

Suggested questions and recommendations to be addressed to Hungary at the Universal Periodic Review 11th May, 2011

Contributed by

The **Chance for Children Foundation** (CFCF) is a Roma rights organisation active since 2004. Its mission is to improve school success for Romani children. The organisation works with communities and where it finds school segregation, trying to solve the problem of segregation through negotiation. In extreme cases, it uses strategic litigation to close Roma schools. The organisation uses the court cases for advocacy and information through the media. <http://www.cfcf.hu/>

The **European Roma Rights Centre** (ERRC) is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations. www.errc.org

The **Hungarian Civil Liberties Union** (HCLU) is a human rights watchdog NGO established in 1994. HCLU is working independently of political parties, the state or any of its institutions. www.tasz.hu/en

The **Hungarian Helsinki Committee** (HHC) is an NGO founded in 1989. The HHC's main areas of activities are centered on non-discrimination, protecting the rights of asylum seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on access to justice, the conditions of detention and the effective enforcement of the right to defense and equality before the law. www.helsinki.hu

The **Minority Rights Group International** (MRG) is a non-governmental organization working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide. <http://www.minorityrights.org/>

PATENT (People Opposing Patriarchy) is a women's rights advocacy organisation active in the fields of violence against women and women's reproductive health and rights. Our aims are achieved mostly through strategic litigation, lobbying and awareness raising. www.patent.org.hu

The City is For All (AVM) is a volunteer based grassroots organization operating in Budapest, Hungary, in which homeless (currently or past) and non-homeless activists work together for housing rights and social justice. www.avarosmindenkie.blog.hu

I. The new Constitution of Hungary

Hungary's new Constitution was signed by the President on 25 April, 2011 and it will enter into force on 1 January, 2012.

Hungarian national report	Joint comments by Hungarian NGOs	Suggested questions	Suggested recommendations
<p>Describes the Constitution framing process.</p> <p>States that the new Constitution will continue to contain all fundamental human rights currently protected by the Constitution in force and that no major change in the constitutional arrangement is foreseen.</p> <p>Claims that the status and power of the Constitutional Court would continue to be provided by a separate act.</p>	<p>Indicates that the new Government started adopting a new Constitution without proper reasoning.</p> <p>States that the current Constitution facilitates the proper functioning of a democratic system which respects human rights and the rule of law.</p> <p>Since the submission of the NGO report it became evident that the Constitution framing process did not meet the requirements deriving from the principle of the rule of law. The concept prepared by the ad-hoc parliamentary committee – the only group with clear mandate – was dismissed. The draft of the new Constitution was submitted and became public on 14 March, 2011. The new Constitution abandons the principle that all human beings are entitled to human rights because they are human beings and that persons hold these rights without regard to the fulfillment of their duties, their personal merits or their social usefulness. The new Constitution weakens the balances of the governing majority, thus the Constitutional Court and the Ombudsman. It also recognizes the</p>	<p>Why does the new Constitution maintain the restriction of the jurisdiction of the Constitutional Court related to laws on the central budget and taxes?</p> <p>What is the position of Hungary on the conflict between the notion of secular state and the fact that the new Constitution should be interpreted in line with the National Creed, which is full of religious references to Christianity and the important role of faith?</p> <p>What effect on human rights protection do you expect from the power restriction of the Constitutional Court and the abolishment of the three autonomous specialized ombudspersons?</p> <p>Why does the new Constitution set explicit conditions for the enjoyment of certain basic rights?</p> <p>Why does the non-discrimination provision fail to explicitly mention sexual orientation as a protected ground?</p>	<p>Restores the full jurisdiction of the Constitutional Court related to laws on the central budget and taxes and the actio popularis petition.</p> <p>Preserves the system of the four independent ombudspersons (ombudsman for civil rights, for the national and ethnic minorities rights, for environmental issues and for data protection and freedom of information).</p> <p>Reconsiders the provisions which weaken the principle that persons hold their human rights regardless their merits, duties or social usefulness.</p> <p>Ensures that the same protection and rights apply to every person regardless their sexual orientation.</p> <p>Ensures keeping access to abortion a safe and legal option.</p> <p>Eliminates lifelong imprisonment without parole (so-called actual life imprisonment), makes conditional release available to all prisoners.</p>

