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Report of the Working Group on the Universal Periodic Review*

Hungary

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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The Government of the Republic of Hungary would like to thank the States for the 148 recommendations put forward during the Universal Periodic Review (“UPR”) of Hungary on 11 May 2011. Out of these recommendations, Hungary supported 113 and rejected only 6 on the spot. The remaining 29 recommendations were left for further consideration by the Government and the result of this process is presented in this Addendum which will be supplemented by our oral presentation at the 18th session of the Human Rights Council.

The Government of the Republic of Hungary wishes to underline that several recommendations have not received our support exclusively due to the fact that the suggested consideration or course of action have already been accomplished or performed, therefore there remained no necessity or cause for further consideration or action.

The following recommendations enjoy our support (9):

95.3¹ Hungary constantly reviews both new and existing international treaties and conventions in order to consider its accession to these legal instruments including to those human rights conventions to which Hungary is not yet a party.

95.5² The Government has started the process of the codification of a new Criminal Code recently and sees no difficulty in harmonising the definition of torture with the one contained in Article 1 of the CAT.

95.9³ Both the current Constitution and the new one entering into effect next year require the harmonisation of national legislation with international law. This was taken into account when Hungary ratified the CEDAW and incorporated its general prohibition of discrimination into its domestic legislation. Moreover, the Act on equal treatment and the promotion of equal opportunities (2003) provides further details regarding gender equality and prohibits acts of discrimination.

95.16⁴ The above mentioned Act created the Equal Treatment Authority which conducts proceedings in case the principle of equal treatment may have been violated, either at the request of the injured party or upon its own motion (*ex officio*) in cases set forth by law, in order to establish whether any discrimination has occurred. The Authority is autonomous and the number of its staff has doubled since its creation. In our opinion the recommendation on elevation of the status of national machinery for the advancement of women has already been realized in Hungary. In addition, after the new government took office in 2010, the position of the machinery within the public administration has been strengthened.

95.19⁵ The Criminal Record System and the Criminal Statistics System of Hungary already contains information on racist and hate-crimes.

¹ Consider the progressive ratification of pending human rights international treaties (Chile).

² Amend the Criminal Code with a view to including all elements of the definition of torture as provided for in article 1 of CAT (Czech Republic).

³ 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 (Belgium).

⁴ 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 (Republic of Moldova).

⁵ Establish and operate a country-wide system to monitor and record racist incidents and hate crimes (Indonesia).

95.21⁶ The new law on Media (the Act on mass communications and media services and the Act on the freedom of the press and the basic rules for media) requires the Media Council, the regulatory authority, to submit a yearly report to the Parliament. This document among others will contain information on the regulatory role of the body and will appear on the website of the Council.

95.17⁷ (Partially acceptable) The accession to the OP-CAT is an acceptable recommendation for the Government, as well as the ratification of the CED. Regarding the ICRMW, as several provisions of this Convention are governed by EU regulations, none of the EU member states are parties to it, including Hungary.

95.24⁸ (Partially acceptable) Hungary fulfils its international obligations stemming from 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. Hungary, as it has done previously, will implement the recommendations of the Slovenian-Hungarian Mixed Commission to the maximum extent possible, nevertheless the full implementation depends on the budgetary allocations.

95.29⁹ (Partially acceptable) Hungary is making every effort to gradually increase its ODA contribution despite austerity measures adopted each year since 2006. Please note that the 12 new EU Member States ODA target was set to 0.33 per cent by 2015.

The following recommendations do not enjoy our support (20):

95.2¹⁰ The Government is ready to examine the accession to the Protocol, but this is a complex task, the implementation of which will take up a longer period and therefore it cannot be guaranteed that the process will be completed by the next UPR examination of Hungary.

95.4¹¹ Although the incompatibility of capital punishment with the Hungarian legal system is not explicitly enshrined at the constitutional level, several legal norms are in place to ensure that the practice of death penalty is fundamentally and strictly prohibited. First, in 1990 the Constitutional Court with its decision derived the prohibition from the right to life and dignity. This decision will remain in effect after the new Constitution will enter into force next year. Second, the list of applicable punishments in the Criminal Code – in conformity with the above mentioned decision of the Constitutional Court, as well as with the international obligations of Hungary – does not include the death penalty. These international obligations are stemming from the ratification of the Second Optional Protocol of

⁶ Monitor the functioning of media regulatory bodies and the application of penalties in order to ensure they remain separated from outside influence (United Kingdom of Great Britain and Northern Ireland).

⁷ Ratify the main United Nations human rights instruments, particularly ICRMW, OP-CAT and CED (Ecuador).

⁸ 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 (Slovenia).

