were employed in Hungary. The employment rate of Romani women is reported by surveys to have been between 13 and 16%. Compared to non-Roma there is a high proportion of casual work and informal or hidden employment among the Roma of active age. This causes a much higher vulnerability and uncertainty compared to non-Romani employees in general: Roma, as a result, have a lower level of income because no protection mechanism is in place for workers in informal or occasional employment. The increasing employment of Roma is foreseen by public work instead of the job market or social economy. The number of participants in public work was 186,000 in 2010, 265,600 in 2011, and 311,500 in 2012. In 2013 the objective is to involve 300,000 individuals in public work. Large-scale as it actually is, this expensive public work system tends to draw resources away from active labour market programmes and state subsidies.

As the only solution, people are forced into public work which involves severe conditions and sanctions violating basic rights and dignity and which, in their current form, involve vulnerability, inequitable working conditions and often pointless work, representing a dead-end for most of the people participating in public work. Moreover, Roma are reportedly discriminated when applying for public work and thus are highly affected by the risk of being excluded from social services. As a consequence of restrictions introduced by the government, the number of adults not receiving social benefits and being excluded from welfare services has increased in Hungary since 2011, a tendency particularly affecting Romani communities living in deep poverty. The findings of a recent survey of public work agencies clearly reinforces the fact that public work in its current form is less of a labour market reintegration instrument than it once was and that Roma frequently suffer from the discriminatory attitudes of decision-makers (employers, job supervisors) when applying for and taking part in public work.

Health:

Another area of exclusion of Roma is access to health services. It has been demonstrated that the health condition of Roma is significantly worse than the average health condition of non-Roma in Hungary. There are major regional inequalities, and public health measures are not effective in reaching out to the most disadvantaged. Special attention needs to be paid to children whose health condition is heavily impacted by the socio-economic status of their parents. Moreover, women in disadvantaged communities are significantly affected by the negative health

consequences of abortions, as well as early pregnancies, while children in disadvantaged communities are significantly affected by foetal health problems and by health consequences of premature birth, malnutrition and insufficient living conditions. The sectoral policy has witnessed severe cut-backs and reorganisation in this area, and although the Action Plan (AP) of the NSIS has formulated numerous fields for interventions, for example, facilitating the employment of Romani women in the fields of social services, child welfare, decreasing the number of vacant general practitioner's / paediatrician's positions, so far there has been little result. The modification of the system of social/unemployment benefits to introduce the "30 days rule" (an additional eligibility criterion that the recipient has to have had an employment relationship of at least 30 days in the previous year) regarding "benefits for people of active age" ("regular social aid" and the "employment substituting allowance") could mean disadvantaged people who are no longer eligible for social benefits might lose their entitlement to primary health care as well. People of active age will be required to cover their health insurance contributions out-of-pocket, a monthly amount of approximately EUR 23.

Housing:

Bad health conditions are reinforced, among various other conditions, by the general housing situation of Roma. The structural problems within the housing sector, such as an unfavourable tenure structure which includes only a 3% social rental sector, has forced large numbers of the poor into the home ownership sector. Affordability issues are exacerbated by various forms of housing exclusion, such as housing in peripheral locations and/or of low quality, illegal arrangements or uncertain legal situations. Moreover, decreasing job opportunities result in many families falling into arrears with mortgage loan repayments and having unpaid public utilities bills. Despite all this, Hungary has been without any coherent housing policy since the transition. Most measures target the middle class and very limited funds have been left available for addressing the housing problems of the poorest, including the Roma. The transformation of the housing allowance and other more general social benefits has resulted in a situation where the poorest have less income for satisfying their minimum needs, a fact deepening their housing problems. Furthermore, no steps have been taken to initiate a growth in the social rental sector except for the one related to the mortgage rescue programme which does not target the poorest families. In the field of social housing, no substantial measures have been taken. In light of all this, it may be concluded that housing policy measures have produced no tangible improvements in the housing situation of those living in deep poverty, including Romani families.

State of Hungary response:

[See response to recommendation n°44]

Recommendation n°109: Support the integration of the Roma and other minorities in Government institutions, by recruiting and promoting these minorities in the police, in the education sector and the public service (Recommended by Canada)

IRI: fully implemented

Joint response:

The National Police launched a special scholarship system for Roma students in 2010; the program targets high school students and college/university students who plan to work at the police after graduation; the benefits include accommodation allowance and monthly stipend.

In 2012, the Ministry of Defence established a scholarship scheme for Roma and/or disadvantaged high school students and college/university students who study military and defence courses; the beneficiaries receive a small monthly stipend.

The National Directorate General for Disaster Management of the Ministry of the Interior also launched a special scholarship scheme in 2012, aimed at helping young people of Roma origin to become firearms officers; the grantees of the program, and new employees of Roma origin as well, are supported with mentoring services.

Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

[See response to recommendation n°44]

Recommendation n°111: *Proceed to forced expulsions only in strict compliance with international and regional standards* (Recommended by Switzerland)

IRI: *fully implemented*

Joint response:

Partially implemented.

By the end of 2012, the Office of Immigration and Nationality changed its position and stopped considering Serbia as a safe third country for asylum-seekers. Furthermore, as of 1 January 2013, the lodging of an asylum application and the start of an asylum procedure constitute an explicit ban on expulsion and removal from the territory. This put an end to the previous practice according to which removal orders were not automatically suspended on account of a subsequent asylum application. Since it is not the asylum authority's competence but that of the alien policing authority to suspend its own decision (about expulsion), the applicant had to submit an explicit, separate request to have the expulsion order suspended.

Since January 2014, Dublin returnees are granted access to the asylum procedure and to a full examination of their asylum claim, except in one case: if an applicant submits his/her application after a (tacit or written) withdrawal of a previous application and the subsequent application is found inadmissible or manifestly unfounded, such subsequent application does not trigger an automatic suspension of return measures (Section 54 (2) of the Asylum Act).

The return of migrants who do not apply for asylum at the border remains problematic. The [HHC's border monitoring findings in 2012](#) show that according to the police records, the majority of minors apprehended on the Southern border of the country did not lodge an asylum application during the alien policing interview at the border. Based on the case files, however, it was clear the necessity of international protection did arise during the interviews. Many of these minors arrived from war-torn Syria and claimed that they had left their country due to the war. The Office of

Immigration and Nationality did not assess the risk of refoulement and return these minors to Serbia within one day in accordance with the relevant EU-Serbia readmission agreement.

Evaluation provided by the Hungarian Helsinki Committee.

UNHCR response:

Hungary is cooperating with UNHCR on ensuring access to its territory for persons with international protection needs via a tripartite border monitoring cooperation by the National Border Police, the Hungarian Helsinki Committee and UNHCR. Since end of 2012, beginning of 2013 access to territory has been generally granted. Nevertheless, it has remained a concern that national legislation still does not provide for a detailed personal interview before the forcible return of a foreigner wishing to enter or entering Hungary unlawfully whereas this would be indispensable to prevent potential refoulement. This is all the more problematic in the case of unaccompanied minors where the principle of the best interests of the child should be applied in accordance with obligations conferred on Hungary by the UN Convention on the Rights of the Child, General Comment no. 14 of the Committee on the Rights of the Child and the EU Return Directive. To fulfil such obligations, a detailed interview is indispensable before return.

State of Hungary response:

In Hungary, the ordering of an expulsion and its forced implementation by official escort (removal) are concluded with respect to human rights obligations under international and regional conventions as well as the EU Return Directive. Moreover, Hungary has been operating a forced return monitoring system, carried out by public prosecutor, in which compliance with human rights standards is ensured. In line with the EU Return Directive the national law prefers voluntary return but Hungary has external borders and realization of expulsions mainly closed by readmission agreements. During the expulsion procedure the principle of non-refoulement is always examined. The public prosecutor shall oversee the deportation procedure in accordance with the relevant regulations.

The Hungarian legislation for alien policing detention and for asylum detention, being two separate regimes legally and infrastructurally, as well as their implementation meets requirements stemming from recommendations of UN High Commissioner for Refugees (UNHCR) as well as the international standards deduced from the case law of European Court of Human Rights and the jurisprudence of the Court of Justice of the EU. Detention of third country nationals can only be ordered in the cases set out in national law and only unless other sufficient but less coercive measures can be applied effectively in a specific case. Persons recognised as refugees in Hungary cannot be placed in administrative detention.

According to the existing tripartite memorandum among the Police, UNCHR Regional Representation for Central Europe and Hungarian Helsinki Committee the civil control is ensured in connection with international protection and alien policing measures.

Recommendation n°112: *Improve the living conditions of asylum-seekers* (Recommended by Iran)

IRI: *fully implemented*

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Recommendation n°113: *Step up efforts directed towards the improvement of conditions and treatments of asylum-seekers and refugees* (Recommended by Belarus)

IRI: *fully implemented*

Joint response:

Partially implemented. As a consequence of the radical increase in the number of asylum-seekers in 2013, reception arrangements were – in general – subject to fast changes. The largest reception facility in Debrecen became unbearably overcrowded by the summer, which led to serious problems in hygienic conditions and increased tension amongst the residents. Other reception facilities with a different profile (Bicske, Balassagyarmat) also started to host asylum-seekers with pending asylum cases in large numbers. In addition to the already extended reception centres a temporary reception facility had to be opened in early June in Nagyfa, where asylum-seekers were accommodated in tents until early October. Another reception centre opened in late August in Vámoszabadi, in a former military accommodation facility.

The Office of Immigration and Nationality did not consult with refugee-assisting NGOs, the UNHCR or local communities prior to these changes, which resulted in serious tension (including xenophobic demonstrations) and a temporary lack of services, e.g. legal assistance was not available in Nagyfa, Vámoszabadi and Bicske until September 2013. The hygienic conditions were of serious concern in Bicske and Debrecen [...]. The HHC also received several complaints concerning the insufficient availability of psycho-social support services and medical care. Specialised care for asylum-seekers with serious mental disorders was completely lacking at various reception facilities. Overcrowding eased and hygienic conditions improved by the end of 2013 (in parallel with the introduction of a new, specific detention regime for asylum-seekers). However, a number of concerns have remained in place to date:

- 1) Subsequent asylum-seekers as of January 2014 have the right to remain in the territory of Hungary but they are not entitled to accommodation and related services (provided to “first” asylum-seekers). The community shelter in Balassagyarmat may be designated as a compulsory place of residence for them, but the maximum period of stay has been reduced to two months. Such asylum-seekers may therefore remain without support and shelter and are at a serious risk of homelessness and destitution. Note that it is not uncommon that international protection is granted only in a second asylum procedure.
- 2) There are no mechanisms in place for the identification of vulnerable asylum-seekers and those with special needs, despite a clear legal obligation to ensure the relevant services to these persons.
- 3) There are no alternative reception arrangements for those who would be in danger in the existing large reception facilities hosting a mixed population (e.g. victims of sexual violence, gay or transgender persons, person with disabilities, etc.). There are no protected areas for the accommodation of single women or female-headed families.

- 4) Psycho-social support services and medical care are still insufficient.
- 5) Evaluation provided by the Hungarian Helsinki Committee.

UNHCR response:

In 2013 Hungary saw a significant increase in the number of asylum applicants (approx. 776% increase as compared to the previous year) as a result of which the reception arrangements were subject to considerable changes in Hungary: the capacity of the existing open facilities was extended and a new reception facility was opened (in Vamosszabadi). The influx resulted in significant overcrowding and turn-over at the reception facilities during summer 2013 with deteriorating hygienic conditions and security situation. During the first quarter of 2014 the Government strengthened its response capacity to similar emergency situations with the support of external (EU) funding whereby open reception centres were refurbished/renovated and their capacity was extended. Nevertheless an effective monitoring and evaluation system is required to be put in place in order to ensure that minimum standards regarding reception conditions are met without compromising basic human rights.

Access for asylum-seekers to certain health care services free of charge, especially to dental care and ophthalmological care has remained problematic. Access to psychological services and psychotherapy for victims of torture and traumatized asylum-seekers are exclusively provided by a non-governmental organization via external (EU) funds. In its report of April 2014 the Parliamentary Commissioner for Fundamental Rights concluded that access of school-age children of subsequent asylum applicants to primary education is not ensured and called on the Minister of Interior to initiate the amendment of the relevant national legislation. In addition, the Parliamentary Commissioner also found that no access of asylum-seekers to maternity care (nurse), including receiving mandatory vaccinations for children, jeopardizes the right of children to free of charge primary education and their right to physical and mental health.

The current reception regime fails to provide sustainable solutions – an exit strategy – for those whose return to their countries of origin or a safe third country is impossible due to technical reasons. It gives rise to concerns that asylum applicants submitting a subsequent application and persons with a tolerated status are only entitled to stay for two months in a designated open reception centre. Subsequent applicants are entitled to fewer services than those lodging initial applications. While requested to leave the designated facility, no assistance is being provided, which might expose them, in particular persons with special needs, to homelessness and destitution. Such an un-facilitated exit has also negative consequences for the local community and may raise concerns relevant to security, public order and health.

There is room for improvement regarding response to sexual and gender-based violence (SGBV) in reception centres. Although Standard Operating Procedures (SOP) for prevention of and response to SGBV are operational since October 2011 in two open reception facilities (Debrecen and Bicske), because of stigmatization and no access to real support in practice only a low number of survivors report SGBV and there is also a lack of training to address common misconceptions. Effective follow-

up system is also not in place to monitor access to mainstream services, not to mention specific issues such as SGBV incidents. Due to the continuous restructuring of the reception system the implementation of SOPs remains problematic. A further concern is that no alternative reception arrangements are ensured in practice for those asylum-seekers who would be in danger in an open reception facility setting hosting a mixed population (e.g. victims of sexual violence, gay or transgender persons etc.).

There is no effective and formalized mechanism in place for the identification and referral of vulnerable asylum-seekers and those with special needs despite a clear legal obligation to ensure the relevant services to these persons. It is however a welcome development that the new Government Migration Strategy (2014-2020) includes the State's commitment to establish such a mechanism to identify special needs and vulnerability factors at an early stage. It is also to be acknowledged that in 2013 Hungary actively engaged in the UNHCR-run regional project 'Response to Vulnerability in Asylum' (RVA) aiming at mapping good practices and elaborating practical guidelines at national level concerning the identification of asylum-seekers with special needs.

Administrative detention of asylum-seekers has remained problematic in Hungary. As of July 2013 a new administrative detention regime was introduced for detaining asylum-seekers. The main shortcomings of this regime are the following: no legal remedy is available against a decision imposing asylum detention on asylum-seekers due to lack of sufficient procedural guarantees in national law, the judicial review of the lawfulness of administrative detention of asylum-seekers is ineffective resulting in automatic judicial prolongation. Detention of asylum-seekers does not meet neither the necessity test, as it is not applied as a last resort measure, nor the proportionality test as it is not applied for the shortest time possible. Decisions imposing asylum detention on asylum-seekers lack any individualization, the best interest of the child principle is not applied when assessing applications submitted by age-disputed minors in detention as these cases are not prioritized in practice and asylum-seekers are kept in detention they undergo age assessment procedure. In October 2013, the UN Working Group on Arbitrary Detention expressed concerns about the overuse of detention and the lack of effective legal remedy worsened with the severe lack of effective legal assistance. It also highlighted that the situation of asylum-seekers and migrants in irregular situation need robust improvements and attention to ensure against arbitrary deprivation of liberty.

State of Hungary response:

Hungary is constantly striving to improve the living conditions of refugees and asylum seekers. Care and support provided for asylum seekers are in line with the rules of European Union governing this issue. The asylum authority provides accommodation and care, as well as financial allowances for asylum seekers during the asylum procedure. Moreover, health care is free for asylum seekers. Refugees and beneficiaries of subsidiary protection enjoy – with a few exceptions – the same rights as Hungarian citizens. In addition, domestic asylum and other sectorial legislation provide support for language teaching, education, housing, health and social services, the acquisition of citizenship etc. The Ministry of Interior supports projects

aiming to improve the living conditions of persons granted international protection and asylum seekers using the sources of the European Refugee Fund to complement national actions.

Recommendation n°137: Reconcile policies related to ethnic Hungarians abroad with neighbouring countries primary responsibility for minority protection (Recommended by Norway)

IRI: not implemented

State of Hungary response:

Hungary supports the efforts of Hungarians living abroad to preserve their cultural identity in line with international standards. Regarding Hungarian minorities living under the jurisdiction of another State, the Government acts as a responsible member of the international community, in line with the Bolzano Recommendations.

Recommendation n°139: Reduce to the minimum possible administrative detention of migrants, asylum-seekers and refugees, and only use it in exceptional cases (Recommended by Mexico)

IRI: not implemented

Joint response:

A new regime of “asylum detention” was introduced on 1 July 2013 with the amendment of the Asylum Act. The transposition of the EU Recast Reception Conditions Directive (not even formally adopted at the time of drafting the amendments) served as a pretext for the changes. Transposition, however, remained limited to provisions concerning detention of asylum-seekers; while in contrast, for instance provisions which entail obligations on Member States in relation to the assessment of the special reception needs of vulnerable persons were not transposed.

Section 31/A of the Asylum Act provides the asylum authority with a right to detain asylum-seekers on numerous grounds, including if the determination of the personal identity or nationality is unknown, if the person concerned has previously absconded or has obstructed the asylum proceedings in any other way, if there are serious grounds to believe that there is a risk of absconding or if national security considerations so require. The Hungarian Helsinki Committee is of the view that that the assessment of the risk of absconding (the ground for detention most commonly relied on) is often carried out in an arbitrary way. For example, the mere mentioning a destination country different from Hungary in the alien policing procedure may suffice for ordering the asylum-seeker’s detention on this ground.

Asylum detention may only be ordered on the basis of assessment of the individual’s circumstances and only if its purpose cannot be achieved by applying less coercive alternatives to detention. The Hungarian Helsinki Committee’s experience show that the detention orders lack individual assessment and alternatives are not properly examined. The necessity and proportionality tests are not used. The orders only state that alternatives are not possible in a concrete case, but there is no explanation why. The regulation in place sets forth concrete alternatives to detention (called “measures ensuring availability”), namely in the form of a bail, a designated place of stay or periodic reporting obligations. The amount of the bail can vary between EUR 500 and

5000, but the conditions of assessment are not properly defined by law, due to which this measure (and any alternative to detention) is hardly ever applied in practice.

Despite the clear ban on the immigration and asylum detention of unaccompanied children, the Hungarian Helsinki Committee on its monitoring missions regularly encounters presumably and allegedly under-age detainees, due to the lack of proper age assessment mechanisms based on a clear, multidisciplinary methodology. Age assessment is usually carried out by a police-employed medical doctor, and it is generally based on the mere physical appearance of the person concerned. Evaluation provided by the Hungarian Helsinki Committee.