	<p>right to life and states that the life of the foetus shall be protected from the moment of conception. Please see the in-depth analysis of three Hungarian NGOs. (http://tasz.hu/en/freedom-of-speech/third-wave-new-constitution-hungary)</p>	<p>What will be the consequences of including into the new Constitution the protection of foetal life from the moment of conception?</p> <p>Why does the new Constitution allow lifelong imprisonment without parole regardless of the criticism raised by international organizations?</p>	
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II. Human rights situation of the Romani community

Hungarian national report	Joint comments by Hungarian NGOs	New events since the submission	Suggested questions	Suggested recommendations
<p>Summarizes the related crimes in the Criminal Code, mentions the “denial of holocaust”¹ and the administrative offense which aims at prohibiting wearing the uniform of a disbanded association.</p> <p>Indicates that the development of a new law enforcement protocol for handling racist and/or racism-motivated crimes was started; and within the framework of this project the police training courses on racism and prejudice will also be reviewed and improved, if necessary. The amendment to the Official Instructions of the Police will be elaborated during the</p>	<p>States that there is no systematic monitoring of racist violence, there is no reliable statistics on the real number of racially motivated crimes in Hungary. Although base motivation can be charged as an aggravating factor in some “common” crimes, there is no explicit provision which notes racial motivation as an aggravating factor. There is a tendency to classify racially motivated crimes as “common” crimes rather than to use hate crime provision of the Criminal Code and in practice ignore the bias motive. Roma victims face very often discriminatory treatment by the police; severe omissions</p>	<p>Since March 2011, members of a paramilitary far right-wing group have been “patrolling” and marching in towns with significant ethnic tensions, claiming that they are providing citizens of Hungarian origin with protection against “Gypsy criminality”. Unimpeded by local police, the Civil Guard members have reportedly threatened residents of Roma origin. Another paramilitary right-wing group called Véderő has been planning to set up a training camp in Gyöngyöspata, as a result² of which on 22 April around 250 Roma women and children were transferred</p>	<p>What kind of measures will be taken in order to introduce systematic and comprehensive monitoring of offences potentially motivated by hatred?</p> <p>What kind of measures will be taken in order to ensure that potential hate crimes are investigated and prosecuted appropriately?</p> <p>Has the work on amending the Official Instructions of the Police begun?</p> <p>How would you explain that there was only 12 registered hate crime in 2008?</p>	<p>Investigates promptly and impartially incidents of violence against Roma and other minorities and prosecute perpetrators of such crimes to the fullest extent of the law, whether they are committed by law enforcement officers or by private parties.</p> <p>Makes guidelines and protocols to law enforcement and judicial authorities on identifying and investigating racially-motivated crime</p> <p>Takes adequate actions against paramilitary radical right wing groups which actions do not fall under the protection of freedom of assembly in order to prevent them from threatening</p>

<p>first half of 2011.</p>	<p>and negligence on the part of state authorities in handling the serial murders of Roma have been revealed.</p>	<p>from the town by the Red Cross. Even though some of the Véderő members were taken into short-term arrest, some members reappeared in the town on 26 April, after the Roma returned and a mass fight broke out. Only people of Roma origin were taken into custody. The Police seem to be unable to handle the paramilitary groups and to find the adequate legal solutions for the problems.³ The Parliament has adopted amendments to the Criminal Code on 2May, 2011 in relation with the events at Gyöngyöspata.</p>		<p>Roma citizens.</p>
<p>Describes the available educational programs for underprivileged and/or Roma students.</p>	<p>Indicates that an increasing number of Roma children are deprived of equal education due to school segregation. Roma children are also overrepresented in schools for children with intellectual disabilities due to discrimination. There is no legal obligation which would make inclusive education mandatory. Children's homes: research found that in every age group those</p>		<p>What measures will be taken to reduce school segregation?</p> <p>Will Hungary enact an enforceable statutory duty to eliminate desegregation in education?</p> <p>What measures will be taken to tackle the discriminatory practices of the child protection services?</p>	<p>Ensures the enactment in national legislation of an enforceable statutory duty to desegregate education requiring public authorities to take action to eliminate segregated education within a fixed period of time.</p> <p>Develops a set of objective criteria against which the competent authorities can make objective recommendations and decisions regarding the removal</p>

	children who were considered Roma have a higher probability of being placed in a children's home than those who were not considered as Roma. ERRRC research in 2010 indicates 65% representation of Romani children in a sample of children's homes in 5 regions.			of children from their families. Develops and adopts a system of incentives for child protections services and agencies with demonstrated results in improving preventative services and reducing the levels of children actually in need of/moved into temporary, short-term or long-term professional care.
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III. The new media legislation

