Ukraine

Buffeted in the Borderland

The Treatment of Migrants and Asylum Seekers in Ukraine

HUMAN RIGHTS WATCH

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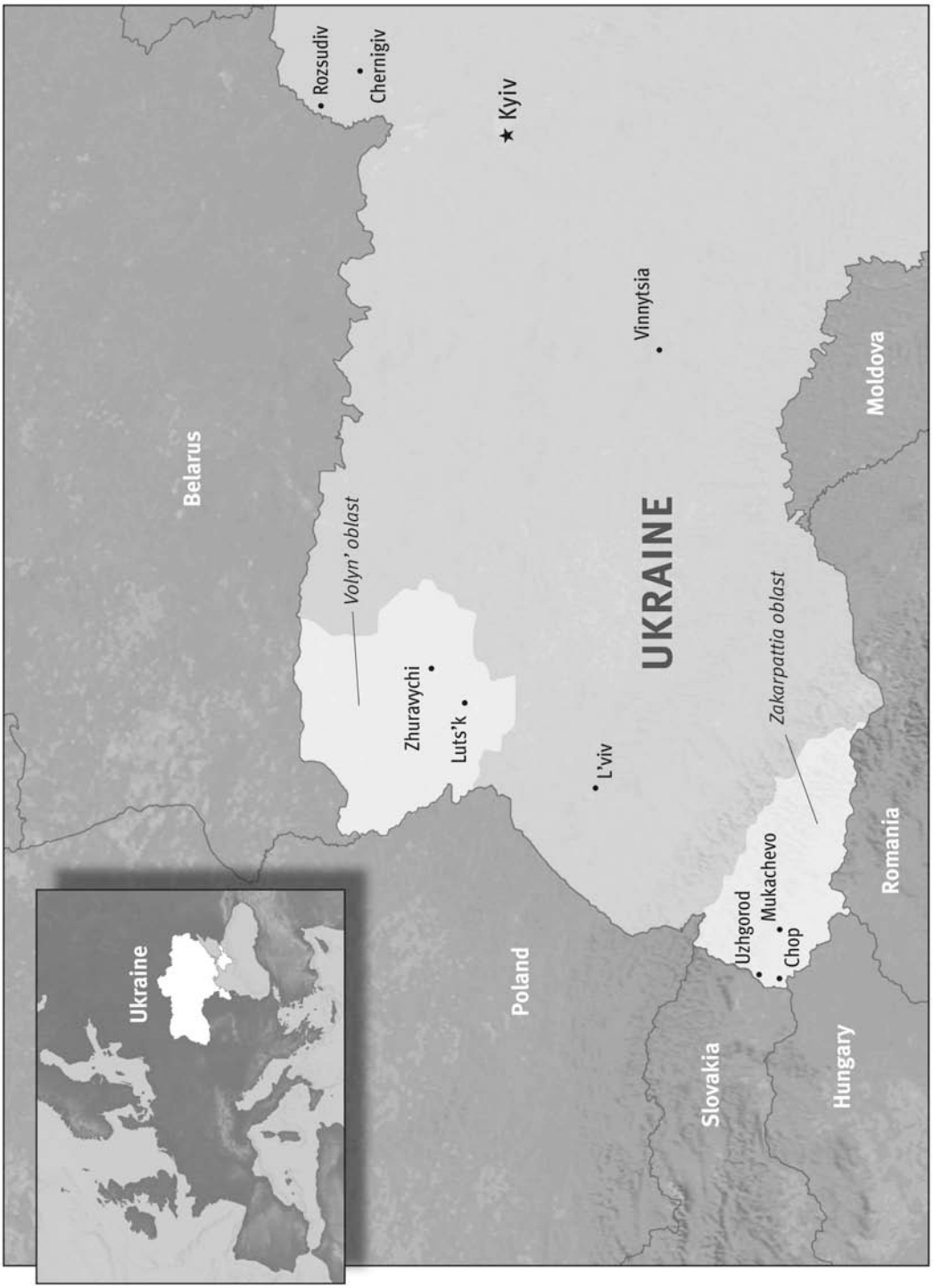
Map of Ukraine



I. Summary

> When I said I wanted to seek asylum [the Slovakian border guards] said "yes" but took us back to the border [with Ukraine]…. The first night [after return] I spent in a border place. People there were hitting me. I asked for food. The border guards said "fuck you"…. They punched me on my heart … also on my mouth and my back. I fell on the ground and they hit me more.
>
> A Pakistani asylum seeker recounted his treatment in Ukraine after he was deported from Slovakia on May 21, 2010.

On January 1, 2010, a readmission agreement between the European Union and Ukraine came into force that provides for the return of third-country nationals who enter the EU from Ukraine. Readmission agreements are a cornerstone of the European Union's so-called externalization strategy for asylum and migration. The core of this strategy is to stop the flow of migrants and asylum seekers into the EU by shifting the burden and responsibility for migrants and refugees on those countries that neighbor the Union, in this case Ukraine. Such an agreement presumes, however, that the receiving state will provide comparable treatment and respect for rights as the sending state. That, as this report will show, is not the case.

Ukraine has a dysfunctional asylum system that was completely unable to recognize or provide protection to refugees from August 2009 through August 2010 and at the time of this writing is struggling to manage the backlog of claims that were not processed during that time. Not only has Ukraine been unable or unwilling to provide effective protection to refugees and asylum seekers, it has also subjected some migrants returned from neighboring EU countries to torture and other inhuman and degrading treatment.

The EU-Ukraine readmission agreement sets out a broad procedure for returns, including an accelerated procedure for individuals apprehended near the border. But human rights protections in the agreement are very thin, amounting to an overall savings clause stating that nothing in the agreement allows a party to violate their obligations under refugee or human rights law.

In the five years leading up to activation of the readmission agreement, and continuing afterwards, the EU has invested millions of Euros to build Ukraine's capacity to stem the irregular arrival of migrants and asylum seekers into the EU. While these capacity-building

funds have devoted some resources to asylum procedures and reception and integration of asylum seekers and refugees, such funding pales in comparison to the money the EU has poured into re-enforcing Ukrainian border controls and boosting its capacity to apprehend, detain, and deport irregular migrants. While Ukraine is engaged in building and renovating migrant detention centers, it appears unable or unwilling to adequately feed the migrants it currently detains and charges the detainees with the costs of their own detention and transportation between facilities.

Because the implementing protocols of the EU readmission agreement had not been finalized as of the writing of this report, nine months after the agreement formally went into effect, neighboring EU countries were operating informally on the basis of bilateral readmission agreements from the mid 1990s. According to those bilateral agreements, migrants entering Poland, Slovakia, and Hungary without permission can be summarily returned if caught within 48 hours of crossing.

Of 161 refugees, migrants, and asylum seekers interviewed in Ukraine, Slovakia, and Hungary, we received 50 testimonies of persons who said they had been returned from Slovakia or Hungary. Most of them said they had asked for asylum upon arrival in those countries, but that their pleas had been ignored and they had been swiftly expelled. These practices breach the right to seek asylum contained in the binding EU Charter of Fundamental Rights. Both Slovakia and Hungary also returned unaccompanied children to Ukraine in violation of their international obligations to protect them.

Neither Slovakia nor Hungary allows for independent monitoring of returns, and neither country provides for an effective remedy that would protect migrants against ill-treatment upon return. The launching of an appeal against a deportation from Slovakia or Hungary does not suspend the return. Returnees do not have access even to minimal information on arrest and return. In practice, Slovak and Hungarian border authorities often trick migrants into believing they will not be returned or coerce or deceive migrants into signing papers they do not understand, which are then used to send them to Ukraine.

The number of third country nationals believed to have crossed irregularly from Ukraine and apprehended in Slovakia and Hungary has been decreasing steadily since 2008, as has the number of asylum applications lodged. Slovakia apprehended 978 migrants entering the country from Ukraine in 2008, 563 in 2009, and 203 between January and June 30, 2010. The vast majority were deported to Ukraine: 691 in 2008, 425 in 2009, and 140 during the first six months of 2010. The remaining were not returned, including some who were admitted into the asylum procedure. Hungary deported 425 migrants to Ukraine in 2008, 284 in 2009,

and 164 between January and August 31, 2010. At the same time, Hungary admitted 555 migrants who entered the country from Ukraine into the asylum procedure in 2008, 152 in 2009, and 21 up to August 31, 2010. The return of almost all third country nationals to Ukraine took place under an accelerated procedure.

More than half of the migrants interviewed by Human Rights Watch who had been returned from Slovakia and Hungary said that they were beaten or subjected to other physical mistreatment upon return to Ukraine. Some migrants and asylum seekers, including children, gave credible accounts of having been tortured during interrogations while in the custody of Ukraine's State Border Guard Service (SBGS). Allegations included accounts of being subjected to electric shock by Ukrainian plain clothes officials during interrogations about smuggling networks. An Iraqi man spoke of his interrogation after being arrested by Ukrainian border guards in late April 2010:

> The treatment was savage. They beat us and kicked us and abused us verbally. They also electric shocked me. They shocked me on my ears. I admitted that I wanted to cross the border and that we were smuggled. They were four persons and one interpreter. They said they were security forces, but they were in plain clothes. The interpreter was an Iraqi. I felt my heart was going to stop. I was sitting on a chair. I just admitted everything, but they didn't stop torturing me.

While Human Rights Watch does not believe torture of migrants is systemic in Ukraine, the testimonies in this report indicate that it does occur. Many migrants who were not tortured nevertheless alleged that they were subjected to beatings, kicking, food deprivation, or other inhuman or degrading treatment. All of these abuses take place in a climate of impunity with victims fearful of reporting the abuse and perpetrators not held to account.

Detention of Migrants

The authorities in all facilities clearly made preparations to improve the look of detention centers prior to the Human Rights Watch visit. Of greater concern than cosmetic changes, such as fresh coats of paint, were accounts we heard of intimidation of detainees regarding their interviews with Human Rights Watch researchers, as well as indications that certain detainees were being transferred, released, or concealed to prevent us from meeting them.

That being said, physical conditions of detention for migrants in Ukraine do appear to have greatly improved in the five years since the publication of our previous report on Ukrainian

migrant detention centers, *On the Margins: Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union*. That 2005 report had documented substandard conditions of detention in migrant detention centers throughout Ukraine, including overcrowding, unhygienic facilities, poor nutrition, and limited access to recreation, natural light, and health care. While many of these concerns have been addressed, serious problems in migration detention remain including ill-treatment, lack of access to the asylum procedure for detainees, detention of children, co-mingling of men with unrelated women, co-mingling of children with adults, corruption, and the arbitrary and disproportionate use of migrant detention in general.

All of the facilities we visited in 2010 looked clean and well-ordered and none, at the time of our visit, were overcrowded. In fact, the detention centers Human Rights Watch researchers visited in June 2010 were, at most, half filled, and in some cases entirely empty.

Most of the current detainees interviewed in most locations had no complaints regarding lack of hygiene or overcrowding. The most frequent complaints were about the food, both quality and quantity, and about lack of access to lawyers, telephones, internet, and television. "Some good, some bad," was the typical response when Human Rights Watch asked current and former detainees how detention center guards and staff treated them. Most of the allegations of guard mistreatment in migration detention centers involved shouting, shoving, and the use of racial epithets, sometimes as a result of guards' drunkenness or loss of temper.

Ukraine's short-term detention facilities, called Specially Equipped Premises (SPs), where migrants are held by the State Border Guard Service in the hours immediately following apprehension exhibited the worst detention conditions and treatment of detainees, according to interviews with former detainees. Conditions progressively improve as migrants are transferred from SPs to Temporary Holding Facilities, also run by the SBGS, and from those facilities to the Migrant Accommodation Centers, run by the Ministry of Interior, where conditions and treatment are better.