UNHCR response:

As of July 2013 a new detention regime was introduced for asylum-seekers. It is of major concern that there is no legal remedy available against a decision imposing asylum detention on asylum-seekers due to lack of sufficient procedural guarantees set in national law. This concern was shared by the UN Working Group on Arbitrary Detention (WGAD) during its visit in October 2013. WGAD also expressed concerns about the overuse of detention and the severe lack of effective legal assistance. The judicial review of administrative detention of asylum-seekers is ineffective resulting in automatic judicial prolongation. Detention of asylum-seekers does not meet neither the necessity test, as it is not applied as a last resort measure, nor the proportionality test as it is not applied for the shortest time possible. Decisions imposing asylum detention on asylum-seekers lack any individualization, the justification of the decision does not elaborate on the particular reason why, in the case of a given individual, it is necessary and reasonable to impose detention, nor is any information provided on exactly why, in his/her case, detention is the only way to ensure availability in the asylum procedure. The best interests of the child principle is not applied when assessing applications submitted by age-disputed minors in detention as these cases are not prioritized in practice and asylum-seekers are kept in detention for the duration of the age assessment procedure. The newly introduced alternative to detention (asylum bail) is not applied in practice effectively. Whether to apply the asylum bail belongs to the discretionary power of the asylum authority and since the minimum amount is often set at a very high level it practically makes this type of alternative to detention inaccessible for many asylum-seekers. Families with children remain to be exposed to detention for up to 30 days according to national legislation. UNHCR is still concerned about the systemic use of leashes and handcuffs amounting to inhuman and degrading treatment, which results in treating asylum-seekers as criminal suspects.

State of Hungary response:

The different types of detention of non-citizens existing in the Hungarian legislation need to be clearly distinguished: immigration detention (alien- policing detention and detention prior to expulsion) and asylum detention. The purpose and legitimate aim of the alien policing detention is to ensure the implementation of the expulsion order of illegal migrants whilst the primary aim of the asylum detention is to ensure the presence of the asylum- seeker in the asylum procedure. In accordance with the EU Return Directive the term of administrative detention (of third country nationals) amounts to a maximum of 6 months (in the case of a family with minors, thirty days)

that can be prolonged by the court with a maximum of 6 months in certain cases laid down in national law. The alien-policing detention can be ordered by the Alien Policing Authority and is implemented in detention centres which have a severe regime.

The specific regime for detention for asylum seekers (asylum detention) serves as a last resort in order to ensure the presence of the applicant and possible alternative measures to detention shall be used as a priority measure before proceeding with the asylum detention. The legislation on asylum detention and its implementation fully comply with the relevant UNHCR recommendations as well as the international standards deduced from the case law of European Court of Human Rights and the jurisprudence of the Court of Justice of the EU. The legitimacy of the detention is ensured by continuous judicial control: the Asylum Authority can only order detention that can be prolonged by the court. The period of the asylum detention is much shorter than the period of detention for aliens policing purposes and is carried out in special facilities serving the sole purpose for asylum detention. The asylum detention lasts for a maximum of 72 hours which can be extended by the competent court maximum two times, by a maximum of sixty days, for a maximum total length of 6 months. Families with children may only be detained exceptionally and for a maximum period of 30 days, if the detention is in the best interest of the child. Since 1 July 2013 (the introduction of the asylum detention) no asylum-seeking families with children were detained. Asylum detention may only be ordered on the basis of an individual assessment and the full consideration of alternative options. The detention of asylum seekers must only be exceptional and has to be proportionate to the objectives to be achieved. It should serve as a last resort in order to ensure the presence of the applicant and possible alternative measures to detention (designated place of residence, asylum bail, regular reporting before the refugee authority) shall be used as a priority measure before proceeding with the asylum detention. For asylum-seekers the place of detention is a guarded asylum reception centre. The asylum-seekers are entitled to move freely inside the premises of the guarded closed reception centre, but cannot leave the centre during the procedure.

The asylum seeker may file an objection against an order of asylum detention or the use of a measure securing availability. The objection shall be decided upon by the local court having jurisdiction based on the place of residence of the asylum seeker within eight days. Any costs of the court procedure will be borne by the state. The asylum seeker placed in asylum detention shall be entitled to make objections, complaints and public announcements and to submit requests. If the complaint of the asylum seeker refers to abuse or inhuman or degrading treatment, the director of the guarded asylum reception centre shall transfer the complaint to the public prosecutor who carries out the legal oversight of the guarded asylum reception centre within five days of the submission of the complaint. In cases relevant to the implementation of detention, an asylum seeker may directly turn to the public prosecutor, to the Parliamentary Commissioner for Fundamental Rights, and to NGOs operating in the field. The director of the guarded asylum reception centre shall ensure the right to appeal of the asylum seeker. Furthermore the Prosecution Service also has the possibility to examine the legality of the infringement of personal freedom ex officio.

The Hungarian authorities have the appropriate mechanisms to identify those persons who are in need of international protection and to ensure their protection. The apprehended third country nationals are informed about their rights and obligations including the right to apply for international protection during the alien policing procedure. During the asylum procedure the reasons for seeking have to be proved. According to the existing tripartite memorandum among the Police, UNCHR Regional Representation for Central Europe and Hungarian Helsinki Committee the civil control is ensured in connection with international protection and alien policing measures.

In 2012 the Police (co-financed by European Return Fund) completed an annotation for the training of law enforcement officials under the title 'Human right guarantees and international migration'. During the project there were 2 trainings for 43 police officers and the publication was sent for all alien policing officers. In 2013, the alien policing officers of the Police took part in trainings organised by the UNHCR and the Cordelia Foundation about the special needs of vulnerable persons, the needful legal and psycho-social knowledge and the use of the PROTECT-questionnaire.

Hungary is constantly striving to improve the living conditions of refugees and asylum seekers in every stage of asylum procedure and they comply with the relevant EU legislation (2003/9/EC). Furthermore the Ministry of Interior supports projects aiming to better the living conditions of both persons granted international protection and asylum seekers using the sources of the European Refugee Fund to complement national actions.

The basic guarantee of the respect of the human rights of foreigners is enshrined in the Fundamental Law of Hungary that requires respect of human rights of all persons regardless of their nationality. Furthermore the EU acquis (first and foremost the EU Charter of Fundamental Rights) and the international human rights instruments ratified by Hungary (such as the European Convention of Human Rights and the International Covenant on Civil and Political Rights) also guarantee human rights for all persons therefore these rights are granted by Hungary to all persons regardless of their nationality. Respect for human rights is ensured at all stages of the asylum and the aliens policing procedure. Special rules are applied during these procedures and the reception of persons with special needs providing more favourable treatment for them. Hungary provides separate, autonomous legal status for stateless persons, for beneficiaries of temporary protection, for victims of trafficking and for unaccompanied minors.

Third-country nationals who, although would be subject to a return decision, cannot be removed from the territory of the Member State concerned either for legal reasons due to the principle of non-refoulement obligations provided by international refugee treaties or for practical reasons (e.g. do not have travel/identity documents, lack of co-operation of embassies representing certain countries of origin, in terms of identification of their citizens) receive the "exile" status which is not a legal status, therefore, is not equivalent to the legal status of beneficiaries of temporary protection, they are simply referred to as 'tolerated stay persons'. "Exile" shall mean any person who is provided temporary shelter and may not be returned to the country of his/her

nationality, or in the case of a stateless person to the country of domicile, for fear of being subjected to capital punishment, torture or any other form of cruel, inhuman or degrading treatment, and there is no safe third country offering refuge, and who is not entitled to asylum or treatment as a stateless person, nor to any subsidiary form of protection or temporary protection. According to the Hungarian legislation, a residence permit on humanitarian grounds is issued to the person who has been granted the status of exile by Hungary.

Recommendation n°140: Take all relevant measures to avoid prolongation of administrative detention of asylum-seekers during which the freedom of movement is considerably restricted (Recommended by Czech Republic)

IRI: not implemented

Joint response:

[See response to recommendation n°139]

UNHCR response:

Administrative detention of asylum-seekers has remained problematic in Hungary. As of July 2013 a new administrative detention regime was introduced for detaining asylum-seekers. The main shortcomings of this regime are the following: no legal remedy is available against a decision imposing asylum detention on asylum-seekers due to lack of sufficient procedural guarantees in national law, the judicial review of the lawfulness of administrative detention of asylum-seekers is ineffective resulting in automatic judicial prolongation. Detention of asylum-seekers does not meet neither the necessity test, as it is not applied as a last resort measure, nor the proportionality test as it is not applied for the shortest time possible. Decisions imposing asylum detention on asylum-seekers lack any individualization, the best interest of the child principle is not applied when assessing applications submitted by age-disputed minors in detention as these cases are not prioritized in practice and asylum-seekers are kept in detention they undergo age assessment procedure. In October 2013, the UN Working Group on Arbitrary Detention expressed concerns about the overuse of detention and the lack of effective legal remedy worsened with the severe lack of effective legal assistance. It also highlighted that the situation of asylum-seekers and migrants in irregular situation need robust improvements and attention to ensure against arbitrary deprivation of liberty.

State of Hungary response:

[See response to recommendation n°139]

Recommendation n°141: Establish adequate mechanisms to identify potential asylum-seekers in border procedures, undertake measures aimed at avoiding prolongation of administrative detention of asylum-seekers and at improving the living conditions and treatment of asylum-seekers and refugees (Recommended by Brazil)

IRI: partially implemented

Joint response:

[See response to recommendation n°139]

UNHCR response:

Hungary is cooperating with UNHCR on ensuring access to its territory for persons with international protection needs via a tripartite border monitoring cooperation by the National Border Police, the Hungarian Helsinki Committee and UNHCR. Since end of 2012, beginning of 2013 access to territory has been generally granted. Nevertheless, it has remained a concern that national legislation still does not provide for a detailed personal interview before the forcible return of a foreigner wishing to enter or entering Hungary unlawfully whereas this would be indispensable to prevent potential refoulement. This is all the more problematic in the case of unaccompanied minors where the principle of the best interests of the child should be applied in accordance with obligations conferred on Hungary by the UN Convention on the Rights of the Child, General Comment no. 14 of the Committee on the Rights of the Child and the EU Return Directive. To fulfil such obligations, a detailed interview is indispensable before return.

Administrative detention of asylum-seekers has remained problematic in Hungary. As of July 2013 a new administrative detention regime was introduced for detaining asylum-seekers. The main shortcomings of this regime are the following: no legal remedy is available against a decision imposing asylum detention on asylum-seekers due to lack of sufficient procedural guarantees in national law, the judicial review of administrative detention of asylum-seekers is ineffective resulting in automatic judicial prolongation. Detention of asylum-seekers does not meet neither the necessity test, as it is not applied as a last resort measure, nor the proportionality test as it is not applied for the shortest time possible. Decisions imposing asylum detention on asylum-seekers lack any individualization, the best interests of the child principle is not applied when assessing applications submitted by age-disputed minors in detention as these cases are not prioritized in practice and asylum-seekers are kept in detention for the duration of the age assessment procedure. The newly introduced alternative to detention (asylum bail) is not applied in practice effectively. Whether to apply the asylum bail belongs to the discretionary power of the asylum authority and since the minimum amount is often set at a very high level (according to law the minimum amount is 500 EUR and the maximum amount is 5000 EUR) it practically makes this type of alternative to detention inaccessible for many asylum-seekers. Families with children remain to be exposed to detention for up to 30 days according to national legislation. UNHCR is still concerned about the systemic use of leashes and handcuffs amounting to inhuman and degrading treatment, which results in treating asylum-seekers as criminal suspects. In October 2013, the UN Working Group on Arbitrary Detention expressed concerns about the overuse of detention and the lack of effective legal remedy worsened with the severe lack of effective legal assistance. It also highlighted that the situation of asylum-seekers and migrants in irregular situation need robust improvements and attention to ensure against arbitrary deprivation of liberty.

State of Hungary response:

[See response to recommendation n°139]

Recommendation n°142: *Recognize and guarantee the human rights of all foreigners, independent and regardless of their migratory status* (Recommended by Ecuador)

IRI: *partially implemented*

UNHCR response:

The current asylum reception regime fails to provide sustainable solutions – an exit strategy – for those whose return to their countries of origin or a safe third country is impossible due to technical reasons. It gives rise to concerns that asylum applicants submitting a subsequent application and persons with a tolerated status are only entitled to stay for two months in a designated open reception centre. Subsequent applicants are entitled to fewer services than those lodging initial applications. While requested to leave the designated facility, no assistance is being provided, which might expose them, in particular persons with special needs, to homelessness and destitution. Such an un-facilitated exit has also negative consequences for the local community and may raise concerns relevant to security, public order and health.

In addition, access of school-age children of subsequent asylum applicants to primary education is not ensured, which was confirmed by the Parliamentary Commissioner for Fundamental Rights in its recent report of April 2014. Similarly, the Parliamentary Commissioner found that no access of asylum-seekers to maternity care, including receiving mandatory vaccinations for children, jeopardizes the right of children to free of charge primary education and their right to physical and mental health and called on government authorities to initiate amendment of relevant legislative acts.

State of Hungary response:

[See response to recommendation n°139]

International Instruments

Recommendation n°1: *Continue the process of ratifying OP-CAT* (Recommended by Czech Republic)

IRI: *fully implemented*

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Recommendation n°2: *Consider ratifying OP-CAT* (Recommended by Brazil)

IRI: *fully implemented*

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Recommendation n°3: *Ratify OP-CAT* (Recommended by Afghanistan)

IRI: *fully implemented*

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Recommendation n°4: *Proceed with the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without delay* (Recommended by Denmark)

IRI: *fully implemented*

Joint response:

Implemented. On 24 October 2011, Act CXLIII of 2011 on Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) was adopted, which designated the Commissioner for Fundamental Rights (the Ombudsperson) to be the National Preventive Mechanism (NPM) in Hungary and amended the law on Commissioner for Fundamental Rights in order to comply with the requirements of OP-CAT.

The above law was adopted by the Parliament in an extremely short period: only four working days were provided for commenting on the draft Bill, it was submitted to the Parliament even before the deadline for commenting was over, and was adopted on the next working day. Furthermore, NGOs found that the law above was unsatisfactory and inadequate to fulfil all the requirements set by OP-CAT, and claimed e.g. that (i) not all types of places of detention are covered by the law; (ii) the participation of NGOs which already acquired significant experience in monitoring detention is not ensured in the work of the NPM; and that (iii) the NPM would start its operation only in 2015. (See also in [Hungarian](#); in [English](#).)

Evaluation provided by the Hungarian Helsinki Committee.

UNHCR response:

Implemented. In October 2011, the Parliament of Hungary ratified the OPCAT (Act CXLIII of 2011) and designated the Commissioner for Fundamental Rights (the Ombudsperson) as its National Preventive Mechanism at the same time. On 12 January 2012 Hungary acceded to the OPCAT.

State of Hungary response:

In line with its pledges, Hungary acceded to the OP-CAT (12 January 2012). The Commissioner for Fundamental Rights (Ombudsperson) has been designated as the National Preventive Mechanism (effective as of 2015).

Recommendation n°5: Sign and ratify OP-CAT and CED and declare to accept the competence of the Committee against Enforced Disappearances provided for in articles 31 and 32 of the Convention (Recommended by France)

IRI: partially implemented

Joint response:

Partially implemented.

[See response to recommendation n°1]

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Hungary has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance

Evaluation provided by the Hungarian Helsinki Committee.

UNHCR response:

[See response to recommendation n°1]

State of Hungary response:

OP-CAT [See response to recommendation n°1]. The ratification of the CED is currently being examined by the ministries in charge.

Recommendation n°6: *Study the possibility of becoming a party to the Convention for the Protection of All Persons from Enforced Disappearance* (Recommended by Argentina)

IRI: *fully implemented*

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Recommendation n°7: *Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance* (Recommended by Spain)

IRI: *not implemented*

State of Hungary response:

The ratification of the CED is currently being examined by the ministries in charge.

Recommendation n°15: *Ensure that legislation introduced giving effect to the new Constitution complies with Hungary's international human rights obligations* (Recommended by Australia)

IRI: *partially implemented*

Joint response:

Hungarian LGBT Alliance: Not implemented.

In December 2011, a cardinal law on the protection of families (Act No. CCXI of 2011) was adopted that contained an exclusionary definition of family and restricting statutory inheritance to spouses and blood relatives. The bill was submitted by four individual MPs so that duty for public consultations could be circumvented. The bill was rushed through Parliament in three weeks time. In June 2012, the Commissioner for Fundamental Rights turned to the Constitutional Court claiming the legislation is unconstitutional on several grounds, one being that it amounts to discrimination based on sexual orientation that (same-sex) registered partners are not considered family members and their inheritance rights are curtailed. In December 2012, the Constitutional Court annulled both provisions of the legislation. The governing parties responded with including the criticized definition of family in the Fundamental Law itself to avoid judicial review. The Venice Commission, the CEDAW Committee, the European Parliament, as well as international human rights NGOs such as Amnesty International and Human Rights Watch criticized the move. The new constitutional provision was used to argue for the removal of (same-sex) registered partnership from the new Civil Code. The Commissioner for Fundamental Rights turned to the Constitutional Court claiming the removal is discriminatory and creates legal uncertainty, the decision of the Court is pending.

State of Hungary response:

Hungary is fully committed to ensuring the implementation of all its international obligations through its national legal system. Each law or regulation is examined before adoption or modification thereof to ensure their conformity with international commitments and obligations of Hungary. Article Q of the Fundamental Law stipulates that Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by promulgation into domestic legal regulations. Promulgation is a constitutional requirement according to Act L. of 2005 on the procedures concerning international treaties and the relevant practice of the Constitutional Court. Therefore, the promulgated international treaties (e.g. human rights obligations) are part of the

national law and directly applicable by the Hungarian courts. Domestic rules in contravention with human rights obligations of Hungary are suspended by the courts and transmitted to the Constitutional Court which can ultimately nullify the conflicting domestic law.

Recommendation n°33: *Continue to engage civil society in the process of implementation of UPR recommendations* (Recommended by *Poland*)

IRI: *fully implemented*

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Recommendation n°37: *Continue to closely consult with civil society in implementing the recommendations made during the UPR* (Recommended by *Austria*)

IRI: *fully implemented*

Joint response:

Chance for Children Foundation: Partly implemented. Anti-Segregation Roundtable: The Anti-Segregation Roundtable was established by the Minister of Human Resources in June 2013 in order to seek solutions that may be used in practice to eliminate segregated education that regenerates disadvantages and poverty. The roundtable's stated purpose also included "reviewing the current issues in segregation in education, clarifying the competencies of central and local government, church and NGO actors, reviewing the current norms and suggesting modifying these if necessary." The participants of the roundtable were invited members: education experts from the civil sector and church actors that work for Roma youth or integration. The roundtable is supposed to meet once or twice a month. Civil members working for poor and Roma children to have equal access to quality education presented a list of recommendations on the second meeting of the roundtable asking the government among others to go back to the original definition of the multiply disadvantaged status ("HHH" definition) claiming that the new definition will deprive many disadvantaged students of previously available benefits and will make it harder to fight segregation of Romani and other socially disadvantaged students (the law provides against the disproportionate number of "HHH" students at schools).

Two representatives of the civil sector, Péter Heindl, head of an after-school study centre and Erzsébet Mohácsi, head of the Chance for Children Foundation left the roundtable in July and September respectively, claiming that the government disregarded their views and demands and there was no result of the meetings. While Heindl's main criticism was the government's unwillingness to change back the definition of the [multiply disadvantaged status](#), Mohácsi claimed that there was no theoretical agreement between the civil sector and the government as to what actually constituted segregation and she criticized the government for disregarding court rulings that condemn segregating schools and for not standing up against concrete instances of segregation, while, as a maintainer of all public schools, having the power to do so [...]. After Heindl and Mohácsi had left, three new members joined the roundtable.