Hungarian national report	Joint comments by Hungarian NGOs	Recommendations by international bodies	Suggested questions	Suggested recommendations
<p>The new media law provides opportunity for the effective assertion of the public interests, for the creation of a clear regulatory environment for service providers, and for renewal in the public media.</p> <p>The Media Council and its members are solely subject to law and may not be instructed with respect to the fulfillment of their official duties. The main objectives of the new media legislations are on the one hand to further strengthen media freedom and media pluralism in Hungary, fully in line with</p>	<p>The basic approach of the media law is to put all media in the same regulatory basket, to apply the same rules to print, internet, television and radio. The media law makes source protection and investigative journalism impossible. The mandatory content requirements, compulsory pre-registration, and standards regarding "public morality", a term referring to a vague set of moral and ethical standards with the danger of arbitrary interpretation, jeopardize the editorial freedom and</p>	<p>According to the Commissioner for Human Rights of Council of Europe: "The wide range of problematic provisions in Hungary's media legislation, as identified in this Opinion, is sufficient to warrant a wholesale review of the "media package" (...) It is recommended that the goals of such a review include the reinstatement of precise legislation promoting pluralistic and independent media, and the strengthening of guarantees of immunity from political influence on the part of the media</p>	<p>What did necessitate it to set up a powerful administrative body supervising all media content?</p> <p>How does the media law ensure that no opposition newspapers will be sanctioned for criticizing the government?</p> <p>When is it possible to force journalists to reveal their sources?</p> <p>What are the guarantees of independence of the media council?</p>	<p>Narrows the scope of the regulation to the broadcasting media.</p> <p>Exempts the on-line content of the media regulation.</p> <p>Ensures that only courts can force journalists to reveal their sources, and guarantee this will only be a last resort solution.</p> <p>Ensures the independence of the media authority by including members beyond the nominees of the ruling parties.</p>

<p>European patterns and values, and on the other hand to comply with EU legal harmonization requirements.</p>	<p>through this, the operation of the independent press. The public media broadcasters are not independent from the government with respect to the nomination process and financing</p>	<p>regulatory mechanisms. „More generally, there should be a serious, concerted and urgent effort to free the media, particularly the printed press, from content prescriptions, the imposition of sanctions, pre-emptive restraints via registration procedures, and threats to the integrity and anonymity of sources.”</p>	<p>How does the media law ensure the editorial autonomy and independence of the public media? Is not it a danger to independence, that the prime minister appoint the head of the media authority, who used to be an MP for two terms and regional party leader of the now ruling party?</p>	<p>Ensures the possibility that public figures and politician are not allowed to use the media law to shun criticism.</p>
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IV. Disability rights

Hungarian national report	Joint comments by Hungarian NGOs	Suggested questions	Suggested recommendations
<p>States that several in-patient institutions with high capacity take care of disabled persons in Hungary. Indicates that the state is committed to de-institutionalization replacing these full-care institutions by homes and other communal housing.</p>	<p>Claims that in Hungary, the placement of persons with intellectual and multiple disabilities in large residential institutions is typically favored over services that support the participation of persons with disabilities in the community. Despite international obligations, there is still no governmental strategy for de-institutionalization; however, it is under debate currently.</p>	<p>When will Hungary adopt the de-institutionalization strategy? Is the strategy under debate in line with the article on community living (Article 19) of the UN Convention on the Rights of Persons with Disabilities (Convention)? Does the strategy under debate ensure community living for every person who falls under the definition of the Convention?</p>	<p>Applies the de-institutionalization strategy to every persons who fall under the Convention; persons shall have the right to equal community living services regardless the gravity of their disability. Recognizes the right to live in the community even in case of the most serious disabilities. The strategy on de-institutionalization shall recognize services only which are in line with the Convention.</p>

