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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on extreme poverty and human rights

REFERENCE: AL Housing (2000-9) Poverty (1998-14)
HUN 3/2011

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Special Rapporteur on extreme poverty and human rights pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/8 and 17/13.

We would very much appreciate if your Excellency's Government could contact us about the allegations detailed below. We would prefer to be able to reflect any comment or clarification received from your Excellency's Government in making public our concerns.

In this connection, we wish to bring to the attention of your Excellency's Government information we received regarding an **alleged threat of mass criminalization, eviction and incarceration of homeless population in Hungary, following the adoption of several amendments to national laws by your Excellency's Government Parliament in the past year.**

We would also like to draw your Excellency's Government attention to information received regarding a **Budapest City Council decree, adopted in April 2011, which criminalizes sleeping in the street and to multiple alleged forced eviction and arrests of homeless people in Budapest since October 2011.**

According to the information we received:

In October 2010, your Excellency's Government adopted an amendment to Act 1997/LXXVII on the transformation and protection of urban environment and to Act 1996 XXI on territorial development and settlement. According to information received, the amendment defines the various functions of public spaces and empowers municipalities to criminalize any use of public space which is not in accordance with these functions.

According to additional information received, based on the above amendment, on 27 April 2011, the Budapest City Council adopted a municipal decree criminalizing habitual residence in public spaces as an offence punishable by fine and detention. Subsequently, during October 2011, Budapest police evicted homeless persons from 13 underpasses in the inner city and demolished dozens of homeless self-made shelters in various parts of the city. We are informed that the evicted persons were not provided with alternative shelter options and that some of the evicted persons were subject to short term arrest.

Furthermore, in October 2011 a new police booking center was established in the 8th district of Budapest, for the purpose of detaining rough sleepers. According to reports received, several hundred homeless persons have been already processed through this center, which is operating 7 days a week and 24 hours per day.

We have also been informed that on 14 November 2011, your Excellency's Government's Parliament adopted law Act CLIII amending Act LXIX of 1999 on Misdemeanors. The amendment, which entered into force on 1 December 2011, states (Article 146/A), that a person repeatedly violating municipality regulations regarding the use of public spaces for habitual living, or the storage of movable properties on public places for the purposes of habitual living, can be punished with imprisonment or up to 150,000 Hungarian forints fine. Repetition of the offence is established if the person was convicted for the same offence within six months.

Reportedly, there was no public consultation conducted prior to the adoption of the above amendment, which was opposed by three opposition parties.

Apparently, there are no official statistics regarding the extent of homelessness in Hungary. However, according to various reports, the lowest estimates indicate that between 8,000 and 10,000 homeless persons are currently living in Budapest area, and between 30,000 and 35,000 homeless persons are living in various municipalities across the country. In addition, 1,100 people have been registered living in the forests surrounding Budapest. Allegedly, a substantial portion of this population has been driven into homelessness following the recent global economic and financial crises.

We are also informed that in Budapest there are only 5,500 shelter places available. Consequently, up to 4,500 people have no other shelter alternative but to reside in the streets. Allegedly, there are currently 2,000 homeless persons in Budapest's 8th district, but only 830 beds available in homeless shelters in the district. Furthermore, we are informed that on March 2011 the Budapest City Council decided to annul the city's agreement with several NGOs providing services to homeless people in Budapest, including accommodation, reinsertion services and emergency relief.

Reports received regarding living conditions in homeless shelters also give rise to concern. We are informed that most shelters employ a dormitory system of up to 50 people per room, which severely undermines the privacy and personal security of residents. According to information received, there are no homeless shelters available suitable for families. Reportedly, sanitary options are inadequate and incidences of violence and thefts are rampant.

There are concerns that the enforcement of the above-mentioned amendments and regulations by local authorities will have a disproportionate impact on persons living in poverty in general and on homeless persons in particular. The criminalization of life sustaining behaviours of homeless persons in public spaces, such as eating, drinking and sleeping, in a context of lack of adequate shelter alternatives, has the potential to impede the enjoyment of human rights by poor and vulnerable groups. There are concerns that the recent legislation and municipal decisions and their subsequent enforcement will impede the enjoyment of various human rights of homeless persons, including the right to an adequate standard of living, the right to adequate housing, freedom of movement and the right to liberty and security of person.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards and, in particular, the following:

Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, to which Hungary is a party, states that "the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions".

With respect to the right to adequate housing, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. With "due priority to those social groups living in unfavorable conditions," the right to housing includes guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. The Committee also added that "the

right to housing should be ensured to all persons irrespective of income or access to economic resources”.

The Committee also stressed, that among the steps to be taken immediately towards the full realization of the right to adequate housing, regardless of the status of available resources in a given country, is the adoption of a national housing strategy, which “should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless; the inadequately housed and their representatives” (para. 12).