At the February 2014 meeting of the Roundtable, the Minister of State for Social Inclusion announced that an operational working group for desegregation is established to speed up the desegregation process and to develop practical solutions

to dismantle segregation based on the recommendations of the Roundtable. The group is made up of experts from the State Secretariat for Social Inclusion, the local government offices and the Klebelsberg Institution Maintenance Centre, having no NGO representatives. Despite the stated purpose of the government to speed up desegregation, since February there have been no Roundtable meetings as of mid-April.

State of Hungary response:

As a result of the UPR of Hungary in 2011, the Government set up an inter-ministerial Human Rights Working Group (HRWG) in February 2012 which was tasked to monitor human rights in Hungary, to consult with stakeholders engaged in human rights matters and to advise the Government on human rights legislation. The HRWG operates a Human Rights Roundtable composed of 12 sub-working groups for the participation of the non-governmental organisations. The Human Rights Roundtable was established for the explicit purpose to engage in an ongoing dialogue with the civil society and provides a platform for consultations with various stakeholders. Besides the Government, members of the Round Table include the representatives of the Commissioner for Fundamental Rights, the Equal Treatment Authority, the National Authority for Data Protection and Freedom of Information, and more than 40 non-governmental organizations active in this field. The 12 sub-working groups are covering the following clusters: freedom of opinion, other civil and political rights, economic, social and cultural rights, rights of Roma, minorities, women, children, disabilities, elderly, homeless, LGBT, and refugees. The proposals and the criticism by the 12 thematic sub-working groups of the Human Rights Roundtable are submitted to the HRWG on the level of the state secretaries for follow-up action which can result in legislative proposals by the Government. During these sessions accession to human rights conventions and the better implementation of the already existing international obligations of Hungary were discussed recurrently.

Since 2010, the Hungarian legislator reviewed and re-regulated the most important mechanisms for the promotion and protection of human rights with a view to strengthening them. As a result, parallel to the preparation of the Fundamental Law of Hungary, the Act on the Commissioner for Fundamental Rights was adopted, and the Act on the Right to informational self-determination and freedom of information was updated.

The Fundamental Law and the new Act on the Commissioner for Fundamental Rights created a coherent and consistent organizational structure of the ombudsperson system. In this system the Parliament elects a single Commissioner for Fundamental Rights equipped with the entirety of rights and responsibilities necessary for the effective protection of the fundamental rights. The two Deputy-Commissioners are responsible for the protection of the interests of future generations and for the protection of the interests of nationalities living in Hungary. The Act on the Right to informational self-determination and freedom of information set up the National Authority for Data Protection and Freedom of Information. The Authority, fully in line with the relevant European and international standards, is equipped both with the toolset of an ombudsperson and that of an administrative authority.

Recommendation n°34: *Issue a standing invitation to human rights special procedures* (Recommended by *Palestine*)

IRI: *fully implemented*

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Recommendation n°35: *Continuity of the standing invitation for mandate holders of human rights special procedures* (Recommended by *Afghanistan*)

IRI: *fully implemented*

State of Hungary response:

Hungary upholds its standing invitation for mandate holders of human rights special procedures issued in March 2001.

Recommendation n°36: *Eliminate the backlog of reports to the human rights treaty bodies and the responses to thematic questionnaires of HRC special procedures* (Recommended by *Russian Federation*)

IRI: *not implemented*

State of Hungary response:

Hungary submitted on time its periodical reports to the CRPD (Committee on the Rights of Persons with Disabilities), CEDAW (Committee on the Elimination of All Forms of Discrimination Against Women) and CRC (Committee on the Rights of the Child) and commits itself to eliminate the backlog of periodic reports on the implementation of other international human rights instruments to which its party to. The Government strives to respond to the questionnaires of HRC mandate holders within its capacities. Hungary responded comprehensively to all 10 allegation letters it had received since 2010.

Recommendation n°59: *Implement the necessary measures to fulfil CRPD so there may be full realization of the rights of this important segment of the population* (Recommended by *Ecuador*)

IRI: *fully implemented*

Joint response:

Partially implemented. The Committee on the Rights of Persons With Disabilities in its Concluding Observations on Hungary – published in 22 October 2012 – welcomed the explicit prohibition of disability-based discrimination in the Fundamental Law, entered into force in 1 January 2012, and the adoption the law on the Hungarian Signs Language and the use of Hungarian Sign Language. (CRPD Committee, Concluding Observation on Hungary)

However, the Committee criticized Hungary for many reasons. According to the HCLU the most important issues are the following.

Equal recognition before the law: Guardianship vs. supported decision-making

The new Civil Code – entered into force in 15 March 2014 – maintains a regime of substituted decision-making, while introduced a distorted form of supported decision-making. Preserving plenary guardianship make persons with disabilities susceptible for losing their right to self-determination in all areas of their lives. In 2012 there were more than 32 thousand people under plenary guardianship. Maintaining plenary guardianship is not in line with Article 12 of the Convention. The law introduced

supported decision-making, however this legal tool is available only for people with mild disability. Supported decision-making exclude supported persons for being foster parents and being employed in judicial and justice professions.

The right to vote and to be elected

According to the Fundamental Law of Hungary, the civil courts are required to assess the capacity to vote of those under guardianship. The law allows the right to vote to be restricted if the person's legal capacity has been deprived due to his or her intellectual or psychosocial disability. The legislation is clearly contrary to the Article 29 of the convention.

Right to live in the community

In Hungary there are more than 24 thousand people with intellectual and psychosocial disability being forced to live in large-scale institutions. The institutions segregate the residents from the wider society and make them susceptible to several forms of neglect and abuse. Most of the residents are being placed under plenary guardianship, therefore they cannot decide to where and with whom to live. The European Union Structural Funds has been supporting deinstitutionalization and the transition from the institutional care to community living. In the first programming period of the Structural Funds (2007-2013) Hungary has spent 19,3 Million EUR for closing six institutions and support the residents moving in the community. It has been reported however, that alternatives of institutions are too similar to institutional model, user involvement were insufficient, and the new arrangements were in some cases overcrowded. Moreover, in the same period Hungary also used resources for renovating and enlarging existing institutions. Due to a lack of data we do not know the amount of the money used for the latter. ([ECCL: Briefing on Structural Funds Investments for People with Disabilities](#))

Evaluation provided by the Mental Disability Advocacy Centre

State of Hungary response:

There are approximately half million people living with disabilities in Hungary. The Fundamental Law explicitly prohibits discrimination on the basis of disability. Ensuring the rights and equal opportunities of persons with disabilities has been laid out in a standalone act in Hungary since 1998 (Act XXVI of 1998 on the rights and equal opportunities of persons with disabilities, hereinafter: Disability Act). Hungary was the first country in the world to ratify both the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol in 2007. Our initial report on the Implementation of the CRPD was submitted in 2010, the consequent constructive dialogue took place in September 2012. Since the review of the Disability Act in 2013, the definition of persons with disabilities is more in line with the provisions of CRPD, whereby accessibility became an obligation to ensure by all public services without any further delay, and the structure of the National Disability Council was transformed to gain more independence from the government. In 2013 supported decision making was introduced as a legal institution. In order to facilitate the employment of persons with disabilities the system of rehabilitation employment and provisions was restructured, which resulted in a significant growth in the number of persons with disabilities in employment.

Recommendation n°91: *Ensure that the restriction of some right, such as the right to vote for people with disabilities, is carried out with all the due guarantees and in line with the provisions of the Convention* (Recommended by Uruguay)

IRI: *fully implemented*

State of Hungary response:

The automatic system of limiting the right to vote of people with mental disabilities has been changed, and now it requires a court decision to impose any restriction on any person living with mental disabilities. The judge is required by law to take into account all the circumstances that he or she finds pertinent in assessing the capacity of the person in question to exercise the right to vote.

Recommendation n°115: *Ratify the main United Nations human rights instruments, particularly OP-CAT and CED* (Recommended by Ecuador)

IRI: *partially implemented*

Joint response:

[See response to recommendation n°5]

UNHCR response:

[See response to recommendation n°1]

State of Hungary response:

Please refer to the following responses: ICRMW - [recommendation n°144], OP-CAT - [recommendation n°1], CED - [recommendation n°6].

Recommendation n°116: *Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (Recommended by Spain)

IRI: *not implemented*

State of Hungary response:

The ratification of the ICESCR is currently being examined by the ministries in charge.

Recommendation n°117: *Consider the progressive ratification of pending human rights international treaties* (Recommended by Chile)

IRI: *fully implemented*

Joint response:

In 2013 Hungary ratified the Council of Europe Convention on Action against Trafficking in Human Beings (Act No. XVIII of 2013).

On 14 March 2014 Hungary signed the Council of Europe Convention on preventing and combating violence against women and domestic violence. No public information is available about its ratification yet.

State of Hungary response:

Since its first UPR Hungary has ratified and incorporated into the domestic legal system the following main human rights treaties: OP-CAT, Maritime Labour Convention, European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe and Council of Europe

Convention on Action Against Trafficking in Human Beings. The ratification of the ICESCR and the CED is currently being examined by the ministries in charge.

Recommendation n°119: Amend the Criminal Code with a view to including all elements of the definition of torture as provided for in article 1 of CAT (Recommended by Czech Republic)

IRI: *partially implemented*

Joint response:

Not implemented.

The new Criminal Code of Hungary (Act C of 2012 on the Criminal Code), which entered into force on 1 July 2013, includes provisions similar to the former Criminal Code of Hungary when declaring ill-treatment in official proceedings (Article 301), forced interrogation (Article 303) and unlawful detention (Article 304). As a new element the new Criminal Code also declares ill-treatment in the proceedings of a person carrying out a public duty a criminal offence (Article 302). Furthermore, it provides for higher sentences if ill-treatment and forced interrogation is committed in a group (but at the same time makes it possible in these latter cases to reduce the sentence without restraint if a member of the group makes a confession regarding the circumstances of the case before the indictment). The definition of torture as provided for in Article 1 of CAT has not been incorporated into the Criminal Code as such.

Thus, based on the respective conclusions and recommendations of the Committee against Torture with regard to Hungary from 2007 (see: [Article 6](#)), the concerns raised by the Committee against Torture regarding the former Criminal Code of Hungary apply also to the new one currently in force.

Evaluation provided by the Hungarian Helsinki Committee.

State of Hungary response:

The provisions of Section 301 of the new CC on the felony of assault in official proceedings, Section 302 on the felony of assault in the proceedings of a person performing public duties, and Section 303 on the felony of coercing of confession contain every element of torture included in Article 1 of the CAT. The statutory definition of assault in official proceedings and assault in the proceedings of a person performing public duties does not contain either any intent or motivation thus they are punishable for being carried out with any aim or motivation. Pursuant to Section 12 and Section 14 of the CC the instigator and his or her accomplices are also punishable.

Recommendation n°120: Introduce additional measures to ensure that the new Media Act complies with regional and international human rights standards (Recommended by Switzerland)

IRI: *not implemented*

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Recommendation n°121: Look into the current regulatory framework so as to remove parts of the legislation that may challenge freedom of speech and independence of the press and other media (Recommended by Norway)

IRI: *partially implemented*

State of Hungary response:

Current rules contain exclusively such limitations on the right to the freedom of expression which are fully recognized by international law. For example members of the press may only be obliged to reveal the information source by a decision of a court and only in exceptional cases. If right to freedom of expression conflicts with the fundamental rights of individuals the media authority (National Media and Communications Authority, NMIA) can only take measures when the core content of human dignity is violated. All decisions of the NMIA may be challenged before the courts. Hungary was and will remain ready for dialogue, in case there are concrete questions and observations related to the specific provisions of the laws.

Recommendation n°144: *Consider becoming a party to the International Convention on the Rights of Migrant Workers and Members of Their Families* (Recommended by Egypt)

IRI: not implemented

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Recommendation n°145: *Study the possibility to become a party to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (Recommended by Argentina)

IRI: not implemented

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Recommendation n°146: *Ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (Recommended by Iran)

IRI: not implemented

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Recommendation n°147: *Accede to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a fundamental step in the protection of human rights* (Recommended by Guatemala)

IRI: not implemented

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Recommendation n°148: *Accede to the Convention on the Rights of All Migrant Workers and Members of Their Families in accordance with Recommendation 1737 of 17 March 2006 of the Parliamentary Assembly of the Council of Europe* (Recommended by Algeria)

IRI: not implemented

State of Hungary response:

These recommendations were not accepted as several provisions of this Convention are governed by EU regulations, therefore none of the EU member states are parties to it, including Hungary.

Recommendation n°149: *In line with the recommendations of the Committee on Economic, Social and Cultural Rights, revoke the condition which requires a minority group to have lived in the county at least one hundred years in order to be considered a national minority* (Recommended by Russian Federation)

IRI: -

State of Hungary response:

Hungary supports the efforts of Hungarians living abroad to preserve their cultural identity in line with international standards. Regarding Hungarian minorities living

under the jurisdiction of another State the Government acts as a responsible member of the international community, in line with the Bolzano Recommendations.

Recommendation n°151: *The delegation informed about Hungary's willingness to accede to the Optional Protocol to the Convention against Torture (OP-CAT) as a part of its pledges to the Human Rights Council as well as about the Government's steps to prepare this ratification. (Recommended by Hungary)*

IRI: *fully implemented*

UNHCR response:

[See response to recommendation n°1]

Justice

Recommendation n°63: *Improve the treatment of prisoners and prison conditions (Recommended by Iran)*

IRI: *partially implemented*

Joint response:

Not implemented.

The prison conditions – beyond the serious problems related to overcrowding (see comments on Recommendation 64) has remained unchanged in the past four years. While the newly built or reconstructed institutions (i.e. the penitentiary institutions in Tiszaölk, Szombathely and Veszprém) satisfy almost all requirements prescribed by national and international human rights laws, the circumstances in the vast majority of the older institutions are still hardly bearable. In Kalocsa, for example, during a visit in July 2012 colleagues of HHC observed that the ventilation was very poor in almost all the cells, while the interior temperature reached 40 °C. The toilets in the cells did not have independent ventilation, and, furthermore, in some cases they were only separated with curtains from the rest of the cell. The same conditions were recorded by the Ombudsman (the Commissioner for Fundamental Rights) concerning the Jász-Nagykun-Szolnok County Penitentiary Institution.

The European Court of Human Rights (ECtHR) also established the violation of human rights of detainees because of the poor prison conditions. For example in its decision issued in the case Szél v. Hungary (Application no. 30221/06, Judgment of 7 June 2011), the ECtHR established the violation of Article 3 of the European Convention on Human Rights because the applicant spent around five years in a Hungarian prison in different cells in which he had between 2.76 and 3.15 square meters of personal space available. The ECtHR also noted that the Hungarian authorities had to rapidly take the necessary administrative and practical measures in order to improve the conditions in which detainees were kept in Hungarian prisons. Further applications regarding the same issue are pending.

Due to a change in legislation as of 1 January 2012 the amount spent on nutrition has been cut down in the case of working inmates or those on a special diet, while

the basic amount/day/capita remained less than 1.5 EUR (Measure no. 1-1/3/2012. (I.16.) OP of the Head of the National Penitentiary Headquarters).

As for the detention conditions of juveniles, see comments on Recommendation 77. Evaluation provided by the Hungarian Helsinki Committee.

State of Hungary response:

The Hungarian prison population is around 18.000 people. Overcrowding greatly varies depending on the region and the type of the institution. The task to ease the overcrowding of prisons enjoys priority in particular in the units for long-term and life-long imprisonment. The Government initiated reconstruction programs in 2010. In the first phase of the reconstruction program 741 new places were realized until December 2013. In the Sátoraljaújhely Strict and Medium Regime Prison a new long-term unit was established and one unit inside the Budapest Strict and Medium Regime Prison was rebuilt to make it more convenient for long-term prisoners. The second phase envisages an ambitious plan to ease prison overcrowding with the intensified implementation of alternative measures to confinement on one hand and new prisons and prison extensions on the other hand. Approximately 3600 new places planned to be built before 2017, 1200 this year and 2400 from 2015.

The new Act on the implementation of penalties and sanctions (Act CCXL of 2013) replaces the outdated regulation from 1979 and meets modern European norms. Its main goals are reintegration, effective education and employment in order to prevent recidivism. Progress in the treatment of prisoners is constantly monitored by the Hungarian Prison Service, the Commissioner for Fundamental Rights, the UN and European organisations as well as the NGOs.

Recommendation n°64: *Continue its efforts to combat overcrowding of prisons in order to facilitate the successful reinsertion into society of previously convicted persons* (Recommended by Denmark)

IRI: *partially implemented*

Joint response:

Not implemented. As of 5 December 2013 the total prison population was 18,197, while the capacity of the prison system was 12,584, thus the average overcrowding rate of the penitentiary system was 145% (see also: [documents](#)). As a comparison, the average overcrowding rate of the penitentiary system of Hungary was 137% in 2012. It is to be also noted that in 2013 and 2014 the Hungarian Helsinki Committee (HHC) visited penitentiary institutions where the overcrowding rate was above 170%. According to the experiences of the HHC it is not uncommon that the free space provided for one detainee is around 1 square meter, thus the space per detainee is far less than that set out by international standards.

Despite the constant rise of the number of detainees (15,432 in 2009, 16,328 in 2010, 17,210 in 2011, 17,179 in 2012 and 18,197 in December 2013), the related infrastructure basically remained the same. The rise of the detainees is due to the shift towards a stricter criminal policy and results that prison facilities are hard to manage. In line with the new, stricter penal policy in 2012 a new Criminal Code was adopted (and entered into force on 1 July 2013), which was heavily criticized by –

among others – the HHC, and which will place additional burdens on the penitentiary institutions. (See also the opinion of the HHC available in Hungarian at: <http://helsinki.hu/uj-btk-velemeney>).

The excessive use of pre-trial detention is one of the most serious problems of the Hungarian criminal justice system. Reflecting the general trend of stricter criminal policy the number of pre-trial detainees is also rising: the average number of detainees held in pre-trial detention increased by more than 7% in only two years after 2009 and currently almost 30% of the prison population consists of persons who were not convicted by any court for any crime. Alternatives to pre-trial detention are underused (in 2012 pre-trial detention was ordered 2,500 times, while geographical ban was applied 167 times, and house arrest was ordered only 61 times).

Courts continue to approve motions of the prosecution to order or upheld pre-trial almost as an automatic routine, failing to examine the individual circumstances of the suspect in many cases. In 2012, for example, the number of prosecutorial motions for ordering pre-trial detention was 5,861 out of which 5,334 were approved by a competent judge, which means a success rate of 91%. In 2011 the number of prosecutorial motions for ordering pre-trial detention was 6,245 out of which 5,712 were approved by a competent judge, which means a success rate of more than 91%. In 2010 this rate was 92.6%, while in 2009 it was 93.8%, so the trend is at least a decreasing one.