⁹ Bring official development assistance (ODA) up to the internationally committed 0.7 per cent of GDP (Bangladesh).

¹⁰ Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. (Spain).

¹¹ Specify the prohibition of the death penalty in a future organic law (France).

the ICCPR, the 6th and the 13th Protocols to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

95.6¹² The Government is convinced that the new laws on Media (the Act on mass communications and media services and the Act on the freedom of the press and the basic rules for media) are in conformity with the international human rights obligations of Hungary and therefore are respect the freedom of expression and the press. Hungary was and will remain ready for dialogue, in case there are concrete questions and observations related to the specific provisions of the laws.

95.7¹³ This recommendation in its present form is not acceptable because it doesn't raise any specific concerns. See also explanations under 95.6.

95.8¹⁴ This recommendation in its present form is not acceptable because it doesn't raise any specific concerns. See also explanations under 95.6.

95.10¹⁵ Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities protects women against discrimination, as well as guarantees their equal treatment.

95.11¹⁶ This recommendation is not relevant since Hungarian legislation and judicial practice comply with international conventions, including CEDAW.

95.12¹⁷ The statutory provisions under the Hungarian Criminal Code (Act IV of 1978) and the law on misdemeanours (Act LXIX of 1999) fully cover and prosecute all acts falling under the scope of domestic violence. Spousal rape is punishable since 1997.

95.13¹⁸ The statutory provisions under the Hungarian Criminal Code (Act IV of 1978) and the law on misdemeanours (Act LXIX of 1999) fully cover and prosecute all acts falling under the scope of domestic violence. Spousal rape is punishable since 1997.

95.14¹⁹ The Hungarian statutory regulation in force provides safe and lawful freedom of choice in terms of abortion. This legislation is fully in line with international standards; hence its amendment would not be justified. However, we would like to underline that according to Article II of the Fundamental Law of Hungary: „Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; embryonic and foetal life shall be subject to

¹² Introduce additional measures to ensure that the new Media Act complies with regional and international human rights standards (Switzerland).

¹³ 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 (Norway).

¹⁴ Reconsider legislation and laws in connection with freedom of opinion and expression and general freedoms (Palestine).

¹⁵ Draft and implement a fully comprehensive law on gender equality and a law on combating gender violence (Spain).

¹⁶ Adopt a comprehensive gender equality law that contains a definition of discrimination against women in accordance with CEDAW (Netherlands).

¹⁷ Establish specific legislation to fill the legislative gap of a lack of specific legal provisions to prohibit domestic violence and marital rape (Honduras).

¹⁸ Take measures towards adopting specific legislation prohibiting domestic violence and spousal rape (Finland).

¹⁹ 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 (Norway).

protection from the moment of conception.” In this respect we are committed to provide women with the opportunity of offering the newborns for adoption, as an alternative to abortion, to enable them to consider this option as well. The Constitution also prohibits discrimination based on different grounds, as listed by way of example. This is not an exhaustive list, thus protected categories not explicitly listed are also covered, including discrimination based on sexual orientation. This prohibition is also spelt out unequivocally by the consistent jurisprudence of the Constitutional Court and the Act on equal treatment and promotion of equal opportunities.

95.15²⁰ 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 and a general plan or program in the Government’s estimation would not have any added value. In this year the Parliamentary Commissioner for Civil Rights (Ombudsman) has been accredited by the International Coordination Committee of the National Human Rights Institutions as a national human rights institution.

95.17²¹ The recommendation is not acceptable in this form in line with the reasoning in point 95.15.

95.18²² The recommendation is not acceptable in this form in line with the reasoning in point 95.15.

95.20²³ Act IV of 1978 on the Criminal Code and Act LXIX of 1999 on Administrative Offences cover all acts falling under the scope of “domestic violence in the family against women”.

95.22²⁴ The recommendation is in harmony with the objectives contained in the National Reform Program, but increasing the financial support is by all means not the sole tool to fight poverty. This objective can be reached by measures aimed at the decrease of the transmission of social disadvantages, by complex programs for the amelioration of the situation of children and families with children, by scholarship programs to support students with multiple disadvantages, by the development of the child-healthcare system, or by the decrease of the number of persons living in households without any active employee, all of which can be ensured by measures aiming at social support, the increase of labor market chances and the amelioration of access to public services of groups in a most disadvantageous situation. All the above mentioned measures are addressing the question of child poverty in a complex manner and try to achieve the objective contained in the recommendation not primarily through the increase of financial support.

²⁰ 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 institution in line with the Paris Principles. (Republic of Korea).

²¹ Establish a national human rights programme which fully incorporates international instruments to which Hungary is a party. (Mexico).

²² Elaborate a national human rights plan. (Spain).

