STRANDED HOPE

HUNGARY'S SUSTAINED ATTACK ON THE RIGHTS OF REFUGEES AND MIGRANTS

AMNESTY INTERNATIONAL

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Cover photo: *Child asylum-seekers walk along the Hungarian border fence in the Kelebia 'pre-transit' camp, Serbia, August 2016.*
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1. EXECUTIVE SUMMARY

> **"Both me and my wife are sick. She had to be carried all the way as we only got this wheelchair in Belgrade. We've been here for 22 days and it's not like we are crossing tomorrow. We are still waiting to enter Hungary but that is not the end."**
>
> Z., an elderly asylum-seeker from Afghanistan interviewed by Amnesty International in Horgoš, 7 August 2016

Fences, teargas, and draconian legislation: over the last year the Hungarian authorities have baulked at little in their determination to keep refugees and migrants out of the country. The government's programme of militarization, criminalization and isolation – that it touts as "Schengen 2.0" – has ushered in a set of measures which have resulted in violent push-backs at the border with Serbia, unlawful detentions inside the country and dire living conditions for those waiting at the border. While the Hungarian government has spent millions of Euros on a xenophobic advertising campaign, refugees are left to languish.

The Hungarian government's anti-refugee campaign will reach a new nadir on 2 October 2016 when Hungarians will be asked to vote on the mandatory relocation of asylum-seekers in Hungary. But the real questions are bigger; is Hungary prepared to accept refugees at all? Is it prepared to work within the framework of EU rules to find shared solutions to an EU-wide challenge? The government's intentional blurring of the lines between seeking asylum and other forms of migration goes hand in hand with its labelling refugees and migrants as "illegal" and as threats to national security. The toxic rhetoric of the Prime Minister Viktor Orbán, calling asylum-seekers "poison", has trickled down to the level of local government and often permeates the context in which police and local asylum centres operate.

Hungary has erected a series of legal and physical barriers around the country to keep refugees and migrants out. It has constructed a border fence at its southern border with Serbia and Croatia, and criminalized irregular entry across it. Within a year, close to three thousand refugees and migrants were penalized. Thousands of people have also been denied entry or returned forcibly to Serbia since the law was changed in July 2016 to allow the immediate return of those caught at the border fence or up to 8 km inside Hungarian territory.

The Hungarian government has not been content to isolate itself behind its fences. Prime Minister Viktor Orbán has, instead, invested considerable energy into convincing EU colleagues of the merits of "Schengen 2.0". He has even found some support. This briefing documents some of the pernicious consequences of Hungary's current policies and gives a taste of what awaits refugees seeking sanctuary in Europe if other countries seek to replicate them.

This briefing documents the plight of refugees and migrants as they wait in dire conditions to enter the country; as they get pushed back to Serbia, sometimes violently and without access to any procedure; as they are routinely detained in centres where they are "treated like animals" and as they make their way through an asylum procedure designed to reject them.

The only way to enter Hungary regularly and apply for asylum is through its "transit zones", a set of metal containers set up at the border following the completion of the border fence. Only 30 people are admitted to the "transit zones" each day; others languish in substandard conditions in makeshift camps at the border area, or in overcrowded centres across Serbia waiting for their turn to arrive to enter Hungary, based on an "entering plan" submitted by asylum-seekers themselves. Hungary fails to ensure that those who can't be admitted to the asylum procedure immediately receive humane treatment, including access to sanitation, medical care and adequate accommodation conditions.

With such heavy restrictions on regular entry to the country, many choose to cross the border irregularly after months of waiting. They are stopped and returned immediately, without any consideration of their needs for protection or particular vulnerabilities. Refugees and migrants told Amnesty International about excessive use of force, including beatings, kicking and chasing back with dogs and unlawful returns (or "push backs") to Serbia.

Inside the "transit zone" containers, authorities unlawfully detain without ground most men traveling without family for up to four weeks. Most of them have their asylum applications declared inadmissible on the grounds that they came through Serbia, a "safe third country", where they should have applied for asylum. As Serbia does not formally take them back and does not provide access to a fair and individualized asylum process, those pushed back out of the containers have little other option than to attempt a different route to the EU.

Those who do get into the country risk a multitude of further rights violations. The detention of asylum-seekers has become routine. In early August, over half of the twelve hundred asylum-seekers residing in Hungary were in asylum detention. Despite repeated requests, Amnesty International was not allowed to visit the asylum detention centres to document the conditions asylum-seekers were kept in. However, the organization has interviewed several former detainees in the Körmend tent camp and in Austria, who reported beatings and threats of violence by the police and security guards inside the detention centre. They also spoke of the frustration and trauma among the asylum-seekers locked up without having committed a crime. Amnesty International interviewed several asylum-seekers who harmed themselves in desperation.

Families and vulnerable persons are taken from "transit zones" to open reception centres inside the country where they face a different set of challenges. They languish in conditions which are often unsuitable for long-term accommodation, and where information on and assistance with asylum applications are lacking and support to access essential services is minimal. These centres barely provide education, activities for children and healthcare. The lack of translators and a lengthy, complex asylum process create often insurmountable obstacles to their asylum cases.

Hungary is, on multiple counts, in flagrant breach of international human rights and refugee law and EU directives on asylum procedures, reception conditions, and the Dublin regulation. The Hungarian authorities continue to intentionally undermine any agreement that could protect the rights of refugees and migrants to safely and legally arrive in the European Union, be treated with dignity, and have a fair and individual opportunity to make their cases heard.

This briefing makes the case for the European Commission to take the infringement proceedings it has started against Hungary further and hold Hungary accountable and bring the country's migration and asylum policies in line with EU and international law obligations.

This briefing assesses the state of implementation and the consequences of laws and policies making up Hungary's legal and physical barriers. It details the effects of all measures to keep refugees and migrants out of the country and the European Union. It documents violations of international and EU law and provides evidence of Hungary's:

- Failure to provide access to a prompt and effective asylum procedure at its border with Serbia, including in "transit zones";
- Routine push-backs from Hungary into Serbia;
- Use of force against refugees and migrants at the border and in-country;
- Penalties imposed on refugees who unlawfully enter Hungarian territory, as well as other measures intended to criminalizing irregular entry;

- Failure to provide adequate reception conditions, information and essential services for asylum-seekers at the border and in-country;
- Use of "safe third country" concepts in asylum proceedings, including in admissibility procedures at the border;
- Detention of asylum-seekers for extended periods without legitimate grounds.

METHODOLOGY

This briefing is based on research conducted by Amnesty International's researchers in Serbia, Hungary and Austria from 5 to 11 August 2016, in addition to desk research over the phone. Researchers conducted interviews with 143 individuals: including 129 refugees and migrants, of whom 21 were children, 41 women and 67 men. Seven asylum officials, five police officers and two staff members of non-governmental organizations were also interviewed.

The interviews in Serbia were carried out in the northern town of Subotica's temporary reception centre (Prihvatni centar Subotica), operated by the Serbian Commissariat for Refugees and Migration, and the town's bus station; as well as the informal 'pre-transit zone' camps in Horgoš and Kelebia, located along the Hungarian border fence, outside the official transit zone containers, mainly on Serbian territory. In Hungary, researchers visited the open asylum reception centres in Kiskunhalas and Körmend, operated by the Office of Immigration and Nationality (OIN), as well as the police-operated "guarded accommodation centre for foreigners" (Idegenrendészeti őrzött szállás) in Kiskunhalas. In Austria, interviews took place in the police-operated "competence centre" for foreigners (Competence-Center) in Eisenstadt and the open asylum reception centre in Traiskirchen.

Amnesty International's request to access locations in Serbia were granted by the Ministry of Interior Sector for Border Policing and the Commissariat for Refugees and Migration. In Hungary, the organization's request to visit the regional border police headquarters in Szeged – housing an identification and detention unit – was declined by the National Police Headquarters, as according to the response, newly implemented measures had temporarily resulted in a lack of detainees at the unit. The researchers were only given controlled access to the "guarded accommodation centre for foreigners" (an immigration detention facility) in Kiskunhalas, and allowed to interview a handful of detainees under the surveillance of guards who registered the identity of those Amnesty International spoke to. The Office of Immigration and Nationality granted the researchers permission to visit the open asylum reception centres in Kiskunhalas and in Körmend. It however declined, despite multiple requests, permission to visit the "guarded asylum reception centre" (Menekültügyi őrzött befogadó központ, an asylum detention facility) in Kiskunhalas, as well as the transit zone facilities at the Hungarian side of the Horgoš-Röszke and the Kelebia-Tompa international border crossings. The permissions to visit police identification and detention facilities and asylum reception centres in Austria were granted by the Federal Ministry of Interior.

2. A CAMPAIGN OF FEAR

> **"I feel like everything we'll find in Europe will just be more difficult. In the end no one wants us. So I wish I wasn't here. I wish I wasn't where people didn't want us."**
>
> N., a 15-year old child from Qamisli, Syria interviewed in Kelebia camp on 6 August, 2016.

On 15 September 2015, Hungary closed its southern border with Serbia barring thousands of people from entering the European Union through its land border.[1] In the months that followed, the border with Croatia[2] was closed off too, as the Hungarian authorities sought deliberately, painstakingly and proudly to prevent refugees from reaching its soil.[3]

The numbers of new asylum-seekers plummeted to a few or a dozen per day. According to government statements, by the end of October Hungary was registering border movements similar to "periods of peace".[4] The self-proclaimed "Hungarian model"[5], consisting of a set of legal and physical barriers put up to restrict access to Hungarian territory and to a fair and effective asylum process in the country,[6] was achieving its main goal of keeping Hungary a "protected country".[7]

THE 2 OCTOBER REFERENDUM

International criticism of the state's obvious refusal to guarantee the human rights of refugees and migrants has fallen on resolutely deaf ears. Indeed, the Hungarian government has used every opportunity to lash out against joint European efforts to open more safe and legal routes for refugees to Europe or share the responsibility for hosting them more equitably between EU member states. The government has been particularly vociferous in its criticism of the September 2015 European Council decision on relocation from Greece and Italy[8], rushing through a law in the National Assembly[9], and challenging the legality of the decision before the Court of Justice of the European Union.[10]

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1 Amnesty International: 'Hungary: Refugees blocked by forces, criminalized by laws', 15 September 2016, https://www.amnesty.org/en/latest/news/2015/09/hungary-refugees-blocked-by-forces-criminalized-by-laws/
2 'Migrant crisis: Hungary closes border with Croatia', 17 October 2015, http://www.bbc.com/news/world-europe-34556682
3 'Southern border closure is successful', Statement by the Prime Minister's Office, 19 October 2015: http://www.kormany.hu/en/prime-minister-s-office/news/southern-border-closure-is-successful
4 'Complete calm on Hungary's borders', Statement by the Prime Minister's Office, 21 October 2015: http://www.kormany.hu/en/prime-minister-s-office/news/complete-calm-on-hungary-s-borders
5 'The EU should apply the Hungarian model', Statement by the Minister of Foreign Affairs and Trade, 24 October 2015: http://www.kormany.hu/en/ministry-of-foreign-affairs-and-trade/news/the-eu-should-apply-the-hungarian-model
6 For details see Amnesty International: 'Fenced out: Hungary's violations of the rights of refugees and migrants', 8 October 2015, AI Index number: EUR 27/2614/2015.
7 'Hungary is a protected country today', Statement by the Cabinet Office of the Prime Minister, 10 November 2015: http://www.kormany.hu/en/the-prime-minister/news/hungary-is-a-protected-country-today
8 'Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece', http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015D1601
9 Law CLXXV/2015, 'On the action to be taken against the mandatory settlement quota, in order to protect Hungary and Europe', promulgated on 26 November 2015.
10 The Council Decision would have allocated 1294 asylum-seekers for relocation to Hungary (had the country agreed to transfer anyone).

