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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and recommendations of the Committee against Torture

HUNGARY

1. The Committee considered the fourth periodic report of Hungary (CAT/C/55/Add.10) at its 738th and 741st meetings (CAT/C/SR.738 and 741), held on 15 and 16 November 2006, and adopted, at its 748th and 749th meetings (CAT/C/SR.748 and 749), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Hungary and the information presented therein. The Committee expresses its appreciation for the dialogue with the State party's delegation and welcomes the extensive responses to the list of issues in written form (CAT/C/HUN/Q/4/Add.1), which facilitated discussion between the delegation and Committee members. In addition, the Committee appreciates the delegation's oral responses to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

3. The Committee notes with appreciation that in the period since the consideration of the last periodic report, the State party has acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and ratified the Rome Statute of the International Criminal Court.

4. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights,

including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

- a) Act no. CXXXV of 2005 on the Assistance to be afforded to Victims of Crimes and on the Mitigation of Damages by the State;
- b) Act no. CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities;
- c) Act no. XXXIX of 2001 on the Entry and Stay of Foreigners [“the Aliens Act “] and Government Decree no. 170/2001 on the implementation of the Aliens Act;
- d) Act XIX of 1998 on the Code of Criminal Procedure;
- e) The adoption of the Code of Conduct for Police Interrogations in 2003;
- f) The establishment of a shelter for unaccompanied minors in 2003, in conjunction with the United Nations High Commissioner for Refugees;
- g) The ongoing grant programme for secondary school pupils of Roma origin in disadvantageous situations, supporting them to become police officers; and
- h) The publication in June 2006 of the last report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2006) 20) and the State party’s responses to it (CPT/Inf (2006) 21).

5. The Committee also welcomes the oral assurances given by the State party’s representatives that ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is envisaged shortly.

C. Principal subjects of concern and recommendations

Definition of torture

6. Notwithstanding the State party’s assertion that, under the Hungarian Criminal Code (Section 226 on ill-treatment in official proceedings, Section 227 on forced interrogation and Section 228 on unlawful detention), all acts that may be described as “torture” within the meaning of article 1 of the Convention are punishable, the Committee observes that all elements of the definition of torture as provided by article 1 of the Convention are still not included in the Criminal Code of the State party. (article 1)

The State party should adopt a definition of torture that covers all the elements contained in article 1 of the Convention.

Pre-trial detention

7. The Committee expresses its concern at the length of the initial pre-trial detention phase (up to 72 hours), at ongoing pre-trial detention on police premises and the high risk of ill-treatment which it entails and greatly regrets that pre-trial detention of up to three years is provided for under the Criminal Procedure Act. Furthermore, the Committee is concerned that

pre-trial detainees under and over 18 years are accommodated in the same cell in the course of the procedure and notes that the need for separation of children and adults is included in the Draft Penitentiary Code. (articles 2, 11 and 16)

The State party should take appropriate measures to ensure that its pre-trial detention policy meet international standards, including by reducing pre-trial detention on police premises, further reducing the period of pre-trial detention and using the alternative measures outlined in the Code of Criminal Proceedings under the chapter “Coercive Measures” in cases where the accused does not pose a threat to society. Furthermore, the State party should take the necessary measures to ensure that children in pre-trial detention are kept separately from adults, and adopt the Draft Penitentiary Code.

Fundamental safeguards

8. The Committee is concerned at allegations that fundamental legal safeguards for persons detained by the police or Border Guard staff, including the rights of access to a lawyer and medical examination, are not being observed in all situations. In this respect, the Committee notes with concern that a high number of persons with an ex officio defense counsel remain without actual assistance from his/her attorney in the investigation phase of the procedure. Furthermore, the Committee is concerned at information that the compulsory medical examination upon arrival at the police station is often carried out by physicians who are not independent from the police and in the physical presence of police officers, and that the same applies in the case of illegal foreigners in the presence of Border Guard staff. (articles 2, 13 and 16)

The State party should take effective measures to ensure that the fundamental legal safeguards for persons detained by the police or Border Guard staff are respected, including the right to inform a relative, have access to a lawyer as well as to an independent medical examination or a doctor of their own choice, and the right to receive information about their rights.

