

Submission to the 100th session of the Human Rights Committee:

**SHADOW REPORT TO HUNGARY'S FIFTH PERIODIC REPORT
UNDER THE ICCPR**

Legal Defence Bureau for National and Ethnic Minorities



Minority Rights Group International



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1. INTRODUCTION & EXECUTIVE SUMMARY

- 1.1 This Shadow Report has been written for the Human Rights Committee to assist it in its consideration of Hungary's Fifth Periodic Report under Article 40 of the International Covenant on Civil and Political Rights (ICCPR), scheduled to occur during its 100th session. It has been written in response to Hungary's Fifth Periodic Report (CCPR/C/HUN/5).
- 1.2 This Shadow Report has been prepared by the Legal Defence Bureau for National and Ethnic Minorities (NEKI), Minority Rights Group International (MRG) and the Serbian Institute of Budapest. NEKI is a foundation providing legal assistance to people, especially the Roma, on matters of discrimination and organizing anti-discrimination and tolerance trainings. MRG is a non-governmental organization working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide. The Serbian Institute of Budapest is a research institute founded in 2009 by the self-government of Serbs in Hungary. The organisation's aim is to organise support for and conduct research on issues related to Serbs in Hungary, through different fields such as history, ethnography, linguistics, sociology, law and political science.
- 1.3 MRG, NEKI and the Serbian Institute of Budapest undertook to assist the Human Rights Committee to consider Hungary's performance under Article 2&26, 20, and 25&27, with reference to the *List of issues* compiled by the Human Rights Committee during its 98th session. This shadow report provides information with respect to national and ethnic minorities unless otherwise stated. Therefore, **the term minority used in this report will refer to national and ethnic minorities.**
- 1.4 In summary, the submitting organisations encourage the Human Rights Committee **to consider asking the Hungarian Government the following questions** with regard to Hungary's Fifth Periodic Report:

Articles 2 & 26

- Q1. What guarantees can the Government offer in respect of the Equal Treatment Authority's financial stability and independence?*
- Q2. Does the Government intend to increase the staff of the Equal Treatment Authority in order to enable it to fulfil all of its statutory tasks?*
- Q3. Does the Government intend to revise the legal regulations concerning the appointment and dismissal of the Equal Treatment Authority's President in order to guarantee its independence?*
- Q4. Does the Government intend to revise the legal regulations allowing for an alteration of the Equal Treatment Authority's decisions?*
- Q5. Does the Hungarian Government intend to strengthen the democratic function of the police and raise awareness of the importance of equal treatment during criminal procedures, especially regarding the investigation of serious, racially motivated crimes?*
- Q6. Does the Government have a program regarding the education and training of police officers to promote human rights, tolerance and equal treatment?*

Article 20

- Q7: Does the Hungarian Government intend to introduce civil law sanctions expressively addressing hate speech?*
- Q8: In accordance with its international obligations to promote human rights and understanding between different groups in Hungarian society, does the Hungarian Government intend to create new policies to eliminate the trend towards widespread racial hatred in public debate, in particularly when it originates from state agents?*

Article 25 & 27

- Q9: What concrete steps have been taken to guarantee that the recent legislative process on the parliamentary representation of national and ethnic minorities and on the new Constitution will be completed in cooperation with and with the consent of the national minority self-governments¹ of the 13 national and ethnic minorities?*
- Q10: What steps does the Government consider taking to ensure the parliamentary representation of numerically smaller minorities in the current legislative process? How does the Government utilize the concept note put forward by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities regarding this issue?*
- Q11: How does the Government guarantee that changes in the Constitution do not infringe on the rights of minorities?*
- Q12: Does the Hungarian Government envisage restoring the institution of reserved seats² for minority candidates at municipal elections?*
- Q13: Does the Government consider ensuring the representation of minorities in the assembly of county councils?*
- Q14: Please provide information on any legislative measures taken to ensure that minority representatives can exercise their right to be consulted, their right to give an opinion and their right to participate in open and closed sessions of the local council or in any committees of the municipal government as enshrined in the Act on Minorities and the Act on Municipal Governments.*
- Q15: Please provide information on the number of trainings for representatives of municipal governments and those of minority self-governments in order to improve cooperation between them.*
- Q16: Please provide any statistics on the participation of representatives of minority self-governments in open and closed sessions of the local council or in any*

1 Minority self-governing councils. We decided to adopt the term *minority self-government* because it is used in both the state report and in the translation of the Act on Minorities.