The other serious problem with pre-trial detention is its excessive length in a considerable number of cases: suspects often remain in detention for several months, even for years. The number of cases where the pre-trial detention exceeded the length of one year was 172, 243 and 274 in 2009, 2010 and 2011 respectively. (See also the [Briefing paper of the HHC for the UN Working Group on Arbitrary Detention](#)).

Moreover, the problem of unnecessarily long pre-trial detentions has been deepened as the length of pre-trial detention became unlimited in the case of crimes punishable by a prison term of up to 15 years or life-long imprisonment. (See also the [Update to the briefing paper of the HHC for the UN Working Group on Arbitrary Detention](#)).

Evaluation provided by the Hungarian Helsinki Committee. Please note that the Hungarian Helsinki Committee is not in the position to comment on the reinsertion into society of previously convicted persons.

State of Hungary response:

[See response to recommendation n°63]

Recommendation n°80: Adopt practical and legislative measures to ensure impartial and effective investigation of cases of ill-treatment by law enforcement bodies (Recommended by Uzbekistan)

IRI: partially implemented

Joint response:

Not implemented. No legislative steps were taken in order to ensure the independent medical examination of persons who claim to have been ill-treated by officials, which means that physicians employed by the police or the penitentiary institution examine detainees and record their health status, including potential injuries. Thus, a detainee making allegations of ill-treatment does not have the right to be examined by a medical expert who is fully independent from the detaining authority. (No such rules are included either in Act CCXL of 2013 on the Execution of Punishments, Measures, Coercive Measures and Confinement for Petty Offences, the new penitentiary code of Hungary, which will enter into force on 1 January 2015.)

Furthermore, in terms of Article 8 of Order 22/2010. (OT 10.) of the National Chief of Police on the Implementation of the Recommendations of the Council of Europe Committee for the Prevention of Torture (CPT), absence of law enforcement personnel at medical examinations is the exception and not the rule, and the detainee's request to this end is decided on by the commander of the guards, not the physician. This clearly contradicts the relevant [recommendation of the CPT](#) (§ 15).

There is no publicly available data which would indicate that the any practical measures were carried out in order to assess and change the prosecutorial and judicial practice in ill-treatment cases, which results that very few reports on official ill-treatment cases lead to indictment and the success rate of the prosecution is significantly smaller in ill-treatment cases than in relation to any other offence. Besides the difficulties of proving such cases, this may be attributed to a certain degree of lenience on the part of the authorities, which can be demonstrated by the mild sentences in case of the relatively few convictions.

No legislative steps were made in order to ensure that video-recording of interrogations is obligatory in Hungary. Under Article 167 of Act XIX of 1998 on the Criminal Procedure, the prosecutor and the investigative authority may order that procedural actions (including interrogations) be audio or video recorded. The recording is mandatory upon the request of the victim, the defendant or the defense counsel, but only if the defense or the victim advances the costs of such recording. Furthermore, defendants are not warned about this possibility, so if a defendant does not have a lawyer, he/she is unlikely to be aware of that he/she may put forth such a motion.

No legislative steps were taken in order to address the deficiencies regarding the mandate of the Independent Police Complaints Board (IPCB), vested with the right to investigate violations and omissions committed by the Police, provided that such violations and omissions substantively concern fundamental rights. Thus, for example,

- i. the IPCB is still not vested with the right to hear police officers, meaning that the officers are free to decide whether or not they give a statement upon the IPCB's inquiry;
- ii. the IPCB does not have regional offices, and with the limited number of the personnel, it is practically not possible for its staff to carry out on the spot investigation. As a result, the IPCB's investigation is restricted to the inspection

of the case files consisting of documentation provided by the police units concerned by the complaint, which obviously restricts the effectiveness of the investigation.

(For the issues outlined above, see also: [\[the HHC submission to the UN Human Rights Committee\]](#), pp 8-13.)

Evaluation provided by the Hungarian Helsinki Committee.

State of Hungary response:

The prosecutor is responsible for the investigation of ill-treatment committed by the member of the police forces. According to the Law on Police victims of such cases can complain at the Independent Police Complaints Board whose members are elected by the Parliament. If the complaint of the detainee alludes to an assault or an inhumane or humiliating treatment, the head of the institution must forward it to the prosecutor immediately or at latest within five days from the lodging of the complaint. The victims of ill-treatment also have access to the whole range of victim support services provided by the state. Victim assistance covers victim support (facilitate the protection of victims' interests, grant instant monetary aid and provide legal aid) and state compensation. Several regulations in the Criminal Proceeding Act also assure that the victims' particular interests are taken into consideration during the criminal procedure. After the recent ratification of the OP-CAT by Hungary, the Commissioner for Fundamental Rights has been designated as the National Preventive Mechanism on the prevention of torture (effective as of 2015).

Recommendation n°82: *Introduce professional training, capacity-building and cooperation for law enforcement and judicial authorities to identify and address racially motivated crimes* (Recommended by Norway)

IRI: *fully implemented*

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Recommendation n°83: *Ensure that victims of hate crimes have access to assistance and protection, including counselling and legal assistance* (Recommended by Austria)

IRI: *fully implemented*

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Recommendation n°84: *Ensure adequate training for the police and judiciary to promptly and effectively deal with hate crimes* (Recommended by Austria)

IRI: *partially implemented*

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Recommendation n°85: *Ensure training for police officers, prosecutors and judges in order to ensure that they can recognize, investigate and prosecute hate crimes* (Recommended by Canada)

IRI: *fully implemented*

Joint response:

Not implemented. While some training courses were organized, only a small number of police officers and judges participated. In 2012 20 police officers participated at a training organised by OSCE ODIHR, while in November 2013 Hattér NGO organised two-day training sessions for all together 28 police officers, out of these 20 being members of the hate crime network. The Judicial Training Academy organized a

training for 35 judges in May 2012. In comparison there are currently (April 2014) 49,250 police officers, 1,800 prosecutors, 3,000 judges and 80 victim support staff in the country.

Evaluation provided by the Working Group Against Hate Crimes

State of Hungary response:

The Roma Population forms the largest ethnic minority in Hungary, an estimated number of 500,000 to 600,000 of them (their total number is approximately 750,000) live in disadvantaged regions. Demographic change in Hungary is characterised by an ageing, falling population while the number of people of Roma origin is rising and the age composition of the Roma population is much younger than that of the overall population. During the last comprehensive census held in Hungary (2011) the 13 domestic nationalities constituted 6% of the 10 million population. The new Fundamental Law states that the “freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community” and individuals can file a law suit on grounds of hate speech.

Protection of minorities ensured in the Criminal Code which renders the following crimes to be punished: genocide (Section 142), crime against humanity (Section 143), apartheid (Section 144), violence against a member of a community (Section 216), incitement against a community (Section 332), public denial of the crimes of the national socialist or communist regimes (Section 333), use of symbols of despotism (Section 335). In addition racist motive and/or purpose is considered malicious motive which results a more severe punishment judging crimes like homicide (Section 160), battery (Section 164), violation of personal liberty (Section 194), libel (Section 226), unlawful detention (Section 304), insult of a subordinate (Section 449).

State victim support services include facilitating the protection of victims’ interests, granting instant monetary aid etc. (Act CXXXV of 2005 on Crime Victim Support and State Compensation). Legal aid is free of charge depending on the victim’s financial situation.

After the UPR session of Hungary in 2011 the Government made a proposal to the Hungarian Judicial Academy of the National Office for Judiciary in order to include in its training programmes the issue of racially motivated crimes. According to the Act on the status and revenue of Judges, since 1 January 2014 a judge is obliged to participate in free and regular courses organised by the Hungarian Judicial Academy including those on hate crimes.

The eligibility tests performed during the selection procedure of law enforcement education institutions include the examination of personal skills (i.e. tolerance) needed for the profession and the curricula contains communication studies in multicultural environment. Communication and conflict management trainings led by psychologists and hate crimes specialists are being organized regularly for the police personnel in particular in regions with ethnic minorities aimed at improving the preparation level of the police force, promoting better knowledge and understanding people living in multicultural environment, strengthening the prevention of crime and

mutual assistance. Further trainings are held for the police for detecting hate crimes and for the judiciary with regards to court proceedings in relation to hate crimes.

According to the Hungarian Law on Police and a regulation published by the National Police Headquarters (NPH), the police officer must take action unbiasedly. Furthermore an unprejudiced and conflict-free relation between the Police and the Roma minority is a professional and social fundamental expectation which requires an active and continuous involvement of all actors. The Police regard the Roma as victims of the hate-crimes and if the racist motive and/or purpose has been identified, the investigation process moves accordingly.

The Government issued a “zero tolerance policy” towards anti-Semitism and anti-Roma attitudes. Incidents of anti-Semitism have been promptly followed-up by high-level official condemnations on the part of the Hungarian government or by legislative changes. In combating anti-Semitism, the government focuses on 1. Law enforcement and legal measures - the public denial of Holocaust is a criminal offence punishable with up to 3 years of imprisonment; 2. Holocaust education - the National Curriculum and frame curricula contain information on the Holocaust, students both in primary and in secondary schools learn about it and since last January about the common Jewish-Hungarian history that spans over a thousand years and which gave rise to many great achievements. The Holocaust Memorial Day (16 April) was included among the secondary school memorial days; 3. Support for Jewish cultural renaissance in Hungary; 4. Holocaust remembrance- as a continuation of commemorations organised under Raoul Wallenberg Year 2013 and Holocaust Memorial Year 2014, both initiated by the Government, Hungary will take over the Presidency of the International Holocaust Remembrance Alliance (IHRA) in 2015.

The rules of the Criminal Code and the Act on Administrative offences have been tightened regarding paramilitary organizations. The Government enforces this decision by penalizing participation in disbanded organizations as well as the use of non-official uniform-like clothing to avoid intimidation by paramilitary groups. The Parliament has tightened the House Rules on hate speech by MPs with the introduction of strict disciplinary measures and waiving of immunity in cases of incitement against a community or denial of crimes of totalitarian regimes.

The hate crimes staff unit of the NPH is monitoring extremist communication channels and forums in conformity with data protection regulations. If they recognise mobilization against vulnerable groups, in particular in connection with planned demonstrations by such groups, they inform immediately the territorial police forces, and other involved law enforcement authorities.

A “hate-crime expert net” has been operated since 2012 by The Hungarian National Police Force. Its tasks are to follow up, register and manage crimes and criminal processes, evaluate the data of investigations, and establish integrated legal practise, aiming also to reduce the high level of latency. The hate-crime expert net organise trainings to improve the efficiency of the investigation process, in addition providing expertise for such investigations.

The Government initiated the development of a monitoring system to provide a comprehensive professional analysis of anti-Semitic phenomena in Hungary. The monitoring of anti-Semitic acts of hate is performed by the Brussels Institute of the Action and Protection Foundation (TEV), an independent non-governmental organization founded in 2012 and is carried out according to methods developed and recommended by the Organization for Security and Co-operation in Europe (OSCE).

The NPH has created a new platform for efficient evaluation of disputes in cooperation with NGOs. In addition to the central and regional police services various civil rights organizations (Roma organisations, Amnesty International Hungary, the Hungarian Helsinki Committee, Association for Human Rights, Background Society for Homosexuals and others) and independent experts strive to reveal the deficiencies.

Thematic school programs of the Police contain tolerance topic for different age of students (12-14, 14-18 years old). To improve the different level of protection mechanism of the most vulnerable groups (women, children, youth) the police crime prevention units started programs, organised conferences and forums on hate-crime prevention and sensitisation.

Recommendation n°88: *Adopt a programme to safeguard the rights of victims of torture and ill-treatment* (Recommended by Iran)

IRI: not implemented

Joint response:

Not implemented. There is no publicly available information which would indicate the adoption of a programme by the government to safeguard the rights of victims of torture and ill-treatment.

Evaluation provided by the Hungarian Helsinki Committee.

UNHCR response:

The Government still fails to ensure appropriate support, treatment and rehabilitation for victims of torture/survivors of torture who are traumatized or suffer from Post-Traumatic Stress Disorder. Psychological services and psychotherapy for traumatized asylum-seekers, including unaccompanied minors, are exclusively provided by one NGO to a limited extent with the support of external (EU) funds which raises concerns relevant to the sustainability of such essential services on the long run. Medical assistance for seriously mentally challenged persons remains unresolved. Similarly, persons of concern with drug or other type of addiction have no access to mainstream health care services.

State of Hungary response:

[See response to recommendation n°80]

Recommendation n°118: *Specify the prohibition of the death penalty in a future organic law* (Recommended by France)

IRI: not implemented

Joint response:

The Fundamental Law of Hungary adopted by the Hungarian Parliament on 18 April 2011 does not explicitly prohibit capital punishment. Evaluation provided by the Amnesty International Hungary

State of Hungary response:

Several legal norms are in place to ensure that the practice of death penalty is fundamentally and strictly prohibited: The Hungarian Constitutional Court has derived the prohibition of the death penalty from the inviolable nature of the right to life and human dignity in its decision 23/1990 (X. 31.). With regard to the fact that the new Fundamental Law of Hungary purports the inviolable right to life and human dignity, the above decision of the Constitutional Court remains valid. Hungary has joined the Convention for the Protection of Human Rights and Fundamental Freedoms and to its eight Protocols in 1993. Article 1 of the Protocol No. 6 prescribes the abolition of death penalty. Hungary is also part of the Second Optional Protocol to the ICCPR which purports the abolition of death penalty. Being a member of the European Union the EU Charter of Fundamental Rights is a binding legal instrument for the country since the entry into force of the Lisbon Treaty. The EU Charter declares the abolition of death penalty without any doubt in its Article 2 (Right to life): "Everyone has the right to life. No one shall be condemned to the death penalty, or executed."

SOGI

Recommendation n°13: *Strengthen hate crimes laws to protect against violence motivated by gender identity, sexual orientation and intolerance, and implement public awareness campaigns to include law enforcement officials and to combat intolerance* (Recommended by United States)

IRI: *partially implemented*

Joint response:

Partially implemented. In March and April 2011 extremist vigilante groups started to "patrol" illegally and harass Roma people living in Gyöngyöspata. Police and government failed to intervene for 2 months. Finally, as a consequence, a new provision was included in the Criminal Code in May 2011 (Act No. IV of 1978, Art. 174/B par. 1a), and the new Criminal Code also includes this part (Act No. C of 2012, Art. 216 par. 1) which sanctions bias motivated rowdyism (disorderly conduct). Another new provision was introduced in 2011 in the Criminal Code as a consequence of the far-right "patrollings" in Gyöngyöspata. This provision aims at sanctioning illegal performance of activities maintaining or protecting public order. However these provisions have rarely been enforced, despite reports to the police and even despite incidents that happened in presence of the police (e.g. Devecser, 5 August 2012).

The Parliament adopted a new Criminal Code in June 2012 (Act No. C of 2012, which entered into force on 1 July 2013) that specifically mentions sexual orientation,

gender identity and disability as grounds for protection under the hate crime provision 'violence against a member of a community' (Art. 216).

Even though both civil society actors and the Commissioner for Fundamental Rights called for it, the hate crimes provisions do not cover crimes against property.

Civil society groups also criticized the inclusion of ("other social groups") as a protected characteristic that carries the risk of too loose interpretation and legal uncertainty.

Despite sporadic developments in legislation, there are serious concerns with regards to the implementation of the hate crime provisions:

- Police often fail to take effective measures on the spot when they are present during hate incidents (e.g. at different demonstrations).
- Law enforcement agencies are often reluctant to acknowledge bias motivation behind hate incidents against minority groups while it is more likely to prosecute Roma for hate crimes against Hungarians.
- In case bias motivation is recognized, investigation is regularly ineffective (the police fails to explore the background of the perpetrator, fails to analyze CCTV footage, fails to interview witnesses, etc.)

A Supreme Court decision of 2011 declares that hate crime provisions cannot be applied in defense of racist groups especially if they have been dissolved by the court. In spite of this, there is a widely reported case where the hate crime provision has been applied against Roma people committing a violent crime against members of extremist groups, which was interpreted by the court as an anti-Hungarian hate crime. (The judgement is under revision by the Supreme Court).

Submitting organizations are not aware of any other measures or awareness raising campaigns to combat racism, anti-Semitism or homo- or transphobia. On the contrary, some recent actions (no actions, respectively) of the government provoked resistance in the Jewish community, among others. For instance, the German occupation memorial which is currently being built. It denies by its symbolic means the responsibility of the Hungarian leadership for murdering Hungarian Jewish Holocaust victims. Or, for example, that there were no consequences that the director of the Veritas History Research Institute, Sándor Szakály, classified the deportation of thousands of Jews to Kamyanets-Podilsky as an "aliens policing procedure".

Symbolic steps were made against the Roma people in Hungary as well. Although the Prime Minister distanced himself in many cases from calling slurs to Roma people – in response to racist remarks made by members of the Parliament of the party Jobbik –, there were some cases where he also made anti Roma statements, such as in his speech at the Hungarian Chamber of Commerce and Industry's Economic Season Opener 12th, March 2013. After that a member of a far right extremist band and an openly racist journalist received an award from the Minister of Human Resources (the latter was revoked). Evaluation provided by the Working Group Against Hate Crimes

UNHCR response:

Although the new Penal Code entered into force on 1 July 2013 introduced some changes in the field of criminalizing hate crime, however a number of deficiencies have remained. The application of hate crime legislation seems to be still inadequate (systematic under-classification of hate crimes, high degree of latency due to mistrustfulness towards the investigating authorities, lack of relevant data). Although in September 2013 the Government adopted a new National Crime Prevention Strategy as well as an Action Plan for 2013-2015, the document failed to include any specific measures aimed at combating crimes motivated by bias or hatred. Asylum-seekers and refugees – many are visibly different, as well as Roma and LGBTI people – find themselves in a double-disadvantaged situation when it comes to the 'root causes' of hate crime in Hungary. UNHCR and its interlocutors found discriminatory attitudes on behalf of the Police, health care providers, schools and employers. Refugees have reported suffering discrimination, physical and verbal harassment in all areas of their lives. While in 2013 an official Government policy on migration has been adopted by the Hungarian Government, highlighting the fact that very little has been done by the Government itself in communicating and generating community understanding, awareness and acceptance of migrants, the Migration Strategy fails to elaborate on a Government communication strategy aiming at generating community understanding, awareness and acceptance about migrants, asylum-seekers and refugees in order to increase social cohesion.

State of Hungary response:

Section 216 of the new Criminal Code (2012) on violence against a member of a specified community and Section 332 of the Criminal Code (CC) enacting to punish incitement against a community particularly accentuate sexual identity and sexual orientation among the protected group making criteria. According to the new CC it is not anymore a requirement to demonstrate provocative, anti-social conduct against any person. It is sufficient to prove racist motivation and objectives. If such racially motivated act can excite alarm in members of the target group the perpetrator commits the crime.

Recommendation n°52: *Confirm its commitment to equality and non-discrimination by explicitly prohibiting any discrimination on grounds of sexual orientation and gender identity* (Recommended by France)

IRI: *partially implemented*

Joint response:

Hungarian LGBT Alliance: Not implemented. While the prohibition of discrimination based on sexual orientation and gender identity are included in the Equal Treatment Act (Act No. CXXV of 2003), unlike most other grounds, the new Fundamental Law does not contain an explicit prohibition on these grounds. This is especially problematic, since the Government claimed that Fundamental Law was modeled on the EU Charter on Fundamental Rights that does explicitly mention sexual orientation, and also because the list of protected grounds was extended with the adoption of the Fundamental Law (e.g. disability was not included in the previous constitution, but it is in the Fundamental Law). The government claims that the case law of the Constitutional Court is clear that sexual orientation is covered by 'any other

status' in the relevant provision, the Fourth Amendment to the constitution, however, annulled all earlier decisions of the Constitutional Court, thus also doing away with such case law.

