human rights *first*

VIOLENT HATE CRIME IN HUNGARY

Introduction

1. This report is a submission by Human Rights First to the Office of the High Commissioner for Human Rights (OHCHR) for consideration in its summary of stakeholder submissions for Hungary's appearance before the eleventh Universal Periodic Review session, scheduled from May 2-11, 2011.

2. This submission is consistent with the guidelines approved by the Human Rights Council and the Civil Society Unit of the OHCHR. This submission focuses primarily on the situation of **violence against Roma** in Hungary, which is of particular relevance to sections I.(C), I.(F), and I.(G) of the Human Rights Council's Guidelines, and to sections 7 (c), (f), and (g) of the Civil Society Unit's Guidelines.

Executive Summary

In addition to the recommendations contained in the final section, this submission makes the following key points:

3. In Hungary, an alarming upsurge of racist violence has victimized many members of the country's Roma population, estimated between 400,000 and 600,000 people. There has been a particularly sharp rise in serious—sometimes deadly—attacks since 2008, inflaming social tensions and weakening the sense of physical protection of minorities across the country.

4. The government response to this serious problem has been mixed. The Hungarian authorities have demonstrated the resolve to respond to individual high-profile hate crime cases, although their overall response is still marred by significant shortcomings. Senior government officials publicly spoke out against some of the most serious recent cases of anti-Roma violence, although in most cases only after the violence had escalated considerably. Some progress has been made in investigating a number of serious violent attacks that occurred in 2008 and 2009. The Hungarian government at the time committed significant law enforcement resources to the investigations and sought international cooperation in those efforts. The authorities have also taken some steps to holding accountable law enforcement officials for misconduct in the course of hate crime investigations.

5. The authorities, however, maintain a poor record in bringing perpetrators to justice in the large majority of serious cases of violence documented by human rights groups. Despite notable positive efforts, particularly in the higher-profile cases, there are considerable obstacles and challenges to a better overall response to hate crime: underreporting of hate crimes; inadequate data collection mechanisms; mistrust rooted in police misconduct; and an inadequate legal framework for hate crimes.

Violent Hate Crimes—Serious Human Rights Abuses

6. Violent attacks on individuals on account of their race, ethnicity, religion, national origin, sexual orientation, gender, gender identity, disability, or other similar attributes, or a combination thereof are serious abuses of the rights to life, liberty and security of the person, threatening the

equal enjoyment of fundamental rights and freedoms. States have an obligation to respond to such abuses by recording, adequately investigating bias motives and prosecuting the perpetrators of these abuses, thereby prohibiting discrimination and upholding the equal protection of the law in accordance with the Universal Declaration of Human Rights and state obligations under the International Covenant on Civil and Political Rights.

7. In its 2005 judgment in the case of *Nachova and Others vs. Bulgaria*, the European Court of Human Rights for the first time noted that the states "have the additional duty to take all reasonable steps to unmask any racial motive and to establish whether or not ethnic hatred and prejudice may have played a role in the events." Two other subsequent decisions in 2007—*Angelova and Iliev vs. Bulgaria* and *Šečić vs. Croatia* made similar points regarding cases of racially-motivated violence.

Violence Against Roma in Hungary

8. Although there are no official statistics on the number of cases of targeted violence against Roma, domestic and international organizations have documented a disturbing pattern of violent attacks that have struck the nation since 2008, ranging from severe beatings in broad daylight to murders by arson, shootings or the throwing of Molotov cocktail explosives. What has been documented is likely only the tip of the iceberg—it is widely believed that many incidents—particularly lower level violence and harassment—go unreported, in large part due to mistrust of the police.

9. The Desegregation Foundation documented 68 attacks, of which 11 led to death between January 2008 and June 2010.

10. According to the European Roma Rights Centre, forty-eight attacks against Roma and/or their property in Hungary—many believed to be racially motivated—were reported in the media between January 2008 and July 2010. Nine people were murdered—including two minors—and dozens injured. Perpetrators used firearms, Molotov cocktails, or hand grenades in at least twenty-four attacks. Nine incidents of property damage were also reported.

11. Intergovernmental organizations, too, have drawn attention to the problem in special reports. In a recent assessment of anti-Roma violence in Hungary, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) reported that "A number of violent incidents took place in Hungary in late 2008 and the first half of 2009 that resulted in the deaths of several Roma, the injury of numerous others, and the destruction of houses and other property owned by Roma. … Similarities among these incidents included the apparent targeting of Roma on the outskirts of small villages with a combination of incendiary devices and small-arms fire."

The U.N. Human Rights Committee's Assessment

12. According to the October 2010 concluding observations of the Human Rights Committee for the fifth periodic report submitted by Hungary, the environment of intolerance and exclusion of Roma in Hungary remains grave. The Committee expressed a concern with "persistent ill-treatment and racial profiling of the Roma by the Police" and "the virulent and widespread anti-Roma statements by public figures, the media, and members of the disbanded Magyar Gàrda."