The government has called a referendum that could see the EU-wide relocation scheme "vetoed" by Hungarian voters on 2 October. The question put up for vote does not relate specifically to the relocation quota, nor to other EU-wide measures and is unlikely to lead to the approval or rejection of any concrete agreement. Instead, the referendum asks voters whether they "want the EU to be able to prescribe, even without the agreement of the National Assembly, the mandatory settlement of non-citizens to Hungary?" The government has presented the referendum as a decision about "Hungary's future"[11] and how to reconcile that future with the European Union.[12] The referendum campaign has been accompanied by hundreds of billboards across the country displaying anti-immigration messages linking refugees and migrants to terrorism and other violent crimes.[13] The same messages are also aired in radio and TV and printed in print media extensively, and repeated in government statements.[14]

Back in July and September 2015, Hungary adopted a raft of changes to its asylum laws with a view to expediting the return of asylum-seekers to Serbia and discouraging new arrivals. Law CXL/2015 included amendments to the Law on Asylum, introducing a "crisis situation due to mass immigration" enabling the wide use of police and military to assist the asylum authority, instituting expedited border procedures in "transit zones" and limiting judicial review of OIN decisions.[15] It also criminalized refugees and migrants who enter Hungary irregularly through the border fence, instituting a wide range of penalties, including prison sentences and mandatory expulsion. Law CXXVII/2015 introduced new grounds for the detention of asylum-seekers, and specified the criteria for rejecting asylum-seekers at the admissibility stage of the process, including for transiting a "safe third country".[16] A government decision in July specified the list of "safe countries of origin" and "safe third countries", which included Serbia, from where the majority of asylum-seekers were arriving.[17] Amendments to the Law on National Border and related laws added to these, specifying the physical setting up of the "transit zones".

The crackdown on refugees and migrants continued in early 2016. On 31 March 2016, the government's list of "safe countries of origin" and "safe third countries" was expanded to include Turkey, which had previously been the sole EU candidate country excluded from the "safe country" list.[18] In May, the National Assembly passed a set of amendments significantly cutting access to housing, healthcare and integration programmes for people with a protection status in Hungary.[19] The amendments brought an end to support programmes granting access to language courses and employment counselling. They also introduced a requirement to review any protection status at least every three years. The government's package decreased the availability of free housing in reception centres to a month following the conclusion of the successful asylum application, and limited access to free health care services to the first six months. The amendments also ended cash allowances to asylum-seekers and to those with the third-tier "tolerated stay status"[20].

In 2016, the politics and hateful rhetoric towards refugees and migrants continued unabated, and resulted in further deterioration of their situation at Hungary's borders and inside its territory. A year after the closure of the border with Serbia, Amnesty International has found that multiple barriers continue to result in serious violations of international and EU law causing significant harm for people seeking international protection at Hungary's border, and other people on the move.

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[11] Statement by the Cabinet Office of the Prime Minister, 23 August 2016, http://www.kormany.hu/en/cabinet-office-of-the-prime-minister/news/referendum-is-about-hungary-s-future.
[12] Statement by the Spokesperson of the Government, 19 August 2016 http://www.kormany.hu/en/government-spokesperson/news/brussels-must-be-interested-in-what-the-hungarian-people-have-to-say.
[13] E.g. one of the billboards reads: "Did you know? Since the beginning of the immigration crisis, the number of sexual assaults on women has exponentially increased." Another says: "Did you know? Since the beginning of the immigration crisis, over 300 people have died in terror attacks." A third one reads: "Did you know? Brussels wants to settle a whole town of illegal immigrants to Hungary."
[14] 'Mass migration is organised, aggressive and illegal', Statement of the Chief Security Advisor to the Prime Minister, 8 August 2016, http://www.kormany.hu/en/news/mass-migration-is-organised-aggressive-and-illegal.
[15] Law CXL of 2015 on amendments to certain laws in connection to the management of mass immigration, promulgated on 7 September 2015, http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK15124.pdf.
[16] Law CXXVII of 2015 on amendments to certain laws in connection with migration and the creation of the temporary border security barrier, promulgated on 13 July 2015, http://mkogy.jogtar.hu/?page=show&docid=a1500127.TV.
[17] Government decision 191/2015 on establishing the countries considered nationally as safe countries of origin and safe third countries, 21 July 2015, http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK15106.pdf.
[18] Government decision 191/2015, updated 31 March 2016, http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1500191.KOR
[19] Law XXXIX. of 2016 on Amendments to certain laws related to migration and other relevant laws, http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1600039.TV&timeshift=fffffff4&txtreferer=00000001.TXT
[20] Section 25/A Law on Asylum awards "tolerated status" ("befogadott jogállás") to non-citizens who have not been awarded a protection status but cannot be returned to their country of origin, due to a risk of persecution on the grounds of their race, religion, national identity, membership of a particular social group or their political conviction, and where there is no third country which would readmit them.

THE PERMANENT "CRISIS SITUATION"

In the first three months of 2016, the number of asylum-seekers decreased significantly.[21] This was the result of both Hungary's own policies, and the blocking of the so called Balkans route by the closure of the Greece-Macedonia border[22], and, later, the EU-Turkey deal, which came into force on 20 March. Nonetheless, on 9 March, the government announced the introduction of a new state of emergency due to "mass immigration", as a preventive measure to focus resources on migration control.[23] The government also started to promote its own programme of militarization, criminalization and isolation (titled "Schengen 2.0") as the solution to the refugee crisis at various European fora.[24]

The state of emergency not only allowed the government to raise the issue of migration at every opportunity, it has also facilitated the swift introduction of measures to reinforce the heavily militarized borders and to deploy more army and police personnel. Since the beginning of July, a new set of amendments to the Law on Asylum, the Law on the National Border and the Law governing the Entry and Stay of Third Country Nationals have enabled the police to apprehend and 'escort' asylum-seekers who are found within 8 km from the border to the other side of the border fence, effectively pushing them back to Serbian soil without due process or consideration of their protection needs. According to government statements, this 'push-back law' has resulted in thousands of summary expulsions, as well as many denials of entry, since its introduction a few weeks ago.[25] More detailed police information shows that people were returned in 1,701 instances in July[26], and 1,771 in August[27], while they were prevented entry at the border fence on 2,705 and 2,306 occasions respectively, during this time. As documented below, returns have been accompanied by violence and threats of violence.

The state of emergency was extended on 9 September for a further period of six months. In August, the government's chief security advisor reasoned that the extension was warranted by the fact that around one hundred entries to Hungary were prevented each day, and over three thousand migrants were reportedly waiting "in the vicinity of the Hungarian border."[28] To counter this "threat" another three thousand police will be added to the ten thousand police and military personnel already deployed at the borders.[29] Recruitment for so called 'border-hunter' units started in early September.[30]

A FRONTEX-coordinated international border police contingent is also present in Hungary. [31] As of 5 August 2016, according to the National Police Headquarters, 42 international police officers are participating in "so called 'flexible' operational activities that are organised on the Hungarian-Serbian border."[32] More guest

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[21] In the first three months of the year, 93,975 and 7,557 people were registered in Serbia and Hungary respectively. Source: UNHCR Europe Refugees and Migrants Emergency Response - Daily Estimated Arrivals per Country - Flows through Western Balkans Route, accessed 29 August 2016, http://data.unhcr.org/mediterranean/download.php?id=1843.

[22] Amnesty International: 'Humanitarian crisis in Greece amid EU paralysis', 4 March 2016, AI Index number: EUR 25/3574/2016.

[23] 'Hungarian government declares state of emergency due to mass migration', Statement by the Minister of Interior, 9 March 2016, available at http://www.kormany.hu/en/ministry-of-interior/news/hungarian-government-declares-state-of-emergency-due-to-mass-migration

[24] 'Orbán will tour EU capitals with 'Schengen 2.0' plan', 18 April 2016, https://www.euractiv.com/section/justice-home-affairs/news/orban-will-tour-eu-capitals-with-schengen-2-0-plan/.

[25] As of 8 August 2016, 3,100 entries were prevented, and 1,800 people were pushed back to the other side of the fence. http://www.kormany.hu/en/news/mass-migration-is-organised-aggressive-and-illegal

[26] 'Illegal border crossings on the Serbian-Hungarian border, preventions of entry and returns across the temporary security barrier since 5 July', National Police, http://police.hu/sites/default/files/illegalis_hataratlepes_megakadalyozas_atkiseres_szerb_szakasz_2016.07.31._24.00-ig.pdf

[27] 'Illegal border crossings on the Serbian-Hungarian border, preventions of entry and returns across the temporary security barrier in the last thirty days', National Police, http://police.hu/sites/default/files/illegalis_hataratlepes_megakadalyozas_atkiseres_szerb_szakasz_2016.08.31._24.00-ig.pdf

[28] Statement by the Chief Security Advisor to the Prime Minister, 18 August 2016, http://www.kormany.hu/en/news/state-of-emergency-to-be-extended.

[29] Statement by the State Secretary for Government Communication, 10 August 2016, http://www.kormany.hu/en/cabinet-office-of-the-prime-minister/news/police-staff-to-be-increased-by-three-thousand. Statement by the Chief Security Advisor to the Prime Minister, 13 July 2016, http://www.kormany.hu/en/news/ten-thousand-people-are-participating-in-protecting-the-hungarian-border.

[30] See 'Border-hunter training' advertisement and detailed admission criteria by the National Police, http://police.hu/a-rendorsegrol/hatarvadasz-kepzes.

[31] FRONTEX is the Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

[32] Statement by the National Police Headquarters, 5 August 2016, http://www.kormany.hu/en/news/currently-42-international-police-officers-support-hungarian-efforts.

officers from Germany were expected to be deployed at the end of the month, while the arrival of dozens of officers from Austria[33], Slovakia[34], the Czech Republic[35] and Poland[36] was also announced.