Migrants interviewed by Human Rights Watch who had been detained previously described some of the same clean and spacious facilities we toured in June 2010 as having been dirty and overcrowded as recently as late 2009.

Although migration detention is limited to a six-month maximum, many migrants are frustrated in their ability to challenge the legality of their detention because severely overworked Ukrainian courts are usually not able to review cases before six months have

passed. In several instances, migrants said they were issued a six-month detention order but were never presented before a judge or given an opportunity to challenge their detention. Many, including children, reported that border guards threatened to keep them detained for the full six months unless they paid a bribe.

Nothing in Ukrainian law prohibits the authorities from re-arresting migrants shortly after release from detention and detaining them for another six months. Human Rights Watch met a number of migrants who had been detained multiple times.

Migration detainees in Ukraine have no consistent, predictable access to a judge or other authority or access to legal representation to enable them to challenge their detention. Furthermore, there generally is no individualized assessment of the necessity of detaining migrants or asylum seekers as required by international law. Therefore, Human Rights Watch concludes that migration detention in Ukraine is sometimes arbitrary, and therefore contrary to international standards to which Ukraine is bound.

Ukraine's Dysfunctional Asylum System

Although in August 2010 the asylum procedure formally resumed after having been in a state of paralysis since the eruption of an intergovernmental power struggle in August 2009, the system remains essentially broken. The asylum system has been restructured eight times in 10 years, each transition resulting in gaps in protection.

In both years 2007 and 2008, 2,155 applications were filed, according to the State Committee on Nationalities and Religions (SCNR). That number fell to 1,233 in 2009. The SCNR granted asylum to 33 people in 2007, 125 in 2008, and 126 in 2009, until the authority to grant asylum ended in August 2009. As of December 2009, there were 2,334 recognized refugees in Ukraine, more than half of whom were Afghans.

While SCNR and the Regional Migration Service (RMS) were no longer authorized to grant asylum, they continued to reject asylum claims. Most asylum claims were rejected either as inadmissible to the procedure or as manifestly unfounded without a careful examination of the substance of the claim.

A serious obstruction to the functioning of the asylum system has been the failure of State Border Guard Service officials to submit applications filed by detained asylum seekers to the RMS. The number of people released from border guard-controlled temporary holding facilities because their asylum applications had been accepted by the regional migration

service fell dramatically from 1,114 in 2008 to 202 in 2009. The largest drop in asylum applications filed in 2009 occurred in the Zakarpattia oblast on Ukraine's western border where more asylum seekers are detained than in other places, such as Kyiv.

Asylum seekers interviewed by Human Rights Watch complained that their RMS asylum interviews were superficial, that interpreters were often unqualified, and that the interviewers were sometimes harsh and judgmental. An Afghan, who appeared to us to have a plausible claim, said that his interviewer told him during the interview "100 percent you will be rejected."

Corruption in the asylum system is rife. Refugees may be recognized because they bought their protection status and many asylum seekers say they had to bribe migration officials to enter the asylum procedure, have an interpreter during the asylum interview, or to obtain documentation.

There are also important legal gaps, such as the lack of complementary protection in the Ukrainian refugee law to protect people fleeing indiscriminate violence arising from armed conflict. Consequently, Somalis are not granted refugee protection in Ukraine. Many Somalis also face an increased risk of experiencing racial violence in Ukraine, and many said they had no other option than trying to enter the EU for protection. There are no provisions in the asylum law to protect victims of trafficking.

Unaccompanied Children

Unaccompanied children face particular obstacles to access the asylum procedure and receive documentation because they can only file a claim with a legal representative and the authorities in some regions refuse to appoint legal representatives for them. There is only one known case of an unaccompanied child being granted refugee status. Decision-making is slow, and many children become adults before their asylum applications are decided, which works against their claims.

Worse, border guards may detain children for weeks in a jail-like facility euphemistically called a "dormitory." Border guard officials put children's safety at risk by detaining them in this dormitory jointly with unrelated adults, including girls with boys and men. Unaccompanied migrant children often are unable to access state-sponsored accommodation and care. A majority live with fellow nationals in shared flats and pay rent. Some are unable to pay for daily expenses and rent and therefore perform domestic or other work. Those who do live in centers for asylum seekers may be housed jointly with

unrelated adults, putting them at risk of abuse. Unaccompanied children are rarely enrolled in school, and most only attend sporadic language classes.

There are no age assessment guidelines, and some officials contest children's declarations of being underage, registering them as adults instead. Others coerce children into declaring themselves as adults by threatening to keep them in detention otherwise. As a result, some children have been detained for six months. Despite the abysmal treatment these children receive in Ukraine, both Slovakia and Hungary have returned unaccompanied children under their readmission agreements. In practice, they were returned on the same basis as adults, without consideration of their vulnerability and lack of protection in Ukraine. Some returned children alleged ill-treatment, including torture and arbitrary detention by Ukrainian officials.

Refoulement

In Ukraine the most heightened risk of refoulement—the forced return of a refugee—comes as a result of extradition requests. Despite the clarity of the bar on refoulement in international and domestic law, Ukraine on February 14, 2006 forcibly returned ten Uzbeks to Uzbekistan pursuant to an extradition request, despite calls from the UN High Commissioner for Refugees (UNHCR) not to return them. After the fact, in May 2006, the Ministry of Justice issued a legal opinion saying the deportation was illegal. During the time of the Human Rights Watch visit in June 2010, four Uzbek nationals appeared to be the subject of extradition requests from their home country and were in various stages of seeking asylum or appealing the rejection of their refugee claims in Ukraine.

UNHCR documented that Ukraine committed refoulement against 12 persons in 2008 and 16 persons in 2009. UNHCR told Human Rights Watch, "We continue to have a difference of opinion with the Prosecutor General with respect to the application of extradition procedures to persons of concern to UNHCR."

II. Recommendations

To the Government of Ukraine

To the President, the Cabinet of Ministers, and the Verkhovna Rada

- Ensure that sufficient state budget resources are allocated to receiving and accommodating asylum seekers and refugees and for processing refugee claims.
- Simplify the asylum procedure and the documents issued at various stages of the process so that asylum seekers are protected from arrest and have work authorization. Consider introducing a single document for all asylum seekers.
- Provide accommodation other than detention for asylum seekers while their claims are pending.
- Provide state budgeting for the free legal aid for asylum seekers that is required by law, including for unaccompanied children.
- Establish a specialized corps of administrative judges dedicated to examining cases involving migration and refugee law.
- Provide sufficient resources for administrative courts and administrative appeals courts to handle migration and asylum-related cases.
- Amend the Law of Ukraine "On Refugees" to include complementary forms of protection to protect people fleeing indiscriminate violence arising from armed conflict and other human rights abuses, humanitarian protection for circumstances such as trafficking in human beings, and temporary protection in situations of mass influx.
- Amend the Law of Ukraine "On Refugees" to ensure access of all asylum seekers to the asylum procedure, irrespective of their age. Ensure that children are supported by qualified state sponsored representatives throughout the asylum procedures as well as by lawyers, and do not make access to the asylum procedure and documentation dependent on the appointment of a legal representative.
- Repeal any provisions in law that would require persons in migration detention to pay the costs of their own detention or of their transfer from one detention facility to another.
- Prevent re-arrests and repeat detentions of migrants who have completed the maximum six months of administrative detention by allowing released detainees at least 30 days to seek means of voluntary return or other means of relief from forced removal.
- Amend the Code of Ukraine on Administrative Offenses and the Law of Ukraine on Legal Status of Foreigners and Stateless People to limit the use of migrant detention in accordance with the European Convention on Human Rights: migration detention should only be carried out when actual removal proceedings are ongoing against that person, where detention is, as a last resort, shown to be necessary to secure that

person's lawful removal, or where the person presents a danger to the community. The necessity for detention should be subject to regular reviews before administrative and judicial authorities who have the authority to order the detainee's release. Asylum seekers and children should not be detained solely for migration reasons.

- Make it absolutely clear to all security, police, and intelligence agencies that torture, beatings, extortion, and other abuses against migrants will not be tolerated and that perpetrators will be prosecuted.
- Consider steps to better integrate the government entities involved with irregular migrants, asylum seekers, and refugees so that standards and procedures will be consistently professional and respectful of human rights principles.

To the State Border Guard Service

- Immediately investigate allegations of torture and abuse of migrants in State Border Guard Service custody, including at the time of apprehension and in all phases of SBGS detention and transfer, including while other Ukrainian authorities may be conducting interrogations in SBGS facilities. Initiate criminal or other appropriate disciplinary actions against perpetrators of torture and abuse and against officials who have failed to report such abuses.
- Ensure that all detainees in SBGS custody are treated in a humane and dignified manner and that their detention fully complies with Ukraine's international obligations governing the administrative detention of migrants.
- Ensure that detainees are not pressured or encouraged to sign papers they don't understand. Provide a written translation of any document detainees are asked to sign and fully explain to them the content and consequences of signing such documents.
- Ensure that all requests for asylum are quickly forwarded to the regional migration service and discipline any personnel who obstruct access to asylum by discouraging detainees from applying or by not forwarding their applications.
- Refrain from detaining migrant children, both unaccompanied children and those staying with their families. Detain children only as a measure of last resort dictated by their best interests. Do not detain unaccompanied children with unrelated adults and girls with boys or men.
- Ensure that persons in SBGS custody—including those held at Boryspil' Airport—have full access at all times to lawyers, UNHCR, and NGOs and that detainees have access to legal remedies to challenge their detention.
- Provide information about the right to seek asylum and guarantee access to the asylum procedure for foreigners in all SBGS detention facilities.

- Through recruitment and training, deploy more guards and other migrant detention facility personnel with capacity to communicate with foreigners in their own languages and, where needed, employ competent interpreters to communicate with detainees with whom no common languages are spoken.

To the Prosecutor General

- Immediately investigate allegations of torture and abuse of migrants in State Border Guard Service custody and prosecute perpetrators of torture and abuse.
- Investigate reports of corruption in migration service and SBGS detention facilities and ensure appropriate disciplinary and/or criminal action against perpetrators.
- Observe Ukraine's nonrefoulement obligations at all times and refrain from extraditing asylum seekers to countries where they are likely to face persecution and/or torture, including by ensuring a right of appeal to a court with suspensive effect.

To the Ministry of Interior

- Stop the practice of quickly re-arresting and detaining migrants who have been released from administrative detention after reaching the maximum six months.
- Provide migrants in Ministry of Interior detention facilities a sufficient quantity of food and an appropriate and nutritious diet. Carry out inspections in migration accommodation centers to ensure standards on food provisions are observed.
- Ensure that persons in Ministry of Interior custody have full access at all times to lawyers, UNHCR, and NGOs and that detainees have access to legal remedies to challenge their detention.
- Refrain from detaining unaccompanied children and families with children. Ensure that children are detained as a matter of last resort dictated by their best interests. In the case of uncertainty whether a person is underage he or she should be given the benefit of the doubt.

To the State Committee on Nationalities and Religions

- Investigate allegations of corruption of migration service staff and ensure appropriate disciplinary and/or criminal sanctions against staff who demand bribes.
- Reserve expedited procedures for claims that are clearly abusive and manifestly unfounded. Accelerated procedures should be the exception rather than the rule and claims that are not clearly abusive and manifestly unfounded should be decided on the merits. Refrain from considering claims by unaccompanied migrant children under accelerated procedures.