			Appoints a date after which no person can be enrolled to institutions breaching the Convention.
<p>Describes the legislation on guardianship and claims that guardianship is designed to assist people under guardianship to exercise rights and manage pecuniary affairs.</p> <p>States that legislation on guardianship excluding the ability to act is expected to be revised in the forthcoming process of elaboration of a new Civil Code.</p>	<p>Claims that the number of persons under guardianship is extremely high, according to statistics approximately 60-80.000 persons are under guardianship. The legislation does not contain alternatives to guardianship, several provisions are not in line with international obligations. The government intends to retain total guardianship. (see concept note on the Civil Code, Commissioner of the Ministry of Public Administration and Justice, 3 December 2010). Due to placement under full guardianship, the person is automatically deprived of exercising numerous other fundamental human rights, e.g. the right to vote.</p> <p>The newly-adopted Constitution changes the current provision on right to vote: “Those deprived of their right to vote by a court for limited mental ability and for a criminal offense shall not have the right to vote.”⁴ The actual content of the right to vote will be regulated by a so-called cardinal act (shall be adopted by two-third majority of the Parliament). There is no information available about the content of the cardinal act on right to vote.</p>	<p>Will Hungary abolish the total guardianship which violates the right the equal recognition before the law (Article 12 of the Convention)?</p> <p>What institutions will Hungary introduce which support the decision making of persons with disabilities without limiting their legal capacity?</p> <p>How will Hungary ensure the right to participation in political and public life (Article 29 of the Convention)?</p>	<p>Revokes total guardianship and guardianship with general limitations and introduce forms of supported decision-making.</p> <p>Ensures the right to vote for each person under guardianship and incorporates the requirement of complex accessibility.</p>

V. Criminal policy and detention

Hungarian national report	Joint comments by Hungarian NGOs	Suggested questions	Suggested recommendations
Indicates the overcrowding in	The Penal Code’s amendment passed	What kind of measures will be taken	Decreases overcrowding in

<p>detention facilities and refers to a proposal by the National Prison Service to reduce the saturation to 100 %.</p> <p>Claims that as a further tool to reduce the saturation of prisons the system of criminal sanctions shall be revised in order to significantly increase the use of alternative and other non-custodial sanctions.</p>	<p>in 2010 has made it mandatory for judges to sentence suspects to life imprisonment if certain conditions are met. While this infringes the principle that criminal sanctions shall be individualized, the conditions for mandatory life sentence are formulated in a way that perpetrators with offences of very different severity may have to face the same sanction. Moreover, the amendment was not validated by criminal statistics and was lacking well established rational justification as well.</p> <p>As a result of the restrictive tendencies in criminal policy (which are in contradiction with the National Report's statement under § 64), Hungary's penitentiary system faces a severe problem of overcrowding: the average overcrowding rate is approximately 140%. The Government responds to the problem of overcrowding by amending the respective law instead of decreasing the number of detainees: according to amendments adopted in 2010, the minimal living space for detainees – which is 3 m² for men and 3.5 m² for women and juveniles – should be ensured only “if it is possible”.</p>	<p>in order to decrease the overcrowding in penitentiaries? Do these measures include promoting the use of alternative punishments?</p> <p>When will Hungary sign and ratify the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and designate a National Preventive Mechanism?</p>	<p>penitentiaries by a change in criminal policy and the use of alternative punishments.</p> <p>Signs and ratifies the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, designates the National Preventive Mechanism.</p>
	<p>Recent amendments have led to a situation in which juvenile offenders</p>	<p>Does Hungary intend to eliminate the possibility of confinement of</p>	<p>Eliminates the possibility of sanctioning juveniles with a</p>