THE FALL OF DUBLIN [37]

The systemic failings of the Hungarian asylum-system have prompted a number of national courts and migration boards in other European countries to rule against Dublin returns to Hungary, preventing individual returns from taking place, or recommending the suspension of Dublin transfers altogether. Finland first suspended all transfers in September 2015; a position solidified in February this year, as the Helsinki Administrative Court, ruled formally against any returns to Hungary.[38] In April, the Finnish Supreme Administrative Court issued a decision confirming the ruling, binding all lower courts to follow suit.[39] In Switzerland, the Federal Administrative Tribunal suspended transfers to Hungary in February, "until the situation is clarified"[40]. Also in July, the Administrative Court of the German state of Baden-Württemberg suspended the return of a Syrian asylum-seeker due to the "systemic deficiencies" of the Hungarian asylum system and the likelihood that the transfer could not take place within the timeframe allowed by the Dublin regulation.[41] Swedish administrative courts have likewise ruled against individual returns.[42] Finally, as recently as August 2016, the High Court of England and Wales found, in relation to two asylum-seekers from Iran, that "there is a real risk that they will not be given a fair chance to establish their *refoulement* claims and accordingly there is a risk of onward transfer", should they be returned to Hungary.[43]

The Hungarian authorities are far from unhappy about this. In any case, they have stated that they would not accept anyone sent back to Hungary under the Dublin system,[44] arguing that Dublin requests should be submitted to Greece.[45] This approach has trickled down to the level of the Hungarian Dublin Unit, the coordination office managing transfer requests, which in June 2016 informed its German counterpart that it "cannot accept any incoming Dublin transfers" and therefore Germany should "not plan any Dublin transfer to Hungary in the future"[46]. According to a Ministry of Interior statement to media[47], of 19,542 requests submitted this year until 15 August, only a handful were approved and carried out[48], and all requesting

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[33] 'Austrian border can be best protected at Hungarian-Serbian border', Government statement, 26 July 2016, http://www.kormany.hu/en/the-prime-minister/news/austrian-border-can-be-best-protected-at-hungarian-serbian-border

[34] 'Slovak police arrive in Budapest to help patrol Hungary-Serbia border', 1 Aug 2016, http://dailynewshungary.com/slovak-police-arrive-budapest-help-patrol-hungary-serbia-border/.

[35] 'Czech police leave for Hungary to help protect Schengen border', 6 September 2016, http://praguemonitor.com/2016/09/06/czech-police-leave-hungary-help-protect-schengen-border.

[36] 'Poland sends new contingent to protect Hungary's border', 14 July 2016, http://visegradpost.com/en/2016/07/14/poland-sends-new-contingent-to-protect-hungarys-border/.

[37] The Dublin system was set up to ensure access to an asylum procedure and the examination of an asylum application in a single, clearly determined EU Member State (or other state participating in the system). The Dublin Regulation establishes the criteria and mechanisms for determining which state is responsible for examining an asylum application.

[38] 'Finland suspends asylum seeker repatriations to Hungary', 14 February 2016, http://yle.fi/uutiset/finland_suspends_asylum_seeker_repatriations_to_hungary/8672464

[39] Finland: Supreme Administrative Court rules against Dublin III returns to Hungary due to 'systemic flaws' in asylum procedures and reception conditions, European Database of Asylum Law, 20 April 2016, http://www.asylumlawdatabase.eu/en/content/finland-supreme-administrative-court-rules-against-dublin-iii-returns-hungary-due-%E2%80%98systemic.

[40] 'Le TAF suspend les renvois des cas Dublin vers la Hongrie', 27 February 2016, http://www.hebdo.ch/news/politique/le-taf-suspend-les-renvois-des-cas-dublin-vers-la-hongrie. As of July 2016, it continued to quash, on appeal, decisions of the State Secretariat of Migration to not consider applications from asylum-seekers who were registered in Hungary, and ordered the authority to revise its decisions. See Decision E-3219/2016, 5 July 2016, http://www.bvger.ch/publiws/pub/cache.jsf?displayName=E-3219/2016&decisionDate=2016-07-05&lang=fr.

[41] Germany: The Administrative Court of Baden-Württemberg suspends Dublin transfers to Hungary because of systemic deficiencies in the asylum system, European Database of Asylum Law, 5 July 2016, http://www.asylumlawdatabase.eu/en/content/germany-administrative-court-baden-w%C3%BCrttemberg-suspends-dublin-transfers-hungary-because.

[42] Sweden: Migration Board suspends Dublin transfers to Hungary, European Database of Asylum Law, 2 March 2016, http://www.asylumlawdatabase.eu/en/content/sweden-migration-board-suspends-dublin-transfers-hungary. The country's Higher Migration Court did not order a full suspension as yet. See: Swedish Migration Authority, Legal Commentary SR 38/2016, 12 July 2016, http://www.lifos.migrationsverket.se/dokument?documentAttachmentId=43615

[43] Ibrahimi & Anor v The Secretary of State for the Home Department [2016] EWHC 2049 (Admin) (05 August 2016), http://www.bailii.org/ew/cases/EWHC/Admin/2016/2049.html.

[44] Statement by the Minister of the Prime Minister's office, 26 May 2016, http://www.kormany.hu/en/prime-minister-s-office/news/no-one-can-be-sent-back-to-hungary.

[45] Amnesty International research established in May 2016 that serious impediments to access to asylum persist in Greece. See: Amnesty International: Submission to the Council of Europe Committee of Ministers: M.S.S. v. Belgium and Greece, Application no. 30696/09, https://www.amnesty.org/en/documents/eur25/4109/2016/en/.

[46] Copy of e-mail exchange between the two Dublin Coordination Offices, June 2016, on file with Amnesty International.

[47] 'Ezreket akar visszatoloncolni Ausztria' ('Austria wants to deport thousands back'), 22 August 2016, http://mno.hu/belfold/ezreket-akar-visszatoloncolni-ausztria-1358017.

[48] Information available to the Hungarian Helsinki Committee shows that 377 Dublin transfers were carried out in 2016, by the 1st of September. Source: Information note by the Hungarian Helsinki Committee, 1 September 2016, http://www.helsinki.hu/wp-content/uploads/Magyar-menekultugy-a-szamok-tukreben-2016-szeptember-1.pdf

countries received rejections similar to Germany's.[49] At the same time, in mid-September, the National Dublin Unit of Greece confirmed to Amnesty International, that as of 18 August 2016, they had received 2,579 transfer requests from Hungary.[50]

[49] See e.g., Slovakia's confirmation of suspending Dublin returns to Hungary based on the Hungarian government's decision. European Database of Asylum Law, 21 July 2016, http://www.asylumlawdatabase.eu/en/content/slovakia-suspension-dublin-returns-hungary.
[50] E-mail from the National Dublin Unit of Greece, 13 September 2016, on file with Amnesty International.

3. HUNGARY UNDER INCREASED SCRUTINY

> **"I am extremely concerned at the repeated failures of the European Union to agree firm and principled action to respond to the crisis in Hungary"**
>
> UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein[51]

In May 2016, the UN High Commissioner for Refugees issued its updated observations on Hungary as a country of asylum. The assessment of the country's laws and the services provided to asylum-seekers found that "significant aspects of Hungarian law and practice raise serious concerns as regards compatibility with international and European law".[52] The UNHCR took particular issue with the detention of asylum-seekers in the transit zones and in closed asylum reception centres, the limitation on access to Hungarian territory, the use of a national "safe country" list which includes Serbia, as well as the criminalization of irregular entry which acts as a deterrent for submitting an application for asylum.[53] The UNHCR issued further statements condemning the violent incidents reported from the border zone,[54] as well as the introduction of the 5 July push-back law.[55] The latter was also criticized by the UN High Commissioner for Human Rights.[56]

At the time of writing, a number of cases against Hungary are pending before the European Court of Human Rights on asylum issues. One application relates to a complaint about detention in a transit zone,[57] while another challenges a restriction imposed on a news outlet to report from an open reception centre.[58] In the case of *O.M. v Hungary*, the Court found that the asylum detention of the applicant, a gay asylum-seeker, was in violation of his right to liberty and safety. The Court ruled that Hungary failed to make an individualised assessment justifying the applicant's detention and to take into account the applicant's vulnerability in the detention facility based on his sexual orientation.[59]

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[51] UN High Commissioner for Human Rights: Hungary violating international law in response to migration crisis. 17 September 2015, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16449&LangID=E

[52] UNHCR: 'Hungary as a country of asylum', May 2016, http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-observations-on-restrictive-legal-measures-and-subsequent-practice-implemented-between-july-2015-and-march-2016.html.

[53] Ibid, para. 72-79.

[54] 'UNHCR alarmed at refugee death on Hungary-Serbia border', 4 June 2016, http://www.unhcr-centraleurope.org/en/news/2016/unhcr-alarmed-at-refugee-death-on-hungary-serbia-border.html.

[55] 'Hungary: UNHCR concerned about new restrictive law, increased reports of violence, and a deterioration of the situation at border with Serbia', 15 July 2016, http://www.unhcr.org/uk/news/briefing/2016/7/5788aae94/hungary-unhcr-concerned-new-restrictive-law-increased-reports-violence.html.

[56] Press briefing note on Hungary, 5 July 2016, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20236&LangID=E.

[57] Application no 47287/15 lodged on 25 September 2015.

[58] Application no. 15428/16 lodged on 12 March 2016.

[59] Case of O.M. v. Hungary, application no. 9912/15.

As detailed above, courts across Europe have declared Hungary unfit to receive asylum-seekers through the Dublin procedure due to the risk of *chain refoulement* to third countries, but also due to systemic deficiencies in the asylum system. In a third party intervention to the European Court of Human Rights, the Council of Europe Commissioner for Human Rights also expressed serious criticism of the direction Hungary has taken to respond to the needs of refugees and asylum-seekers. Referring to the whole spectrum of Hungary's measures, the Commissioner's intervention notes that "the very restrictive measures taken in recent months by the Hungarian authorities translate into a deliberate intention of the latter to deter asylum-seekers from entering the country and applying for asylum therein."[60]

INFRINGEMENT PROCEDURES BY THE EUROPEAN COMMISSION

The European Commission has remained modest in its criticism of the Hungarian government's efforts to block any common solution that could provide safe and legal routes to Europe. Even so, on 10 December 2015 it launched formal proceedings against the country, finding some elements of the amended asylum and criminal laws to be incompatible with EU law.[61] The Commission took issue with three rather technical elements of the newly adopted legislation: 1) that there is no possibility to refer to new facts and circumstances in the context of asylum appeals and that Hungary is not automatically suspending decisions in case of appeals; 2) that fast-tracked criminal proceedings for irregular border crossings enabled in law do not respect provisions of the Directive on the right to interpretation and translation in criminal proceedings; and 3) that the judicial review of decisions rejecting an asylum application render a personal hearing of the applicants optional.[62] To date, the European Commission has not concluded the infringement proceedings.