The State party should, *inter alia*, ensure that:

- a) **Persons in the custody of police or Border Guard staff benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty; and**
- b) **Police officers and Border Guard staff are not present during medical examinations of persons under custody in order to guarantee the confidentiality of medical information, save under exceptional and justifiable circumstances (i.e. risk of physical aggression).**

Detention of asylum seekers and non-citizens

9. The Committee is concerned at the detention policy applied to asylum seekers and other non-citizens, including reports that they often face lengthy periods of detention, including in the

context of the so-called “alien policing procedure” with detention for up to 12 months in alien policing jails maintained by the Border Guard. (articles 2, 11 and 16)

The State party should take measures to ensure that detention of asylum seekers and other non-citizens is used only in exceptional circumstances or as a last resort, and then only for the shortest possible time, and that the rules of maximum-severity penitentiaries do not apply to these detention facilities. The State party should also ensure that courts carry out a more effective judicial review of the detention of these groups.

Non-refoulement

10. The Committee notes with concern that individuals may not have been able, in all instances, to enjoy full protection under the relevant articles of the Convention in relation to expulsion, return or extradition to another country. The Committee is also concerned at information that the right of non-citizens seeking protection to have access to the asylum procedure is not fully guaranteed at the border, and at reports of unlawful expulsions of asylum seekers and other non-citizens to third countries implemented by the Border Guard. (articles 3 and 16)

The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party’s jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.

In this respect, the State party should ensure that the relevant alien policing authorities carry out a thorough examination in accordance with Section 43 (1) of the Aliens Act, prior to making an expulsion order, in all cases of foreign nationals who have entered or stayed in Hungary unlawfully, in order to ensure that the person concerned would not be subjected to torture, inhuman or degrading treatment or punishment in the country where he/she would be returned. The State party should expand and update its country of origin (COI) information database and take effective measures to certify that the internal regulation about the obligatory use of the COI system is respected.

Training

11. The Committee is concerned at the lack of specific training on the prohibition of torture, inhuman or degrading treatment or punishment provided for law enforcement officials at all levels, including police officers, prison staff, and personnel of the Border Guard and the Office of Immigration and Nationality (OIN). In addition, the Committee regrets that there is no available information on the impact of the training conducted for law enforcement officials and border guards, and how effective the training programmes have been in reducing incidents of torture, violence and ill-treatment. (article 10)

The State party should further develop educational programmes to ensure that law enforcement officials, prison staff and border guards are fully aware of the

provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All personnel should receive specific training on how to identify signs of torture and ill-treatment, and the Committee recommends that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.

Data collection

12. The Committee regrets the fact that for certain areas covered by the Convention, the State party was unable to supply statistics, or appropriately disaggregate those supplied (e.g. by age, gender and/or ethnic group). During the current dialogue, this occurred with respect to, for example, the ethnicity of inmates and detainees, particularly the Roma. (article 11)

The State party should take such measures as may be necessary to ensure that its competent authorities, as well as the Committee, are fully apprised of these details when assessing the State party's compliance with its obligations under the Convention.

Conditions of detention

13. The Committee is concerned that, notwithstanding the measures taken by the State party to improve conditions of detention, there is continuing overcrowding in prisons. The Committee is also concerned at allegations of some cases of ill-treatment by custodial/prison staff, including beatings and verbal abuse. (articles 11 and 16)

The State party should continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the wider application and use of alternative sentencing introduced by the new Act on Criminal Proceedings and the establishment of additional prison facilities as needed. The prison management should deliver a clear message to custodial/prison staff that ill-treatment is not acceptable.

Ill-treatment and excessive use of force

14. The Committee notes with concern some allegations of excessive use of force and ill-treatment by law enforcement officials, especially in the course of or in relation to apprehension. In this respect, the Committee is particularly concerned at reports emerging of alleged excessive use of force and ill-treatment by the police during the demonstrations in Budapest in September and October 2006. (articles 12 and 16)

The State party should give higher priority to efforts to promote a culture of human rights by ensuring that a policy of zero tolerance is developed and implemented at all levels of the police-force hierarchy as well as for all staff in penitentiary

establishments. Such a policy should identify and address the problems, and should include the new Code of Conduct for Police Interrogations and introduce a code of conduct for all officials as well as regular monitoring by an independent oversight body. The State party should take measures to ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duty.