State of Hungary response:

The Equal Treatment Act (CXXV of 2003) purports the prohibition of any discrimination on the grounds of sexual orientation and gender identity. The Equal Treatment Authority conducts proceedings if the principle of equal treatment might have been violated either at the request of the injured party or ex officio in cases set forth by law in order to establish whether any discrimination occurred. The infringement of the law may lead to an administrative fine up to 6 million HUF.

Women & Children

Recommendation n°10: Strengthen its current laws and continue robust implementation of the Equal Treatment Law to ensure equality for women, including with regard to employment and educational opportunities, as well as ensuring access to the judicial system to address domestic violence, rape and sexual harassment (Recommended by United States)

IRI: fully implemented

Joint response:

No changes in the Act on Equal Treatment have occurred in the follow-up period in order to ensure equality for women.

In the field of employment, contrary to the previous Constitution, the new Fundamental Law – adopted in 2011 and entered into force in 2012 - does not contain the principle of equal pay for equal work, neither does the new Labour Code (Act No. I of 2012) in an explicit way. Moreover, the new Labour Code – contrary to the previous one – does not suggest that employers introduce equal opportunity plans. The Labour Code introduced positive changes, however, which may support the sustainability of jobs after childcare leave, such as regulating certain atypical forms of employment. However, it diminished the protection from dismissal of those caring for children until they reach the age of three: those who return to work before the child attains that age can now be dismissed with sufficient justification. The maximum length of paid work if the worker receives child-care benefits were reduced in 2011, then this limit was cancelled from 2014.

Despite some positive changes in substantive law no comprehensive policies have been introduced to ensure access to justice for the victims of violence against women. /See the Alternative report submitted to the UN CEDAW Committee for consideration in relation to the examination of the combined seventh and eighth periodic reports of Hungary by the Hungarian Women's Lobby and the European Roma Rights Centre, January 2013/ Evaluation by the Hungarian Women's Lobby

State of Hungary response:

Similarly to the previous Constitution, the new Fundamental Law of Hungary, being in effect since the 1st of January 2012, declares the prohibition of every form of discrimination between men and women, the protection of women, the promotion of equal treatment and equality between women and men. The CEDAW noted in 2013 that the Fundamental Law recognizes the general principle of non-discrimination and that every legal initiative undergo gender impact assessment. Standalone acts of legislation are in place on equal treatment and the promotion of equality (Act CXXV of 2003) and on the rights and equal opportunities of persons with disabilities (Act XXVI of 1998). They give a very broad definition of discrimination which covers all aspects of any form of discrimination. The Equal Treatment Act establishes a framework for the fight against discrimination and specifies about 20 groups of people to be protected, among them, women and mothers (separately). It defines the concept of discrimination, names indirect discrimination as punishable and introduces the possibility of positive discrimination to remedy disadvantages.

The Equal Treatment Authority became an autonomous body on 1 January 2012. Thereby matters of its organization, functioning and rules of procedure can only be regulated by the Parliament testifying the significance of the principle of equal treatment for Hungary. The new regulations extend the autonomy of the Equal Treatment Authority which contributes to combatting discrimination against women. The financial situation of the Authority has been stabilised (2009: 207M HUF, 2010: 207M, 2011: 190M, 2012: 111M, 2103: 213M) last year. Between 2010 and 2013 the Equal Treatment Authority organized legal and awareness raising training courses within the framework of the EU-funded Social Renewal Operational Programme (TÁMOP 5.5.5.) „Realizing equal treatment and enhancing social awareness”. Courses took place in all regions of the country and further 90 training courses will be held within the 3 years of the project.

The Network of Houses for Families, Equal Opportunities and Volunteering contributes to combatting discrimination in all its forms. It operates in all county seats and in the capital and accommodates weekly office hours held by the Equal Treatment Authority. With regard to actions taken by the Equal Treatment Authority, please refer to [recommendation n°30].

The Human Rights Roundtable operated by the Human Rights Working Group was established to strengthen the dialogue with NGOs, which has specific working groups devoted to the rights of persons with disabilities, women, Roma and LGBT persons.

The „National Strategy about the Advancement of Equality of Women and Men – Aims and Goals 2010-2021” introduces measures in the field of the reconciliation of work and family life, employment, family support and social provisions, education, health care, as well as civil and criminal law.

The task of Solid Start Children Centres is to guarantee the best possible chance for parents and their children in early childhood (age 0-3) and to foster their skills and competencies. The Centres are primarily aimed at children and their families that live in extreme poverty, many times in difficult social and housing conditions, in need of

help to ensure the child's healthy physical, intellectual, emotional and moral development.

Regarding domestic violence, rape and sexual harassment, please refer to [recommendation n°11].

Recommendation n°11: Consider adopting a comprehensive gender equality law that encompasses a definition of discrimination against women in accordance with the CEDAW and prohibits domestic violence and spousal rape (Recommended by Brazil)

IRI: partially implemented

Joint response:

No comprehensive gender equality law has been adopted in the follow-up period, and the legislation does not contain the definition of discrimination in accordance with CEDAW. There have been some positive changes in substantive criminal legislation concerning domestic violence and sexual violence in 2012 and 2013, however, shortcomings are still present both in legal, policy and institutional fields.

Evaluation by the Hungarian Women's Lobby

State of Hungary response:

With regard to the prohibition of discrimination against women, please refer to [recommendation n°10].

Section 197 of the new Criminal Code (CC) threatens commitment of felony of sexual violence with 2 to 8 years of imprisonment. The statutory definition uses "who" as a general subject, accordingly felony may be committed by any person thus by the spouse as well. However, the punishment increases (5-10 years) if the perpetrator is a relative (e.g. spouse, brothers/sisters, children /including adopted/, parents, custodians) of the victim (197/3/b) therefore spousal rape is an aggravating factor.

From 1 July 2013, a specific legal provision governing domestic violence has been incorporated into the Criminal Code (Section 212/A). Victims of domestic violence are ensured access to justice and to comprehensive care in crisis centers which provide immediate protection, including safe accommodation, as well as full-range physical care and professional assistance (by lawyers, psychological assistants, social workers) where necessary. This new regulation is in line with the Concluding Observations of the CEDAW (2007, 2012). Further information on the new provision is provided under 95.10. The Government created child interrogation rooms in each county headquarters' competency area since 1 January 2013 with detailed rules of internal norms.

Act LXXII of 2009 on Restraining Orders prescribes the rules of the temporary preventive restraining order, and the preventive restraining order. The regulations are constantly updated based on the relevant case law (i.e. since the latest amendment courts prevent the physical meeting of the abused and the abuser in the court's premises to protect the victim from influence; preventive restraining orders are also provisionally enforceable and the duration of the restraining order has been doubled).

Police officers are continually educated and trained for the psychological background of domestic violence. Each county headquarter has already surveyed those schools where programs for multiple disadvantaged students are realized. In some of these schools general crime prevention tasks are implemented within the programs "School's Police", D.A.D.A.1 and its updated and specific version: the "ELLEN-SZER". Addressing domestic violence, the Ministry of Human Resources (EMMI) launched successful victimization prevention pilot projects targeting age groups 14-18 in 2012- 2013 which is continuing this year by involving vocational schools and crisis centers.

Recommendation n°14: *Adopt legislation that prohibits domestic violence and marital rape* (Recommended by Netherlands)

IRI: *fully implemented*

Joint response:

A new criminal offence of "relationship-related violence" (Article 212/A of the Criminal Code, Act No. C of 2012) was introduced in 2013, in order to address domestic violence.

The offence, however, does not cover certain typical behaviours and relationships, and requires in some cases a private motion (a statement of the victim that s/he requests the punishment of the perpetrator) as a prerequisite for the criminal procedure.

Mediation is still applicable in criminal procedure and in other sectors/fields in cases of domestic violence. Moreover, the new Civil Code (Act No. V of 2013, being in force from 2014) introduced obligatory mediation for certain parental supervision/child custody cases, not paying attention to eventual history of domestic violence. Other provisions of the Civil Code in relation to parental supervision and child custody may also affect negatively the victims of domestic violence.

Marital rape is not explicitly prohibited by law, but punishable under the general criminal offence of sexual violence. It is a positive change that the new Criminal Code (Act No. C of 2012) regulates the cases of sexual coercion and sexual violence against relatives - thus against the spouse - as aggravated cases not requiring private motion. The new Criminal Code brought more positive changes as regards to sexual violence, affecting but not limited to marital rape. In the previous legislation violence or imminent threat against the life or bodily integrity were necessary conducts for punishability, while in the new legislation even using force/coercion establishes criminal liability. However, the definition of rape in the criminal legislation is based on the use of force and not on the lack of consent; related concerns have been raised by the women's rights NGOs as well as by the UN CEDAW Committee. Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

[See response to recommendation n°11]

Recommendation n°38: *Eliminate discrimination against women* (Recommended by *Bangladesh*)

IRI: *not implemented*

Joint response:

The Hungarian government submitted its combined seventh and eighth report to the UN CEDAW Committee in 2011. The Hungarian Women's Lobby and European Roma Rights Centre elaborated an Alternative report to CEDAW in 2013, identifying several fields and lack of measures hindering compliance with CEDAW. The Alternative Report highlighted that Romani women in Hungary face multiple discrimination because of their gender and ethnicity. The CEDAW Committee issued its Concluding Observations to Hungary in 2013. The Committee identified numerous problems in relation to discrimination against women in different fields, and elaborated more than sixty recommendations to the state. /Committee on the Elimination of Discrimination against Women:

Concluding observations on the combined seventh and eighth periodic reports of Hungary, adopted by the Committee at its fifty-fourth session (11 February–1 March 2013); CEDAW/C/HUN/CO/7-8, 2013/ Evaluation provided by the Hungarian Women's Lobby

Hungarian Civil Liberties Union: Hungary has adopted a restrictive amendment on voluntary sterilization in opposition to a previous Constitutional Court ruling. According to the now-adopted law only people above 40 years old or already having 3 children could opt for sterilization for non-medical reasons.

UNHCR response:

The Committee on the Elimination of Discrimination against Women in its concluding observations on the periodic reports of Hungary (11 February - 1 March 2013) urged the Government to provide adequate access to family planning services and affordable contraceptives, including emergency contraception, to all women including women with disabilities, Roma women, women living with HIV/AIDS, and migrant and refugee women, i.e. by covering costs of range of modern contraceptives under the public health insurance and eliminating the prescription requirement for emergency contraception. The Committee is concerned about the lack of disaggregated data on the situation of Roma women, women with disabilities, older women and refugee women. It also notes with concern that asylum seeking and migrant women in reception centres receive inadequate assistance and are often confined to such centres for prolonged periods. The Committee also urges the Government to ensure that migrant and asylum seeking women receive adequate assistance, are not subjected to prolonged administrative detention, and that they benefit from integration policies as well as family reunification measures. It is to be noted that as of July 2013, a new form of administrative detention was introduced for detaining asylum-seekers. In this context, it is of concern that families with children remained to be exposed to detention for up to 30 days according to national legislation. In its concluding observations the UN Committee on the Elimination of Discrimination against Women raised concerns about the insufficient provision of human, financial and technical resources for the Equal Treatment Authority and the lack of effective remedies in cases of discrimination. The Committee was also concerned about the

fact that – in the absence of a comprehensive plan of action protecting their rights – women belonging to ethnic minorities such as Roma women and women with disabilities are subjected to multiple discrimination. Further, as of 2014, a new integration model has been introduced for beneficiaries of international protection with shifting away from previous camp-based integration to a community-based system. This shift is welcomed as it has the potential to better respond to special needs of persons of concern, including female heads of households, and single females, nevertheless at this stage the functioning of this new integration scheme cannot yet be evaluated.

State of Hungary response:

[See response to recommendation n°10]

Recommendation n°39: *Implement the necessary measures to guarantee gender equality in law and in practice in conformity with international human rights standards* (Recommended by Ecuador)

IRI: *fully implemented*

Joint response:

The Fidesz-KDNP government (2010-2014) has had a regressive approach in gender equality issues. They replaced the concept of gender mainstreaming with family mainstreaming, affecting both the communication and measures implemented. It especially concerned promoting traditional gender roles, negative attitude to abortion, and narrow interpretation of the concept of family. The CEDAW Concluding Observations to Hungary in 2013 identified the main problems/shortcomings. No action plan has been adopted by the government for the implementation of CEDAW's recommendations. The new Criminal Code has brought the legislation closer to international standards, but shortcomings still present. Hungary did not have a gender equality strategy for 12 years before the previous government adopted one in 2010, at the very end of their term. Although the Strategy remained in force, there is no information about its implementation or the implementation of its first action plan for 2010-2011. Further action plans have not been elaborated. The Fidesz-KDNP government (2010-2014) argued that Strategy will be replaced by a new one, but women's rights NGOs have not been consulted or even informed about it, and new strategy has not been adopted. The national machinery for gender equality has been consistently underfunded and understaffed, together with its marginalised location in the government structure. In the last period of the current government's term it has been the Demography, Family Affairs and Gender Equality Unit under the Department for Family Policy at the Ministry of Human Resources. Only three staff members are assigned to deal primarily with gender equality issues.

The Council for Gender Equality, composed of state, NGO representatives and individual experts, has not been convened by the Fidesz-KDNP government at all. Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

[See response to recommendation n°10]

Recommendation n°41: *Intensify efforts to combat all forms of discrimination to make effective the equality of opportunities and treatment among all inhabitants in its territory, with particular care and attention to women and children who are in the situation of more vulnerability, such as those who belong to the Roma people* (Recommended by Argentina)

IRI: *partially implemented*

Joint response:

Multiple discrimination against women in general has not been given due attention in legal and policy measures in the follow-up period. Major state policy documents to improve the situation of Roma have not yet resulted in substantive improvements in the situation of most Romani women or have failed to address the particular situation of those women.

The National Social Inclusion Strategy gives a detailed description of the problems of Roma women and identifies several relevant points for intervention; however, attention to gender issues is limited in the discussion of the indicators.

Legislative measures, policies and programmes to address the specific situation and multiple discrimination against women with disabilities and of the girl child have not been introduced by the state in the reporting period.

/HWL-ERRC Alternative report to CEDAW, 2013/ Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

[See response to recommendation n°10]

Recommendation n°42: *Take steps to bring about a change in attitudes with a view to eliminating deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society, which are reflected in women's educational choice, their situation in the labour market and their underrepresentation in political and public life and decision making positions* (Recommended by Moldova)

IRI: *partially implemented*

Joint response:

The new National Core Curriculum that provides the framework for the state regulation over elementary education, adopted in 2012, represents a conservative shift, and focuses on the moral and patriotic aspects of education and on 'preparation' for family life.

Gender equality is not included at all among the tasks and values of public education, in the areas of development, or among the objectives of education.

There is only a subchapter, titled "Social and civic competences", where it is stated that "knowledge of basic concepts about gender equality" is important to the development of the competences discussed in the chapter. At the same time, preparing students for relationships and family life is highlighted in the National Core Curriculum, with the aim of compensating for "the changes in the value systems and the problems in the functioning of some families."

The issue of gender equality is not emphasised in teacher training, it is only present in the form of local programmes and individual initiatives of some teachers, rather than at the policy level.

The media laws adopted in 2010 do not reflect the content of CEDAW's Article 5 on elimination of stereotypes. Moreover, although the Hungarian Women's Lobby recommended it, the media-focused Public Service Code - adopted in 2011 - does not refer to the promotion of gender equality and encouraging content that is free from gender stereotypes. It only mentions that public service broadcasters should respect human rights and rights relating to personality; and emphasises that public service media should respect and support the institution of marriage and the value of the family. /HWL-ERRC CEDAW Alternative report, 2013/ Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

A new Commissioner was appointed in the Ministry of National Economy with the task of advancing women's employment. Education on Family Life, a pedagogical objective included in the National Core Curriculum, and includes basic notions related to the individual, the group, the organization of labour, gender equality, non-discrimination, society and culture during the course of compulsory education. Several programmes, projects have been launched in order to eliminate deep-rooted stereotypes and shape attitudes, including in the area of 'women and science'.

The National Media and Info-communications Authority (NMIA) collect data with regard to the representation of women in the media. According to the Press Freedom Act, media service providers have the obligation to maintain respect for human dignity in the media content they communicate. Through this provision, the Media Council of the NMIA can take measures against discriminative content.

The ratio of women employed in management positions is 41% in Hungary which puts the country in the forefront of the EU Member States. 40 % of leading positions in legislature in public administration and of the advocacy leaders were women in 2012. In accordance with the OECD's publication (2 April 2014) the ratio of female judges is among the highest in Hungary.

The previous government (2009-2010) had no female ministers whilst the second Orbán government's Minister for National Development is female and the number of female secretaries of state (8), deputy secretaries of state (16) and ministerial commissioners (5) is high. In the ongoing 2014's European Parliament election campaign the heads of the lists are women both at FIDESZ-KDNP and Jobbik. At the recent parliamentary elections in all of the parliamentary election alliances there were female politicians in the top 5 candidates.

Recommendation n°56: Take all appropriate measures to protect children effectively from being exposed to violence, racism and pornography through mobile technology, video movies, games and other technologies, including the Internet (Recommended by Pakistan)

IRI: *fully implemented*

Joint response:

Act No. CCXLV of 2013 on the modification of certain acts aiming to the protection of children contains provisions on the protection of children concerning the use of the internet. The service providers are obliged to make a prior notification if an information may endanger the development of the child. Furthermore, the act ordered the establishments of the Child-protection Internet Roundtable (Art.29). The Act also obliges the service providers providing access to internet to ensure the free installation and use of a child protection filter software. (Art.34) Institutions of public education should also ensure that computers open to the use of pupils contain such a filter-software (Art. 40) Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

In Hungary there are 1,73 million children (persons under 18 years old), 830.000 girls and 900.000 boys.

The Government launched “The Internet Does Not Forget” interactive programme this January to promote responsible internet use for children, including the protection of personal data and avoiding cyber bullying. The parallel “Our Children on the Web” programme informs parents and teachers about the dangers of the Internet. In order to effectively implement regulations regarding child protection the National Media and Info-communications Authority (NMA) established the “Child protection Internet roundtable” this year which issues statements and recommendations to promote media literacy among youth and to ensure the culture of compliance among all service providers. Internet providers and public libraries should inform their customers on, and provide for free filtering software for the protection of children.

The Government initiated for the second time a school programme for children entitled as “I have the right to know” to learn about the judicial system via drama teaching techniques. The project's main purpose is to prevent children from becoming victims, but when something does go wrong, children should know where to turn for help and what kind of rights and obligations they have. During a special lesson, children act out a court trial where the defendant is played by a professional actor; judges are the employees of the Ministry of Public Administration and Justice, while students act as spectators, witnesses, defence lawyers and prosecutors. Many teachers find that the programme is encouraging because the issues risen during the play and deepened the bond between classmates. The programme made students face the fact that as a member of the society they must take responsibilities for their actions and companions at an early age, and that every action in our lives and every missed opportunity have consequences. In the same time the structure of probation officers for young offenders has been extended through the innovative preventive mentoring system in cooperation with the judiciary and the child protection system.