This briefing makes the case for the European Commission to take the infringement proceedings against Hungary further. The country's policies continue to pose a serious structural threat to the rule of law and respect for human rights in the European Union. Hungary also consistently undermines attempts by the European Union to meaningfully share responsibility and distribute asylum-seekers, including through the temporary relocation mechanism.[63] The European Commission should examine the whole breadth of Hungary's anti-refugee and anti-migrant measures, conclude the infringement proceedings and take further action, including by submitting a reasoned proposal to the European Council to activate the preventive mechanism foreseen under Article 7(1) of the Treaty on European Union, in light of the evidence of continued "clear risk of a serious breach of the values referred to in Article 2 TEU", including "the respect for human dignity ... and respect for human rights". The European Commission must hold Hungary accountable and bring the country's migration and asylum policies in line with EU and international law obligations.

[60] Further, the intervention notes: "The Commissioner considers that the current asylum law and practice in Hungary are not in compliance with international and European human rights standards. At the moment, virtually nobody can access international protection in Hungary. The asylum procedure is too expedited and lacks essential safeguards; the use of asylum detention and the detention conditions are problematic; and the general negative climate against migrants fostered by the authorities is not conducive to the integration of asylum seekers and refugees in Hungarian society." In: Third Party Intervention by the Council of Europe Commissioner for Human Rights under Article 36 of the European Convention on Human Rights, Applications No. 44825/15 and No. 44944/15, S.O. v. Austria and A.A. v. Austria, 17 December 2015, https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2875309&SecMode=1&DocId=2348808&Usage=2.

[61] European Commission Press Release, 10 December 2015, http://europa.eu/rapid/press-release_IP-15-6228_en.htm.

[62] Ibid.

[63] 'Council Decision (EU) 2015/1601, cited above.

4. KEPT OUT AT ALL COST: BARRIERS TO ENTERING HUNGARY REGULARLY

> **"We can't go on. We have suffered a lot."**
>
> Interview with Y. in Kelebia camp, 6 August 2016.

This section documents the numerous methods employed by the Hungarian authorities to keep people out. It includes details about the functioning of "transit zones" at the border, and documents the criminalization, ill-treatment and summary expulsion of those who cross into Hungary irregularly.

GETTING TO HUNGARY

For the women, men and children stuck at Hungary's border the wait is yet another obstacle in their long and difficult journeys. The families Amnesty International met at Horgoš and Kelebia spoke of the horrors of war, violence and persecution which left them with no choice but to flee their countries. As R., a Kurdish woman from Qamisli, Syria, who had already been travelling for seven months with her husband and her four children, as well as her young niece, told Amnesty International:

"We escaped death, if you haven't seen it with your own eyes you can't imagine the horror. Death, fear, explosions, slaughter, that's why we had to leave. . But it has been such a long journey. Each day we die a thousand deaths. [My children] ask me 'why did you bring us here, where are you taking us, what is going on?' That is hard as a mother. We just want a normal life for our children, for them to sleep without fear. We just want safety and we want humanity."[64]

Across all of those Amnesty International spoke with there were repeated stories of dangerous and difficult journeys and of enduring inhumane conditions along the way.

One Kurdish family Amnesty International spoke with had left Syria ten months earlier, as they were afraid that their adolescent son would be forced to join the armed forces or the rebel forces. The family of five children and their parents stayed for four months in Turkey, and six in Greece. Their time in Greece was largely spent at the border in Idomeni, waiting for the border of the Former Yugoslav Republic of Macedonia to reopen, as well as in the squalid conditions of the Diavata camp. Y. the mother of the family was heavily pregnant and passed her due date when Amnesty International spoke with her. She told Amnesty International:

"We escaped from our country because of war. Fighting between *Daesh* and government became so dangerous. We need help. But in Greece we could have died and no one would have cared. […] We want to stay in Hungary

[64] Interview in Kelebia camp, 6 August 2016.

because we want to finish travelling. We can't go on. We have suffered a lot. I left for my children but the last months have been a real struggle."[65]

Z., a 27 year old woman from Kabul, Afghanistan, described why she, her husband and seven year old daughter had taken the long journey to reach the 'pre-transit' camp, five months earlier:

"My father-in-law was killed, murdered. He worked for the government, then life for us became very difficult, very dangerous, very hard. We started our trip for my daughter, for her future, for her to be safe. Everyone here at the camp is so tired. Life is so hard. We crossed mountains, walked in forests, we had rain, we had heat, we had everything. I had to dry my daughter's tears every day. So my biggest dream is to see her happy in Europe. I just want to see her go to school. I hope that in a few years she will come to me and say 'mum you were right to leave, you made the right choice."[66]

These families, along with hundreds of others, remain stuck in squalid and insecure conditions waiting for their chance to cross.

CONDITIONS IN PRE-TRANSIT CAMPS AT THE HUNGARIAN BORDER

> **"We all have reasons to flee. We have no choice, all we can do is flee. We run from war, we run from pain. So why do people at the border treat us like animals? We are looking for humanity at the borders. They should help people running from war. We aren't looking for money. We are looking for humanity, for safety."**
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> Interview with I. in Horgoš camp, 5 August 2016.

The closure of Hungary's border with Serbia on 15 September 2015 was accompanied by the opening of two "transit zones" in accordance with the amendments to Hungary's migration laws adopted earlier that month. The purpose of the transit zones at the Tompa-Kelebia and the Röszke-Horgoš crossings, is to restrict the flow of refugees and asylum-seekers entering the country and offer at-the-border processing of asylum applications with a view to their prompt return to Serbia under the newly introduced "safe third country" provisions.

The introduction of these "transit zones" by the Hungarian authorities, and the limit of 30 people a day who are allowed to enter them, has caused significant waiting periods for those hoping to cross. Informal waiting camps have been growing outside the facilities on the Serbian side of the fence. These areas have gradually become permanent 'pre-transit' camps hosting hundreds of refugees and asylum-seekers, waiting for their turn to enter. At present, there is no other legal way to apply for asylum at Hungary's southern land borders.

At the time of Amnesty International's visit to the informal camps at the Hungarian-Serbian border in August 2016, over six hundred people, the majority from Afghanistan, Syria, Iraq and Iran were staying in degrading conditions, waiting to enter the Hungarian "transit zones". People living in the camps had erected makeshift tents and structures to protect themselves from heat, wind and dirt. There were no adequate and secure facilities to shower, prepare food, or for children to play safely.

The Hungarian authorities provide a water tap and sinks in both locations, and distribute lunch packs. Additional food packages and donations are distributed by aid agencies and charitable groups and organizations on an irregular basis. The Serbian authorities have provided portable toilets and rubbish bins. Medical checks and basic care are provided by moving clinics of the medical NGO Médecins Sans Frontières and by the Serbian Red Cross. UNHCR and staff from the International Organization for Migration conduct daily camp surveys. Regular access for humanitarian organizations and other NGOs is restricted by the Serbian border police.

Despite repeated requests, Amnesty International was not granted permission to visit the "transit zone" facilities on the Hungarian side of the border; however, researchers conducted 39 interviews over the course of three days in the 'pre-transit' camps.[67] At the time of the interviews, the majority of those who spoke to Amnesty International had already been in the camps for three to six weeks, and they expected to stay

[65] Interview in Kelebia camp, 6 August 2016. The family managed to enter the EU and Y. gave birth to a girl later in August.
[66] Interview in Horgoš camp, 7 August 2016.
[67] The initial request was sent on 15 July 2016, and a reply by the OIN granting partial access was received on 26 July. A second request enquiring about the refusal to visit the closed facilities was sent on 27 July and a reply was received on 29 July. A third request was sent on 19 August 2016; a reply was received on 14 September 2016. On file with Amnesty International.

another two to three weeks. Many families – making up the majority of those staying in the camp – had already spent months stuck in Greece, either at the Greek-Macedonian border or in one of the inadequate camps set up hastily after the evacuation of Idomeni.[68]

Single men reported to Amnesty International that the lack of interest in them and empathy towards them from the state agencies was palpable. In addition to having to wait longer for entry into the transit zones, because only one or two of them are allowed in each day as families are unofficially prioritized, they spoke about being neglected, refused the same items or services that were offered to families, or spoken to as if they were criminals. In particular, single men complained that they were not given the same amount or quality of food and clothing items when distributions took place. While many of them stressed that families should have appropriate care and prompt access to Hungary, they also felt that the long waiting times for accessing the transit zones were unfair and unjust. M., a 24 year old man from Afghanistan, told Amnesty International:

"I have spent 38 days in the camp, I will get to cross the border in 12 days. […] Yesterday I went to Horgoš, the shopkeeper said I have no permission to be there. The hairdresser refused to cut my hair. The police and people look me down as if we were not human. […] I eat what I get from families, who will share with me their food. Some people don't like canned fish so I get these. Here, it's the legal way for everyone, I hope I can cross this border someday. I want a future. I cannot come back to my country. […] But every day the problem for single men is bigger."[69]

THE FUNCTIONING OF "TRANSIT ZONES" AT THE SERBIAN-HUNGARIAN BORDER

The "transit zones" at the Tompa-Kelebia and the Röszke-Horgoš crossings are composed of five to six fenced-off metal containers that are set up as offices for police and the Office of Immigration and Nationality and as guarded accommodation for admitted asylum-seekers. The containers are located just on the Hungarian side of the border fence.

The movement of asylum-seekers in the "transit zones" is restricted to the containers and adjacent footpath for the duration of an initial identification and admissibility procedure. They can choose to leave the containers and go back to Serbia if they wish to terminate the admissibility procedure before a decision is made. However, asylum-seekers cannot leave the containers towards Hungary before their request is declared admissible. Only asylum-seekers requiring special treatment (i.e. members of vulnerable groups such as unaccompanied minors or families with underage children) are exempt from the admissibility procedure, which should take no longer than 8 days. If an admissibility decision is not reached within 28 days, the asylum-seeker must be granted "entry to Hungarian territory", i.e. the restrictions on their movement must be lifted.[70] Hungary considers the "transit zones" to have a special status in relation to the country's territory, arbitrarily exempting part of its territory from its jurisdiction and from the application of its human rights obligations.[71] However, asylum-seekers entering the "transit zone" are under the jurisdiction of Hungary, as they are "under power and effective control" of Hungarian authorities[72] carrying out the asylum procedure.[73] Although there is no official upper limit to the number of asylum-seekers that could be processed in the "transit zones", the Hungarian authorities have adopted the arbitrary and dissuasive practice of registering only 15 asylum-seekers a day in each of the two facilities, meaning that only 30 persons a day can register to apply for asylum along the country's southern borders.