15. The Committee is concerned at reports that law enforcement officers did not carry identification badges during the Budapest demonstrations which made it impossible to identify them in case of a complaint of torture or ill-treatment. (article 13)

The State party should ensure that all law enforcement officials be equipped with visible identification badges to ensure the protection against torture, inhuman or degrading treatment or punishment.

Prompt and impartial investigations

16. The Committee is concerned at the number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated. (articles 12 and 16)

The State party should:

(a) **Strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the suspect should be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation; and**

(b) **Try the perpetrators and impose appropriate sentences on those convicted in order to eliminate the de facto impunity for law enforcement personnel who are responsible for violations prohibited by the Convention.**

Compensation and rehabilitation

17. While noting that the Act on Assistance to Victims contains provisions regarding the right to compensation for victims of crimes and supporting services available for such victims, the Committee regrets the lack of a specific programme to safeguard the rights of victims of torture and ill-treatment. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases as well as the lack of information about other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims (art. 14).

The State party should strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims with redress and fair and adequate compensation, including the means for as full rehabilitation as possible. The State party should develop a specific programme of assistance in respect of victims of

torture and ill-treatment. Furthermore, the State party should provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.

Prisoners placed under a special security regime

18. The Committee is concerned at the situation of the so-called “Grade 4 prisoners” who may be placed in a maximum security cell or ward with severe restrictions of their rights resulting in extreme isolation and deprivation of human contact. Furthermore, the Committee notes with concern that, according to information before the Committee, neither the Admission Committee of a given penitentiary institution nor the special committee appointed by the national commander issue formal resolutions and that the “Grade 4 prisoners” cannot appeal to any higher level authorities or any courts. (articles 2, 13 and 16)

The State party should review and refine the system of classifying prisoners as Grade 4 with a view to ensuring that this grade is only applied – and retained – in respect of prisoners who genuinely require to be accorded such a status and review without further delay their current policy with regard to the application of means of restraint to prisoners placed under this system. Furthermore, the State party should establish a proper appeal procedure relating to this special security regime as well as adequate review mechanisms relating to its determination and duration.

The Roma

19. The Committee is deeply concerned at reports of a disproportionately high number of the Roma in prisons and ill-treatment of and discrimination against the Roma by law enforcement officials, especially the police. (articles 11 and 16)

The State party should intensify its efforts to combat discrimination against and ill-treatment of the Roma by law enforcement officials, especially the police, including through the strict application of relevant legislation and regulations providing for sanctions, adequate training and instructions to be given to law enforcement bodies and the sensitization of the judiciary. Furthermore, the State party should strengthen its support to the grant programme for support of police officers of Roma origin and to the Roma Police Officers Association.

National minorities and non-citizens

20. The Committee notes with concern reports of ill-treatment of and discrimination against persons belonging to national minorities and non-citizens by law enforcement officials, especially the police. (articles 11 and 16)

The State party should strengthen its efforts to combat ill-treatment of and discrimination against persons belonging to national minorities and non-citizens by law enforcement officials.

Trafficking

21. The Committee is concerned about persistent reports of trafficking in women and children for sexual and other exploitative purposes. The Committee regrets the lack of information about any assistance provided to victims of trafficking and training of law enforcement personnel and other relevant groups. (articles 2, 10 and 16)

The State party should continue to take effective measures to prosecute and punish trafficking in persons, including by strictly applying relevant legislation, raising awareness of the problem, and including the issue in training of law enforcement personnel and other relevant groups.

22. The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions. Information is further requested on any compensation and rehabilitation provided to the victims.

23. The State party is encouraged to disseminate widely the reports submitted by Hungary to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

24. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 9, 12 and 17 above.

25. The State party is invited to submit its next periodic report by ...