The other initiative of the Ministry's Child-friendly Justice Programme is to create online webpages which address young children and grown-ups alike. In cooperation with the team of egyszervolt.hu the Government set off the [“Rightful Question” website](#) in order to make the judicial system more familiar for children. ‘Kimi’, the host of the website, helps children to get to know their legal rights and responsibilities, to make them understand the basic concepts and procedures used by the judicial

system concerning children. Visitors receive constant updates about the on-going projects, contests and invitations for applications encourage children to learn and be active users of the website.

A child victim has the statutory right to use victim support services and mitigation of damages by the State. The State facilitates the assertion of their rights, and provides immediate financial aid and legal assistance. A new law extends the statute of limitations regarding certain crimes against children until after the victim has reached the legal age in order to allow time for the victim to be able to realise that a crime has been committed against her/him.

One of the cornerstones of the Hungarian child protection system is the operation of a signalling system in order to detect and ward off factors endangering children. All those who perform social, health care, public education services or official tasks are members of the child protection system and have the duty to signal to and cooperate with the child protection system. In November 2010 Hungary signed the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse, (2007 Lanzarote Convention) and introduced important changes to make the functioning of the child protection warning system more effective. If the guardianship authority receives a warning indicating child abuse, neglect or other serious threat of a child, the data of the informant must be handled confidentially, not to be made known to the abuser. The child protection staff – especially the staff dealing with cases of child abuse or sexual abuse against children – should apply common principles and methodology approved by the minister responsible for children and youth affairs. Only persons with clean criminal record can be employed to positions dealing with children. The criminal record contains specific information on any child related crime including professional ban/disqualification.

Recommendation n°65: Implement the recently adopted United Nations rules of treatment of women prisoners and non-custodial measures from women offenders, otherwise known as Bangkok rules, to ensure that special needs of women in prisons or in custody are appropriately addressed (Recommended by Thailand)

IRI: partially implemented

Joint response:

Not implemented. There is no publicly available information which would indicate that the Bangkok Rules were taken into consideration when drafting and amending related laws. No reference can be found to the Bangkok Rules in the reasoning attached to Act CCXL of 2013 on the Execution of Punishments, Measures, Coercive Measures and Confinement for Petty Offences (available at [this website](#)), the new penitentiary code of Hungary, which will enter into force on 1 January 2015. Evaluation provided by the Hungarian Helsinki Committee.

State of Hungary response:

The separation of 1300-1400 women prisoners can be provided only using new resources. In 2013 a unit for pre-trial detention was built in the Szombathely National Prison and the Veszprém County Prison. In the II. object of the Budapest Remand Prison there are 100 new places, first of all for women. Further expansions are planned this year. Referring to the Bangkok Rules: a mother-child unit was built in the

Kecskemét prison, the HIV/AIDS tests are working on voluntary basis, body searches are made by the representatives of the same gender and there is a maternity unit in the Central Hospital of the Prison Service.

Recommendation n°66: *Take measures to ensure the protection of the rights of victims of domestic violence and spousal rape* (Recommended by Finland)

IRI: *fully implemented*

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Recommendation n°67: *Continue the work for enhanced protection for victims of domestic violence and take measures with a focus on prevention and accountability in regards to domestic violence* (Recommended by Sweden)

IRI: *partially implemented*

Joint response:

[See response to recommendation n°14]

[+]

Beyond the positive legislative changes no improvements made to introduce systematic and obligatory training for different professionals, for adoption of protocols as regards to effectively handle the cases, and for the establishment and development of complex and specialized services for the victims of domestic violence and sexual violence. Care has been taken only for child victims/witnesses in the framework of the Child-Friendly Justice Program of the government, bringing some legislative changes in 2013, opening child-friendly interview rooms at police stations and courts in 2013-2014 and organizing related trainings. /See [more information] in [Hungarian/](#)

Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

[See response to recommendation n°11]

Recommendation n°68: *Rehabilitate and socially integrate women and girl victims of trafficking* (Recommended by Iran)

IRI: *partially implemented*

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Recommendation n°70: *Take further measures for the rehabilitation and social integration of women and girls who are victims of trafficking* (Recommended by Azerbaijan)

IRI: *partially implemented*

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Recommendation n°71: *Strengthen measures for the rehabilitation and social integration of women and girls victims of trafficking* (Recommended by Brazil)

IRI: *not implemented*

Joint response:

No governmental measures were implemented for the rehabilitation and social integration of women and girl victims of trafficking. The Action

Plan of the National Social Inclusion Strategy for the years 2012–2014 does not include measures aimed at the social (re)integration of trafficking victims. Evaluation provided by the Hungarian Women's Lobby and the European Roma Rights Centre

State of Hungary response:

A state-funded temporary shelter provides safe accommodation, complex services and assistance for victims of trafficking in human beings. The service includes accommodation, full supply according to individual needs (meeting the physical needs, meals, clothing, bed linen, medicines), assistance in administrative issues, availability of professionals for improving the status of the victims, hygiene care. The shelter can provide services for victims for 90 days, the duration of stay can be extended once with 90 days. NGOs are also able to provide safe accommodation and rehabilitation programmes for victims of human trafficking.

The main priorities of the National Strategy against Trafficking in Human Beings for 2013-16 are mapping opportunities for safe return and reintegration, designing supportive action, establishing transitory apartments related to the Shelters, helping victims' social reintegration. The transitory apartments provide accommodation for five years to ensure reintegration into the society. Priority A and B aim to operate an appropriate and well- running victim identification, referral and protection system and to implement efficient prevention, awareness building and awareness raising. In order to prevent victimization and to facilitate awareness raising in authorities involved in the fight against trafficking in human beings (ministries, police, victims assistance service, labour inspectorate, NGOs) continuously organize prevention and awareness raising campaign, education programmes.

Recommendation n°69: Investigate the causes of human trafficking and compile statistical data on the subject in order to find the most effective means to combat this phenomenon (Recommended by Honduras)

IRI: partially implemented

Joint response:

In 2012, the Deputy State Secretary for EU and International Relations of the Ministry of Interior introduced a new form for data collection on identified victims of trafficking in human beings, within the framework of the national anti-trafficking coordination mechanism. At the same time the National Strategy Against Trafficking in Human Beings for the years 2013-2016 does not include research initiatives (with the aim of mapping and understanding the phenomenon and the context of trafficking in Hungary), while the SWOT analysis of the Strategy identifies the lack of basic research data among the 'weaknesses'. Although the National Strategy provides an estimation (supported by several references) that "80-85% of the female victims of trafficking for the purpose of sexual exploitation are Roma women", data disaggregated by ethnicity is not collected. Evaluation provided by the Hungarian Women's Lobby and the European Roma Rights Centre

State of Hungary response:

The practice of data collection related to human trafficking is rudimentary; it needs harmonisation and development at national and at EU level as well. Since 2012 anonym data is collected through an electronic data sheet in cooperation with the authorities concerned (police, prosecutors' office, court, temporary shelter, victim assistance service, consular service). The National Strategy against Trafficking in Human Beings for the period 2013-16 defined several measures in connection with the development of the data collection system as well as research and studies in the

field of human trafficking. It aims to set-up an anonymous database to examine the trends of human trafficking and making a map of intervention especially considering age, gender and the form of exploitation. Data provision by organisations cooperating in the identification of victims is encouraged. The set of criteria for annual, statistics-based assessments has to be developed.

The Government adopted a 4-year plan related to the Directive against Human Trafficking and the European Strategy towards the Eradication of Trafficking in Human Beings and a Decree (354/2012. (XII.13.)) about identification of victims of trafficking. The Ministry of Interior regularly collects and analyses data about victims and traffickers with the involvement of the National Police Headquarters, National Bureau of Investigation, Office of Public Administration and Justice, National Crisis Telephone Information Service, Chance for Families Foundation 2005 (provides shelter for victims of trafficking in human beings). Consular services perform separate data collection on human trafficking cases. The NPH annually analyze-assess within a comprehensive examination the phenomenon of trafficking human beings, in context of criminal prosecutions and experiences.

In the field of justice, it is in the Unified Criminal Statistics of Investigation Authorities and Public Prosecution (ENYÜBS) where data on criminal cases are recorded, up to the moment when criminal proceedings are launched. At the same time, this system does not give a genuine picture on the ongoing cases because the authorities concerned are only obliged to provide statistical data after the decision in their competence has been made, i.e. at the end of the investigation and prosecution phase. Data on final judgments are collected in court statistics.

Recommendation n°72: Increase efforts to effectively prevent trafficking in women and girls for sexual exploitation and domestic servitude and take measures for rehabilitation and social integration of women and girls who are victims of trafficking (Recommended by Moldova)

IRI: partially implemented

Joint response:

No governmental measures were implemented for the rehabilitation and social integration of women and girl victims of trafficking. The Action Plan of the National Social Inclusion Strategy for the years 2012–2014 does not include measures aimed at the social (re)integration of trafficking victims. Several awareness raising events and campaigns on the phenomenon of human trafficking and labor force exploitation were organized by the government during the last years, targeting first of all young people/students. The Ministry for Human Resources plans to launch a program in 2014, within the framework of the EEA and Norwegian Financial Mechanisms, aimed at reducing the elementary and high school drop-out rates of Roma girls aged 10-18, who are especially vulnerable to trafficking. Evaluation provided by the Hungarian Women's Lobby and the European Roma Rights Centre

State of Hungary response:

[See response to recommendation n°68]

Recommendation n°73: *Step up efforts to combat the trafficking in human beings, including the development of international cooperation with interested Governments, international organizations and NGOs* (Recommended by Belarus)

IRI: *fully implemented*

Joint response:

In 2012, the National Anti-trafficking Coordination Mechanism of the government, led by the Ministry of Interior, initiated a consultative forum - the "Anti-trafficking NGO Roundtable" - by inviting representatives of relevant civil society organizations. As of 4 April 2013, Hungary ratified the Council of Europe Convention on Action against Trafficking in Human Beings (in force since 1 August 2013). The Deputy State Secretary for EU and International Relations of the Ministry of Interior participate in European partnership projects aimed at combating trafficking in human beings, e.g. in the project "Referral of and assistance for victims of human trafficking in Europe" (2014-2016), in cooperation with the Ministry of Justice and Law Enforcement of the Netherlands and with an NGO in Belgium. Evaluation provided by the Hungarian Women's Lobby and the European Roma Rights Centre

UNHCR response:

Unaccompanied minor asylum-seekers and beneficiaries of international protection have remained extremely exposed to smuggling and trafficking (for prostitution, forced labour or organs) as they continue their irregular journey from Hungary after a short period time spent in one of the designated child protection institutes. No concerted efforts seem to have been made by the Government in order to prevent such movements in an efficient, child friendly and proactive manner. Victim protection and prevention of victimisation need generally more attention and state funds than the ones currently allocated in Hungary. This is even more so when it comes to children because of their extreme vulnerability. Strengthening the capacity of the child protection service would be highly desirable. On a positive note, the newly adopted national anti-trafficking strategy covering the period of 2013-2016 treats child victims of trafficking as a specifically vulnerable group. The strategy specifically aims at the efficient prevention and awareness-raising and targeted training of personnel. Nevertheless, effective measures need to be put in place to fully meet the objectives of the national strategy.

State of Hungary response:

The previous National Strategy against trafficking in human beings (2008-2012) established the National Coordination Mechanism (NCM) which meets quarterly. Aim of the NCM is to serve the cooperation of the National Coordinator on trafficking and government organisations, to enhance information- exchange on the activities of the parties, and the mapping of potential fields of cooperation between the participants. Since December 2011 an informal NGO Roundtable exists to further help the NCM. Besides of the above-mentioned two forum authorities have good cooperation with partner- organisations at international and EU level through joint investigations, projects, and victims' assistance.

Recommendation n°74: *Consider the question of toughening the criminal liability for trafficking in human beings* (Recommended by Belarus)

IRI: *fully implemented*

Joint response:

The amendment in 2010 of the Act on Petty Offences led to a situation in which juvenile offenders committing petty offences, might end up in confinement for up to 45 days, among them juvenile prostitutes as well, for 'illegal soliciting' - while the purchase of sexual services from someone who is under 18 years is a crime in Hungary, therefore juvenile prostitutes should be considered as victims of sexual exploitation as well. In 2011, the Commissioner for Fundamental Rights released a report on child prostitution, and identified as one of the most serious obstacles to effectively tackling the phenomenon the fact, that the police treat children in prostitution as offenders and not as victims.

In 2012, the Parliament adopted the Act on the Amendment of Certain Laws Connected to the Implementation of Child-friendly Justice Norms which amended the Criminal Code by removing a statute of limitation for trafficking cases involving a child victim until the victim reaches (or would have reached) age 23. Moreover, the new Criminal Code, in force from the 1st of July, 2014, contains a new, separate provision on "taking advantage of child prostitution" (Article 203). The new Criminal Code criminalizes many forms trafficking in human beings (Article 192), and it does not require coercive means to prove the basic offense. However, the definition includes certain acts/elements not required by the international norms' definition of trafficking and being difficult to prove. Evaluation provided by the Hungarian Women's Lobby and the European Roma Rights Centre

State of Hungary response:

Significant legislative changes have been taken as regards the regulation of trafficking in human beings offence. The new Criminal Code (entered into force on 1 July 2013) formulates a new definition of the crime of human trafficking in line with the relevant international obligations of Hungary. The legal definition of human trafficking remains to be complemented in the system of the new Criminal Code by provisions on what are referred to as parasite crimes, related to prostitution, on sexual crimes and provisions serving the protection of children. In addition, labour exploitation is punished in the new Criminal Code.

Recommendation n°75: *Adopt measures to collect disaggregated data on the phenomenon of human trafficking and adopt and implement policies to address it* (Recommended by Egypt)

IRI: *fully implemented*

Joint response:

The Action Plan of the National Social Inclusion Strategy for the years 2012–2014 sets out the following: "Targeted law enforcement measures shall be taken in order to tackle the phenomena of usury, human trafficking and forced prostitution efficiently."

In 2012, within the framework of implementing the EU Trafficking Directive, the Amendment of the Act on Assistance of Victims introduced the right of victims trafficking in human beings to be placed in protected shelters.

The National Strategy Against Trafficking in Human Beings for the years 2013-2016 was adopted in June 2013. The document focuses, among others, the effective of operation of the victim identification and referral system, regulated by the Governmental Decree on the Protocol of Identifying Victims of Human Trafficking (adopted in December 2012).

In 2012, the Deputy State Secretary for EU and International Relations of the Ministry of Interior introduced a new form for data collection on identified victims of trafficking in human beings, within the framework of the national anti-trafficking coordination mechanism.

Although the National Strategy Against Trafficking in Human Beings for the years 2013-2016 provides an estimation (supported by several references) that “80-85% of the female victims of trafficking for the purpose of sexual exploitation are Roma women”, data disaggregated by ethnicity is not collected. Evaluation provided by the Hungarian Women's Lobby and the European Roma Rights Centre

State of Hungary response:

[See response to recommendation n°69]

Recommendation n°76: *Ensure, in line with the recommendation of the Committee on the Rights of Child, the implementation in practice the prohibition of corporal punishment in schools* (Recommended by Russian Federation)

IRI: not implemented

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Recommendation n°78: *Take measures, including disciplinary measures, to bring to the attention of those working in the educational system, in particular teachers, their obligation to refrain from corporal punishment* (Recommended by Uzbekistan)

IRI: not implemented

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Recommendation n°79: *Adopt measures, including disciplinary measures, in order to raise the awareness of professionals of the education system, in particular teachers, on their obligation of abstaining from resorting to corporal punishment* (Recommended by Uruguay)

IRI: not implemented

Joint response:

Chance for Children Foundation: Not implemented. There is zero tolerance since 2005, however there has been no awareness raising or sensitising campaigns to change public attitude in the reporting period. 70% of parents use corporal punishment and 25% of children find it normal. Teachers, parents are given no support to use non-violent, alternative techniques to discipline. Corporate punishment cases are not referred, investigated and usually stay without consequences. Independent child rights representatives, social workers, school psychologists not available in schools. According to the new act on public education, school guards are allowed to use physical force to discipline. School guards can – in some instances use physical force, which goes against the recommendations of the Committee on the Rights of the Child and current Hungarian legislations. The Ombudsman has addressed the Constitutional Court in October 2012 (AJB 6980/2012) to review the

provisions about school guards. According to the Ombudsman the authorization to the police for the application of coercive measures against children under the age of 14 is an unnecessary and disproportionate restriction of rights, which can be even worse considering the basic deficiencies of the regulation and the risk of uncertain and arbitrary application. The ombudsman therefore asked the Constitutional Court for the urgent revision and the suspension of the entry into force of said provision. The Commissioner of Educational Rights covered the issues of school violence in his 2012 report. He mentioned that most of the school principals condemned corporal punishment, however it was not uncommon by teachers.

State of Hungary response:

Under the Public Education Act, the personality, human dignity and rights of a child /student shall be respected, and protection has to be provided for them against physical and mental violence. Under the Family Act, the child shall be entitled to respect of his or her human dignity and to protection against abuse – physical, sexual or psychological violence –, neglect or informational damage. No child shall be subject to torture, corporeal punishment or any other cruel, inhuman or degrading treatment or punishment. The regulations become more stringent during the implementation of the National Strategy for the Prevention and Efficient Management of Violence in Families and the National Crime Prevention Strategy. Since 2005 prohibition applies not only to cruel, inhuman or degrading corporeal punishment, but corporal punishment in itself is banned in all settings, that is, the child shall not be subject to or threatened with corporal or emotional punishment, torture, cruel, inhuman or degrading treatment or punishment. Public shaming is another prohibited means of discipline. Violent conduct within the household affecting a child is punishable under the Hungarian Criminal Code. According to the statutory definition of facts, a person responsible for the education, supervision or care of a child, who severely violates his/her obligation arising from such a responsibility and thereby endangers the physical, intellectual, emotional or moral development of a child commits a criminal offence (Criminal Code Section 208). Abuse of a child is deemed a severe violation of obligation. Further statutory facts, such as injury resulting from abuse may lead to the establishment of accumulation of crimes.

The Commissioner for Educational Rights contributes to the promotion of rights concerning education of children, students, teachers, parents. Any child, pupil, parent, educator, student, researcher, teacher or their associations may file a petition in individual cases, if in their judgement their guaranteed rights have been infringed or there is a direct threat of such infringement. The Commissioner shall investigate all petitions. The Centre for Pedagogical Professional Services is in the process of developing the nationwide network of professional advisers for teachers which will include school conflict resolution experts. Until the system is fully functional anyone (teacher, pupil, director and parent) involved in a possible school conflict can turn to the mediator experts of the Centre. Such mediators are also providing training courses for teachers.

Recommendation n°77: *Bring fully its system of juvenile justice into line with the CRC and ensure that detention of children under 18 should be separated from adults* (Recommended by Thailand)

IRI: *partially implemented*

Joint response:

First part of the recommendation: not implemented.