A semi-formal method of setting up waiting lists for entry into Hungary is in place, which is managed by asylum-seekers, chosen in the camps by others to act as local 'leaders'. These lists, called 'transit zone entering plans' operate on a first-come first-served basis and are coordinated between the camps (hosting mainly Arabic speakers in Kelebia, and predominantly Farsi speakers in Horgoš) as well as with the Serbian Commissariat for Refugees and the Hungarian OIN. Handwritten lists are compiled by the leaders featuring details about all asylum-seekers and are submitted regularly to the "transit zones" and returned typed up,

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[68] Amnesty International: Trapped in Greece: refugees stranded in dire conditions as Europe drags its heels, 18 July 2016, https://www.amnesty.org/en/latest/news/2016/07/trapped-in-greece-48000-stranded-in-dire-conditions/

[69] Interview in Horgoš camp, 7 August 2016.

[70] Section 71/A of the Law on Asylum.

71 Hungary has the same obligations towards the asylum-seekers entering the "transit zones" as the obligations towards asylum-seekers in the rest of its territory, including providing safeguards against *refoulement*. See Amnesty International: 'Fenced out: Hungary's violations of the rights of refugees and migrants', cited above.

72 UN Human Rights Committee, General Comment no. 31, CCPR/C/21/Rev.1/Add. 1326 May 2004, para 10.

73 Section 71/A (3) of the Asylum Law LXXX/2007 (September Amendment).

carrying the seal of approval of the OIN. The lists are open to all asylum-seekers in the informal camps, as well as to those in accommodation centres across Serbia.[74]

DETENTION IN THE "TRANSIT ZONES"

The daily routine in the two "transit zones" is as follows: in the morning, 15 people are allowed to go in. A first identification and body and bag search takes place, after which the group is separated. Families and unaccompanied children have their basic information recorded and pass quickly through a list of questions establishing their background (personal situation and information about the journey).[75] For members of "vulnerable groups",[76] this process usually leads to a swift transfer to an accommodation centre inside the country, as the expedited border procedures do not apply to them.[77] In some cases, families (nuclear families are not defined as vulnerable) are separated and only mothers and children are transferred. [78] Transport is facilitated by police and takes place in the evenings.

Most men remain in the transit zones for a longer period as they await decisions on the admissibility of their asylum applications under the new border procedures.[79] This measure, qualified as detention by the UNHCR[80] and Amnesty International, is not treated as such by Hungarian authorities (no official detention decision is offered in law or in practice). Asylum-seekers waiting in Horgoš and Kelebia reported to Amnesty International that they feared they would be detained for 8-28 days and subsequently returned to Serbia, a "safe country of transit" according to the Hungarian authorities.[81] However, they had no other option than to follow this process.[82]

Amnesty International spoke to one unaccompanied 17 year-old child from Logar Province in Afghanistan, who was returned to Serbia because he had signed up on the list together with a family that helped and protected him while in the informal camp. He was returned immediately and put to the bottom of another list, one reserved for unaccompanied children. He was devastated that after 45 days of waiting, he was returned without any questions asked, and at the prospect that he would have to wait in Horgoš again.[83] Simply returning people back to Serbia without any interview qualifies as a push-back and is prohibited under international law.

Amnesty International was not able to visit the "transit zones" and to enter the containers following repeated refusal of the Hungarian authorities to provide access. The conditions are clearly cramped and unsuitable for any period beyond a few days. The 15m^2 containers have a small window and house three to four persons each. They have no cupboards and there is only approximately 1-2m^2 of free space for each person. Asylum-seekers are only allowed to walk on a narrow strip of land alongside the containers.[84] Testimonies from asylum-seekers Amnesty International spoke to, once they were out, paint a grim picture.

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74 The majority of asylum-seekers in Serbia, whether they wait in formal or informal camps are submitting their names in order to be able to proceed. Serbia continues to provide accommodation and food to asylum seekers, however it does not provide access to a prompt and effective asylum process. At the time of writing, over 4,400 refugees and asylum seekers are awaiting entry into Hungary; in the 'pre-transit camps', only 350 people remain as the rest have either passed to Hungary or accepted accommodation in state-run reception centres, while waiting to pass. Of the close to 8,000 asylum applications submitted by the end of August 2016, only 50 have reached first instance decisions in the first six months. Ten individuals were given refugee status and sixteen received subsidiary protection. Twenty-four applications were rejected. Source: UNHCR Serbia update, 25-28 August, http://data.unhcr.org/mediterranean/download.php?id=1844.

75 Interview in Kiskunhalas, 8 August 2016.

76 Law on Asylum, Section 2 (k): persons requiring special treatment: an unaccompanied minor, or an individual vulnerable due to his/her situation, particularly as minor, elderly, a person living with disability, a pregnant woman, a single parent with an underage child, and as victim of torture, rape or other serious forms of psychical, physical or sexual violence, where an individual assessment reveals that they have special needs. Nuclear families as such do not feature on the list.

77 Section 71/A (7) of the Law on Asylum specifies that the border procedure cannot be applied in case of vulnerable individuals. However they are not exempt from an in-country admissibility procedure (Section 51).

78 Both Amnesty International and the Hungarian Helsinki Committee interviewed male family members who were separated from their nuclear families in the transit zone and qualified as 'not vulnerable'. See the Report on the Hungarian Helsinki Committee's visit in the transit zones, dated 20 May 2016, http://www.helsinki.hu/wp-content/uploads/Roszke-Tompa-tranzitzona-jelentes-20160422_javitott.pdf, and below.

79 Admissibility procedures in the transit zones are conducted as a matter of priority. Decisions have to be made no later than eight days after submission of the application. Section 71/A (3) Law on Asylum.

80 Hungary as a country of asylum, para. 19.

81 Inadmissibility criteria, in particular inadmissibility due to transit or stay in a "safe country", is detailed in Section 51 (2) Law on Asylum.

82 E.g. Amnesty International interview with D., a 30-year old asylum seeker from Western Sahara, in Kelebia camp, 6 August 2016.

83 Amnesty International: The long crossing to Hungary: refugees between borders and barbed wire, 11 August 2016, https://www.amnesty.org/en/latest/campaigns/2016/08/the-long-crossing-to-hungary/.

84 See the Report of the Hungarian Helsinki Committee, cited above. Amnesty International estimates that the 'outdoor space' available for detained asylum-seekers is 2 m wide and 20 m long.

For example, N., a man from Afghanistan, was returned to Serbia after eight days spent in detention in the containers. He told Amnesty International:

"I arrived on 30 April 2016, and I went in through the transit door on 27 May. I was 8 days inside the jail. I was told Serbia is a safe country. The first day I had an interview, 30 minutes, then just waited in detention. […] The translator was not saying what I told him. The translator's speech was not the same as my speech. When I saw my speech on paper I recognized that it was not the same. The translator said to me that Serbia is a safe country, 'you should go back'. I can't go to Hungary. What should I do now?"[85]

The organization also interviewed a family that was separated in the "transit zone". The young couple from Iraq, now seeking asylum in Austria, told Amnesty International that the woman and her two-year old child were separated from her husband shortly after entering the "transit zone". The husband spent 28 days in detention in the "transit zone", before he was allowed to reunite with his family in Hungary. They were not given any reason for the separation and did not understand why they were subjected to this.[86] Other families, who managed to navigate through the admissibility procedure more easily, reported that they had seen dozens of men in the containers, who were not allowed to move beyond the tiny fenced courtyards surrounding their containers, while waiting for their decisions.[87]

These accounts are consistent with reports of the UNHCR and the Hungarian Helsinki Committee, who are allowed to periodically visit the facilities.[88] The latter found that translation is available primarily via video link, with the occasional presence of a translator in person only if specifically requested for the admissibility interview. Furthermore, asylum-seekers detained inside are left without access to information they understand, and without access to internet or phone connections to communicate with the external world.

THE FLAWED NOTION OF "SAFE COUNTRIES"

In the first five months of 2016, the OIN rejected 851 asylum applications on the grounds of the asylum-seeker coming through a "safe third country".[89] The majority of these decisions were taken in-country, but 281 asylum-seekers were rejected in "transit zones". Those whose applications are rejected on this ground face being returned to Serbia. Under international law, states are responsible for examining asylum claims lodged in their territory or under their jurisdiction promptly, fairly and effectively. A few countries, including Hungary, apply the "safe third country" mechanism to assess whether an asylum-seeker may be returned to a country other than the country of origin. This assessment is carried out at the admissibility stage of an asylum application, before examining its merits.

The application of a "safe third country" mechanism does not create an exemption from, and cannot be used to sidestep, Hungary's obligations under international law. These obligations include not only the obligation of *non-refoulement,* but also the procedural guarantees necessary to uphold the obligation of *non-refoulement* in practice. In particular, the application of a "safe third country" mechanism cannot curtail or substitute an assessment of the personal circumstances of each individual case.

The use of a list of "safe third countries" allows Hungary to shift its responsibility for asylum procedure to third countries, at present exclusively Serbia, without a thorough assessment of whether an applicant individually would be at risk of serious human rights violations in the third country concerned. The reality, however, is that Serbia cannot be considered a "safe" country in which the rights of asylum-seekers, notably to seek and acquire international protection, will be respected. Indeed, Serbia's Asylum Law remains only partially implemented and fails to guarantee access to international protection to even *prima facie* refugees.[90] Hungarian law gives asylum-seekers only three days to appeal any inadmissibility decision based on the

[85] Amnesty International interview with N. in Horgoš, 6 August 2016.
[86] Amnesty International interview in Traiskirchen, 10 August 2016.
[87] E.g. Amnesty International interview with a Palestinian Syrian family from Damascus, in the Kiskunhalas open reception centre, 8 August 2016.
[88] The OIN refused entry to Amnesty International staff arguing that these two organizations had already been granted permission, therefore humanitarian and legal assistance was assured for asylum-seekers. Reply from the Director General, 14 September 2016, on file with Amnesty International.
[89] Written response by the Minister of Interior to a question in the National Assembly, 16 June 2016, http://www.parlament.hu/irom40/10943/10943-0001.pdf
[90] See Amnesty International: Europe's Borderlands: Violations against refugees and migrants in Macedonia, Serbia and Hungary, July 2015, AI Index: EUR 70/1579/2015.

"safe third country" concept and puts the burden of proof on them to demonstrate that there is no "effective protection" in the third country in question.[91]

Additionally, the application of the "safe third country" mechanism to male or (visibly) non-vulnerable asylum-seekers is discriminatory. There is no intrinsic characteristic of male or (visibly) non-vulnerable asylum-seekers which would warrant blanket decisions of inadmissibility in their case. It is also unclear what criteria and screening is applied inside the transit zones to determine any vulnerability. The whole procedure is all the more concerning due to unreliable translation services.