2 A special exemption whereby the threshold for winning seats has been reduced.

committees of the municipal government. In case of participation, what percentage of the issues on the agenda was related to the social, economic and cultural rights of minorities?

Q17: Please provide any statistics about the requests made by the council of municipal governments to consult the minority self-governments before making a decision having a general impact on the situation of a minority. In case of a request, what percentage of the decisions was related to the social, economic and cultural rights of minorities?

Q18: Please provide information on the measures taken by the Hungarian Government to establish the system of collection and evaluation of ethnically disaggregated data. How does the Hungarian government involve the national minority self-governments, civil organizations and experts of the 13 national and ethnic minorities in the consultations related to the issue?

Q19: How does the Government intend to utilize the recommendations of the joint report written by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection and Freedom of Information on the collection of ethnically disaggregated data?

Q20: Please provide information on the measures taken by the Hungarian Government to eliminate the shortcomings of the minority election register including those which deter or disenfranchise minorities from participating in the minority self-government elections. How does the Hungarian government involve the national minority self-governments, civil organizations and experts of the 13 national and ethnic minorities in the consultations related to the issue?

Q21: How does the Hungarian government intend to utilize the recommendations of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities on the shortcomings of the minority election register?

2. RECOMMENDATIONS

2.1 MRG, NEKI and the Serbian Institute of Budapest further encourage the Human Rights Committee to **recommend in its concluding observations** on Hungary's Fifth Periodic Report based on **Articles 2 & 26** that Hungary:

concerning the independence of the Equal Treatment Authority (ETA)

- a) guarantees the ETA's financial stability and independence by providing sufficient funding and makes sure that the ETA has sufficient personnel capacity to fulfil all of its statutory responsibilities;
- b) revises the legal regulations concerning the appointment and dismissal of the ETA's President so as to guarantee that he/she enjoys the necessary independence from Government;
- c) abolishes the legal regulation making it possible to alter the decisions of the ETA by the Government;

concerning the Hungarian police

- d) takes the necessary measures to raise awareness in respect of the importance of equal treatment during criminal procedures, especially, as regards the investigation of racially motivated crimes;
- e) implements a program for police officers promoting human rights, tolerance and equal treatment through education and training.

2.2 MRG, NEKI and the Serbian Institute of Budapest further encourage the Human Rights Committee to **recommend in its concluding observations** in respect of **Article 20** that Hungary:

- f) revises the civil law regulations in respect of hate speech in order to ensure that they offer sufficient legal remedies against such expressions;
- g) implements a policy, which eliminates the widespread racial hatred found in public debate, especially as regards the Roma community, giving prior attention to hate speech by state agents.

2.3 MRG, NEKI and the Serbian Institute of Budapest further encourage the Human Rights Committee to **recommend in its concluding observations** in respect of **Articles 25 & 27** that Hungary:

concerning the omission in the Hungarian Constitution regarding the parliamentary representation of national and ethnic minorities and concerns over current legislative process related to the parliamentary representation of minorities:

- h) takes effective steps to complete the legislative process on the parliamentary representation of national and ethnic minorities and on the new Constitution in cooperation with and with the consent of the national minority self-governments of the 13 national and ethnic minorities;
- i) takes effective steps to ensure the parliamentary representation of smaller minorities; it should utilize the concept note put forward by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities regarding the issue;

concerning the abolition of the institution of reserved seats for national and ethnic minorities at municipal elections:

- j) reconsiders restoring the institution of reserved seats for minority candidates at municipal elections and considers taking steps to ensure the representation of minorities in the assembly of county councils;

concerning the lack of proper legal assurance for minority self-governments to exercise their right to be consulted and the right to give an opinion:

- k) takes more specific measures to improve the level of participatory decision-making and implementation in municipal governments with regard to minority

self-governments;

- l) provides data in its next periodic report on the cooperation between local councils and committees of municipal governments and the minority self-governments;

concerning the lack of ethnically disaggregated data:

- j) elaborates the system of collection and evaluation of ethnically disaggregated data; in doing so, the Government should involve the national minority self-governments, civil organizations and experts of the 13 national and ethnic minorities in the consultations; in addition, it should utilise the already existing studies such as the joint report of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection and Freedom of Information;

concerning the shortcomings of the minority election register:

- m) takes steps to eliminate the shortcomings of the minority election register including those which deter or disenfranchise minorities from participating in the minority self-government elections; in doing so, the Government should involve the national minority self-governments, civil organizations and experts of the 13 national and ethnic minorities in the consultation process; in addition, it should utilise the already existing reports such as the recommendations of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities.