As stated in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute gross violation of a wide range of internationally recognized human rights and large-scale evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law. According to the General Comment No. 7 of the Committee on Economic, Social and Cultural Rights:

“15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

“16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

We would also like to draw the attention of your Excellency’s Government to the provisions of article 2(1) of the International Covenant on Economic, Social and Cultural Rights, which states that States parties must ensure the “progressive realization” of all economic, social and cultural rights. In General Comment 3 (para. 9), the Committee on Economic, Social and Culture Rights stressed the existence of a strong presumption that deliberately retrogressive measures that affect the level of enjoyment of economic, social and cultural rights are in violation of the State’s obligation under article 2(1). In adopting

retrogressive measures, States must demonstrate that they have been introduced after "the most careful consideration" of all alternatives and that they are "fully justified by reference to the totality of the rights provided for in the Covenant".

Furthermore, article 2(1) obligates each member State to ensure the immediate satisfaction of, the very least, minimum essential levels of all economic, social and cultural rights, including: basic shelter and housing, for all members of society (General Comment 3, para. 10).

We note that while human rights law permits States to limit some rights, on the basis of certain justifiable limitations, such limitations must comply with numerous safeguards. We would also like to refer your Excellency's Government to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex) and to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1987/17, annex), both of which state that limitations of human rights may only be imposed if they are "determined by law", "compatible with the nature of these rights", "solely for the purposes of promoting general welfare" and "necessary in a democratic society". Permissible limitations must also comply with general principles of human rights law, and must thus be non-discriminatory, reasonable and proportionate. States must not impose more restrictive measures than are required for the achievement of the purpose of the limitation.

We would also like to draw the attention of your Excellency's Government to the principles of equality and non-discrimination, which are core elements of the international human rights normative framework and enshrined, inter alia, in article 2 of the Universal Declaration of Human Rights and articles 2 of the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights.

In its General Comment 20 (para. 34 and 35), the Committee on Economic, Social and Cultural Rights noted that "place of residence" and "economic and social status" are prohibited grounds for discrimination, implied to in the phrase "other status" in article 2 of the International Covenant on Economic, Social and Cultural Rights. Thus, measures which discriminate against individuals because they live in a situation of poverty may amount to a contravention of the principle of non-discrimination.

The Committee also stressed that a discriminatory intent is not a necessary element of discrimination. Therefore, any measure with the purpose or effect of nullifying or impairing the equal enjoyment of human rights constitutes a violation of States' human rights obligations (para. 10 and 12).

As it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts summarized above accurate?
 2. Has a complaint been lodged by or on behalf of the affected community?
 3. Please provide details of all shelter alternatives available for homeless people in Hungary in general and Budapest in particular.
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4. What measures have been put into place to replace services no longer available for the homeless community in Budapest, following the annulment of the contract between Budapest municipality and NGOs in March 2011?
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5. Has your Excellency's government adopted a National Housing Strategy? If so, please provide details on the Strategy, in particular with regard to the situation of homeless persons. Please provide information on the estimated costs of implementation of the Strategy. To what extent have the concerned communities been allowed to participate in the design and drafting of the strategy?

With regard to the amendments to Act 1997/LXXVII, Act 1996/XXI and Act 1999/LXIX on Misdemeanors

6. Did public consultations take place (including with potentially affected persons) prior to the adoption of these amendments? If yes, please give the details, date and outcome of these consultations.
7. Has a human rights impact assessment been carried out regarding these amendments? If so, who undertook such assessments and could you please provide us with the conclusions of the assessments?

What are the estimated costs of the on-going enforcement of Law Act CLIII in the various municipalities in Hungary?

8. Have these amendments been contested before a judicial body? If so, please provide details and outcomes of these proceedings.
9. What are the legal recourses available to the affected persons to contest administrative and legal decisions based on these amendments? Has free legal aid been made available for the affected persons?
10. Is there any on-going consultation with the persons threatened with criminal proceedings following the implementation of Act CLIII? If so, please give the details, date and outcome of these consultations. What measures have been put into place to ensure access to information and participation for potentially affected communities and individuals?

With regard to the municipal decree adopted by the Budapest City Council on 27 April 2011 and its subsequent enforcement

11. Has the municipal decree been contested before a judicial body? If so, please provide details and outcomes of these proceedings.
12. What is the legal basis for the establishment of the police booking station in Budapest 8th district?
13. What are the legal recourses available to the persons affected by the enforcement of the decree? Has free legal aid been made available for the affected persons? In particular, has free legal aid been made available for persons processed at the above mentioned booking station?
14. What shelter alternatives were provided to homeless persons that have been evicted and/or detained based on the decree?
15. What is the current situation of the persons affected by the enforcement of this decree? Was any measure undertaken to avoid worsening the housing and living conditions of the people affected?

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Raquel Rolnik

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