A readmission agreement between Serbia and Hungary specifies the procedure of returning people whose right to stay in Hungary has been cancelled. However, the agreement was unilaterally suspended by Serbia at the time of the complete border closure in September 2015. Formally, Serbia is not receiving returned asylum-seekers from Hungary. It is only occasionally readmitting irregular migrants from Serbia, Kosovo and Albania.[92]

THE CRIMINALIZATION OF REFUGEES AND MIGRANTS

Between 15 September 2015 and 21 August 2016, the Szeged County Court, responsible for adjudicating the criminal cases of "unauthorized entry through the border fence" and "damage to the border fence", handled the cases of 2,889 people charged with unauthorized entry, and 4 charged with damaging the border fence. Overall, a total of 2,841 were found guilty. The sentences were overwhelmingly expulsion orders for one or two years; however three individuals were sent to prison, and 41 received suspended prison sentences. Since the enforcement of the new "push-back law" (see below), prosecutions for irregular entry through the border fence have decreased. Only five individuals were brought before the court to undergo this accelerated criminal procedure during the six weeks following the introduction of the new law.[93]

Criminalizing irregular entry and stay in Hungary is a disproportionate border control measure. Under the Refugee Convention, no one should be held criminally responsible for crossing borders irregularly in order to seek asylum.

IRREGULAR ENTRIES: PUSHED BACK AT THE BORDER FENCE

As of 5 July 2016, a new set of amendments to the Law on Asylum, the Law on the National Border and the Law governing the Entry and Stay of Third Country Nationals[94] enables the police to apprehend and push back any foreign national found to be irregularly in the country, within 8 km from the state border.[95] The measure, adopted in mid-June in Parliament and swiftly rolled out by the police authorities, is effectively a "push-back law" legalizing summary expulsions to Serbia. According to the government, the measures are necessary not only as a border control measure, but also to apply asylum procedures more effectively.[96] The core actions taken by police to enforce the law are to stop anyone who enters the country irregularly, inform them of the legal ways to enter Hungary (through the "transit zones"), and 'escort' them back to the other side of the border fence or to the entrance of "transit zones" situated on the external side of the fences. These are applied to all individuals except if the police suspects that a crime has been committed; however at the time of writing, statistics from the Szeged County Court suggest the new push-back practice has largely replaced the formal criminal procedures for irregular entry in place between September 2015 and July 2016.

The practices Amnesty International and other groups have documented at the border since the introduction of these measures seem to structurally include summary expulsions, or "push-backs" to Serbia, without any individual conditions considered. Push-backs happen when people are forcibly returned back to the country they are trying to leave shortly after they enter a country's territory or jurisdiction, without an opportunity to

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[91] According to the Hungarian Helsinki Committee's visit report (cited above), the appeals are generally honoured by the Szeged administrative court which orders the OIN to conduct a new admissibility procedure. However access to legal aid to submit appeals is severely restricted in the "transit zones".
[92] In 2016, by the end of July 136 persons were readmitted by Serbia. Serbia has not readmitted any asylum-seeker from Afghanistan, Iraq, Somalia or Syria. Source: Information note of the Hungarian Helsinki Committee, 1 September 2016.
[93] Szeged County Court, information on cases related to migration, 11 July – 21 August: http://szegeditorvenyszek.birosag.hu/hirek/20160826/tajekoztatas-migracios-ugyekrol-2016-julius-11-augusztus-21
[94] Law XCIV. of 2016 on the legal amendments enabling widespread application of asylum procedures at the border: http://www.magyarkozlony.hu/dokumentumok/83f2d2607c3fe77a71a9bd27c841ae3146f74980/megtekintes/49.png
[95] Amnesty International: Hungary: Crackdown on the rights of refugees and migrants continues unabated amidst European Commission inaction, 6 July 2016, AI Index number: EUR 27/4405/2016.
[96] Government statement, 4 July 2016, http://www.kormany.hu/hu/hirek/melysegi-hatarorizetet-vezetnek-be.

challenge their forced return. The deportation of a group of people without looking at each case individually is a collective expulsion and is prohibited under international law. Push-backs breach the EU Charter of Fundamental Rights, the Schengen Borders Code and EU asylum procedures and return directives.

Amnesty International researchers interviewed 18 people who entered Hungary irregularly in an attempt to claim asylum, often in groups, and who were pushed back, several violently. None of them had their individual situation assessed to determine the risks to the person or establish their asylum needs first. They were all sent back to Serbia across the border fence – sometimes through the hole they had cut themselves, sometimes through service doors – without any formal procedure. Most of them were informed in English that they needed to wait to enter the "transit zones", if they wished to seek asylum in Hungary, and that this is the only lawful way to enter the country. Some of the interviewees reported that they were shown an information note in their own language, advising them of the same. Most of them were photographed or filmed by police. Accounts from several interviewees suggest that Hungarian police do not restrict the application of the measures to 8 kilometres from the border line, in violation not only of international law, but also of Hungarian law.

M., a 17 year old boy from Herat, Afghanistan who has been traveling alone for over six months, told Amnesty International about his attempt to cross the border irregularly, in a group of eight people. He had spent three days and two nights in Hungary before being found and returned:

"I think I managed 10 km in the territory. After that we met the police. There were eight people in the group; the police told us we did not enter legally and will return us. I was photographed by Hungarian police and returned across the fence. I was not beaten personally but one man in the group was kicked in the foot so his foot broke. After this I have been in the camp, I did not try again."[97]

At the time of the interview, M. had already spent 36 days in Horgos and was unable to say when he would cross to Hungary through the "transit zone".

N., another unaccompanied child, aged 14, had been sleeping in the unofficial tent camp for over 2 months. He also attempted to enter Hungary across the fence two days before speaking to Amnesty International. He told Amnesty International that he had not met any police at the border when he entered the country and had spent more than a day in the country before being found at night. He was told that he could not enter Hungary illegally, only legally, and police repeated laws in English that were the basis for his return. They carried out the return immediately. He was not asked any questions.[98]

S. and S., two men from Afghanistan aged 21, were prevented from entering the country five times and pushed back twice from across the fence. At the time of speaking to Amnesty International, they were around 110th on the waiting list, with a potential waiting time of three and a half months before being allowed to access the country regularly to seek asylum.[99]

M. and H., two brothers from Iraq in their early 20s, tried to cross to Hungary three times. They told Amnesty International that first they saw helicopters, then the police came with dogs and cameras. They took pictures of all of them in their group and pushed them back. After three failed attempts, they decided to wait until their turn on the list. Although they themselves were not beaten when stopped and returned, they saw one person hit with a baton on his leg. When the Hungarian police stopped them they were also threatened if they did not go easily back to Serbia: "we can do anything, if you complain no one will listen to you", the police said to them.[100]

D. and M., two friends from Syria aged 31 and 16, also attempted the crossing three times. The last time they were successful, telling Amnesty International that they managed to walk a long distance into Hungary, and thought they had reached safety and would be able to apply for asylum. Instead they were sent back a third time, without any questions asked. One of them told Amnesty International:

"Once we managed to get 21 km into Hungary. But police came and still brought us back to Serbia. First of all when they caught us they said don't worry we will take you to a camp. […] They transferred us to different group of mixed police and military. […] They had a video camera with them. They said I had to say to the camera that I

[97] Interview with M. in Subotica, 5 August 2016.
[98] Interview with N. in Subotica, 5 August 2016.
[99] Interview with S. and S. in Subotica, 5 August 2016.
[100] Interview with M. and H. in Subotica, 5 August 2016.

broke the law and we were only 3 km in. They were aggressive, they said if we don't do that we will use tear gas and hit you. They gave us no papers, took no finger prints. Just drove us back to the border by Kelebia and then looked at our passports and threw them over the fence."[101]

While the immediate area on the external periphery of the border fences where asylum-seekers are 'escorted' to is, technically, Hungarian territory, in practice it is impossible to remain on Hungarian territory even if an asylum-seeker decides to sign up to the 'entering plan' waiting list; there are no suitable facilities where they could wait until their turn comes. The tent camps that emerged near the two transit zones in Kelebia and Horgoš are mainly on the Serbian side of the border line.

HUMAN RIGHTS OBLIGATIONS RELATED TO PUSH-BACKS

Under international and EU law, individuals whose transfer is sought from the jurisdiction of a state to that of another state have the right to both substantive and procedural safeguards. Substantively, the principle of *non-refoulement* prohibits states from transferring anyone, whether directly or indirectly, to a place where they would have a well-founded fear of persecution or would face a real risk of other serious human rights violations or abuses.[102] Procedurally, states are obliged to give the individuals concerned an effective opportunity to challenge the transfer.

The forcible returns to Serbia under the new law of all persons irregularly entering Hungary are realized summarily, without any of the guarantees required by international and EU law. Law XCIV of 2016 does not include any safeguards against *refoulement* and does not include any assessment of the individual circumstances and risks upon return of each individual. It does not provide any opportunity to challenge the expulsion and to claim asylum on the spot.

As a result of their summary nature, the push-backs from Hungary to Serbia are in breach of international conventions, including Article 13 of the International Covenant for Civil and Political Rights (ICCPR), Article 33 of the 1951 Refugee Convention, Article 3 of the European Convention on Human Rights (ECHR), and Article 4 of Protocol 4 and Article 1 of Protocol 7 to the ECHR. They are also in violation of EU legislation, such as the Schengen Borders Code[103], the Asylum Procedures Directive[104] as well as Articles 18 (right to asylum), 19 (protection in the event of removal, expulsion or extradition), and 47 (right to an effective remedy and to a fair trial) of the Charter of Fundamental Rights of the European Union. When they affect children, they are also in breach of the Convention on the Rights of the Child as per the General Comment of the Committee on the Rights of the Child, which said that "[s]tates shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention" and that "the assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services".[105]

Hungary has an obligation to respect, protect and fulfil the human rights of everyone on their territory or under their jurisdiction, irrespective of their migration status.[106] Whether or not the people pushed back from or prevented to enter Hungary are on territory considered Hungarian at the moment of the expulsion, once Hungarian officials have effective control over them the refugees and migrants are under Hungarian jurisdiction.[107]

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[101] Interview with D. and M. in Kiskunhalas, 8 August 2016.
[102] The situation in Serbia exposes refugees and asylum-seekers to a risk of human rights violations. Amnesty International's research demonstrates that the asylum system in Serbia is ineffective and fails to guarantee access to international protection to even prima facie refugees. Failures and delays in the implementation of the provisions of Serbia's Asylum Law deny asylum-seekers a prompt and effective individual assessment of their protection needs. See Amnesty International: Europe's Borderlands: Violations against refugees and migrants in Macedonia, Serbia and Hungary, July 2015, AI Index: EUR 70/1579/2015.
[103] See Article 13. Refusal of entry, prescribing a reasoned decision and the right to appeal. Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).
[104] Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on minimum standards on procedures in Member States for granting and withdrawing international protection (recast).
[105] General Comment no. 6, 1 September 2005, para. 27. Article 6 protects the right to life and Article 37 of the Convention deals mainly with the prohibition of torture and other cruel, inhuman or degrading treatment and the right to liberty and security of the person.
[106] Article 1 of the European Convention on Human Rights (ECHR), for example, establishes that the parties to the Convention "shall secure to everyone within their jurisdiction the rights and freedoms" enshrined in the Convention.
[107] As the UNHCR, the Human Rights Committee, the Committee against Torture, and other international bodies have confirmed, a state's human rights obligations toward an individual attach as long as that person is subject to the state's effective power and control. Also see, for