3. ARTICLES 2 & 26 – PROHIBITION OF DISCRIMINATION

A) Issues concerning the Equal Treatment Authority

- 3.1 The Equal Treatment Authority (hereinafter: the ETA) is the equality body set up to meet the requirements of relevant EU directives. The ETA has a wide range of powers and duties including conducting ex officio or complaint based investigations in cases of discrimination, initiating actio popularis claims, representing victims before other authorities, reviewing and commenting on draft laws and reports, making proposals concerning government decisions and informing the public about the situation concerning the enforcement of equal treatment.
- 3.2 The ETA has power to act on all grounds of discrimination (sex, race, ethnicity, disability, age, etc.), irrespective of the field concerned (employment, education, housing, access to goods and services, etc).³ The Authority's scope of mandate extends to all actions and omissions of all public actors. With regard to the private sector, only a limited circle, four groups of actors fall under the ETA's scope:
- those who make a public proposal for contracting (e.g. for renting out an apartment) or call for an open tender;

3 Article 13 of Act 125 of 2003.

- those who provide services or sell goods at premises open to customers;
- self-employed persons, legal entities and organisations without a legal entity receiving state funding in respect of their legal relations established in relation to the usage of the funding; employers with respect to employment (interpreted broadly).⁴

- 3.3 The ETA is an administrative body and its budget forms an independent title within the budgetary chapter of the Ministry of Social and Labour Affairs. Consequently, its financial conditions depend entirely on the discretionary power of the Government. This financial dependence is not compensated by the fact that between the limits of its budget ETA has an unrestricted competence to dispose over its own budgetary appropriations. Therefore, there are concerns in respect of the ETA's financial stability and independence from the Government.
- 3.4 Most of the capacities of the ETA are occupied by the handling of complaints and other requests. In 2009 the ETA received 1087 submissions and delivered 248 decisions on the merits.⁵ Despite its workload ETA's professional staff consists of only 16 persons. As a result of this shortcoming the ETA is unable to carry out several of its tasks defined by the relevant statutes including initiating ex officio investigations, representing victims of discrimination before other authorities and initiating actio popularis claims.
- 3.5 Furthermore, there are serious concerns relating to the ETA's independence from the Government. According to the relevant legal regulations the President of the ETA is appointed and dismissed by the Prime Minister. Appointment is carried out on the basis of the joint recommendation of the Minister of Justice and Law Enforcement and the Minister of Social and Labour Affairs. The latter also exercises employer's rights over the President except for appointment and dismissal. Since the President directs the work of the ETA and guarantees the high standards of its professional work, its status is essential. Consequently, direct dependence on the head of the Government raises serious concerns. This issue is even more important during the period following a change of Government when there are frequent alterations in the high ranking administrative positions.
- 3.6 A further serious concern in respect of the ETA's independence is that since October 2009 the Minister of Social and Labour Affairs is vested with the right to alter the decisions of the ETA. Such an interference with the professional work of the ETA is unacceptable and can be considered as an extremely serious intrusion in respect of its independence.

Q1. What guarantees can the Government offer in respect of the Equal Treatment Authority's financial stability and independence?

Q2. Does the Government intend to increase the staff of the Equal Treatment Authority in order to enable it to fulfil all of its statutory tasks?

Q3. Does the Government intend to revise the legal regulations concerning the appointment and dismissal of the Equal Treatment Authority's President in order to guarantee its independence?

Q4. Does the Government intend to revise the legal regulations allowing for an alteration of the Equal Treatment Authority's decision?

⁴ Article 5 of Act 125 of 2003.

⁵ See the ETA's narrative report on its activities in 2009 at <http://egyenlobanasmod.hu/data/2009-koltsegvetesi-beszamolok-indoklasi.pdf>.