13. The Committee recommended Hungary "to adopt specific measures to raise awareness in order to promote tolerance and diversity in society and ensure that judges, magistrates, prosecutors and all law enforcement officials are trained to be able to detect hate and racially motivated crimes."

The State's Failure to Adequately Address Hate Crimes

The Lack of Official Monitoring and Reporting

14. Although the most serious racist crimes have attracted media attention and resulted in police investigations, many lower-profile cases go unreported and thus unrecorded by the police. Enhancing the level of reporting of incidents lies at the very root of what needs to be done to address racist violence. The discrepancy between the documentation among nongovernmental monitors and the police also illustrates the problem of underreporting. Despite the number of serious cases of targeted violence against Roma, the Hungarian authorities—in their submission for the OSCE's annual hate crime report—reported only seventeen recorded hate crimes overall in 2008 and did not submit any information on hate crimes specifically targeting Roma.

Inadequate Data Collection Mechanisms

15. At present there is no effective system for collecting data on violent hate crimes, or that permits even the identification of the ethnicity of the victim of a crime—a key factor in determining if the crime was motivated by bias. The absence of an adequate system for monitoring and public reporting on hate crimes impedes policymakers from seeing and understanding the full scope of the problem and developing adequate responses.

16. According to the European Union Fundamental Rights Agency, which has assessed criminal justice data collection systems among E.U. member states, Hungary is in a lower tier of countries that collect and makes available only limited data on racist violence and crime

Mistrust Rooted in Police Misconduct

17. Instances of police ill-treatment and discrimination against Roma—recognized by the Council of Europe's European Commission Against Racism and Intolerance (ECRI) as problematic in Hungary—contribute to the high levels of mistrust of authorities among Roma communities, and thus to the severe underreporting of racist and other violent acts. This sentiment of distrust is also confirmed in a recent survey published in 2009 by the European Union Agency for Fundamental Rights (FRA), in which the overwhelming majority of Roma respondents indicated they did not report hate crime incidents to the police. One can assume as a result that the level of officially recorded racist crime in the twenty-seven E.U. states—including in Hungary—significantly undercounts the real extent of the problem.

An Inadequate Legal Framework for Hate Crimes

18. There is one provision of the Hungarian criminal code - Article 174/B—which does allow for certain violent crimes committed with a bias motivation to be prosecuted as a separate offense. The article relates to specific offenses, notably acts of violence, cruelty or coercion by threats committed against persons who are members of national, ethnic, racial or religious groups. There is, however, little evidence that this provision is systematically used. Even in cases where there is reason to suspect a bias motivation, police more frequently open their investigations with a view to pursuing non-hate crime charges. General aggravating circumstance provisions also exist and, although rare, judges have handed down enhanced penalties on the basis of those provisions in

cases where a crime was motivated by bias. However, such provisions could be strengthened by an express mention of bias as an aggravating factor that mandates such enhanced penalties in hate crime cases.

19. The lack of an adequate legal framework means that ordinary offences committed with racist motivations are not systematically prosecuted or punished as such. It also renders monitoring of the state response to violent racist acts nearly impossible. Adequate training is an important part of the successful enforcement of such legislation. It requires that police are adequately trained to gather evidence of racial and other bias motivations in the commission of a crime, that prosecutors are trained to present evidence of such motivations before a court and know to request enhanced penalties, and that judges are trained to hand down sentences that adequately reflect the more serious nature of hate crimes.

Recommendations for Combating Hate Crimes in Hungary

20. We appeal to the Universal Periodic Review to make the following recommendations in its outcome document:

- Senior government officials should speak out against violence against Roma or the members of any other group whenever such acts occur and ensure that there is a rapid response of the law enforcement and the criminal justice authorities.

- The Hungarian authorities should develop and enact provisions that establish enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities. The systematic use of such penalty enhancement provisions in appropriate cases will send a strong message of condemnation of hate crimes.

- Law enforcement agencies should publicly commit to investigate all hate crimes, committed against any individual, including Roma, and to provide regular public updates into the investigation and prosecution of such crimes.

- Senior law enforcement officials should ensure that police receive adequate training on community policing, conflict resolution at local level and identifying and recording bias motivations when hate crimes do occur.

- Law enforcement officials should take steps—including by reaching out to community and other nongovernmental groups—to increase the confidence of crime victims from marginalized groups such as Roma to report crimes to the police. The authorities should ensure thorough investigations and prosecution of any reports of police misconduct or abuse.

- The Hungarian authorities should ensure adequate training for prosecutors and judges in bringing evidence of bias motivations before the courts and in handing down consistent, enhanced sentences that reflect the more severe nature of hate crimes. Judges should use the opportunity of the sentencing process to clearly and publicly articulate when and how a bias motivation was factored into the sentence.