- Accept asylum claims by and provide documentation to all unaccompanied children who wish to file a claim.
- Improve training and supervision of migration service refugee claim interviewers and interpreters to ensure that interviews are conducted by staff with specialized skills and knowledge of refugee and asylum matters. Applicants should be treated with respect and consideration in all phases of the process in order to foster trust and a full and fair examination of the claim, with particular sensitivity to cultural and gender difference, and for survivors of torture, sexual abuse, and other traumatizing events.
- Train migration service officials on child-specific forms of persecution and on conducting child-friendly asylum interviews.
- Grant unaccompanied children access to state-sponsored accommodation on a priority basis. Ensure children housed in these centers are able to enroll in state schools as soon as possible after their arrival. Encourage children's integration into the local community by promoting their participation in sports clubs and other recreational events.
- Ensure that single adult men are not housed together with children in Temporary Accommodation Centers.
- Cooperate with the UN High Commissioner for Refugees and the International Organization for Migration in finding and facilitating durable solutions for refugees in Ukraine, including resettlement.

To the Ministry of Family, Youth, and Sport

- Ensure the prompt designation of state-funded competent legal representatives for unaccompanied children in the asylum procedure.
- Ensure that all unaccompanied migrant children receive protection as children deprived of a family and are able to access their entitlements to state-sponsored education and housing immediately after identification and without bureaucratic obstacles.
- Lead on the adoption of inter-agency guidelines that clearly set out the responsibilities of and cooperation among ministries and committees towards unaccompanied migrant children in Ukraine.
- Lead on the adoption of age assessment guidelines for all government bodies dealing with unaccompanied children. Age assessments should take a holistic approach that includes a child's history and not rely exclusively on intrusive and unreliable medical exams.

To the Governments of Slovakia and Hungary

- Do not return asylum seekers to Ukraine and ensure access to the asylum procedure at all times for apprehended foreigners. Provide information on their right to seek asylum in writing and orally with the help of a competent interpreter.
- Suspend the return of rejected asylum seekers and migrants to Ukraine until such time as independent reports confirm that persons returned are treated in a dignified and humane manner.
- Suspend the readmission of unaccompanied children and members of other vulnerable groups to Ukraine, as that country is not in a position to provide protection for them. In case of uncertainty whether a person is underage, the person should be given the benefit of the doubt.
- Amend legislation to introduce a suspensive effect of all appeals against expulsion decisions. Ensure any foreigner apprehended and subject to deportation is informed of his or her right to legally challenge that deportation, and has access to lawyers, NGOs, or UNHCR to do so.
- Allow for independent monitoring at border police station at all times, and in particular of returns under accelerated procedures.

To the European Union

To EU Member States

- Suspend the return of third-country nationals under the EU-Ukraine readmission agreement until Ukraine meets international standards with respect to the human rights of returned migrants, particularly with regard to the practice of torture, inhuman or degrading treatment, and arbitrary detention and until Ukraine demonstrates the will and the capacity to provide a fair hearing to asylum seekers and effective protection to refugees.
- Develop a generous program for the resettlement of refugees from asylum countries, including Ukraine, in a spirit of international solidarity and as a means of providing legal mechanisms for refugees to find protection in EU member states and as a durable solution to their plight. Resettlement, however, should be conceived as a complement to asylum and not as a substitute to providing asylum to refugees who have entered or stayed irregularly in EU member states.

To the European Commission

- Provide assistance to Ukraine geared toward improving its capacity to receive, accommodate, and properly process the claims of asylum seekers and to protect,

integrate, and provide other durable solutions for refugees, including resettlement to EU member states. In light of the decreasing numbers of detainees, consider reprogramming funds for the construction of new detention centers in Ukraine in favor of funding that will improve Ukraine's capacity to provide greater protection for asylum seekers and refugees and more humane treatment for migrants.

- Monitor implementation of the EU-Ukraine readmission agreement with particular regard to assessing whether the right to seek asylum is respected and ensuring that all persons returned pursuant to this agreement are treated humanely.
- In cooperation with other EU bodies, including the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee, assess Hungary and Slovakia's compliance with European Parliament asylum directives and with their obligations under Articles 18, 19, and 24 of the EU Charter of Fundamental Rights.

To the Council of Europe

- Before Ukraine takes the chairmanship of the Council of Europe in May 2011, the Committee of Ministers and other Council bodies should pressure Ukraine to fully comply with Council of Europe standards with regard to the treatment of irregular migrants and the provision of protection to those needing it.
- The Commissioner for Human Rights should conduct a country visit to Ukraine and include the treatment of asylum seekers and migrants as a key focus of his work. He should address with Slovakia, Hungary, and other EU member states their nonrefoulement obligations with regard to the return of third-country nationals to Ukraine.
- The Committee for the Prevention of Torture should visit Ukraine with a particular focus on investigating allegations of torture during interrogations at Specially Equipped Premises and Temporary Holding Facilities in the Zakarpattia region and with particular regard to facilities located in and around Chop and Mukachevo (the CPT's September 2009 delegation visited other locations—Boryspil' Airport, the Chernigiv Temporary Holding Facility, and the Rozsudiv Migrant Accommodation Center).
- The Council of Europe's Parliamentary Assembly as well as its Committee of Ministers, in line with Resolution 1741(2010) and Recommendation 1925(2010), and taking into account the findings of this report, should urge Member States to suspend readmission of migrants to Ukraine until Ukraine meets international standards with respect to the human rights of returned migrants, particularly with regard to the practice of torture, inhuman or degrading treatment, and arbitrary detention, and until Ukraine demonstrates the will and the capacity to provide a fair hearing to asylum seekers and effective protection to refugees and vulnerable individuals.

To UNHCR

- Update UNHCR's October 2007 Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers and reiterate that governments should "refrain from returning third country asylum-seekers to Ukraine as at present no assurances can be given that the persons in question…would have access to a fair and efficient refugee status determination procedure…be treated in accordance with international refugee standards or…[have] effective protection against refoulement."
- Continue to intervene to prevent the refoulement of refugees from Ukraine in the context of extradition requests or any other manner.
- Seek to improve UNHCR's presence in the western border region of Ukraine so that asylum seekers, particularly those in detention, have better access to UNHCR's advice and assistance.

To the UN Working Group on Arbitrary Detention, the UN Special Rapporteur on Torture, and the UN Special Rapporteur on the Human Rights of Migrants

- Within the mandates of each Special Procedure, request an invitation to visit Ukraine and the neighboring EU countries to examine the treatment of migrants and asylum seekers in state custody, including detention of people who are the subjects of extradition requests. Follow up with the Ukrainian government on shortcomings and recommendations detected during previous visits to the country.

III. Methodology, Scope, and Terminology

Human Rights Watch conducted research for this report in Ukraine from May 21 to June 1 and from June 7 to June 28, 2010 with brief side trips into Slovakia and Hungary. In Ukraine we travelled to Kyiv, Vinnytsia, Chernigiv, Luts'k, L'viv, and Zakarpattia region. In Slovakia we travelled to Bratislava to meet with officials and visited the reception center for asylum seekers in Humenné. In Hungary we visited the detention facility for migrants in Nyírbátor and met with officials there and in Budapest. After an assessment of current patterns of irregular migration from Ukraine to the European Union, we decided not to include Poland in our field work. In fact, the Human Rights Watch researchers did not find a single person who said he or she had been returned from Poland among the 161 migrants, refugees, and asylum seekers interviewed.

Three Human Rights Watch researchers conducted 161 individual interviews with migrants, refugees, and asylum seekers in Ukraine, six in Hungary, and five in Slovakia. Interviews with migrants, refugees, and asylum seekers were conducted directly in English, Russian, French, and German and, with the aid of professional interpreters, in Somali, Arabic, Dari, and Pashtu. In a few cases, such as with nationals of China and some of the Pakistanis, interviewees chose interpreters from among co-national detainees who spoke some English.

Human Rights Watch interviewed 60 Afghans, 49 Somalis, 11 Iraqis, 7 Nigerians, and smaller numbers of other nationality groups from Algeria, Bangladesh, China (four Tibetans), Democratic Republic of Congo, Egypt, Germany, Ghana, India, Iran, Palestine, Republic of Congo, Russia, Sri Lanka, Syria, Tunisia, Uganda, Uzbekistan and a stateless man with ties to Armenia and Iran. The interviewees generally were young and male, mostly traveling singly and not part of family groups. The largest number of males, 76, was in the 18 to 29 age range. There were 25 boys under age 18. Of those, 19 were unaccompanied. There were 13 men in their thirties, 11 in their forties, and four in their fifties; ten males were of indeterminate or questionable age, mostly in their late teens.

Females represented 33 of the interviewees, of whom 11 were under the age of 18. Of those, 7 were unaccompanied. Seven women were in the 18 to 29 age range, four were in their thirties, four were in their forties, one was in her fifties, and six were of indeterminate age.

Individual interviews averaged about 45 minutes, and some lasted well over one hour. In some cases Human Rights Watch selected individual interview subjects in detention and reception centers from among those who indicated a willingness to be interviewed after we

made a group presentation. Outside of detention centers, local service providers and migrant community members helped to identify interview subjects.

Interviews were conducted in complete privacy with no one present other than an interpreter, except for a few interviews where a family member was present, which is always indicated in the text. Two interviews were conducted by phone.

Human Rights Watch visited the following migrant detention centers in Ukraine: The Chernigiv and Chop Temporary Holding Facilities; the Rozsudiv and Zhuravychi Migrant Accommodation Centers; the Boryspil' Airport and Mukachevo Specially Equipped Premises, and the Dormitory for Women and Children in Mukachevo, known among migrants as the "Baby Lager." We also visited the Latorytsia Temporary Accommodation Center in Mukachevo. Access and terms of reference for the visits were subject to lengthy negotiation, but Human Rights Watch researchers were permitted to interview detainees in completely private settings of our choice.

In all cases, Human Rights Watch told all interviewees that they would receive no personal service or benefit for their testimonies and that the interviews were completely voluntary and confidential. All names of migrant, refugee, and asylum seeker interviewees are withheld for their protection and that of their families. The notation used in this report uses a letter and a number for each interview; the letter indicates the person who conducted the interview and the number refers to the person being interviewed. All interviews are on file with Human Rights Watch.

Human Rights Watch also interviewed national and local Ukrainian officials with the Ministry of Interior, State Border Guard Service, State Committee on Nationalities and Religions, and Ministry of Family, Youth, and Sport. We interviewed representatives of international organizations and local and international nongovernmental organizations in Ukraine, Slovakia, and Hungary.

In line with international instruments and Ukrainian law, in this report the term child refers to a person under the age of 18.[1] For the purpose of this report, we use the term unaccompanied child to describe both unaccompanied and separated children as defined by the Committee on the Rights of the Child:

[1] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res.44/25, annex, 44 U.N. GAOR Supp. (No.49) at 167, UN Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Ukraine on August 28, 1991, http://www2.ohchr.org/english/law/crc.htm (accessed October 20, 2010), art. 1. Civil Code of Ukraine, art. 388.

"Unaccompanied children" are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. "Separated children" are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.[2]

In this report, "migrant" is simply the broadest, most inclusive term to describe the third-country nationals entering, residing in, and leaving Ukraine. It is intended as an inclusive rather than an exclusive term. In other words, to call someone a migrant in this report does not exclude the possibility that he or she may be an asylum seeker or refugee. A refugee, as defined under the 1951 Convention Relating to the Status of Refugees, is a person with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" who is outside his country of nationality and is unable or unwilling, because of that fear, to return.[3] Refugees, it should be remembered, are people who meet the refugee definition whether or not they have been formally recognized as such. An asylum seeker is a person who is seeking protection and, as such, is trying to be recognized as a refugee or to establish a claim for protection on other grounds.