B) Discrimination by the police, investigation of hate crimes

- 3.7 The complaints received by the Legal Defence Bureau for National and Minorities (NEKI) show that the Roma minority still experience discrimination by the police during investigations and criminal proceedings. Because of their ethnic origin, the Roma usually face immediate detention; they are not provided with proper information regarding their rights as laid down in the Criminal Code⁶, which are therefore often violated during the procedure. Using the defence attorneys freely provided for disadvantaged persons by the state also carries the risk of discrimination. According to numerous complaints, at least some attorneys do not provide sufficient professional care in these underpaid cases, especially when Roma persons are involved.
- 3.8 According to their complaints, Roma victims often experience discriminatory treatment (lack of information and legal help, reluctance from the police etc.) by the police from the very first moment when they want to report a crime. This problem is the most tangible in hate crime investigations, where Roma are the victims of serious racially motivated crimes. In 2009, NEKI, together with the ERRC and the Hungarian Civil Liberties Union compiled a shadow report on the circumstances of the double killings in Tatárszentgyörgy⁷. The report pointed out the failure of authorities to investigate the case properly. Later that year, the Head of Police approved the decision of the Independent Police Complaint Committee (IPCC) that established the violation of the fundamental right of the victims to a fair procedure as authorities initially treated the murders as an accident and failed to secure the crime scene.
- 3.9 Problems in the investigation of hate crimes usually arise already the police start investigating a case. The classification of the criminal act is a determining factor at the early stage of the investigation, and there is a tendency to conclude that the incident was a “common” crime (assault, truculence or other violent acts) rather than hate crime with the special biased motive.⁸
- 3.10 NEKI has also documented cases of police brutality during detention or arrest. Unfortunately, victims of these abuses were not able to receive effective legal protection; usually the courts acquitted the accused policemen.
- 3.11 While the Hungarian legal system provides all the guarantees in criminal procedures that are required by international legal standards, the practice shows that not everyone can enjoy these rights equally. The prejudice against Roma persons - either as victims or as perpetrators - among the police often results in openly biased behaviour or statements which can negatively influence the outcome of their procedures.

Q5 Does the Hungarian Government intend to strengthen the democratic function of the police and raise awareness of the importance of equal treatment during

6 Act 19 of 1998.

7 <http://errc.org/cms/upload/media/03/DA/m000003DA.pdf>

8 The Civil Liberties Union raised awareness of this problem in two cases. In March 2010, a person had thrown stones into the windows of an apartment in the neighborhood of the main Synagogue of Budapest, where a rabbi and his family gathered to celebrate Pesah. The police started the investigation for property damage, not considering a possible anti-Semitic motive. The same happened in 2009 after the Budapest Pride Parade, where LGBT persons were attacked by right-wing groups, and the police treated it as a “normal” breach of peace.

criminal procedures, especially regarding the investigation of serious, racially motivated crimes?

Q6 Does the Government have a program regarding the education and training of police officers to promote human rights, tolerance and equal treatment?

4. ARTICLE 20 – ADVOCACY OF NATIONAL OR RACIAL HATRED

- 4.1 The Hungarian legal system does not contain a general prohibition of hate speech. It only prohibits incitement against a community, the most extreme form of hate speech.⁹ The latest modifications concerning criminal regulations added Holocaust denial and the denial of crimes committed during the Communist regime as criminal acts¹⁰.
- 4.2 "Hungarian judicial practice is coherent in dealing with Article 269 cases; courts find incitement against a community established only if 'stirring up hatred' prompts direct and immediate violent action. Thus, the Roma community is not protected under criminal law from disparaging or intimidating anti-Roma comments that do not reach this level of severity. The practice of the ordinary courts is supported by the relevant decisions of the Hungarian Constitutional Court.
- 4.3 In the previous years the Government tried to introduce civil and criminal law regulations dealing with hate speech, however all of the bills were annulled by the Constitutional Court for violating the freedom of expression.
- 4.4 However, even in the absence of a separate legal provision on hate speech such expressions can be challenged with the means of civil law since harassment as defined by the Equal Treatment Act can form grounds for condemning hate speech. The Equal Treatment Authority established harassment in two cases both of them concerning racist remarks by mayors. Thus, in the absence of explicit civil law sanctions against hate speech, some expressions can be challenged. However, it would be preferable to have special regulations in respect of racist language.
- 4.5 In the recent years anti-Roma remarks are occurring much more frequently than before. Moreover, there has been a change in respect of their quality as well, since hate speech (primarily anti-Roma statements) is often being expressed by public figures (mayors, politicians). Apart from the two decisions from the Equal Treatment Authority, authorities have been often reluctant to take action and leading public figures (party leaders, president of the republic) have also repeatedly failed to condemn such remarks.