The relevant investigations of the Hungarian Ombudsman revealed severe deficiencies regarding the detention of juveniles. (The report of the Ombudsperson on the juvenile penitentiary institutions is available in Hungarian at [this website](#)). He found the physical conditions unacceptable in two out of the four juvenile penitentiary institutions and voiced criticism with regard to the high and increasing number of violent acts among inmates in these institutions, which he contributed – among other factors – to the insufficient staffing. Severe criticism was voiced by the Ombudsman concerning the lack of cultural and sport activities. He also pointed out that some of the remand prisons where juvenile pre-trial detainees are held are unbearably overcrowded. The Ombudsman concluded that the conditions in juvenile penitentiaries where the number of inmates is high pose a direct threat to detainees' right to life, human dignity, and to proper moral, intellectual and physical development. The HHC has paid visits to various juvenile penitentiary institutions in 2013 (the monitoring reports are available in Hungarian [here](#)). In the Juvenile Penitentiary Institution in Tököl, among other problems, the HHC noticed the unacceptable physical conditions, for example the bad state of toilets, serious skin diseases, and the lack of appropriate health care and unsatisfactory hygienic conditions. (After the visit, the prison took steps to solve the problem.)

The range of misdemeanours (petty offences) punishable with confinement has been widened in general already in 2010 by Act LXXXVI of 2010. The same law allowed for the confinement of juveniles for petty offences. Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System (hereafter referred to as: "Petty Offence Act") upheld the extended list of offences punishable with confinement and the possibility of confinement for juveniles, and made it possible to apply confinement for the third misdemeanour within a 6-month period to any petty offence, thus even if none of the misdemeanours committed would be otherwise punishable by confinement. Furthermore, there is the possibility to transfer a fine into confinement in case the fine is not paid.

Confinement for juvenile offenders is unacceptable for the following reasons: (i) The Petty Offence Act completely disregards the international legal obligations of Hungary by maintaining the possibility for confinement and also by not making any alternative sanctions available for juvenile offenders. According to domestic as well as international standards, even in case of the perpetration of a criminal act, juvenile offenders should only be confined as a last resort, and in their case, the central focus of the criminal justice system should be education and reintegration. According to international legal rules, individuals under 18 are considered children, and this should be the primary perspective through which all legal solutions relating to them are evaluated. Article 37 of the Convention on the Rights of the Child clearly requires that the arrest, detention or imprisonment of a child should only be applied as a measure

of the last resort, and only for the shortest possible period of time. Moreover, amongst others, Recommendation Rec (2003) 20 of the Committee of Ministers of the Council of the European Union, adopted on 12 September 2003, concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, and the Beijing Rules (the UN 3 Standard Minimum Rules for the Administration of Juvenile Justice) also state: in the case of juvenile offenders, the criminal justice system needs to avoid a retributive approach. The objective of the sanction according to international documents is the correction and education of the juveniles, and not punishment. The Petty Offence Law goes against these international rules.

Second part of the recommendation: implemented.

The relevant provisions of penitentiary code (Act 11 of 1979 on the Execution of Punishments and Measures) provide for the separation of juveniles and adults while in detention. The same applies to Act CCXL of 2013 on the Execution of Punishments, Measures, Coercive Measures and Confinement for Petty Offences, the new penitentiary code of Hungary, which will enter into force on 1 January 2015. Evaluation provided by the Hungarian Helsinki Committee.

State of Hungary response:

In proceedings brought against juveniles, the presence of defence counsel is mandatory. In the event that the accused does not have an authorised lawyer, the investigation authorities, the prosecutor or the court shall order a lawyer for them. In accordance with the Convention on the Rights of the Child (Ultima ratio principle), a punishment or measure involving any deprivation of liberty may only be applied against juveniles if the aim of the punishment or measure cannot otherwise be achieved. Life imprisonment may not be applied against a juvenile. During the implementation of imprisonment, women shall be separated from men, and juveniles are separated from adults in a dedicated law enforcement institution for juveniles, juvenile prison or detention centre for juveniles; high security prison as the most severe degree is not applicable for juveniles.

The Ministry of Justice set up the Child-Friendly Justice Working Group in 2011 as a result of which a new legislative package on child-friendly justice was born modifying the Codes on criminal law, criminal procedural and penal law, and also the Code of Civil Procedure.

The new Civil Code since 15 March 2014 integrates the previously separated Family Law of 1952. The Book of Family Law sets the best interest of the child as a principal, general provision to be considered when dealing with legal relations related to children. In addition the modified Code of Civil procedure contains stronger guarantees for children during the whole civil procedure. Children shall receive a child friendly description of the procedure and may only be asked to testify if there is no other way to obtain the evidence.

The Government created child interrogation rooms in each county headquarters' competency area since 1 January 2013 with detailed rules of internal norms. It is

compulsory to interrogate children under 14 years, juvenile victims and witnesses where such interrogation rooms have been established.

Recommendation n°87: *Bring the juvenile justice system fully in line with the relevant conventions and United Nations standards* (Recommended by Iran)

IRI: not implemented

Joint response:

Not implemented.

The range of misdemeanours (petty offences) punishable with confinement has been widened in general already in 2010 by Act LXXXVI of 2010. The same law allowed for the confinement of juveniles for petty offences. Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System (hereafter referred to as: "Petty Offence Act") upheld the extended list of offences punishable with confinement and the possibility of confinement for juveniles, and made it possible to apply confinement for the third misdemeanour within a 6-month period to any petty offence, thus even if none of the misdemeanours committed would be otherwise punishable by confinement. Furthermore, there is the possibility to transfer a fine into confinement in case the fine is not paid.

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Furthermore, according to Petty Offence Act, confinement of juveniles for petty offences/misdemeanours is executed in a penitentiary institution; the possibility of carrying out the confinement in a juvenile correctional facility is excluded. Therefore the Petty Offence Act still goes contrary to Article 19 of the Beijing Rules, the commentary of which explicitly states that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, and giving priority to correctional or educational institutions. The

former Parliamentary Commissioner for Civil Rights established that even for juveniles in pre-trial detention, thus for juveniles who have committed rather more serious activities than misdemeanours, it is an abuse of the juveniles' right to satisfactory physical, mental and moral development if their confinement does not take place in a juvenile correctional facility or a juvenile penitentiary institution. Evaluation provided by the Hungarian Helsinki Committee.

State of Hungary response:

[See response to recommendation n°77]

Recommendation n°92: *Take the necessary measures to remedy the low participation of women in public and political life* (Recommended by Morocco)

IRI: *fully implemented*

Joint response:

The legislators of the Act on the election of members of Parliament (Act CCIII of 2011) did not intend to introduce measures to increase women's proportion among MPs. On the contrary, two of the law's elements has a potential to decrease women's presence. The significant cut in the number of seats has increased the competition in general, which might bring women in less favourable situation. The other element is the increase of the proportion of individual constituencies, the way women has lesser chance to enter to Parliament.

The opposition party LMP submitted a legislative proposals to introduce quotas in 2011, but it failed.

The UN CEDAW Committee – as well as women's NGOs – called the state and political parties in 2013 to adopt measures to increase women's political participation, but neither legislative nor other measures have been introduced. (Party quotas have only been applied by two parties of the Parliament, MSZP (the Hungarian Socialist Party) and LMP (Politics Can Be Different), but it only brought significant women's presence in Parliament for the latter, regulating not only the proportion of sexes, but their placement on the list as well.)

As a result of the above facts, women's proportion in the Parliament will be again below 10% after the 2014 elections.

Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

[See response to recommendation n°42]

Recommendation n°97: *Continue its efforts to ensure that children with disabilities exercise their right to education to the fullest extent possible and facilitate their integration into the general education system* (Recommended by Uruguay)

IRI: *fully implemented*

State of Hungary response:

Over recent years significant developments took place – some of them still in progress – which aim to promote the access of children with special educational needs to quality education, as well as the prevention of undue classification as a

person with mental disability. Moreover, the entire specialized pedagogical service system, including special educational needs (SEN) diagnostic committee activities, has been reformed in 2013 affecting more than 300 public education institutions (timeframe: 2012-2014, budget 2.3 billion HUF). The reform process takes into account comments by NGOs with regards to undue classification as a person with disability, as well as the recommendations of the CRPD concerning integrated education. Under the new regulations specialized pedagogical services and the network of travelling special education teachers are to promote the successful advancement of children with special educational needs participating in inclusive education by providing career advising. Currently, more than 64% of the children with disabilities (52.000) participating in the public education system receive education in an inclusive methodological framework.

Recommendation n°98: *Take effective measures to ensure equal access of women to the labour market and to narrow and ultimately close the wage gap between men and women* (Recommended by Egypt)

IRI: *fully implemented*

Joint response:

Contrary to the previous Constitution, the new Fundamental Law – adopted in 2011 and entered into force in 2012 - does not contain the principle of equal pay for equal work, neither does the new Labour Code (Act No. I of 2012) in an explicit way. Moreover, the new Labour Code – contrary to the previous one – does not suggest that employers introduce equal opportunity plans. The Labour Code introduced positive changes which may support the sustainability of jobs after childcare leave, such as regulating certain atypical forms of employment. However, it diminished the protection from dismissal of those caring for children until they reach the age of three: those who return to work before the child attains that age can now be dismissed with sufficient justification. The maximum length of paid work if the worker receives child-care benefits were reduced in 2011, then this limit was cancelled from 2014. Special incentives were introduced for employers to support re-entry to the labour market for those inactive due to childcare responsibilities and significant EU funds were allocated to the improvement of day-care provision for children and the promotion of flexible forms of employment. In 2012, following the initiative of the opposition party LMP, a commissioner responsible for women's employment was appointed within the Ministry of National Economy. The commissioner, however, has not cooperated with women's rights NGOs. Her first report does not refer to the issue of gender equality at all. The report paints a positive picture of women's employment, due to selective methods of data analysis. The report does not mention the gender pay gap, women's limited participation in economic decision-making, the encouragement of women's entrepreneurship or men's participation in care work in the family. /HWL-ERRC Alternative report to CEDAW, 2013/

Evaluation provided by the Hungarian Women's Lobby and the European Roma Rights Centre

State of Hungary response:

[See response to recommendation n°42]

Recommendation n°123: *Incorporate in its national legislation a definition of discrimination against women that is consistent with the Convention on the Elimination of All Forms of Discrimination Against Women* (Recommended by Belgium)

IRI: *partially implemented*

Joint response:

The national legislation - the Fundamental law, the Act on equal treatment and other legal norms - do not contain explicitly the definition of discrimination against women as laid down in the CEDAW Convention. Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

[See response to recommendation n°10]

Recommendation n°124: *Draft and implement a fully comprehensive law on gender equality and a law on combating gender violence* (Recommended by Spain)

IRI: *not implemented*

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Recommendation n°125: *Adopt a comprehensive gender equality law that contains a definition of discrimination against women in accordance with CEDAW* (Recommended by Netherlands)

IRI: *not implemented*

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Recommendation n°126: *Establish specific legislation to fill the legislative gap of a lack of specific legal provisions to prohibit domestic violence and marital rape* (Recommended by Honduras)

IRI: *partially implemented*

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Recommendation n°127: *Take measures towards adopting specific legislation prohibiting domestic violence and spousal rape* (Recommended by Finland)

IRI: *partially implemented*

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Recommendation n°134: *Elaborate a specific law on domestic violence against women* (Recommended by Pakistan)

IRI: *fully implemented*

State of Hungary response:

Regarding domestic violence and marital rape, please refer to [recommendation n°11].

Similarly to the previous Constitution, the new Fundamental Law of Hungary, being in effect since the 1st of January 2012, declares the prohibition of every form of discrimination between men and women, the protection of women, the promotion of equal treatment and equality between women and men. The CEDAW noted in 2013 that the Fundamental Law recognizes the general principle of non-discrimination and that every legal initiative undergo gender impact assessment. Standalone acts of legislation are in place on equal treatment and the promotion of equality (Act CXXV of 2003) and on the rights and equal opportunities of persons with disabilities (Act XXVI of 1998). They give a very broad definition of discrimination which covers all

aspects of any form of discrimination. The Equal Treatment Act establishes a framework for the fight against discrimination and specifies about 20 groups of people to be protected, among them, women and mothers (separately). It defines the concept of discrimination, names indirect discrimination as punishable and introduces the possibility of positive discrimination to remedy disadvantages. The provision of the Fundamental Law concerning the right to the human dignity of the foetus was not intended to change the access to abortion as a legal and safe option in case the conditions required by law are fulfilled. It should be emphasized that these conditions were the same under the previous Constitution which did not contain the provision referring to the foetus. The entry into force of the Fundamental Law did not change the circumstances in which it is possible to solicit an abortion. Regarding sexual orientation please refer to [recommendations n°30, n°52 and n°12].

Recommendation n°128: Reconsider the relevant provisions of the new Constitution in order to ensure keeping access to abortion as a safe and legal option, and to ensure that the same protection and rights apply to every person regardless of their sexual orientation (Recommended by Norway)

IRI: not implemented

Joint response:

Hungarian LGBT Alliance: Not implemented. While the new Constitution (Fundamental Law) has been amended five times since its entry into force on January 1, 2012, none of the provisions criticized (lack of specific inclusion of sexual orientation and gender identity in the non-discrimination provision, definition of marriage as a union between a woman and a man) have been amended. Furthermore, after the Constitutional Court found the definition of family in the Family Protection Act (Act No. CCXI of 2011) too restrictive, the governing parties responded with including the criticized definition of family in the Fundamental Law itself to avoid judicial review, thus including further discriminatory provisions in the Constitution.

Hungarian Women's Lobby: The Fundamental Law has not changed it the follow-up period, so it still calls for the protection of the life of the foetus from the moment of conception in the same sentence which declares the right to life and human dignity. Although the legislation on abortion has not changed yet, governing parties' representatives made several statements against abortion and tried to introduced measures restricting access to abortion. Moreover, a state anti-abortion advertising campaign started in 2011, partly financed from the EU Progress Fund serving to combat discrimination and, among others, to advance gender equality. The European Commission called on the Hungarian government to immediately remove the posters, stressing that the anti-abortion campaign is not in line with European values. Under the framework of another awareness-raising campaign entitled "Life is a gift", the government funded a large anti-choice conference.

In 2012 the national drug administration authority registered the abortion pill Medabon. As a reaction, the state officials announced that despite the registration, this method of abortion would not be introduced in Hungary, as there are several "contradictory professional concerns about its safety and future side effects."

Information shows that in the last years more women went abroad for abortion because they wanted medical abortions or they found the access to abortion in Hungary difficult, time consuming, expensive and humiliating. /HWL-ERRC Alternative report to CEDAW, 2013/

State of Hungary response:

[See response to recommendation n°124]

Recommendation n°130: *Elevate the status of the national machinery for the advancement of women, strengthen its mandate, provide the necessary human and financial resources to endow it with sufficient authority and decision-making power for coordinating effectively the Government's work to promote gender equality* (Recommended by Moldova)

IRI: *partially implemented*

Joint response:

The national machinery has been consistently underfunded and understaffed, Together with its marginalised location in the government structure. In the follow-up period gender equality issues first were belong to the Department of Equal Opportunities at the Ministry of Human Resources (later renamed to Ministry of National Resources), with a wider issue-scope than gender equality and reduced staff members as compared to the situation during the previous government. In 2013 gender equality issues were removed from the Department of Equal Opportunities to the Demography, Family Affairs and Gender Equality Unit under the Department for Family Policy at the same ministry. Only three staff members were assigned to deal primarily with gender equality issues. At the same time management of the institutional system for the victims of violence remained at the scope of the Department of Equal Opportunities. The Council for Gender Equality, a consultative body on gender equality issues composed of state, NGO representatives and individual experts, has not been convened at all during the term of the Fidesz-KDNP government (2010-2014).

Evaluation provided by the Hungarian Women's Lobby

State of Hungary response:

[See response to recommendation n°10]

Recommendation n°136: *Increase financial and welfare support to families living in conditions of poverty so that families living in a situation of poverty can raise their children with adequate amenities as required for healthy upbringing of those children* (Recommended by Bangladesh)

IRI: *fully implemented*

State of Hungary response:

In order to enhance the social security of families and ease the financial burden of bringing up children, the family supporting system – in harmony with the recommendations made in Closing Observations No. 46 of the Committee on the Rights of the Child (CRC) – provides to families with children a broad scope of one-time payments, regularly disbursed benefits, various benefits on the basis of civic rights or insurance and allowances tied to income assessment. From 1st January 2014 child care benefits [child care fee (gyermekgondozási díj) and child care

allowance (gyermekgondozási segély)], granted on the basis of having children born consecutively after each other, can be disbursed simultaneously. This means, that the parent will not lose the allowance, when in the eligibility period of the former benefit a new baby is born, in regard of whom a new child care benefit is granted. According to the new regulations parents receiving child care benefits (child care fee or child care allowance) can pursue a gainful activity without time limit after the first birthday of their child. Another new step towards the reduction of the number of families living in poverty was the expansion of the family tax allowance from 2014. This enables parents not only to reduce the tax base of their personal income tax, but also to reduce the combined 17% compulsory state pension and health insurance contribution. This new measure is primarily benefits larger families with relatively low level of income, thus it effectively helps to reach the goals of this recommendation.

Within the framework of the programme against child poverty, the so-called summertime social child catering aims to provide at least one hot meal per day during the summer vacation for children with disadvantages or multiple disadvantages. To this end, the central budget allocated a yearly 2.4 billion HUF in years 2011, 2012 as well as in 2013. Regarding 2013, 1170 communities participated in the programme, ensuring catering for 112 833 children. In 2014 the budget was raised to 2.64 billion HUF.

Besides social assistance there are several different social transfers and other tools, which help families to access to the income and goods needed for maintaining a decent standard of living. Since the beginning of 2013, the reduction of utility costs by about 35% (depending on cost item) helps those living in poverty to pay their bills and raise their children. Measures aiming to save the housing of those with foreign currency debts also support this goal. Living allowance (instead of general social assistance) is paid to those (mostly living in deep poverty) involved in training programmes. From 1 September 2011 the income threshold of the entitlement to housing support – preventive tool to preserve housing – increased from 150% to 250% of the prevailing minimum old-age pension, consequently, more people in need have access to this benefit. The amount of the cash benefit provided to the carers of relatives in need of intensive nursing, the so-called nursing fee in higher amount has been increased by 15%, and a new form of nursing fee has been introduced to those in the most severe status from 1 January 2014. 13% of the carers who receive nursing fee in an increased amount take care of children. The Government launched the system of Solid Start Children Centres to guarantee the best possible chance for children in early childhood (age of 0-3) to foster their skills and competencies and primarily target children living in extreme poverty, many times in unacceptable social and housing environments, helping to ensure their healthy physical, intellectual, emotional and moral development. By the end of 2013, 113 Solid Start Children Centres operated in total.