[2] UN Committee on the Rights of the Child, "Treatment of Unaccompanied and Separated Children Outside their Country of Origin," General Comment No. 6 (2005), UN Doc. CRC/GC/2005/6, http://www.unhchr.ch/tbs/doc.nsf/%28symbol%29/CRC.GC.2005.6.En?OpenDocument (accessed October 20, 2010) paras. 7-8.

[3] Convention relating to the Status of Refugees, 189 U.N.T.S 150, entered into force April 22, 1954. http://www.unhcr.org/refworld/docid/3be01b964.html (accessed July 14, 2009). (Hereafter, Refugee Convention).

IV. Background

The name Ukraine is believed by some to be derived from *okrayina*, which means borderland. If so, it is well named. Ukraine is the primary borderland country that separates Russia in the east from the European Union in the west. The country's geographic location is one of the factors that has defined its current economic, social, and political life. For centuries Ukraine has been one of the key stepping stones for east-west migration, and over the years various attempts have been made to stem migration flows at its borders. This report is about the effort to stop the flow of irregular migration to the European Union and about the impact on the lives of refugees, asylum seekers, and migrants who have found themselves stuck in a country many thought was only going to be a way station to the West.

External Dimension of EU Asylum and Migration Policy

The story of refugees, migrants, and asylum seekers in Ukraine begins, paradoxically, with the European Union (EU). This is because the people coming from Asia, the Middle East, and Africa in search of protection, opportunity, or some mix of motives, rarely choose Ukraine as their preferred destination but rather end up there when their plans to get to the European Union go awry. They wind up in Ukraine because EU member states came increasingly to see the influx of migrants and asylum seekers in the post-Cold War period as a threat to be stopped or at least controlled and in the 1990s began externalizing migration controls.

The European Union's commitment to open internal borders created additional pressure to secure its external borders. To do so, the Union as a whole, as well as its member states (particularly those on its external frontier), has sought to engage with neighboring countries to manage and control those borders. Various proposals for externalizing migration controls—and refugee processing—outside the territory of the EU have emerged. In one example, the United Kingdom's "new vision proposal" in 1993, suggested using Ukraine as a location for processing asylum claims outside the EU.[4]

[4] "New International Approaches to Asylum Processing and Protection," Correspondence from H.E. Tony Blair, Prime Minister of the United Kingdom to H.E. Costas Simitis, Prime Minister of Greece and President of the European Council, March 10, 2003, para. (1) (ii). For a Human Rights Watch critique of EU externalization, see Human Rights Watch, "Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees" October 17, 2006, http://www.hrw.org/en/reports/2006/10/17/managing-migration-means-potential-eu-complicity-neighboring-states-abuse-migrant.

While Member States have differed on the specifics, a consensus has nevertheless emerged to try to attenuate the entry of irregular migrants and asylum seekers into the European Union. A key part of the strategy for stopping or diverting the flow to the EU has been to build the capacity of neighboring states to stop the flow and, where possible, to provide protection in those states for people in need of international protection.

In December 2004 the European Council adopted the five-year Hague Program, which included an outline of the EU's vision on partnership with third countries in the area of asylum and migration. The program called for assistance to third countries to improve their capacity for combating illegal migration, refugee protection, border-control capacity, and in tackling returns. The Hague Program also called for the "timely conclusion of Community readmission agreements" and it coincided with the establishment of the EU's border management agency, Frontex, in 2005.[5]

The Hague Program was followed in 2009 by the Stockholm Program, which set out the EU's Freedom, Security, and Justice plan for the next five-year period until 2014. It called for "dialogue and partnership" with countries outside the EU to manage migration and envisioned "the conclusion of new agreements covering the three dimensions of a comprehensive approach: controlling illegal migration (including readmission and support for voluntary return and reintegration), promotion of mobility and legal immigration, and support for development."[6]

As it has developed in practice, the external dimension of EU migration and asylum policy has had a number of components, including refusal of entry to EU territory of persons coming from countries regarded as safe countries of origin or transit,[7] interceptions at sea of persons attempting to reach EU territory,[8] the return or readmission of persons who have irregularly entered EU territory,[9] and the strengthening of border enforcement and detention

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[5] Council of the European Union, "The Hague Programme: strengthening freedom, security and justice in the European Union," 16054/04, December 13, 2004, http://www.libertysecurity.org/IMG/pdf/hague_programme_en.pdf (accessed September 20, 2010), pp. 11-18.

[6] Commission of the European Communities, "Communication from the Commission to the European Parliament and the Council: An area of freedom, security, and justice serving the citizen," COM (2009) 262/4, Brussels, http://www.statewatch.org/news/2009/jun/eu-com-stockholm-prog.pdf (accessed October 20, 2010), paragraph 5.1.1, p. 24.

[7] Council Directive 2005/85/EC of December 1, 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status outlines the safe country of origin concept in article 31 and the safe third country concept in article 27.

[8] See Human Rights Watch, *Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, ISBN: 1-56432-537-7, September 2009, http://www.hrw.org/en/reports/2009/09/21/pushed-back-pushed-around.

[9] See Directive 2008/115/EC of the European Parliament and of the Council on Common Standards and Procedures in Member States for returning illegally staying third-country nationals, December 16, 2008,

capacity in transit countries that border the EU.[10] In reality there remain few legal avenues for most asylum seekers to enter the European Union in search of protection.

Strengthening of Ukraine's border enforcement capacity appears to have been successful both in making it more difficult for irregular migrants to enter Ukraine and as a deterrent. As Ukraine's border enforcement capacity strengthened, it was able to repel increasing numbers of irregular migrants at the borders and ports of entry: from fewer than 12,000 refused entry in 2005, the number of foreigners refused entry rose to more than 18,000 in 2006 and to nearly 25,000 in both 2007 and 2008. The drop to 19,700 refusals in 2009 suggests the deterrent impact of the border-control measures. The deterrent effect is also indicated as at least one factor in the steady decline in the numbers of foreigners apprehended in Ukraine for suspected illegal entry. Such apprehensions have fallen every year since 2006, when 7,578 people were apprehended. The number fell to 6,762 in 2007, 4,879 in 2008, 3,684 in 2009, and 1,810 in the first eight months of 2010. Deportations show the same pattern; deportations fell from 5,406 in 2006 to 4,464 in 2007, 3,738 in 2008, 2,885 in 2009, and 1,436 in the first eight months of 2010.[11]

Readmission Agreements

Readmission agreements have become a favored EU mechanism for facilitating the return of migrants and asylum seekers to countries outside the Union.[12] A readmission agreement between two states allows each state to return to the other any person who travels from one state to the other without permission, though in the case of the EU and neighboring states the notion of reciprocity is mostly theoretical. The reality is that such agreements almost entirely work in one direction: returning people from the EU to countries outside the Union.

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http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:01:EN:HTML (accessed October 20, 2010).

[10] The Stockholm Program says, "Concerted management of migratory flows requires genuine cooperation with non-member countries" and calls the EU and its Member States to "mobilize the Union's various cooperation instruments to increase the capacity of the central, regional, and local authorities of non-member countries to manage migration issues, including their capacity to offer adequate protection." (Stockholm Program, para. 5.1.1 Consolidating a global approach, pp. 23-24.) See also, Human Rights Watch, *Stemming the Flow - Abuses against Migrants, Asylum Seekers and Refugees*, ISBN: E1805, September 12, 2006, http://www.hrw.org/en/reports/2006/09/12/stemming-flow.

[11] Letter from P.A. Shysholin, first deputy head of the State Border Guard Service, to Human Rights Watch, October 19, 2010. All statistics in the paragraph are taken from this letter.

[12] Although the rapporteur for the Council of Europe Parliamentary Assembly's Committee on Migration, Refugees and Population noted that many states do not report the number of returns enforced under readmission agreements (para. 24), some reports, for example, Italy, indicated that "a great majority [of returned foreign citizens] were…returned under readmission agreements." (para. 25). "Readmission agreements: a mechanism for returning irregular migrants," Committee on Migration, Refugees and Population, Rapporteur: Ms Tineke Strik, Parliamentary Assembly, Council of Europe, Doc. 12168, March 16, 2010 http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12168.pdf (accessed November 1, 2010).

In theory readmission agreements are not supposed to interfere with the right to seek asylum and other fundamental human rights.[13] In practice those liable to return under such agreements include not only irregular migrants and failed asylum seekers but also asylum seekers and members of vulnerable groups whose claims for protection have yet to be determined. The agreements are also used in combination with accelerated procedures at the border that result in quick returns without a careful examination of protection needs.[14] This approach undermines the right to seek asylum as articulated in the Universal Declaration of Human Rights and the binding EU Charter of Fundamental Rights and conflicts with the spirit of Article 31 of the 1951 Refugee Convention which prohibits the penalization of refugees for illegal entry.[15] It also undermines states' obligation to protect vulnerable groups including unaccompanied migrant children who "come under a State's jurisdiction while attempting to enter the country's territory."[16]

More than 300 readmission agreements were signed worldwide between 1990 and 2000, of which 155 were signed between western European countries and central and eastern European countries.[17] Ukraine's bilateral readmission agreements with Slovakia, Hungary, and Poland were signed in 1993 and entered into force in 1994. These agreements covered not only Ukrainian nationals but also citizens of third countries and stateless persons. The agreements were deficient in many ways: they lacked a specific obligation to ensure that the returnees would have their asylum claims processed in a fair and effective manner upon readmission; they did not include a prohibition of the return of asylum seekers; they did not require effective remedies which would allow returnees to lodge their asylum applications or

[13] Rosemary Byrne, "Harmonization and Burden Redistribution in the Two Europes," *Journal of Refugee Studies*, vol. 16, 2003, p. 336.

[14] "Certain readmission agreements contain provisions on accelerated procedures at borders, which require examination from a human rights point of view. Moreover the speed with which a return is enforced under readmission agreements might prevent the returnee from properly accessing all legal remedies that would or should be at his disposal," para. 31, "Readmission agreements: a mechanism for returning irregular migrants," Committee on Migration, Refugees and Population, Rapporteur: Ms Tineke Strik, Parliamentary Assembly, Council of Europe, Doc. 12168, March 16, 2010 http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12168.pdf (accessed November 1, 2010).

[15] EU states are bound to guarantee the right to asylum under article 18 of the Charter of Fundamental Rights. (*Charter of the European Union*, December 7, 2000, Official Journal of the European Communities, December 18, 2000 (2000/C 364/01). The right to seek asylum is also enshrined in article 14 of the UDHR. Article 31 of the Refugee Convention states, "the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened…enter or are present in their territory without authorization." We say that readmission agreements conflict with the spirit—rather than the letter—of article 31 because discrimination against those who enter or stay illegally in allowing access to asylum is not a penalty per se. Ironically, the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* suggests that asylum seekers who possess valid passports have less evident claims to refugee status than those who are not able to acquire legal travel documents and advance permission to enter. (*Handbook on Procedures and Criteria for Determining Refugee Status,* UNHCR, paras. 47 and 48, pp. 13-14.)

[16] CRC, art. 20; UN Committee on the Rights of the Child, General Comment No. 6, para. 12.

[17] Intergovernmental Consultations for Asylum, Refugee and Migration Policies in Europe, North America and Australia, "IGC Report on Readmission Agreements: January 2002," p. 5. Available on the Bali Process website: http://www.baliprocess.net/files/ReturnsProject/IGC%20Report%20on%20Readmission%20Agreements%20Jan%202002.pdf (accessed October 20, 2010).

raise nonrefoulement concerns under article 33 of 1951 Refugee Convention, article 3 of the United Nations Convention against Torture, and article 3 of European Convention on Human Rights.[18] Nor did they include any protection mechanisms for members of vulnerable groups or for victims of trafficking.