ILL-TREATMENT IN THE COURSE OF BORDER CONTROL OPERATIONS

The police threats and beatings outlined above and reported to Amnesty International during its visit to Hungary and its border areas are just a fraction of the number of violent incidents against refugees and migrants that have surfaced over the course of a few months. In May and early June, UNHCR and its partners collected information on over 100 cases of excessive use of force by law enforcement officers against asylum-seekers and migrants trying to cross the border.[108] The UN agency also disclosed details of reports of a violent incident that resulted in the drowning of a Syrian refugee in the Tisza River in Hungary near the border line, as he was being pushed back.[109] In July, Human Rights Watch reported cruel, violent pushbacks from across the border fence; some of the testimonies collected by the organization depicted a brutal approach by Hungarian military and police personnel who beat and abused asylum-seekers, including children, sometimes for hours.[110]

The government has flatly denied the accusations, while acknowledging that by 13 July, "eight migrants have submitted complaints in four cases due to physical assault in connection with the measures implemented by members of the Hungarian police force as part of the maintenance of law and order on the state borders […] The investigations instituted with a view to clarifying these incidents established that the complaints were unfounded".[111] At the time of writing, with the exception of an investigation into the drowning of the Syrian man, there is no information about any ex officio inquiry looking into the allegations of excessive use of force in the border area.

Ill-treatment in the course of border control operations or while in migration related detention (see below) is a human rights violation in breach of several human rights provisions, including in particular the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention on Human Rights. Authorities have an obligation to prevent ill-treatment and to promptly and impartially investigate all allegations of ill-treatment. The conduct of law-enforcement officers must ensure full respect for the right to life, liberty and security of all persons, enshrined in the International Covenant on Civil and Political Rights. The UN Code of Conduct for Law Enforcement Officials (1979)[112] and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)[113] (Basic Principles) provide detailed guidance for law enforcement officers on how to ensure respect for these rights while performing their duties.

The core provisions on the use of force in these documents have been recognized as reflecting binding international law by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.[114] In particular, law-enforcement officials should only use force if non-violent means of restraint are ineffective (Basic Principle 4) and force should only be used where it is absolutely necessary and strictly proportional to the legitimate aim pursued (Basic Principle 5). Assistance and medical aid must be given as swiftly as possible to those injured or otherwise affected by the use of force by law-enforcement officials (Basic Principles 5 and 6).

example, Hirsi Jamaa and Others v Italy, App. No. 27765/09 (Eur. Ct. H.R. Grand Chamber), paras 74-75, 79-82; Medvedyev and Others v France, App. No. 3394/03, Judgment of 29 March 2010 (Eur. Ct. H.R. Grand Chamber), paras 62-67.

[108] 'UNHCR alarmed at refugee death on Hungary-Serbia border', 6 June 2016, http://www.unhcr-centraleurope.org/en/news/2016/unhcr-alarmed-at-refugee-death-on-hungary-serbia-border.html.

[109] Ibid.

[110] Human Rights Watch: Hungary: Migrants abused at the border, 13 July 2016, https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border.

[111] Statement by the Ministry of Interior, 13 July 2016, http://www.kormany.hu/en/ministry-of-interior/news/the-ministry-of-interior-rejects-the-claims-of-human-rights-watch.

[112] Code of Conduct for Law Enforcement Officials, Adopted by General Assembly Resolution 34/169 of 17 December 1979.

[113] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

[114] Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 23 September 2006 (A/61/311, para. 35).

5. DEGRADING TREATMENT AS DETERRENCE

> **"I'm disappointed and sad. When I came, I thought, Hungary is Europe, maybe it will be OK. But I realise that they hate us here. It is too hard to restart life here so I have to leave."**
>
> M., an asylum-seeker from Afghanistan interviewed in Körmend, 9 August 2016.

The following section examines the current situation in reception conditions in Hungary, including the failure to ensure adequate access to information, translation and support for registered asylum-seekers who have been admitted onto Hungarian territory, including those that have successfully passed through "transit zones". It presents evidence of the widespread detention of asylum-seekers on dubious grounds, and the traumatic experiences resulting from detention. Finally, it provides insights into shortcomings in the asylum procedure, leading to devastating consequences for unaccompanied minors and other vulnerable asylum-seekers.

RECEPTION CONDITIONS IN SOUTHERN HUNGARY

Asylum-seekers entering a full asylum process have their residency assigned by the OIN. In practice, most people entering from Serbia are sent to two locations in the south and southwest of the country: either the container camp in Kiskunhalas, set up to accommodate mainly families, or the tent camp in Körmend, set up to house male asylum-seekers. Both open camps are fenced off and are surrounded by police buildings. A lack of interaction between the asylum authority and the asylum-seekers compounds the grim settings. The open accommodation centre in Kiskunhalas was set up in June 2016, following the closure of a larger camp in Debrecen, in the east. It is located adjacent to the heavily policed asylum detention centre and is composed of containers put up in a gravel-surfaced area. The containers are encircled by tall wire fencing with razor wire on the top; while free movement of asylum-seekers is allowed, entries and exits are recorded and closely monitored. The tent camp in Körmend is a structure of military tents unsuitable for long-term accommodation, and is located directly next to a police training and education centre. Its security features include CCTV units and a tight perimeter fence.

Asylum-seekers interviewed in Kiskunhalas reported a lack of attention and care, especially for children. At the time of Amnesty International's visit, it was unclear if the children would be able to attend school from the beginning of the school year and if other social activities would be available to them.

The organization spoke to N., a Palestinian Syrian woman travelling with her husband, four children aged 3 to 13 and her 72 year old mother-in-law, who left Yarmouk camp in Damascus. After months of being stuck in Syria, they managed to enter Turkey; after a long and difficult journey with her mother-in-law who is unable to walk, and a brief interview in the transit zone in Kelebia, they were transferred to Kiskunhalas asylum accommodation centre. N. told Amnesty International:

"It's not nice here for the children. It's barbed wire and no grass, nothing green for them. It's hot and not a good environment for them to be in. […] The first time we arrived here and saw this we were so scared. It looked like a jail, we were so scared. In Hungary there is suspicion."[115]

Amnesty International is concerned that unaccompanied children may be accommodated with adults due to shortcomings in the initial identification and a lack of proper vulnerability checks. For example B., a fourteen year-old boy from Afghanistan, was staying in Körmend camp at the time of Amnesty International's visit. He was misidentified as an adult at the initial identification process carried out by police and a translator. He was, quite visibly, still a minor and ought to have been identified as such. Following the mistaken identification, he was transferred to Körmend and accommodated with adults.[116]

ACCESS TO INFORMATION AND SUPPORT WITH THE ASYLUM APPLICATION

All the asylum-seekers and migrants interviewed by Amnesty International in reception centres and in immigration detention in August 2016 lacked information about their rights, the procedure they were subjected to and the EU asylum system. They feared the registration and asylum process in Hungary, including fingerprinting and interviewing. They reported a lack of interest on the side of the asylum authority to support them with their application, including through preparation for interviews and counselling. This was compounded by the general lack of communication and the absence of state-sponsored legal aid during asylum and immigration procedures.

There are no locally stationed interpreters available to asylum-seekers when a need to communicate arises outside the formal hearings. For the hearings or to communicate decisions, an interpreter is requested to come from another facility of the OIN (e.g. the brick and mortar reception centre in Bicske, near Budapest), or from its central offices. M., a Palestinian asylum-seeker who was released from asylum detention after four months told Amnesty International that no one employed in the detention centre in Kiskunhalas could speak Arabic or another foreign language, which commonly was a cause of conflict and frustration.[117]

The negative consequences of the general lack of support to asylum-seekers can be seen through recognition rates: by the end of August, of over twenty-five thousand applications for international protection registered, only 290 were completed with a positive decision. Only 96 persons were granted refugee status, while 194 benefited from subsidiary protection.[118] Two-thirds of all asylum applications were submitted by asylum-seekers fleeing conflict and widespread violence: 37% from Afghanistan, 16% from Syria, 11% from Iraq and 1% from Somalia. Nearly half of the applications were submitted by women (21%) and children (25%).[119]

ASYLUM DETENTION IN-COUNTRY

At the time of Amnesty International's visit, of the twelve hundred registered asylum-seekers still in Hungary, seven hundred remained in asylum detention.[120] Detention orders seen by Amnesty International, as well as testimonies of asylum-seekers released from detention confirmed that detention is routinely ordered for male asylum-seekers, initially for identification, then prolonged to ensure their availability for the asylum procedure or to prevent flight pending the conclusion of their claims.[121]

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[115] Interview with N. in Kiskunhalas, 8 August 2016.
[116] Interview with B. in Körmend, 9 August 2016.
[117] Interview with M. in Körmend, 9 August 2016.
[118] Information note of the Hungarian Helsinki Committee, 1 September 2016, cited above.
[119] Ibid.
[120] Information note of the Hungarian Helsinki Committee, 1 August 2016. The proportion of detainees relative to all asylum-seekers has somewhat decreased in August. http://www.helsinki.hu/wp-content/uploads/Magyar-menekultugy-a-szamok-tukreben-2016-augusztus-1.pdf.
[121] Section 31/A, Law on Asylum

GROUNDS FOR ASYLUM DETENTION – SECTION 31/A LAW ON ASYLUM

The Office of Immigration and Nationality can order the detention of the asylum-seeker:

(a) To establish his or her identity or nationality;

(b) Where a procedure is ongoing for the expulsion of a person seeking recognition and it can be proven on the basis of objective criteria – inclusive of the fact that the applicant has had the opportunity beforehand to submit application of asylum – or there is a well-founded reason to presume that the person seeking recognition is applying for asylum exclusively to delay or frustrate the performance of the expulsion;

(c) In order to establish the required data for conducting the procedure, where there are well-founded grounds for presuming that the applicant is delaying or frustrating the asylum procedure or presents a risk of absconding;

(d) To protect national security, public safety, or (in the event of serious or repeated violations of the designated place of stay) public order;

(e) Where the application has been submitted in an airport procedure; or

(f) Where it is necessary to carry out a Dublin transfer and there is a serious risk of escape;

(1a) In order to carry out the Dublin transfer, the refugee authority may take into asylum detention a foreigner who failed to submit an application for asylum in Hungary and the Dublin handover can take place in his or her case. [122]

Note: a complaint against a detention order can be brought before the regional administrative court but the detention order cannot be appealed. The complaint does not have a suspensive effect and it can only address the circumstances of the detention (Section 31/C Law on Asylum).