Other

Recommendation n°17: *Consider establishing at the earliest a national human rights institution in full compliance with the Paris Principles* (Recommended by India)

IRI: fully implemented

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Recommendation n°18: *Consider the possibility of establishing a national human rights institution in conformity with international standards* (Recommended by Algeria)

IRI: fully implemented

+

Recommendation n°19: *Consider establishing a national human rights institution in accordance with the Paris Principles* (Recommended by Moldova)

IRI: fully implemented

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Recommendation n°20: *Consider the possibility of establishing a national human rights institution in conformity with the Paris Principles* (Recommended by Chile)

IRI: fully implemented

+

Recommendation n°21: *Establish an independent national human rights institution in accordance with the Paris Principles* (Recommended by Russian Federation)

IRI: partially implemented

+

Recommendation n°22: *Establish a national human rights institution in conformity with the Paris Principles* (Recommended by Ecuador)

IRI: partially implemented

+

Recommendation n°23: *Establish a national human rights institution in conformity with the Paris Principles* (Recommended by Argentina)

IRI: partially implemented

+

Recommendation n°24: *Establish the national human rights institution in accordance with the Paris Principles* (Recommended by Poland)

IRI: partially implemented

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Recommendation n°25: *Establish a national human rights institution that is fully compliant with the Paris Principles* (Recommended by Australia)

IRI: partially implemented

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Recommendation n°26: *Take all necessary measures to establish a national human rights institution according to the Paris Principles* (Recommended by Czech Republic)

IRI: fully implemented

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Recommendation n°27: *Develop its national human rights institution to fully adapt it to the Paris Principles, with a legal mandate which is clear and as broad as possible, and with sufficient financial resources* (Recommended by Spain)

IRI: *partially implemented*

Joint response:

Implemented, but re-consideration of implementation is under process.

In August 2011 the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights confirmed the Hungarian Parliamentary Commissioner for Civil Rights' (PCCR) accreditation for B status. Previously the ICC Sub-Committee on Accreditation (SCA) recommended some developments:

1. SCA noted that the PCCR has competence over state powers; it does not have competence over the private sector, the legislation provides that the mandate is for the protection only of constitutional rights, and does not provide for the promotion of human rights more broadly by the time of the accreditation process, protection of national and ethnic minorities was not within the mandate of the PCCR, as it was delegated to a different Commissioner. Therefore the referred to Paris Principles A.1 and to General Observation 1.2 on 'Human rights mandate', and recommended that the PCCR advocate for a wider mandate that includes all rights set out in international, regional and domestic instruments, covers all areas of discrimination, gives it the responsibility to protect and promote human rights, allows for its engagement with international mechanisms, and gives it explicit functions for human rights education and monitoring.
2. The SCA also encouraged the PCCR to advocate for the formalisation of the selection process in relevant legislation, regulations or binding administrative guidelines as appropriate in order to fulfil the requirements for a clear, transparent and participatory selection process that promotes the independence of, and public confidence in, the senior leadership of the national human rights institution. The SCA referred to Paris Principles B.1 and to its, General Observation 2.2 on 'Selection and appointment of the governing body'.
3. The SCA recommended the development and formalization of the PCCR's relations with civil society organizations, It referred to Paris Principles C (g) and to General Observation 1.5 on 'Cooperation with other human rights institutions'.
4. The SCA recommended that the PCCR advocate for legislative amendments to specify clearly the grounds upon which the dismissal of the Ombudsman can be sought. The SCA referred to its General Observation 2.9 on 'Guarantee of tenure for members of governing bodies'.
5. Finally, the SCA noted that according to the new Fundamental Law of Hungary, the Hungarian ombudsman system was restructured, and the legislation enabling this restructuring shall be followed. The SCA recommended that the PCCR advocate to ensure that the founding legislation of the Ombudsman for Fundamental Rights is compliant with the Paris Principles, and encouraged the PCCR to submit an

application for re-accreditation following Parliamentary approval of the new legislation. (Reference: ICC Sub-Committee on Accreditation Report – May 2011, point 1.2.)

Today the successor of PCCR is Commissioner for Fundamental Rights (CFR), and it holds its predecessor's B category of National Human Rights Institution. As it was recommended by SCA, CFR applied for a re-accreditation. The procedure of re-accreditation is ongoing, in November 2013 the SCA deferred the consideration of the application to its second session in 2014. Nevertheless, the SCA noted the following:

1. All National Human Rights Institutions should be legislatively mandated with specific functions to both promote and protect human rights. The 'promotion' functions have been defined in General Observation 1.2 as those that seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. In addition, the SCA is of the view that a National Institution's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights that includes all rights set out in international, regional and domestic instruments. Therefore the SCA encouraged the CFR to expand the range of its promotional activities, including in relation to human rights education generally, and minorities in particular, and to advocate for the express inclusion of a promotion mandate in the amending legislation. Such changes may have staffing and resource implications for the NHRI and funding commensurate with these new functions be provided by the State. The SCA referred to Paris Principles A.1 and A.2 and to its General Observation 1.2 on 'Human rights mandate'.

2. The SCA also noted that the Act on CFR does not provide the CFR with a specific mandate to encourage the ratification and implementation of international human rights standards. The SCA encouraged the CFR to advocate for the entrenchment of this function in its enabling law and referred to Paris Principle A3(b) and (c) and its General Observation 1.3 on 'Encouraging ratification or accession to international human rights instruments'.

3. The SCA noted that the CFR has had made efforts to increase its engagement with the international human rights system, and it encouraged RCA to increase its interaction activity with the International Human Rights System. The SCA referred to Paris Principle A.3 and its General Observation 1.4 on 'Interaction with the International Human Rights System'.

4. The SCA noted that vacancies in the posts of Commissioner and Deputies are neither widely advertised, nor is there broad consultation. The SCA stressed the importance of a clear, transparent and participatory selection process that promotes merit based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a NHRI. Therefore the SCA encouraged the CFR to advocate for the formalization of a transparent and participatory selection process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice. According to SRC, this should include

requirements to publicize vacancies broadly, maximize the number of potential candidates from a wide range of societal groups, promote broad consultation and / or participation in the application, screening, selection and appointment process, assess applicants on the basis of pre-determined, objective and publicly available criteria, and select members to serve in their own individual capacity rather than on behalf of the organization they represent. The SCA referred to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of National Human Rights Institutions'.

5. According to the pluralism of staff, the SCA highlighted the importance of ensuring that the staff is representative of the diverse society in which the institution operates, and encouraged CFR to develop policies and procedures to ensure that its staff is broadly representative of the society in which it operates. The SCA referred to General Observation 1.7 on 'Ensuring Pluralism of the National Human Rights Institution', particularly subsection (d).

6. Whilst recognising that the scope of the mandate of a National Human Rights Institution may be restricted for national security reasons, General Observation 2.7 notes that this limitation should not be unreasonably or arbitrarily applied and should only be exercised under due process. The SCA recommended that Section 23 of the CFR law shall be interpreted in such a way as to ensure that the CFR can carry out effective investigations into the relevant bodies.

To sum up, the re-accreditation of the National Human Rights Institution is deferred to the second half of 2014. (Reference: ICC Sub-Committee on Accreditation Report – November 2013, point 2.3)

[Evaluation provided by] Hungarian Civil Liberties Union

State of Hungary response:

The Commissioner for Fundamental Rights was accredited as a “B” status National Human Rights Institution by the International Coordinating Committee of National Human Rights Institutions (ICC) in May 2012. Accreditation for an “A” status is currently under consideration by the ICC as it would like to evaluate the operation of the Commissioner for Fundamental Rights in a more detailed manner.

Recommendation n°28: Examine the possibility of initiating an assessment of all existing mechanisms for the promotion and protection of human rights with a view to strengthening them as needed (Recommended by Algeria)

IRI: fully implemented

State of Hungary response:

As a result of the UPR of Hungary in 2011, the Government set up an inter-ministerial Human Rights Working Group (HRWG) in February 2012 which was tasked to monitor human rights in Hungary, to consult with stakeholders engaged in human rights matters and to advise the Government on human rights legislation. The HRWG operates a Human Rights Roundtable composed of 12 sub-working groups for the participation of the non- governmental organisations. The Human Rights Roundtable was established for the explicit purpose to engage in an ongoing dialogue with the civil society and provides a platform for consultations with various

stakeholders. Besides the Government, members of the Round Table include the representatives of the Commissioner for Fundamental Rights, the Equal Treatment Authority, the National Authority for Data Protection and Freedom of Information, and more than 40 non-governmental organizations active in this field. The 12 sub-working groups are covering the following clusters: freedom of opinion, other civil and political rights, economic, social and cultural rights, rights of Roma, minorities, women, children, disabilities, elderly, homeless, LGBT, and refugees. The proposals and the criticism by the 12 thematic sub-working groups of the Human Rights Roundtable are submitted to the HRWG on the level of the state secretaries for follow-up action which can result in legislative proposals by the Government. During these sessions accession to human rights conventions and the better implementation of the already existing international obligations of Hungary were discussed recurrently.

Since 2010, the Hungarian legislator reviewed and re-regulated the most important mechanisms for the promotion and protection of human rights with a view to strengthening them. As a result, parallel to the preparation of the Fundamental Law of Hungary, the Act on the Commissioner for Fundamental Rights was adopted, and the Act on the Right to informational self-determination and freedom of information was updated.

The Fundamental Law and the new Act on the Commissioner for Fundamental Rights created a coherent and consistent organizational structure of the ombudsperson system. In this system the Parliament elects a single Commissioner for Fundamental Rights equipped with the entirety of rights and responsibilities necessary for the effective protection of the fundamental rights. The two Deputy-Commissioners are responsible for the protection of the interests of future generations and for the protection of the interests of nationalities living in Hungary. The Act on the Right to informational self-determination and freedom of information set up the National Authority for Data Protection and Freedom of Information. The Authority, fully in line with the relevant European and international standards, is equipped both with the toolset of an ombudsperson and that of an administrative authority.

Recommendation n°32: *Take steps for further promotion and protection of the human rights in the country* (Recommended by Azerbaijan)

IRI: partially implemented

UNHCR response:

National legislation still lacks sufficient legal guarantees to give legal effect to Article 31 of the 1951 Convention Relating to the Status of Refugees. In particular no guidance is provided for law enforcement authorities (police, public prosecutors) on how to interpret relevant terms of Article 31 (1) of the Convention, such as 'coming directly', 'without delay', 'penalties' and 'good cause'. The application of Article 31 of the 1951 Geneva Convention has also remained problematic in Hungary. Many asylum-seekers intercepted with forged documents face criminal prosecution on the basis of forging or using forged travel or identity documents. It cannot be excluded that asylum-seekers are put into pre-trial detention and legal proceedings are initiated against them for arriving in Hungary with false or forged travel documents.

National alien-policing legislation still does not comply with the 1954 UN Convention on the Status of Stateless Persons as it excludes and does not grant statelessness status to applicants staying unlawfully on the territory of the country. This limitation essentially amounts to applying a de facto exclusion clause not allowed by the 1954 Convention, thus it needs to be discontinued.

Protection gaps are still in place that impede children's right to acquire a nationality, ultimately leading to statelessness in Hungary. Although domestic legislation on nationality includes safeguards against statelessness there are concerns regarding compliance with the 1954 UN Convention on the Status of Stateless Persons as well as with the 1961 Convention on the Reduction of Statelessness.

Hungarian legislation essentially criminalizes homelessness in Hungary. In 2013 the Hungarian Parliament passed an amendment to the Hungarian Fundamental Law that authorizes national and municipal legislation to outlaw sleeping in public spaces and later on further amendment to the Act on Misdemeanour according to which living on the streets on World Heritage areas will be considered a misdemeanour. The UN Special Rapporteurs stated the amendment institutionalizes the criminalization of homelessness which will have a disproportionate impact on persons living in poverty in general and on homeless persons in particular. The Special Rapporteur on adequate housing warned that outlawing rough sleeping in the context of limited availability of housing solutions for homeless persons and low-income households is contrary to Hungary's international human rights obligations of equality and non-discrimination.

Administrative detention of asylum-seekers has remained problematic in Hungary. As of July 2013 a new administrative detention regime was introduced for detaining asylum-seekers. The main shortcomings of this regime are the following: no legal remedy is available against a decision imposing asylum detention on asylum-seekers due to lack of sufficient procedural guarantees in national law, the judicial review of the lawfulness of administrative detention of asylum-seekers is ineffective resulting in automatic judicial prolongation. Detention of asylum-seekers does not meet neither the necessity test, as it is not applied as a last resort measure, nor the proportionality test as it is not applied for the shortest time possible. Decisions imposing asylum detention on asylum-seekers lack any individualization, the best interest of the child principle is not applied when assessing applications submitted by age-disputed minors in detention as these cases are not prioritized in practice and asylum-seekers are kept in detention for the duration of the age assessment procedure. In October 2013, the UN Working Group on Arbitrary Detention expressed concerns about the overuse of detention and the lack of effective legal remedy worsened with the severe lack of effective legal assistance. It also highlighted that the situation of asylum-seekers and migrants in irregular situation need robust improvements and attention to ensure against arbitrary deprivation of liberty.

National legislation and practice does not ensure full and effective access to family reunification for beneficiaries of international protection. Most beneficiaries of international protection in Hungary are unable to reunite with their families mainly due to lack of conducive administrative environment and the lack of Government or other

funds earmarked to facilitate the procedure. There is still space for improvement of access in practice, especially concerning access to information, application for family reunification procedure in practice, access to travel documents, support to groups with special needs and integration support upon reunification. Since the family reunification of beneficiaries of subsidiary is not facilitated under national law they face enormous difficulties in fulfilling the statutory conditions as they may have spent lengthy periods in reception waiting for the outcome of the asylum procedure with limited access to the labour market.

National legislation and policies do not define the principle of best interests of the child in detail, resulting in diverging practice. On a positive note, official consultations started with the Hungarian Government to establish a formal, individualized Best Interests Determination (BID) procedure in Hungary. Nevertheless, several shortcomings have remained in practice, in particular the age assessment procedure of age-disputed unaccompanied minors is still conducted in a highly problematic manner, age-disputed minors are kept in detention for the duration of the age assessment procedure and their asylum cases are not prioritized in practice. It is also of concern that there is still no requirement under national law for a detailed personal interview before the forcible return of a foreigner, including unaccompanied minors, wishing to enter or entering Hungary unlawfully.

Access for asylum-seekers to certain health care services free of charge, especially to dental care and ophthalmological care has remained problematic. Access to psychological services and psychotherapy for victims of torture and traumatized asylum-seekers are exclusively provided by a non-governmental organization via external (EU) funds.

State of Hungary response:

[See response to recommendation n°28]

Recommendation n°129: *Establish a comprehensive human rights framework upon which to develop more coordinated and effective policy measures and strategies for promoting human rights and that such a framework includes initiatives to set up a national human rights institutions in line with the Paris Principles* (Recommended by Republic of Korea)

IRI: *partially implemented*

+

Recommendation n°131: *Establish a national human rights programme which fully incorporates international instruments to which Hungary is a party* (Recommended by Mexico)

IRI: *partially implemented*

+

Recommendation n°132: *Elaborate a national human rights plan* (Recommended by Spain)

IRI: *partially implemented*

State of Hungary response:

The Commissioner for Fundamental Rights was accredited as a “B” status National Human Rights Institution by the International Coordinating Committee of National



Human Rights Institutions (ICC) in May 2012. Accreditation for “A” status is currently under consideration by the ICC. Hungary has national human rights strategies relating to numerous fields (social equality of men and women, elderly people, youth, environmental protection, healthcare, Roma) which serve the strengthening of human rights. Since 2011, the Hungarian legislator reviewed and re-regulated the most important mechanisms for the promotion and protection of human rights with a view to strengthening them. As a result, parallel to the preparation of the Fundamental Law of Hungary, Acts on the Commissioner for Fundamental Rights and on the Freedom of information were updated. With regard to the role of the Human Rights Working Group see [recommendation n°28] above.

Methodology

A. First contact

Although the methodology has to consider the specificities of each country, we apply the same procedure for data collection about all States:

1. We contact the Permanent Mission to the UN either in Geneva or New York;
2. We contact all NGOs that took part in the process. Whenever NGOs were part of coalitions, each NGO is contacted individually;
3. The National Institution for Human Rights is contacted, whenever one exists.
4. UN Agencies, which sent information for the UPR, are also contacted.

We post our requests to the States and send e-mails to NHRIs, NGOs and UN Agencies.

The purpose of the UPR is to discuss issues and share concrete suggestions to improve human rights on the ground. Therefore, stakeholders whose objective is not to improve the human rights situation are not contacted and those stakeholders' submissions are not taken into account.

However, since the UPR is meant to be a process that aims to share best practices among States and stakeholders, we take into account positive feedbacks from the latter.

B. Processing recommendations and voluntary pledges

The stakeholders that we contact are encouraged to use an Excel sheet, which we provide, that includes all recommendations received and voluntary pledges taken by the State reviewed.

Each submission is processed, whether the stakeholder has or has not used the Excel sheet. In the latter case, the submission is split among recommendations to which we think it belongs. Since such a task is more prone to misinterpretation, we strongly encourage stakeholders to use the Excel sheet.

If the stakeholder does not clearly mention whether the recommendation was “fully implemented” or “not implemented”, *UPR Info* usually considers the recommendation as “partially implemented”, unless the implementation level is obvious.

UPR Info retains the right to edit comments that are considered to not directly address the recommendation in question, when comments are too lengthy or when comments are defamatory or inappropriate. While we do not mention the

recommendations which were not addressed, they can be accessed unedited on the follow-up webpage.

C. Implementation Recommendation Index (IRI)

UPR Info developed an index showing the implementation level achieved by the State for both recommendations received and voluntary pledges taken at the UPR.

The **Implementation Recommendation Index (IRI)** is an individual recommendation index. Its purpose is to show an average of stakeholders' responses.

The *IRI* is meant to take into account stakeholders disputing the implementation of a recommendation. Whenever a stakeholder claims nothing has been implemented at all, the index score is 0. At the opposite, whenever a stakeholder claims a recommendation has been fully implemented, the *IRI* score is 1.

An average is calculated to fully reflect the many sources of information. If the State under Review claims that the recommendation has been fully implemented, and a stakeholder says it has been partially implemented, the score is 0.75.

Then the score is transformed into an implementation level, according to the table below:

Percentage:	Implementation level:
0 – 0.32	Not implemented
0.33 – 0.65	Partially implemented
0.66 – 1	Fully implemented

Example: On one side, a stakeholder comments on a recommendation requesting the establishment of a National Human Rights Institute (NHRI). On the other side, the State under review claims having partially set up the NHRI. As a result of this, the recommendation is given an *IRI* score of 0.25, and thus the recommendation is considered as “not implemented”.

Disclaimer

The comments made by the authors (stakeholders) are theirs alone, and do not necessarily reflect the views and opinions at UPR Info. Every attempt has been made to ensure that information provided on this page is accurate and not abusive. UPR Info cannot be held responsible for information provided in this document.

Uncommented recommendations

Hereby the recommendations which the MIA does not address:

rec. n°	Recommendation	SMR	Response	A	Issue
114	Ratify the main United Nations human rights instruments, particularly ICRMW	Ecuador	Rejected	5	International instruments, Labour, Migrants
150	It also informed about Hungary's intention to submit mid-term report to recap the implementation of the accepted recommendations.	Hungary	Voluntary Pledge	5	UPR process

A= Action Category (see on [our website](#))

SMR = State making recommendation

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