As the numbers of asylum seekers entering Europe increased in the mid 1990s, the EU began inserting readmission clauses into its association and cooperation agreements with other states – effectively making trade and other cooperation conditional on countries agreeing to readmit irregular migrants. In 1999 the Treaty of Amsterdam then allowed the European Union to enter into readmission agreements with other states as a community, thus binding all EU members and the third country.

After 2001, readmission agreements (and deportations) came to be seen as a crucial part of combating irregular migration into the EU. The June 2002 Seville European Council meeting recommended that each future EU association or co-operation agreement include a clause on migration management and compulsory readmission in the event of irregular migration and attached "top priority to … speeding up of the conclusion of readmission agreements currently being negotiated … (and the) adoption of a repatriation programme … by the end of the year."[19] The first of these agreements was signed with Hong Kong in November 2002, and a total of 14 such agreements have now been adopted.[20]

The EU-Ukraine Readmission Agreement

The European Commission was granted authority to begin negotiating a readmission agreement with Ukraine in June 2002, around the same time as the Seville European Council meeting. The negotiations took four years, from November 2002 until October 2006. Ukraine was generally a reluctant negotiating partner, concerned mainly with the easing of visa requirements for its own nationals traveling to the EU. Because it is mainly a transit country, it was concerned that it would be a dumping ground for irregular migrants from Europe, particularly stateless persons or others who could not be sent anywhere else. In addition, it was concerned that because the eastern border with Russia was unclearly demarcated and poorly controlled, migrants would end up massing

[18] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted December 10, 1984, G.A. Res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], (entered into force June 26, 1987), ratified by Ukraine on February 24, 1987.

[19] Council of the European Union, Presidency Conclusions, Seville European Council, 21- 22 June 2002, Press: 13463/ 02, http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/72638.pdf (accessed October 20, 2010).

[20] For a full list of EU Readmission Agreements, see the Statewatch Compilation from January 2010, http://www.statewatch.org/news/2010/jan/eu-readmission-agreements.pdf

in Ukraine. It thus sought to delay negotiations long enough to conclude a readmission agreement with Russia—also a very difficult process, but one which met with success as the readmission agreement with Russia came into force in 2008.

The negotiations were conducted only by the executive; the Ukrainian parliament and civil society were not involved in any way. According to one scholar, the only reason that Ukraine would accept the readmission agreement at all was because its leaders during the period of negotiation hoped one day to join the EU and thought the agreement would "show that you are ready to cooperate with the EU."[21]

On June 18, 2007, the European Union and Ukraine signed agreements on visa facilitation for Ukrainian nationals and on readmission of irregular migrants who transit Ukraine and are apprehended in the EU. The readmission provisions for Ukrainian nationals came into force in January 2009. For third-country nationals, the agreement came into force on January 1, 2010.

The agreement sets out a broad procedure for returns, including an accelerated procedure for individuals apprehended near the border, and a procedure for transiting through Ukraine. It also sets out in some detail acceptable evidence that the person meets the readmission conditions.[22]

Human rights protections in the agreement are very thin, relying on an overall savings clause that nothing in the agreement allows a party to violate their obligations under refugee or human rights law. The agreement includes almost no specific obligation (except for data protection) on any party to the agreement to ensure that migrants are treated humanely, that they have access to refugee status determination, or that they will be protected from refoulement.[23]

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[21] Information about the negotiations is taken from Imke Kruse, "The EU's Policy on Readmission of Irregular Migrants", unpublished paper, 2004, http://socsci2.ucsd.edu/~aronatas/scrretreat/Kruse.Imke.pdf, (accessed October 19, 2010). See also the description in: Secretary General of the European Commission, "Communication from the Commission to the Council on the Monitoring and Evaluation Mechanism of Third Countries in the Fight Against Illegal Immigration", Doc. 11614/05 Add1, Brussels, August 1, 2005, http://register.consilium.eu.int/pdf/en/05/st11/st11614-ad01.en05.pdf, (accessed October 20, 2010).

[22] Such evidence includes official statements of authorized border authority staff, tickets and passengers' lists, hotel bills, car rental agreements, etc., which show that the person concerned stayed on the territory of the state of readmission. Agreement between the European Community and Ukraine on the readmission of persons, signed on October 10, 2006, Article 7(1), Annex 3A, 3B.

[23] The Agreement between the European Community and Ukraine on the Readmission of Persons, CE/UA/READ/en 1, can be found in "Council Decision on the signing of the Agreement between the European Community and Ukraine on readmission of persons," 9312/07,Council of the European Union, Brussels, June 5, 2007.

EU Relations with Ukraine in the Spheres of Migration and Asylum

The EU as Donor

The European Union has had a significant influence as a major donor in developing migration control and asylum systems in Ukraine.[24] The EU-Ukraine readmission agreement was predicated on a promise of EU financial and technical support for capacity building in Ukraine especially in the five years leading up to the agreement coming into effect. In fact, attached to the agreement is a Joint Declaration on Technical and Financial Support which states that "the EC is committed to make available financial resources in order to support Ukraine in the implementation of this Agreement. In doing so, special attention will be devoted to capacity building."[25]

The EU's expenditures to strengthen Ukraine's border enforcement and detention capacity, however, are far greater than its funding for the development of Ukraine's asylum system, refugee integration, or programs to resettle refugees from Ukraine to EU Member States, as will be shown below.

EU support for Ukraine for border management, migration, and asylum has come through several major funding initiatives. In the period from 2000 to 2006 the main funding source was TACIS (Technical Aid to the Commonwealth of Independent States),[26] which spent more than €35 million on migration management and border control projects in Ukraine, of which about three-quarters went to private defense and security contractors for border control and surveillance equipment and training.[27] The International Organization for Migration (IOM) received more than €8 million through TACIS for capacity building for migration

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[24] Total EU funding for Ukraine from 1991 to 2004 amounted to €1 billion. This amount was supplemented by contributions from Member States which reached €157 million in the period 1996 – 1999., "Commission Staff Working Paper, European Neighbourhood Policy, Country Report," Brussels, 12.5.2004, SEC(2004) 566, (COM(2004)373 final). The International Monetary Fund (IMF) also played a key role, providing Ukraine about $3.5 billion in credits from 1994 until 1999 (Åslund, p. 250). The Ukrainian authorities have informed Human Rights Watch, however, that 70 percent of the costs of construction, renovation, and repair of detention holding facilities from 2004 to 2010 were covered by Ukraine's state budget. Letter from P.A. Shysholin, first deputy head of the State Border Guard Service, to Human Rights Watch, October 19, 2010. However, when the Ukraine Cabinet of Ministers announced a €1 billion budget for border management, on June 17, 2007, its own figures showed that 49 percent would be funded by the United States and the EU. This included construction of more than 262 new border checkpoints and improvements on 123 existing checkpoints. See "1 Billion Euros for Border Management in Ukraine," Sida, June 15, 2007, http://soderkoping.org.ua/page14769.html (accessed November 2, 2010).

[25] Joint Declaration on Technical and Financial Support, Agreement between the European Community and Ukraine on the Readmission of Persons, CE/UA/READM/en 1, Council Decision on the signing of the Agreement between the European Community and Ukraine on readmission of persons, Council of the European Union, 9312/07, Brussels, June 5, 2007.

[26] TACIS was a general program for promoting a market economy, democracy, and the rule of law in Eastern Europe and Central Asia that spent some €3.1 billion in 13 countries over a six-year period.

[27] http://ec.europa.eu/europeaid/work/funding/beneficiaries/index.cfm?lang=EN&mode=SM&type=contract&order=false&direc=false&paging.offset=1&paging.len=50. http://www.aidinformationchallenge.org/wp-content/uploads/List-of-Beneficiaries-2008-Procurement-contracts.xls.

management in Ukraine, including €7.2 million for the Capacity Building for Migration Management (CBMM) project that started in 2005 and continued through the end of 2008.[28] The CBMM enabled IOM to fully equip and upgrade two of the Ministry of Interior's Migrant Accommodation Centers (MACs), refurbish and fully equip five SBGS Temporary Holding Facilities (THFs), and procure 27 modern Toyota buses to transport irregular migrants (six for the Ministry of Interior and 21 for the SBGS).[29] IOM also received €4.3 million in 2006-2007 and €1.4 million in 2008-2010, co-financed by the EU and the US Department Bureau of International Narcotics and Enforcement Affairs, for the improvement of SBGS human resources management and the upgrading of Border Guard training facilities.[30]

The UN High Commissioner for Refugees (UNHCR) was, relatively speaking, the poor cousin within the TACIS family, receiving about €1.7 million from 2000 to 2006 to strengthen the asylum system and support the Söderköping Process.[31] About three-quarters of the TACIS funding to UNHCR went for building the temporary accommodation centers in Odesa and Mukachevo; the remainder went for material assistance for refugees.[32]

The imbalance between EU funding for border and migration control and protection continued during the Aeneas program from 2004 to 2006, which provided a total of €120 million over its three-year life specifically for migration and asylum-related projects.[33] A relatively small amount went to build up the asylum system or to enhance refugee protection: UNHCR received €1.3 million for its continuing engagement in the Söderköping Process in Ukraine, Belarus, and Moldova and several NGOs, including the Danish Refugee Council (DRC), Caritas Austria, and the European Council on Refugees and Exiles (ECRE), received amounts of less than €1 million each for their work on behalf of refugees and asylum

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[28] The U.S. government contributed €728,000 through IOM for this project.

[29] International Organization for Migration, "Capacity Building for Migration Management: Ukraine (CBMM)", Project Information '3-pager', http://www.iom.org.ua/img_collection/file/CBMM_Part%20I_3pager_en.doc (accessed October 20, 2010).

[30] IOM, "Reinforcing the Human Resources Management of Ukraine's State Border Guard Service (HUREMAS)," http://www.iom.int/jahia/Jahia/pid/1979 and http://www.iom.org.ua/img_collection/file/HUREMAS-HUREMAS2%20projects%20description.pdf (accessed October 20, 2010). A November 8, 2010 email communication from IOM-Kyiv to Human Rights Watch said that IOM received €4.3 million in HUREMAS I funding (on file with Human Rights Watch).

[31] Sweden launched the Söderköping Process in May 2001, a multilateral initiative to promote cooperation on asylum and migration among the countries situated along the future eastern border of the EU as the EU was undergoing enlargement eastward. UNHCR and IOM jointly supported the Söderköping secretariat. See http://soderkoping.org.ua/page2864.html (accessed August 27, 2010).

[32] See UNHCR, "Ukraine offers new home for asylum seeker," December 2004, http://www.unhcr.org/41af1fec4.html (accessed October 20, 2010).

[33] Ukraine was one of many recipients of Aeneas funding. Aeneas funded projects in the Mediterranean basin, the Balkans and South-Eastern Europe, and Latin America and the Caribbean, as well as Eastern Europe. See Final Report: Evaluation of the Aeneas Programme, 2004-2006, December 2009, Commission Framework Contract / EuropAid: 123314/C/SER/multi, http://ec.europa.eu/europeaid/what/migration-asylum/index_en.htm (accessed October 6, 2010).

seekers.[34] Through Aeneas the EU provided more funding for migration management, including €2.3 million to the International Center for Migration Policy Development (ICMPD) for technical support to the Ukrainian authorities to control irregular migration,[35] including the construction of five Temporary Holding Facilities and the equipping of another eight THFs. Through Aeneas the EU funded ICMPD to construct the perimeter security systems for the Rozsudiv and Zhuravychi MACs.[36] It also provided €1.7 million to IOM and €748,000 to the International Labor Organization through Aeneas for counter-trafficking in Ukraine.[37]

Since 2007 the EU's primary general fund for building Ukraine's capacity in the migration and asylum fields has switched from TACIS to the ENPI (European Neighborhood and Partnership Instrument), which covers a wide range of development projects with €494 million specifically for Ukraine for the period 2007-2010.[38] ENPI funding included €35 million to the Ukrainian State Border Guard Service and Ministry of Interior to build their capacity to deal with irregular migrants, including by constructing and upgrading migrant detention facilities, €24 million for the EU Border Mission to Moldova and Ukraine (EUBAM) itself, and €2.9 million to an engineering and technology multinational corporation, the Arup Group, and a migration research and consulting company, Eurasylum, to set up custody centers and THFs in Ukraine and technical support. Again, relatively small amounts went to enhance protection of asylum seekers and other vulnerable groups. Through ENPI, the EU provided €960,000 to the DRC for legal and social protection programs for asylum seeking and refugee children in Ukraine and €596,000 to the NGO Suchasnyk to combat trafficking in children.