Q7 Does the Hungarian Government intend to introduce civil law sanctions

9 Article 269 of the Penal Code provides that:
'A person who in front of a wider public, stirs up hatred against
a) the Hungarian nation or
b) a national, ethnic, racial, religious group or certain groups of the society
is guilty of a crime and is liable to imprisonment up to three years.'

10 Article 269/C of the Penal Code on denial of the crimes committed during the National Socialist and Communist regimes: The person who publicly denies, the genocide and other crimes against the humanity committed during the National Socialist and Communist regimes, call it into doubt or present it as insignificant shall be punishable for a felony with imprisonment up to three years.

expressively addressing hate speech?

Q8 *In accordance with its international obligations to promote human rights and understanding between different groups in Hungarian society, does the Hungarian Government intend to create new policies to eliminate the trend towards widespread racial hatred in public debate, in particularly when it originates from state agents?*

5. ARTICLE 25 & 27 - RIGHT TO TAKE PART IN POLITICAL AFFAIRS AND MINORITY RIGHTS

Concerns and questions with reference to the List of issues (CCPR/C/HUN/Q/5), para. 23

Please provide information on the State party's implementation of the constitutional provision on the participation of minorities in political life. In the absence of data disaggregated by ethnic background, how does the State party monitor their representation in political and public life?

C) Omission in the Hungarian Constitution concerning the parliamentary representation of national and ethnic minorities and concerns over current legislative process related to the parliamentary representation of minorities

(CCPR/C/HUN/5, paras. 241 and 272)

- 5.1 Hungary regards national and ethnic minorities living on its territory as a constituent part of the state and ensures their representation in the Constitution¹¹ and declares their right to be represented in the National Assembly in the Act on Minorities¹². Despite this and several decisions of the Constitutional Court their parliamentary representation has not been resolved.
- 5.2 MRG believes that Hungary's Fifth Periodic Report does not clearly explain the decisions of the Constitutional Court with respect to the omission in the Hungarian Constitution concerning the parliamentary representation of national and ethnic minorities. The Report states at para. 241 that "No constitutional omission concerning the parliamentary representation of minorities can be detected based on either the Constitution or the resolutions of the Constitutional Court..."
- 5.3 **A 1994 Constitutional Court ruling¹³ declared the omission in the Hungarian Constitution concerning the representation of national and ethnic minorities in the National Assembly**, referring back to a 1992 resolution.¹⁴ The Constitutional Court is, however, not consistent about the interpretation of this ruling. After the resolution had

11 "The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State." (Article 68(1), Act XX of 1949, The Constitution of the Republic of Hungary; hereinafter: Constitution)

"The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country." (Article 68(3) of the Constitution)

12 "Minorities have the right - as determined in a separate Act - to be represented in the National Assembly." (Article 20(1), Act LXXVII of 1993 on the Rights of National and Ethnic Minorities; hereinafter: Act on Minorities)

13 Resolution 24/1994. (V. 6.) of the Constitutional Court

14 Resolution 35/1992. (VI. 10.) of the Constitutional Court

declared in 1992 that Hungary omitted to propose a bill about the representation of national and ethnic minorities, the Act on Minorities was passed in 1993. The resolution did not explicitly mention “parliamentary representation”, but said “general representation” instead, a term also used in the Constitution. Thus, the legislation process requested by the resolution could be regarded as completed by 1993 in the narrower understanding of the term.