	<p>committing petty theft (in a value less than EUR 70) almost inevitably end up in confinement for up to 45 days. Alternative sanctions (e.g. labour in the public interest or mediation) are not applicable in petty offence proceedings. The problem is aggravated by the fact that those who commit a petty offence punishable with confinement, if caught in the act, can be taken into short-term detention (up to 72-hours) by the Police automatically. This is in contradiction with the relevant provisions of the Convention on the Rights of the Child according to which detention shall be a last resort.</p>	<p>juveniles in petty offence proceedings, given that it constitutes a violation of Hungary's international obligations as set out by the UN Convention on the Rights of the Child?</p>	<p>confinement in case of petty offences and ensures that alternative sanctions are applicable in petty offence proceedings against juveniles.</p>
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VI. Asylum seekers and refugees

Hungarian national report	Joint comments by Hungarian NGOs	Suggested questions	Suggested recommendations
<p>Summarizes the legislation on immigration detention and detention prior to expulsion. It points out that the recently modified law prohibits the detention of unaccompanied minors and permits the detention of accompanied third country national children together with their family only.</p>	<p>Claims that a significant proportion of asylum-seekers and most irregular migrants are routinely detained with the exception of unaccompanied minors and those coming from a country which is considered prima facie inadequate for return. In practice irregular migrants are usually detained for the maximum period of time and the review is a mere formality. A recent amendment</p>	<p>Why are asylum seekers held in detention without having committed a crime?</p> <p>How can the shortcomings in the judicial review of lawfulness of detention be justified?</p>	<p>Ends the current restrictive detention policy and applies detention only if other less coercive measures cannot be applied effectively and if there is a significant risk of absconding.</p> <p>Makes the judicial review of alien policing detention effective and verifies on its merits whether the grounds and conditions for the prolongation of detention are met.</p>

	of the Aliens Act prolonged the maximum period of detention from 6 months to 12 months.		
	Indicates that experience shows that a remarkable proportion of border police officers routinely fail to record asylum applications which result in returning asylum seekers to countries where international protection is not available.	What measure will be taken in order to identify potential asylum seekers in border procedures?	Establishes adequate mechanisms to identify potential asylum seekers in border procedures and provided with proper procedural safeguards, in order to ensure respect for the principle of <i>non-refoulement</i> .
	The practice of the authorities might result in the deportation of asylum seekers who have never had their asylum application examined on the merit.	How can expulsion of an asylum seeker without having his claim examined on the merits be justified?	Stops issuing expulsion orders to asylum seekers returned under a Dublin procedure who wish to continue their asylum procedure in Hungary. A full examination of the substantive grounds of the asylum seekers' claim should be conducted.
Claims that the principle of non-refoulement is well-established in the Hungarian legislation.	While Hungary does not accept Somali travel documents as valid, it has not established any alternative regime for the substitution of non-accepted Somali travel documents, unlike other European countries. This means that Somali nationals (one of the largest groups among recognised refugees in recent years) are excluded even from the mere possibility of family reunification in Hungary.	Through what measures Hungary intends to make the right to family reunification of Somali refugees effective?	Elaborates a mechanism which enables Somali citizens granted protection in Hungary to reunite with their family members not holding a valid and recognised travel document (e.g. one-way <i>laissez-passer</i> , etc.)

VII. Rights of Minorities

Hungarian national report	Joint comments by Hungarian NGOs	Suggested questions	Suggested recommendations
<p>Summarizes the legal background of parliamentary representation of minorities. Refers to the ombudsman for the national and ethnic minorities rights.</p>	<p>The Hungarian government proposed a new electoral law in 2010, relating to the institutionalized parliamentary representation of minorities through a maximum of 13 reserved seats. This law would have significantly changed the Constitution of 1949⁵, but the amendment has not been validated by the recently adopted Constitution of 2011. In addition, the threshold of votes for a mandate stipulated in the bill practically excludes numerically smaller minorities from representation. In its 100th session, the Human Rights Committee (HRC) called upon the State party to clarify its position on the parliamentary representation of numerically smaller minorities.</p>	<p>What steps has the state party taken since the 100th session of the HRC to ensure the parliamentary representation of numerically smaller minorities through the current legislative process?</p>	<p>Takes effective steps to ensure the parliamentary representation of numerically smaller minorities; and utilize the concept note put forward by the ombudsman for the rights of national and ethnic minorities⁶ regarding the issue.</p>
<p>Summarizes the legislative background and claims that the state budget provides funds to minority communities to maintain their own institutions.</p>	<p>CoE ACFC invited the Hungarian authorities to maintain their support for the cultural activities of the national minorities' organizations and to ensure that budgetary cuts will not affect disproportionately persons</p>	<p>How does the state party intend to maintain their support for the cultural activities of the national minorities' organizations?</p>	<p>Takes more specific measures to improve the level of participatory decision-making and implementation in municipal governments with regard to minority self-governments⁸ and adopts measures to eliminate the shortcomings of the minority election</p>