The €35 million ENPI funding to strengthen Ukraine's migrant detention capacity was through READMIT, a program specifically intended to enhance Ukraine's capacity to receive returnees under the EU-Ukraine readmission agreement. (See Chapter VII.)[39] The EU and bilateral (Italy

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[34] These specific projects are listed in "Annex 2: List of Projects," in "Evaluation of the Aeneas programme-Financial and Technical assistance to third countries in the area of migration and asylum: Aeneas Programme 2004-2006," Commission Framework Contract/EuropeAid: 123314/C/SER/multi.

[35] Europeaid, "Aeneas Programme: Programme for financial and technical assistance to third countries in the area of migration and asylum – Overview of Projects Funded 2004-2006, http://ec.europa.eu/europeaid/what/migration-asylum/documents/aeneas_2004_2006_overview_en.pdf, (accessed October 20, 2010).

[36] Delegation of the European Union to Ukraine, "EU invests Improvement of Ukrainian Detention Centres" EU Co-operation News, No. 46, 25 February 2010, p. 1.

[37] The ILO grant is MIGR/2006/120-079 and the IOM grant is MIGR/2006/120-250, on p. 74 and p. 83, respectively, of Europeaid, "Aeneas Programme: Programme for financial and technical assistance to third countries in the area of migration and asylum – Overview of Projects Funded 2004-2006, http://ec.europa.eu/europeaid/what/migration-asylum/documents/aeneas_2004_2006_overview_en.pdf, (accessed October 20, 2010).

[38] European Neighborhood and Partnership Instrument (ENPI) Indicative Multi-annual Allocations for the period 2007-10, http://ec.europa.eu/world/enp/pdf/country/0703_enpi_figures_en.pdf (accessed November 2, 2010).

[39] Delegation of the European Union to Ukraine, "Re-admission related assistance and EUBAM flanking measures (READMIT), Project 2007/018-962."

and Germany) funders have also provided about €2.5 million specifically to prepare for the EU-Ukraine readmission agreement through the GUMIRA Project (Technical Cooperation and Capacity Building for the Governments of Ukraine and Moldova for the Implementation of the Readmission Agreements with the European Union), of which IOM received €2 million for technical assistance to facilitate the introduction of the readmission agreement.[40]

Relative to such expenditures, the EU funding of €4.9 million to UNHCR in 2009-2010 to support the Regional Protection Support Project and the Local Integration of Refugees Project—split among Ukraine, Belarus and Moldova—has been modest.[41]

The EU has also put considerable funding into strengthening its external border on the EU side of the Ukrainian border, particularly through Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.[42] Frontex's reach has also extended beyond the borders of the EU into other neighboring countries, including Ukraine.[43] Frontex's annual budget in 2009 and 2010 was €88 million.[44] Human Rights Watch is not able to estimate the amounts of Frontex's budget that have been devoted exclusively to controlling migration from Ukraine to the EU, but a snapshot of its operations in 2008 and 2009 that involved Ukraine include Jupiter, a joint operation budgeted at €992,500 to control the EU's eastern land borders, including by detecting irregular migrants hiding in vehicles at border points with Ukraine and neighboring countries;[45] Lynx, a €200,000 operation to enhance border control in Slovakia, particularly from Ukraine;[46] and Ariadne, a €150,000 operation to decrease irregular migration from Ukraine and Belarus with a focus on detecting false documents and irregular crossings near

[40] Technical Cooperation and Capacity Building for the Governments of Ukraine and Moldova for the Implementation of the Readmission Agreements with the European Union (GUMIRA), 2008/153-252, "EU Migration and Asylum Projects in Ukraine," unpublished RELEX-Kyiv paper on file with Human Rights Watch.

[41] "EU Migration and Asylum Projects in Ukraine," unpublished RELEX-Kyiv paper (on file with Human Rights Watch).

[42] Established by the Frontex Regulation, Council Regulation (EC) No. 2007/2004 of October 26, 2004 establishing a European Agency for the Management of Operational Co-operation at the External Borders of the Members States of the European Union, L 349/1.

[43] "Ukraine Signs an Agreement with Frontex," Sida, June 12, 2007, http://soderkoping.org.ua/page14724.html (accessed November 2, 2010).

[44] Frontex, Programme of Work 2010, pp. 6-7. See also, Frontex and Managing the EU's Borders: Frequently Asked Questions, Memo/10/45, Brussels, February 24, 2010, http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/45 (accessed November 9, 2010).

[45] Frontex, General Report 2009, p. 28 and Annex B, p. 35, http://www.frontex.europa.eu/gfx/frontex/files/general_report/2009/gen_rep_2009_en.pdf and Frontex, Examples of accomplished operations, http://www.frontex.europa.eu/examples_of_accomplished_operati/art102.html (accessed November 5, 2010).

[46] Frontex, Examples of accomplished operations, http://www.frontex.europa.eu/examples_of_accomplished_operati/art88.html (accessed November 5, 2010).

border crossing points.[47] Frontex also engaged in the Five Borders pilot project, a series of joint operations in 2008 and 2007 to control the common external EU borders with Ukraine, at a cost of €450,000 in 2008[48] and €350,000 for the last six months of 2007.[49]

EU Burden Sharing through Resettlement

While the EU has spent millions of Euros to control migration and to some extent build Ukraine's asylum system, it has done virtually nothing to share the responsibility for protecting and providing durable solutions to refugees. The most tangible way to share the human burden is through resettlement. The EU's Stockholm Program calls upon the Union to "step up its resettlement efforts in order to provide permanent solutions for refugees."[50]

To use the phrase "step up" implies that Member States have taken some steps to develop resettlement programs. Outside of Scandinavia, such programs are still almost nonexistent. With respect to Ukraine, EU member states have provided virtually no human burden sharing as part of a managed migration scheme to provide a legal and orderly means of admitting refugees who, as yet, have very few avenues to enter EU member states legally to seek protection.

In 2009 UNHCR resettled about 84,657 refugees worldwide, approximately two-thirds of the refugees UNHCR identified as needing resettlement that year. EU member states took fewer than six percent of that number (4,810 persons). Out of the 388 individuals that UNHCR identified in Ukraine as in need of resettlement in 2009,[51] resettlement countries worldwide resettled 116—a mere 30 percent. Of these 116 individuals, EU member states took 67, due in large part to Sweden's willingness to resettle 43, a striking majority. Other EU member countries were not so generous; Portugal admitted 14, the Netherlands eight, France and Denmark each took one, while Germany, Spain, Italy, the United Kingdom, and the remaining

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[47] Frontex, Examples of accomplished operations, http://www.frontex.europa.eu/examples_of_accomplished_operati/art80.html (accessed November 5, 2010).http://www.frontex.europa.eu/examples_of_accomplished_operati/art24.html.

[48] Frontex, Examples of accomplished operations, http://www.frontex.europa.eu/examples_of_accomplished_operati/art81.html (accessed November 5, 2010). The specific operations were Atlas I, II, and III.

[49] Frontex, Examples of accomplished operations, http://www.frontex.europa.eu/examples_of_accomplished_operati/art57.html (accessed November 5, 2010). The specific operations were Ursus I, II, III, and IV.

[50] Communication from the Commission to the European Parliament and the Council: An area of freedom, security and justice serving the citizen, Brussels, COM (2009) 262/4, para. 5.2.3, p. 28.

[51] This includes cases that were submitted, resubmitted, or were still pending from 2008.

EU countries took none.[52] These statistics are remarkably similar to the 2008 figures, which show that while Sweden accepted 50 refugees from the Ukraine, the remaining EU countries admitted only three. Similarly, in the first six months of 2010, more than half of the 92 cases UNHCR submitted were accepted for resettlement worldwide,[53] but EU member states, including Sweden, took only seven.

[52] Germany, Italy, and Spain did not have formal resettlement programs in 2009. Germany established an ad hoc admission program for 2,500 Iraqi refugees from Syria and Jordan. Spain approved a resettlement program at the beginning of 2010, but it had not yet started as of this writing. Italy does not have a resettlement program, but has responded to resettlement needs in the Middle East and Libya with modest numbers through ad hoc arrangements.

[53] As of June 30, 2010, a total of 49 refugees were resettled.

V. A Dysfunctional Asylum System

From August 2009 through August 2010 it was impossible to be granted asylum in Ukraine because there was no government authority authorized to do so. Although the asylum procedure has formally resumed, the system remains essentially broken. The asylum system has been restructured eight times in 10 years, each transition resulting in gaps in protection.[54] A 2007 UN High Commissioner for Refugees (UNHCR) report on the situation of asylum seekers in Ukraine observed:

> These continuous reorganizations, exacerbated by frequent changes in management and limited financial resources allocated by the State Budget have led to problems of access to asylum and substantive procedures, and have negatively impacted on the quality and speed of asylum decisions.[55]

The total shutdown of the asylum-granting authority of the State Committee on Nationalities and Religions (SCNR) occurred as a result of an on-again/off-again showdown between the president and Cabinet of Ministers (under the control of the Ukrainian parliament, the Verkhovna Rada), which has plagued Ukraine since independence.[56] Although the February 2010 inauguration of President Viktor Yanukovych resolved many of the tensions between the president and the current parliament that had paralyzed government functions in many areas in 2009, the struggle nonetheless continued for months.

The specific controversy that resulted in suspension of the asylum system for a year was the Cabinet of Ministers' decree on June 24, 2009 to establish a State Migration Service (SMS) under the authority of the Ministry of Interior that would transfer the Department on Refugee Affairs from the SCNR and merge it with the new SMS, effective August 1, 2009. Then President Viktor Yushchenko vetoed the Cabinet of Ministers' decree, so that no authority—neither the SCNR nor the never-established SMS—had legal authority to grant asylum.[57] The

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[54] Human Rights Watch interview with UNHCR, Kyiv, June 9, 2010.

[55] UN High Commissioner for Refugees, UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers, October 2007, Corr., http://www.unhcr.org/refworld/docid/472f43162.html (accessed October 6, 2010).

[56] Anders Åslund, *How Ukraine Became a Market Economy and Democracy*, Peterson Institute for International Economics, March 2009, p. 239. An almost identical shutdown of the Ukrainian asylum system occurred in 2007. "In the period from mid-March to mid-November 2007, no asylum authority was appointed to take positive decisions on asylum applications. This led to a remarkable backlog in the processing of asylum claims." Implementation of the European Neighbourhood Policy in 2007: Progress Report on Ukraine, SEC(2008) 402, Brussels, April 3, 2008.