- 5.4 Although the Constitution leaves a wide margin to manoeuvre for the interpretation of “general representation”, the 1994 Constitutional Court ruling unambiguously declares **the omission in the Hungarian Constitution regarding the representation of national and ethnic minorities in the National Assembly**.
- 5.5 In addition, **Article 20(1) of the Act on Minorities** clearly states that **minorities have the right to be represented in the National Assembly**.
- 5.6 As an answer to the lack of action from the government side, two parallel consultations started in 2007 in order to elaborate the concept of the parliamentary representation of minorities. One was a consultation of the experts of national self-governments of the 13 national and ethnic minorities and the representatives of the government. The other consultation was the 2nd Minority Roundtable, a consultation forum of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities. The Roundtable summoned the Presidents of the national minority self-governments of the 13 national and ethnic minorities and the associates of the Ombudsman’s Office. The concept note about the act of the parliamentary representation of national and ethnic minorities was submitted to the then government in 2008 by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities.¹⁵
- 5.7 **On 17 May 2010 the Government proposed a bill** about the election of the Members of Parliament (MPs)¹⁶. The bill encourages the **parliamentary representation** of national and ethnic minorities **through a maximum of 13 reserved seats**. Despite its clear relevance for minorities, **national minority self-governments had not been given the right to give an opinion about the bill before it was submitted to the Parliament** as the proposal was put forward as a private member’s bill.
- 5.8 As a result of the lack of consultation, there are substantial differences between previous concepts such as the concept note of the 2nd Minority Roundtable and the recent bill. The first is the question of suffrage. While the Roundtable would give the right to vote only to minority voters registered in the minority election register (similarly to the minority self-government elections), **the bill would enable every voter to vote for minority candidates and lists** even if they are not a member of any minority communities. As the system, however, does not give additional suffrage to minority voters, they would face the choice of giving their second vote to either a party list or a minority list.
- 5.9 Another important difference is related to the preferences which would help minorities gain reserved seats. The bill proposes some concessions such as the exemption from the 5 per cent threshold to form a parliamentary fraction. However, it is **very troubling** according to the bill that appointing **minority organisations can present a national list provided they register a candidate in at least five individual constituencies**. On their national list, minorities would

15 *Concept note of the act regulating the parliamentary representation of national and ethnic minorities*, Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 4248/2007., Budapest, 5 February 2008, <http://www.kisebbsegiombudsman.hu/hir-202-2008-02-05-kisebbsegek-orszagyulessi.html>

16 See the proposal about the election of the members of Parliament at <http://www.parlament.hu/irom39/00018/00018.pdf>

also gain **reserved seats** provided they received **more than the third of the votes** needed to gain one mandate in case of non-minority parties. **These two requirements pose such obstacles to presenting national lists, which most of the 13 minorities will obviously not be able to overcome** due to their uneven regional distribution or, in most cases, their relatively small number. In contrast with non-minority parties, minority appointing organisations cannot present a joint list and cannot link their national lists either. The recommendations of the ombudsman attempted to offset the disadvantages of smaller minorities. As regards presenting a national list, the concept note suggests that besides the exemption from the 5 per cent threshold, any of the appointing minority organisations, which reaches the highest number of votes but at least 1000 would gain reserved seats for their minority.

5.10 Preparatory work for writing the new Constitution of Hungary has been started. On 9 June a body of 6 experts working on the concept of the new Constitution was set up. On 28 June the Parliament voted in favour of the establishment of the Preparatory Parliamentary Committee of the new Constitution with the participation of the MPs. The Committee consists of 45 members, which is to submit a proposal about the principles of the new Constitution to the Parliament by the end of the year. Presidents of the national minority self-governments or experts on minority rights have not been given the right to be consulted in this Committee.

Q9: What concrete steps have been taken to guarantee that the recent legislative process on the parliamentary representation of national and ethnic minorities and on the new Constitution will be completed in cooperation with and with the consent of the national minority self-governments of the 13 national and ethnic minorities?

Q10: What steps does the Government consider taking to ensure the parliamentary representation of numerically smaller minorities in the current legislative process? How does the Government utilize the concept note put forward by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities regarding this issue

Q11: How does the Government guarantee that changes in the Constitution does not infringe on the rights of minorities?

D) Abolition of the institution of reserved seats for national and ethnic minorities at municipal elections

(CCPR/C/HUN/5, paras. 272, 275 and 333)

5.11 MRG is concerned that the 2005 abolition of the institution of reserved seats of national and ethnic minorities at municipal elections substantially decreased opportunities of minority communities to take part in the conduct of public affairs through their elected representatives.