²³ Elaborate a specific law on domestic violence against women. (Pakistan).

²⁴ 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. (Bangladesh).

95.23²⁵ 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.

95.25, 95.26, 95.27, 95.28 The Government is convinced that the Hungarian legislative framework and its practice is fully in line with the Hungary's international obligations as well as with its obligations arising from the EU acquis on the free movement of EU nationals, migration and asylum. Specifically:

95.25²⁶ In compliance with the Return Directive (2008/115/EC) the Act on the Entry and Stay of Third Country Nationals in Hungary (Act II of 2007) as modified by the Act CXXXV of 2010 ensures that the administrative 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. The same Act stipulates that detention shall be immediately terminated when its ground ceases to exist, and its implementing decree provides that the authority ordering the detention shall endeavour to ensure that the detention is ordered for the shortest period possible. The legality of the detention is ensured by continuous judicial control: the aliens policing authority can only order detention for a maximum of 72 hours and the prolongation of the detention have to be decided by a court. In accordance with the Return Directive the term of administrative detention (of third country nationals) amounts to a maximum of 6 months that can be prolonged by the court with a maximum of 6 months in certain cases laid down in national law. Furthermore the Prosecution Service also has the possibility to examine the legality of the infringement of personal freedom. It is worth noting that persons recognised as refugees in Hungary cannot be placed in administrative detention.

95.26²⁷ The general rules of administrative detention are described above – those are also relevant in case of the detention of asylum seekers. However in their case detention is immediately terminated where the person concerned is granted international protection as its legal basis and its aim is extinguished. Besides the general guarantees the aim that the administrative detention of asylum seekers is reduced to the shortest period possible is ensured by the provision that requires the prioritisation of the examination of the applications of international protection lodged by detained persons. Where the reason of the detention is the so-called Dublin procedure (according to Regulation 343/2003/EC) the Hungarian authority always requests an urgent reply in order to speed up the procedure. In order to avoid the unnecessary detention of asylum seekers the Hungarian law stipulates that an asylum seeker shall not be held in detention for the sole reason that he/she is an asylum seeker.

95.27²⁸ For the first part of the recommendation: The Hungarian Government firmly believes that adequate mechanisms are in place in Hungary to identify

²⁵ Reconcile policies related to ethnic Hungarians abroad with neighbouring countries primary responsibility for minority protection. (Norway).

²⁶ Reduce to the minimum possible administrative detention of migrants, asylum-seekers and refugees, and only use it in exceptional cases (Mexico).

²⁷ Take all relevant measures to avoid prolongation of administrative detention of asylum-seekers during which the freedom of movement is considerably restricted (Czech Republic).

²⁸ Establish adequate mechanisms to identify potential asylum-seekers in border procedures; undertake

potential asylum-seekers in border procedures. According to the Act on the Entry and Stay of Third Country Nationals (Act II of 2007) in Hungary escorting back at the border and return cannot be ordered and carried out to a country which cannot be considered as a safe country of origin or a safe third country (in accordance with the principle of non-refoulement). Conformity with this principle and access to the asylum procedure is regularly monitored by the Hungarian Helsinki Committee, a non-governmental organization in accordance with a tripartite border monitoring agreement between the Hungarian Police, the UNHCR Regional Representation in Central Europe and the Committee. Third country nationals have the right to apply for asylum at any time during their presence in Hungary and legal provisions ensure that their application is forwarded to the competent authority without delay.

For the second part: see the answers regarding recommendations 95.25 and 26.

For the third part: The Government of Hungary is constantly striving to ameliorate the living conditions of asylum seekers and refugees. It is worth noting that persons granted international protection in Hungary (refugees and beneficiaries of subsidiary protection) enjoy the same rights as Hungarian nationals with a few exceptions, and also receive special benefits and support. The living conditions provided for asylum seekers comply with the relevant EU legislation, the Reception Conditions Directive (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.

95.28²⁹ The basic guarantee of the respect of the human rights of foreigners is in the Constitution 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 acceded to by Hungary (such as the European Convention of Human Rights and the International Covenant on Civil and Political Rights) also guarantee human rights to 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 relevant to the procedures and the reception of persons with special needs providing more favourable treatment for them. Hungary is one of those few Member States of the European Union that provides protection in the form of a separate, autonomous legal status for both stateless persons and victims of trafficking while detailed rules provide protection for unaccompanied minors – with this setting an example for other countries.

measures aimed at avoiding prolongation of administrative detention of asylum-seekers and at improving the living conditions and treatment of asylum-seekers and refugees (Brazil).

²⁹ Recognize and guarantee the human rights of all foreigners, independent and regardless of their migratory status (Ecuador).