[57] "Quarterly Report: October-December 2009," Danish Refugee Council, unpublished, on file with Human Rights Watch.

situation was finally resolved through a July 2010 Cabinet of Ministers decree that reinstated the authority of the SCNR to grant asylum status.[58]

The resumption of asylum processing occurred without changing any of the authorities or procedures that had been in effect at the time it was suspended. When it functions, in theory, asylum seekers start the process by lodging an application for asylum with the Regional Migration Service. This is more difficult than it sounds, as numerous asylum seekers told Human Rights Watch that they filled out multiple applications and never heard any response, or were told that the border guards to whom they had submitted the applications had destroyed them or thrown them away. Unaccompanied children face particular obstacles as they are barred from accessing the asylum procedure on their own without a legal representative and in many cases the authorities fail to appoint one to represent them.

After submitting an application, there is, in principle, a ten-day period to assess admissibility, after which the applicant is to be informed whether the application has been accepted into the system. While a decision on admissibility is pending, the applicant is issued a green document, which is valid for 15 days. From that point, the authorities are supposed to conduct additional assessments of the claim. Applicants who are in the country illegally remain in detention during this time.

The SCNR was created as an independent agency that is not part of the Ministry of Interior. The Regional Migration Service (RMS), operating in 24 regions (oblasts) under the supervision of the SCNR, receives the asylum applications and conducts admissibility interviews. After receiving an application the RMS can:

- refuse the application within three days if there is no basis for the claim or the claim has violated procedures, and then the person does not even receive a green document;[59]
- accept the application and issue a green document but then refuse to process the application within 15 days if it is manifestly unfounded or abusive;[60] or

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[58] Cabinet of Ministers Decree, "On some issues of the state regulation in the sphere of migration," adopted July 7, 2010, No. 559, art. 3. http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=559-2010-%EF (accessed October 7, 2010), title translated by Human Rights Watch.

[59] Law of Ukraine "On Refugees," art. 9. "The migration service may decide to refuse the acceptance of the application for refugee status when the applicant pretends to be some other person or when the applicant was denied refugee status for not meeting the conditions stipulated in paragraph 2 of Article 1 of this Law [the refugee definition], if such conditions did not change." Article 9 also says that the application may be refused for "abuse of procedures." Natalya Naumenko, director of the Department of Refugees and Asylum Seekers in the State Committee for Nationalities and Religions said that the decision not to accept the application occurs within three days of the claim being lodged. Human Rights Watch interview, June 9, 2010.

[60] Law of Ukraine "On Refugees," art. 12. "Decisions on refusal to process documents…shall be made in relations to applications which are manifestly unfounded…and when applications are associated with abuse."

- accept and process the application and issue the applicant a pink card to indicate that he or she has been accepted into the procedure.

The pink card does not indicate a grant of asylum but rather allows the applicant to remain temporarily pending the outcome of the procedure and includes work authorization. The RMS is not authorized to grant or refuse refugee status, but has the responsibility to examine the claim once an asylum application has been admitted into the procedure and to make a refugee status recommendation to the SCNR. The law allows the RMS a maximum of three months to gather information about the claim, conduct a medical check, and prepare a file with a recommendation on refugee status to SCNR.[61]

SCNR then has a maximum of a further three months to decide the claim. This means that no one, in principle, should have a pink card longer than six months. The card itself has no expiration date but needs to be stamped every two months to maintain its validity.

In both years 2007 and 2008, 2,155 applications were filed, according to the SCNR. That number fell to 1,233 in 2009, and the largest drop occurred in the Zakarpattia oblast on Ukraine's western border. The SCNR granted asylum to 33 people in 2007, 125 in 2008, and 126 in 2009, until the authority to grant asylum ended in August.[62] As of December 2009, there were 2,334 recognized refugees in Ukraine, more than half of whom were Afghans.[63]

While SCNR and the RMS were not authorized to grant asylum during the period of suspension, they continued to reject asylum claims. In the first six months of 2010, 524 asylum applications were lodged with the RMS. The RMS rejected 51 of these applications as inadmissible to the procedure. They acted on 405 cases, rejecting more than half of them, 220, as manifestly unfounded. Most asylum claims, therefore, are rejected after a cursory examination either as inadmissible to the procedure (under article 9 of the Law of Ukraine "On Refugees") or as manifestly unfounded (under article 12 of the Law of Ukraine "On Refugees"). The reasons for rejecting applications as inadmissible or manifestly unfounded are not provided in the written notifications to rejected claimants.[64]

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[61] Law of Ukraine "On Refugees," art. 13.

[62] Human Rights Watch Interview with Natalya Naumenko, director, Department of Refugees and Asylum Seekers, State Committee for Nationalities and Religions, June 9, 2010.

[63] Human Rights Watch interview with UNHCR, Kyiv, June 9, 2010.

[64] UN High Commissioner for Refugees, UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers, October 2007, Corr., http://www.unhcr.org/refworld/docid/472f43162.html (accessed October 20, 2010), para. 33, p. 9. The criteria for finding a claim to be inadmissible as "manifestly unfounded" are provided in Article 12 of the Refugee Law with additional grounds added in Article 9 of the 2005 amendments to the Refugee Law.

If the case is admitted to the procedure by the RMS, the SCNR then makes a decision on the refugee claim that can then be appealed to the courts.[65] However, between August 2009 and August 2010 the SCNR made no decisions on asylum applications forwarded from the RMS because the SCNR was stripped of its legal authority to decide asylum claims.

According to Natalya Naumenko, the director of the Refugees and Asylum Seekers Department of the SCNR, by June 2010 there were 750 pink-card holders the RMS had accepted into the procedure that were backlogged for a first decision because SCNR was not authorized to grant asylum.[66] There were another 340 cases of asylum claimants who had been rejected prior to August 2009 who were appealing their rejections but who were also stuck because neither the courts nor SCNR were authorized to decide their cases. Consequently, about 1,000 asylum cases were in limbo at the time of the Human Rights Watch visit.

Denied asylum seekers have the right of appeal, although the administrative court is not authorized to grant asylum but only to remand cases to the SCNR with recommendations, including returning asylum seekers to the first stage of the process. The office of the prosecutor is also able to issue a protest of an SCNR decision and to challenge a case in court. If the SCNR accepts the protest, it can start the case over, taking into account the objections the prosecutor had to the way it had been previously conducted.[67] Persons appealing denial of refugee claims before the courts are, in theory, issued a grey document, and those with appeals before the SCNR are, in theory, issued a yellow document.

The reality, however, from August 2009 to August 2010 was that the SCNR was not only not authorized to grant asylum, but also was not authorized to issue the yellow or grey documents to those who had been rejected prior to August 2009, which meant, in effect, that hundreds of people with claims pending before the courts and the SCNR had no way to prove to police on the street that they were authorized to be in the country and not subject to arrest, detention, and deportation.

Consequently, in June 2010, Naumenko told Human Rights Watch, "People appealing decisions are not documented. They have effectively become illegal. We cannot implement decisions of the courts on refugee cases."[68] She said that 340 people whose cases were

[65] The Law of Ukraine "On Refugees" (article 16) also provides for an appeal to the SCNR of RMS decisions to refuse asylum applications or to refuse to process asylum applications.

[66] Human Rights Watch interview with Natalya Naumenko, June 9, 2010.

[67] Naumenko informed Human Rights Watch that the office of the prosecutor protested 20 decisions in which refugee status was granted, but did not protest any rejections.

[68] Human Rights Watch interview with Natalya Naumenko, June 9, 2010.

rejected before August 2009 were in this situation. She pointed to a stack of files on the floor of her office to let Human Rights Watch know she was aware of these cases and would begin processing them as soon as her agency was authorized to do so.

In the meanwhile, asylum seekers with cases pending in the courts remain extremely vulnerable because no agency has issued them the relevant document indicating they have permission to stay while their case is pending. A 37-year-old Iraqi who applied for asylum shortly after arriving in Ukraine in May 2008, whose claim was rejected but on appeal in the courts, told Human Rights Watch that police stop him in Kyiv about twice a week to check his documents. All he has is a UNHCR-issued a protection letter, which has no legal weight in Ukraine, so he has been taken multiple times into local police stations, arrested at his place of work and fined for working without authorization, or harassed and extorted by police on the street. The latter treatment has actually been preferable to him to the alternatives. He has allowed the arresting police to empty his pockets of what money he has or on other occasions has chosen to pay them 200 hryven' directly rather than spend a couple of nights in police lock up. He told Human Rights Watch:

> For some police the UNHCR document is no problem, but for others it is a problem because they want money. They know if they take me to the police station, I would rather pay bribes than stay in detention until a court hearing. The court will fine me 350 hryven' for not having documents, so I would rather pay the police 200 or 250 hryven' [and avoid detention and the higher court fine].[69]

Access to Asylum: The Failure of the SBGS to Forward Asylum Applications or to Inform Detainees of the Asylum Procedure

A serious obstruction to the functioning of the asylum system has been the failure of Border Guard officials to forward applications submitted by detained asylum seekers to the Regional Migration Service. It does not appear to Human Rights Watch that a pre-screening system is taking place through which the SBGS makes an eligibility determination prior to the RMS performing that function. Rather, this appears to be a highly informal, ad hoc practice involving many Border Guard officials who either don't bother forwarding applications submitted to them or actively block asylum seekers from lodging claims.

[69] Human Rights Watch interview B-31, Kyiv, June 16, 2010.

There is a perception within the State Border Guard Service that the refugee law is too generous and that migrants abuse the asylum system: "Our main obstacle [to stop irregular migration] is the liberal legislation, in particular the law on refugees," Major General Borys Marchenko told us. He said that "at any stage of the administrative procedure a foreigner can lodge an application and is released:"[70]

> They use the asylum procedure to get out of detention and into a reception center. They break the rules of their stay in Ukraine and don't wait for the decision but use the asylum procedure to cross into the EU. Ukraine has the most liberal refugee law in the world. In no other place can a person use a refugee status application to get released from detention and abuse the system. This is a big problem and completely unacceptable. They do not want refugee status in Ukraine or in any EU country, they just want [to use] this status to live and work."[71]

The number of asylum applications forwarded by border guards fell dramatically from 1,114 in 2008 to 202 in 2009 and in the first eight months of 2010 dropped to 88 applications.[72] Although this drop in applications should be seen in parallel to the overall drop of migrants apprehended in Ukraine, dozens of people interviewed by Human Rights Watch complained that they had tried to submit asylum claims while detained in THFs, and never heard anything more about them. For example, a Somali who was detained at several places, including the Baby Lager, Chop, and Zhuravychi, said that he wrote the asylum application nine times, but never heard any confirmation that RMS had received it.[73] A 25-year-old Iraqi told Human Rights Watch both that he was not able to file asylum applications via the border guards, but also that authorities who may have misidentified themselves to him had him sign papers he didn't understand that may have said that he opted for voluntary return and thus would be precluded from applying for asylum:

> They used to bring papers and asked us to sign and we didn't know what we signed. We signed a lot of papers. I met some lawyers. They said they were from UNHCR. They didn't give us any help at all. I demanded and submitted

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[70] The law "On Refugees" does not actually provide for the release of asylum seekers from detention. Observers have noted the presence of persons in the asylum procedure remaining in detention. See "Ukraine Country Report 2009: Situation of Refugees and Asylum Seekers," European Council on Refugees and Exiles, page 12 http://www.ecre.org/files/ECRE_Report_Eng_with_cover_preview.pdf (accessed October 6, 2010).

[71] Human Rights Watch interview with Major General Borys Marchenko, State Border Guard Service, Kyiv, June 11, 2010.

[72] Letter from P.A. Shysholin., first deputy head, State Border Guard Service, to Human Rights Watch, October 19, 2010.

[73] Human Rights Watch interview S-19, Vinnytsia, May 24, 2010.