5.12 The Hungarian Constitution ensures the collective participation of national and ethnic minorities in public life.¹⁷ Before the 2005 legislative changes¹⁸, the institution of reserved

17 “The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages.” (Article 68(2) of the Constitution)

seats enabled one candidate per minority community per settlement to gain a mandate at the municipal election with fewer votes than non-minority candidates and to participate with voting right in the decision-making body of the municipal government. The abolition of the institution of reserved seats substantially decreased the level of participation of minorities in the decision-making of the municipal government. Indeed, the law provides the minority self-government with the right to be consulted, the right to give an opinion and the right to consent in a limited number of issues. However, due to the soft wording of the Act on Minorities¹⁹ it is hard for minorities to assert the right to be consulted and the right to give an opinion in a wider scope of public issues. As a result of this, these rights cannot replace voting right.

- 5.13 Participation of minorities in the decision-making processes of the assembly of the county council is not realised and has never been an issue on the agenda of any governments. Indeed, this would enhance the right of minorities to take part in the conduct of public affairs.

Q12: Does the Hungarian Government envisage restoring the institution of reserved seats for minority candidates at municipal elections?

Q13: Does the Government consider ensuring the representation of minorities in the assembly of county councils?

E) No proper legal assurance for minority self-governments to exercise the right to be consulted and the right to give an opinion
(CCPR/C/HUN/5, para. 272, 279, 280 and 281)

- 5.14 MRG believes that a **participatory process in decision-making** provides a mutually beneficial relationship between minority citizens and municipal governments. Currently, **Hungary provides minorities with a low level of participation** in decision-making and implementation through the minority self-government system. The scope of the institution is limited to a narrow number of public issues, mainly culture, education and media (CCPR/C/HUN/5, paras. 279-281). The recognition and involvement of minority self-governments is low when it comes to issues related to minorities' social and economic rights although the law says minorities must be consulted in issues having a general impact on minorities.²⁰
- 5.15 To secure participation in the conduct of public affairs (and comply with Article 25 of the ICCPR) is now particularly significant. In the last few years in the most depressed and poverty-stricken areas of Hungary, **more and more municipal governments have issued or threatened with issuing decrees arbitrarily imposing a sanction on the provision of social**

18 The amendment was needed, because prior to 2005 anybody could declare to be a member of a minority community without any constraints and participate in the minority elections, which resulted in the abuse of the minority representation system by persons not belonging to any or to the respective minority community.

19 "Before the competent municipal government body enacts a municipal government decree concerning the rights and the obligations of a minority, or before it takes a measure having a general impact on the situation of a minority, it must consult the spokesperson." (Article 40(6) of the Act on Minorities)

20 The Constitution ensures the collective participation of national and ethnic minorities in public life (see footnote 17) and the Act on Minorities and the Act LXV of 1990 on Municipal Governments (hereinafter: Act on Municipal Governments) defines those fields of public policy where minorities can exercise the right to give an opinion, the right to be consulted and the right to consent, or where decision is completely devolved to them.

benefits.²¹ Based on the fact that in these areas the percentage of the Roma population is very high and the announcements and declarations of some of the respective mayors reflected the acceptance of the prevailing stereotypes and prejudice about the Roma, MRG believes that **the strengthening of the implementation of minority rights** is an important step towards suppressing anti-Roma sentiment at a municipal governmental level.

5.16 The exclusion or neglect of minority self-governments in decision-making about issues related to the social and economic aspects of their life is partly due to the fact that the wording of the law **leaves a wide margin for municipal governments to manoeuvre**. For example, the Act on Minorities provides the minority self-government with **the right to give an opinion** before the municipal government takes a measure **“having a general impact on the situation of a minority”**.²² Based on this article, this is a right which can hardly be asserted in case of reluctance of the municipal government.

5.17 **Exercise of the right to be consulted is also restricted.** According to the Parliamentary Commissioner for the Rights of National and Ethnic Minorities²³ there are several cases when the representatives of the minority self-governments are not allowed to participate in closed sessions and are not allowed to give an opinion about the decisions of the municipal government despite their rights enshrined in the Act on Minorities.²⁴

5.18 Nor does the soft wording of the Act on Municipal Governments enable minorities to effectively hold the municipal governments accountable in case their right to be consulted is violated. The Act *suggests* that the representative of the minority self-government be elected into the committee of the municipal government.²⁵ According to the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, **the municipal governments usually show reluctance to involve the minority representative as an external member into the work of the committee.**²⁶

5.19 MRG welcomes that Hungary declared in para. 309 of the State Report that in the framework of the “Decade of Roma Inclusion” it aims at “establishing the conditions of social and economic integration of the Roma population”. MRG believes, however, that **strengthening the rights of minorities, in this case ensuring the proper implementation of the right to give an opinion and the right to be consulted of minority self-governments are also essential parts of the social and economic integration of the Roma**. This is also an obligation of Hungary derived from Article 15 of the Framework Convention on the Protection of National Minorities, which states that “Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.