	<p>belonging to national minorities⁷. Hungary, however, significantly cut funds to minority communities to support their cultural activities and halved normative support to maintain minority self-governments in 2011. In addition, the new Constitution of 2011 abolishes the independent institution of the ombudsman for the rights of national and ethnic minorities, who was in charge of reviewing the effects of such legislative decisions.</p>		<p>register, and the minority self-government system in general, in compliance with the Concluding Observations of the HRC⁹.</p>
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VIII. Right to Housing

Hungarian national report	Joint comments by Hungarian NGOs	New events since the submission	Suggested questions	Suggested recommendations
<p>Summarizes the legislation related to right to housing. Claims that the number of accommodations for homeless people has been increased from 5800 to 8200 between 2002 and 2009 especially in the capital city (Budapest), the number of street services has been doubled and coordination has been established among them.</p>	<p>Indicates that hundreds of thousands of citizens live in evidently inadequate, unsanitary conditions, including around 130 thousand (mostly Roma) people who live in segregated settlements. Approximately 6 thousand people are sleeping rough.</p>	<p>Article XX of the new Constitution: Hungary shall strive to ensure decent housing conditions and access to public services for everyone.</p> <p>The recent extension of the governmental moratorium on evictions does not apply either to social housing tenants or households in arrears on utility bills. The state has no enforceable obligation to provide adequate housing for at least the most vulnerable groups of homeless people. In its Concluding Observations¹⁰, the Committee on Economic, Social and Cultural Rights (CESCR) urged the State party to increase the availability of social</p>	<p>What steps has the state party taken since the 38th session of the CESCR to increase the availability of social housing, in particular for the Roma?</p> <p>Why does Hungary try to tackle homelessness by means of law enforcement?</p>	<p>Guarantees the enforceable right to housing first for the most vulnerable groups (families with dependent children, pregnant women, the elderly, the disabled, and the long term sick), and eventually for everyone in need.</p> <p>Eliminates the provision which allows local governments to fine rough sleeping.</p>

		<p>housing, in particular for the Roma. CoE ECRI noted that access by Roma to social housing was hindered, partly by the sale of significant proportions of public housing and in some areas by the adoption by local authorities of arbitrary rules as to eligibility of public housing, which in practice resulted in indirect discrimination against Roma¹¹.</p> <p>The act on the protection of built environment mandates local governments to apply sanctions if public spaces are not used accordingly to their defined functions. The amendment explicitly referred to people living and sleeping in public spaces. The local government of Budapest adopted an amendment on 27th April, 2011 according to which staying and living in public spaces can be fined up to 190 euro. The local government of Budapest terminated the contracts with those NGOs which provide services to homeless people.</p>		
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¹ Since the submission of the national report it was amended to „denial of crimes committed by national socialists or communist regimes”.

² Parliamentary committee has been set up to investigate this events.

³ <http://tasz.hu/en/romaprogram/hclu-urges-immediate-measures-regards-situation-gyongyospata>

⁴ The current Constitution automatically excludes from the right to vote those under guardianship. The European Court of Human Rights ruled that this blanket disenfranchisement is contrary to the European Convention of Human Rights (K. A. v. Hungary; Application no. 38832/06)

⁵ A/HRC/WG.6/11/HUN/1, para. 86

⁶ 4248/2007

⁷ A/HRC/WG.6/11/HUN/3, para. 70

⁸ A/HRC/WG.6/11/HUN/3, para. 67

⁹ CCPR/C/HUN/CO/5, para. 21

¹⁰ E/C.12/HUN/CO/3

¹¹ A/HRC/WG.6/11/HUN/3, para. 59