By late August 2016, S., a 23 year-old man from Kabul, Afghanistan, had been in Hungary for five months. According to the records of the OIN, he entered the country irregularly from Serbia across the fence and was apprehended in Szenta train station in southwestern Hungary on 17 April 2016. After he had been detained for identification, he expressed a wish to claim asylum. S. showed Amnesty International all the documentation he had been given by the OIN. He had first submitted an application for asylum on 18 April 2016. He was initially detained for 72 hours.[123] According to the paperwork, the following day he was ordered to remain in asylum detention as his identity could not be verified, he arrived to Hungary irregularly and there was a risk of flight (as he mentioned that he had family in Italy). He was first detained in the Kiskunhalas asylum detention centre, where he spent four months.[124] He told Amnesty International:

"I didn't have any kind of interview. They even don't tell you why you have to stay more [in detention]. After two months more, they again said 'you have to stay more'. Most of the people [in detention in Kiskunhalas] just try to hurt themselves, sometimes they try to kill themselves. […] This was the first time I was detained in my life. It hurts a lot, when you didn't do anything wrong and they put you in a closed camp. There was a doctor, for every kind of issue we had only the same tablet – paracetamol. There were 12 people in my room, about 5 meters long and 3-4 meters wide. The door of the building would be locked in the evenings. Police and security weren't nice and treated us badly. If they wanted to beat somebody they would just take them to another room. I saw this happen several times; maybe thirty people were beaten by the police while I was there."[125]

M., a Palestinian man interviewed by Amnesty International in Körmend had also spent four months in asylum detention prior to being released to the open camp.[126] He was initially accommodated in the Bicske open accommodation centre near Budapest, but decided to buy a train ticket to Vienna after having spent

[122] Working translation available in the Asylum Information Database, http://www.asylumineurope.org/reports/country/hungary/detention-asylum-seekers/legal-framework-detention/grounds-detention
[123] Section 31/C, Law on Asylum
[124] The OIN order includes a declaration that S. had understood the order read out to him in Dari on the spot and had been given information on how to submit a complaint. In mid-June, his detention in Kiskunhalas was prolonged for a second time by the Kiskunhalas county court, until 14 August.
[125] Interview with S. in Körmend, 9 August 2016.
[126] Interview with M. in Körmend, 9 August 2016.

two nights on the floor of the overcrowded camp's gym hall. He and his friends were stopped and detained at a train station at the end of March, in the Western town of Győr, on the grounds that he attempted to leave his assigned residency (and the country). He was not aware that although he could move freely in Hungary, his asylum application was the ground on which he could legally reside in the country, and an attempt to "abscond the procedure" could lead to him being put in detention. The two other men traveling with him were subsequently released on asylum bail;[127] M. was not able to afford this and spent four months in asylum detention, where he experienced violence from the police and the security guards. M. told Amnesty International:

"If you make a mistake, they take you to a container and beat you well. The police and security guards know there are lots of cameras, so they push you away to a place where this can't be seen. […] A friend of mine got a call from his family which made him anxious and very nervous. He was seen by a doctor and then locked in a room. He tried to ask for the door to be open. Instead, the police went in and beat him so his head swell up. […] If the situation continues like this it will have catastrophic consequences for anyone. There are about 450 people in there."[128]

H., a Syrian asylum-seeker from Daraa told Amnesty International in Körmend that prior to his release, around 23 boys were taken to the accommodation centre for children, after having spent three weeks in detention. [129]

Some are so desperate to leave that they harm themselves. H. himself had also spent considerable time in asylum detention before being transferred to Körmend. He had crossed into Hungary irregularly from Serbia, however he was not charged for unauthorized border crossing across the fence[130] and could submit an asylum application. He subsequently tried to leave the country towards Austria, and was caught at a train station in Budapest having just bought a ticket to Vienna. He was swiftly ordered to remain in asylum detention and taken to Kiskunhalas, before he would try to "abscond from the procedure". H. told Amnesty International:

"I cut myself twenty days ago. When the skin healed they transferred me here. I applied for asylum bail five times, but they refused. This is why I cut myself. It was the first time I was detained, it felt very badly. They would take me to the medical nurse first, then they would beat me because I cut myself. There are other people who cut themselves deeper. Another man, from Iran, smashed his head into the edge of the door. […] Every day there is a control by police and the security guards; if they find a spoon they are as happy as if they found a bomb."[131]

Two other Syrian, an Afghan and an Iranian men accommodated in Körmend showed Amnesty International deep cut wounds from razors on their arms; all had cut themselves dozens of times on both arms. The self-inflicted harm was their last attempt to protest their detention. Others in the camp have gone on hunger strike or threatened suicide.

Asylum-seekers, who are presumed to be eligible for international protection unless and until proven otherwise following a full, fair and effective asylum determination procedure, should normally not be detained and their right to liberty should be considered before any detention or other measures restricting personal liberty takes place.

Under international law, refugees and asylum-seekers cannot be subjected to arbitrary arrest or detention. In order not to be arbitrary, arrest and detention must be (a) prescribed by law, (b) necessary in the specific circumstances and (c) proportionate to the legitimate aim pursued. Any custodial or non-custodial measure restricting the right to liberty of refugees and asylum-seekers must be exceptional and based on a detailed and case-by-case assessment of the personal situation of the individual concerned, including their personal history and, as relevant, the risk of absconding. Such assessment should consider the necessity and

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[127] Asylum detention bail is an institution that allows asylum seekers to buy their freedom while remaining in an asylum process in Hungary. The bail cannot be lower than EUR 500 and higher than EUR 5.000, and is normally returned to the asylum seeker once the full asylum procedure (including possible appeals) had been concluded. However the OIN can also take a decision to retain the amount paid in and transfer it to the state fund. See Ministry of Interior order no. 29/2013. (VI. 28.), on the rules of implementing asylum detention and asylum bail, http://www.police.hu/sites/default/files/29-2013.pdf.

[128] A visit by the Hungarian Helsinki Committee to the Kiskunhalas asylum detention centre in mid-August indicates that in recent weeks, detainees continued to be released in groups, as the population of the particular detention centre shrank to 216 (as of 16 August). Report available at: http://www.helsinki.hu/wp-content/uploads/MHB-jelent%C3%A9s-M%C5%90BEK-Kiskunhalas-20160816.pdf

[129] Interview with H. in Körmend, 9 August 2016.

[130] Section 352/A (1-4) of the Criminal Code.

[131] Interview with H. in Körmend, 9 August 2016.

appropriateness of any restriction of liberty, including whether it is proportionate to the objective to be achieved. The person concerned should be provided with a reasoned decision, preferably in a language that they understand.

The detention of children (i.e. anyone under 18 years of age) solely for immigration purposes, whether they are unaccompanied, separated or held together with their family members, can never be justified because it cannot ever be said to be in their best interests. Children in administrative detention are often traumatized and have difficulty understanding why they are being punished despite not having committed a crime. They rarely have access to adequate education, play and leisure facilities, and are often supervised by persons who are not trained to respond to their specific needs. Children should never be detained solely for immigration purposes.

The principle of proportionality allows states to detain refugees and asylum-seekers only as a last resort, and when it is strictly necessary, and to give preference to less coercive measures, that is non-custodial measures, whenever such measures suffice to achieve the objective pursued. However, alternatives to detention must not become alternatives to release, in that alternative measures should not be applied to detained refuges and asylum-seekers who are eligible for unconditional release.

Anyone arrested or detained solely for immigration purposes should be brought promptly before a judge or other officer authorised by law to exercise judicial power to review the lawfulness of the arrest and/or detention and its/their continued necessity; and to order unconditional release and/or less coercive measures, if warranted. Further, reviews of the continued necessity and lawfulness of the detention should be carried out at regular intervals by a judge or other officer authorised by law to exercise judicial power. The burden of proof must rest on the detaining authorities to demonstrate that the presumption in favour of liberty should be displaced. Only weighty reasons will suffice. The refugee or asylum-seeker must have access to high quality, independent legal representations and advice, if necessary free of charge, to challenge the lawfulness of detention.

6. RECOMMENDATIONS

In light of the findings above, Amnesty International makes the following recommendations:

THE GOVERNMENT OF HUNGARY

- To repeal the amendments enabling the summary expulsion of refugees and migrants from inside Hungarian territory, and criminalizing "illegal entry";
- To ensure that all asylum-seekers have access to a fair and effective asylum procedure, including an assessment of their claims for international protection on their merit through an individualized procedure;
- To ensure that asylum-seekers seeking refuge in the country are identified and granted access to Hungary, where their needs can be properly assessed and addressed; annul arbitrary restrictions on the number of daily entries and provide adequate reception conditions inside the country;
- To instruct police and military forces deployed to guard the state borders to not prevent asylum-seekers from accessing Hungarian territory and to refrain from violence while monitoring movements at the border. In cases where use of force might be necessary to stop or prevent a crime, to exercise restraint and to use force only as far as it is proportionate to the objective. Any excessive use of force must be promptly investigated in an independent and impartial manner;
- To ensure that reception conditions in Kiskunhalas and Körmend are in line with international standards by allocating necessary resources.

THE EUROPEAN COMMISSION

- To conclude the formal infringement proceedings against Hungary and ensure, through any appropriate measure, Hungary's full compliance with European Union law.

THE EUROPEAN PARLIAMENT, THE EUROPEAN COMMISSION AND EU MEMBER STATES

- To submit a reasoned proposal to the European Council to activate the preventive mechanism foreseen under Article 7(1) TEU, in the light of the evidence of "a clear risk of a serious breach of the values referred to in Article 2 TEU", including "the respect for human dignity ... and respect for human rights".

THE STATES PARTICIPATING IN THE DUBLIN REGULATION

- To refrain from transferring asylum-seekers back to Hungary on the basis of deficiencies in reception conditions and asylum procedures and a genuine risk of *refoulement* due to legislation designating Serbia, the Former Yugoslav Republic of Macedonia and Turkey as safe third countries, as well as attempted Dublin returns from Hungary to Greece.

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STRANDED HOPE

HUNGARY'S SUSTAINED ATTACK ON THE RIGHTS OF REFUGEES AND MIGRANTS

Fences, teargas, and draconian legislation: over the last year the Hungarian authorities have baulked at little in their determination to keep refugees and migrants out of the country. The government's programme of militarization, criminalization and isolation has ushered in a set of measures which have resulted in violent push-backs at the border with Serbia, unlawful detentions inside the country and dire living conditions for those waiting at the border. While the Hungarian government has spent millions of Euros on a xenophobic advertising campaign, refugees are left to languish.

This briefing documents the pernicious consequences of Hungary's current policies in flagrant breach of international human rights and refugee law and EU directives.

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