Q14: Please provide information on any measures taken to ensure that minority representatives can exercise their right to be consulted, their right to give an opinion and their right to participate in open and closed sessions of the local council or in any committees of the municipal government as enshrined in the

21 Karcag (1991-1996), Nyírmihálydi (2007), Monok (20 May 2008 and 20 October 2009), Sároszombat (30 May 2008), Ivád (10 June 2008), Kerepes (1 July 2008), etc.

22 Article 40(6) of the Act on Minorities, see footnote 19.

23 Report on the Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities 2008, J/8957, Budapest 2009, p. 21

24 Article 40(1)a) and Article 40(6) of the Act on Minorities and Article 12(7) of the Act on Municipal Governments

25 Article 24(2) of the Act on Municipal Governments

26 Report on the Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities 2008, J/8957, Budapest 2009, p. 20

Act on Minorities and the Act on Municipal Governments.

- Q15: Please provide information on the number of trainings for representatives of municipal governments and those of minority self-governments in order to improve cooperation between them.*
- Q16: Please provide any statistics on the participation of representatives of minority self-governments in open and closed sessions of the local council or in any committees of the municipal government. In case of participation, what percentage of the issues on the agenda was related to the social, economic and cultural rights of minorities?*
- Q17: Please provide any statistics about the requests made by the council of municipal governments to consult the minority self-governments before making a decision having a general impact on the situation of a minority. In case of a request, what percentage of the decisions was related to the social, economic and cultural rights of minorities?*

F) No collection of ethnically disaggregated data
(CCPR/C/HUN/5, para. 61)

5.20 After the submission of Hungary's Fifth Periodic Report, the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection and Freedom of Information published a joint report about the collection of ethnically disaggregated data.²⁷ **The very comprehensive report elaborated a system of criteria for the collection of ethnic data** in areas such as the protection of the right to self-identity, positive discrimination, ethnically motivated crimes, statistical data, census, criminal procedures and child protection.

- Q18: Please provide information on the measures taken by the Hungarian Government to establish the system of collection and evaluation of ethnically disaggregated data. How does the Hungarian government involve the national minority self-governments, civil organizations and experts of the 13 national and ethnic minorities in the consultations?*
- Q19: How does the Government intend to utilize the recommendations of the joint report written by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection and Freedom of Information on the collection of ethnically disaggregated data?*

²⁷ *Report on the conclusions of the study about the treatment of ethnically disaggregated data*, Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection and Freedom of Information, 9 November 2009

6. ARTICLE 25 & 27: RIGHT TO TAKE PART IN POLITICAL AFFAIRS AND MINORITY RIGHTS

Concerns and questions with reference to the List of issues (CCPR/C/HUN/Q/5), para. 24
Please indicate whether the State party has taken any steps to address the shortcomings identified regarding the minority self-government system and to increase its efficiency and credibility.

G) Shortcomings of the minority election register (CCPR/C/HUN/5, paras. 275, 328, 332, 333, 334 and 336)

- 6.1 After a person declares their belonging to a minority community, they are registered in an election register. The submission of the declaration, however, is not bound to any conditions other than the person's own intention. The declaration endows the applicants with the right to vote in the minority self-government. The registration is, therefore, a merely formal act of the notary and under the current terms there is no opportunity to take legal action against any abuse.
- 6.2 The obligatory registration of ethnic identity per se may, however, deter those with uncertain identity or those who refrain from giving data about their ethnic identity. Shortcoming of the administrative procedures around the registration can also restrain minorities from exercising their right to vote in the minority self-government elections.

Q20: Please provide information on the measures taken by the Hungarian Government to eliminate the shortcomings of the minority election register including those which deter or disenfranchise minorities from participating in the minority self-government elections. How does the Hungarian government involve the national minority self-governments, civil organizations and experts of the 13 national and ethnic minorities in the consultations?

Q21: How does the Hungarian government intend to utilize the recommendations of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities on the shortcomings of the minority election register?