> an asylum application…. The first time I applied with four other detainees for asylum. We gave [the applications] to the security guard in Chop. After, I met with a lawyer who said, "Why didn't you write an application?" The lawyer said maybe the application ended up in the rubbish. He said we should write again. We wrote another application but I have never seen a lawyer again.[74]

The International Organization for Migration (IOM), which is engaged in providing technical support to the government of Ukraine in migration management, issues monthly reports as part of the observatory mechanism of GUMIRA, an EU-funded capacity-building project in Ukraine and Moldova. IOM's monthly report for September 2009 noted that the SBGS forwarded three asylum applications to the Regional Migration Service that month out of the 13 migrants in Chop who consulted with the NGO there on asylum. All three were rejected. The report said, "Although the number of applications is not high, there are cases when applications submitted to the detaining authority are not transferred to the local migration service."[75]

In some cases, detainees have not submitted asylum applications because SBGS officials did not inform them about the option of submitting an asylum claim. SBGS officials briefing Human Rights Watch before our visit to Chop informed us that they were preparing to deport three Chinese migrants being held at the facility. The three—all of whom were Tibetans fleeing persecution—had no idea that they had the right to apply for asylum. One, who said that his only communication with the guards had been through sign language and who also said that he had never been allowed to make a phone call, told Human Rights Watch:

> Here they don't say anything. We don't want to return to Tibet. No one spoke of a refugee application or asylum. I never heard of that before. I left Tibet because of no freedom, no human rights. I follow the Dalai Lama. If we were to return to Tibet, the Chinese police would hurt us.[76]

In a letter to Human Rights Watch responding to the findings of this report, the State Border Guard Service denied that SBGS officials have failed to forward asylum applications, and cited as confirmation of this that 104 asylum applications had been forwarded in the first nine months of 2010 and that all 104 asylum seekers were released from detention on the basis of

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[74] Human Rights Watch interview S-68, Zhuravychi, June 15, 2010.

[75] "GUMIRA Observatory Mechanism Monthly Report," IOM, September 2009, p. 3. IOM addressed this issue directly with the State Border Guard Services and was informed that corrective action has been taken. Email from IOM-Kyiv to Human Rights Watch, November 8, 2010.

[76] Human Rights Watch interview B-36, Chop, June 19, 2010.

documents issued by the Regional Migration Service. The letter said that a single instance of an untimely submission of an asylum application had been identified in September 2009 in Mukachevo and that disciplinary actions were taken against the responsible officials.[77]

Asylum Interviews

Asylum seekers in detention rarely spoke to Human Rights Watch about their RMS interviews at all. Those who did indicated that the attitudes of the interviewers ranged from uncaring to hostile. An Afghan family with severely disabled children talked at length with Human Rights Watch about their experiences in Afghanistan and their difficulties in Ukraine. The father had been a school teacher in Afghanistan who had run afoul of the Taliban for refusing to teach religion in his classroom. The Taliban declared him an infidel and said they would kill him and subject his daughter to a forced marriage. He was detained together with his wife and children at the Zhuravychi MAC. He talked about his asylum interview:

> The interview took place here. We are waiting for the results. The RMS interviewer told us during the interview, "100 percent you will be rejected as a refugee and we will deport you to Afghanistan." He said, "There is no way the Ukrainian government will accept you as a refugee." He made us very worried. We cried that they would send us back to Afghanistan.[78]

Asylum seekers who were not detained who spoke to Human Rights Watch about their RMS asylum interviews generally characterized them as perfunctory, with questions that were not pertinent to their claims and interviewers with little knowledge of the asylum seekers' countries of origin. They also generally said the quality of interpretation was poor and that interpreters were often corrupt. An Afghan asylum seeker interviewed by the RMS in Kyiv recalled:

> It was a short interview, about a half hour. I was not able to fully explain my situation. She typed my answers. She was very slow with her typing. She did not understand [specific political references indicating that the interviewer had little knowledge of Afghanistan].[79]

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[77] Shysholin P.A., first deputy head of the State Border Guard Service, letter to Human Rights Watch, October 19, 2010.

[78] Human Rights Watch interview B/Y-22/23, Zhuravychi, June 15, 2010.

[79] Human Rights Watch interview B/Y-38, Uzhgorod, June 19, 2010.

An Uzbek asylum seeker in Kyiv told Human Rights Watch that the attitude of the Migration Service interviewers made him unwilling to trust them enough to tell his reasons for fearing return to Uzbekistan:

> The Migration Service has a bad attitude toward asylum seekers. They shout at people. They do not act correctly. I asked them not to shout. The staff of the Migration Service do not take into consideration that people have to bring their children along for the interviews. They make you come back again and again. It is exhausting. Exhausting. I did not feel I could trust the Migration Service. I behaved the same as I had in the Russian Federation. I did not mention all the facts [in my asylum interview]. I did not think that they would provide confidentiality. I know about cases of extradition, so I don't trust them. I think I gave enough information for my refugee claim to be credible, but it was not a long, detailed interview.[80]

Other Uzbek asylum seekers also said that they feared talking openly to the Migration Service interviewers in their asylum interviews because of their hostile attitudes and the fear that information would be shared with the government of Uzbekistan. An Uzbek couple explained to Human Rights Watch why they did not tell their full story during their asylum interview:

> We had an interview with a woman named [name withheld] with the Migration Service. I felt like she didn't believe me. We didn't want to tell everything because being in Ukraine is nevertheless dangerous. There is a new president [Viktor Yanukovych] and he is friends with [President Islam] Karimov [of Uzbekistan]. We told them the main things, but at HIAS [the Hebrew Immigrant Aid Society, an implementing NGO partner for UNHCR in Kyiv] we told more; we trust them. We gave short explanations at the Migration Service. We came here [to Ukraine] but we are scared of the government nevertheless.[81]

Another problem with the RMS asylum interviews is the lack of qualified interpreters. Lack of interpreters permeates every aspect of the migration enforcement and asylum system, but can be a particularly critical problem in the process of determining a refugee claim. A 17-

[80] Human Rights Watch interview B-43, Kyiv, June 26, 2010.

[81] Human Rights Watch interview S-27/28, Kyiv, May 26, 2010.

year-old Somali girl told Human Rights Watch about the interpreter the Migration Service used for her asylum interview:

> During the interview I started to be suspicious that the interviewer would do a wrong translation. If I told him about a serious problem in many sentences, he translated a couple of short words. I said, "You don't try to translate." There were also misunderstandings. I don't speak very well Arabic and he [the Arabic translator] also doesn't speak Russian very well. I also asked for an English translator, but there was no English interpreter.[82]

This Somali girl told Human Rights Watch that her interpreter for the asylum interview said he would give her a pink (asylum seeker) card for US$100. "After that I felt they don't consider my interview, but just my money."

The SCNR's Refugees and Asylum Seekers Department director, Naumenko, told Human Rights Watch that interpreters were "a big problem:"

> The state is supposed to provide translators, but in reality we don't have enough money for them. At the regional levels, at the central level, with the border guards, in the courts, we have problems with translators at every level.[83]

Legal Gaps in Asylum Standards

One of the most serious gaps in the Ukrainian asylum system exists as a failure of the law rather than a failure of implementation: the lack of any form of complementary protection. Now established as a standard in EU asylum law,[84] a growing international consensus[85] has recognized that people fleeing indiscriminate violence in situations of armed conflict and other serious abuses are not adequately covered by the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol and are also in need of international protection. So, although Ukraine acceded to the Refugee Convention and Protocol in 2002 and has adopted a national refugee law,[86] it has not included a provision that would protect

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[82] Human Rights Watch interview, S/Y-94, Uzhgorod, June 18, 2010.

[83] Human Rights Watch interview with Natalya Naumenko, June 9, 2010.

[84] EC Directive 2004/83/EC, Minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection for other reasons (L304/30.09.2004), April 29, 2004.

[85] Conclusion on the Provision of International Protection including through Complementary Forms of Protection, UNHCR Conclusion No. 103 (LVI), October 7, 2005.

[86] Law of Ukraine "On Refugees."

asylum seekers who would face a risk of serious harm arising from situations of armed conflict. The consequences for certain nationalities have been substantial.

Naumenko, the SCNR's Refugees and Asylum Seekers Department director, told Human Rights Watch, "Somalis can't get refugee status." She said that there is draft legislation for temporary protection or protection on humanitarian grounds, but that until such a law passes, "We have no temporary protection, no humanitarian protection, no tolerance; our only protection is [Convention] refugee status at the moment. It creates a lot of difficult situations."[87]

That no Somalis have been granted asylum begs the question whether Somali refugee claimants are considered fairly and without discrimination based on the Refugee Convention's "well-founded fear of being persecuted" standard. UNHCR has noted the lack of a non-discrimination provision in Ukraine's Refugee Law, and observed, "This is important for the ethnic Chechens from the Russian Federation who are generally not recognized" as refugees.[88]

The absence not only of complementary forms of protection, but also for protection on humanitarian grounds means that the asylum system lacks a basis for protecting victims of trafficking, leaving them at risk of being treated as any other irregular migrant. (See also Chapter VII.)

Unaccompanied Children Seeking Asylum

Unaccompanied children cannot claim asylum by themselves. They are considered to lack the legal capacity to file an application and to need an officially appointed legal representative (*zakonnyy predstavnyk*) to enter the asylum procedure.[89] The appointment of legal representatives is not guaranteed throughout Ukraine; the failure to provide legal representatives in some regions prevents unaccompanied children in those places from seeking asylum and from legalizing their status and obtaining documentation.[90]

Access to the Asylum Procedure

By spring 2010 children's access to the asylum procedure throughout Ukraine had improved compared to 2009, when they were largely blocked from applying for asylum. That positive

[87] Human Rights Watch interview with Natalya Naumenko, June 9, 2010.

[88] UN High Commissioner for Refugees, UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers, October 2007, Corr., http://www.unhcr.org/refworld/docid/472f43162.html (accessed October 20, 2010), para. 15 and footnote 12 on p. 5.

[89] Law of Ukraine "On Refugees," art. 8.

[90] Danish Refugee Council, "Legal and Social Protection for Asylum Seeking and Refugee Children in Ukraine," June 2009, pp.10-15.

development, however, was short-lived in some places. Authorities in Vinnytsia, where a Somali migrant community lives, indefinitely delayed the appointment of legal representatives in July 2010, due to the absence of formal age assessment procedures. This meant that despite the overall resumption of asylum processing, unaccompanied children in Vinnytsia were again prevented from seeking asylum.[91] Similarly, migration service and children's service officials in the Kharkiv region reached a deadlock over how to appoint legal representatives for unaccompanied children who seek asylum. As a result, no representatives could be appointed and children were blocked from accessing the asylum procedure.[92]

Even in Kyiv, where unaccompanied children generally are able to file an asylum application, the appointment of a legal representative is not straightforward. Lawyers reported they need to spend considerable time advocating with children's services to appoint a legal representative and that there is no effective cooperation between children's and migration services to enable a child access to the asylum procedure.[93]

Children who are unable to enter the asylum procedure for lack of the appointed legal representative risk being detained and deported. If they lack documentation, their presence in Ukraine is considered illegal, which means they are also barred from accessing education and housing. (See also Chapter VII.) The only way these children can file an asylum application is by falsely claiming to be adults or by waiting until they turn 18. A 16-year-old Somali boy told us, "At the migration service the person who translated said I had to be an adult. I said I was underage. My real date of birth is 1994. The translator said I should change my birthday."[94]

Consideration of Children's Claims

Unaccompanied children who are unable to enter the asylum procedure unless they claim to be adults or wait until their 18th birthday face serious consequences for the consideration of their claims. Child-specific forms of persecution, such as recruitment as child soldiers, trafficking for the purpose of sexual exploitation, the threat of forced marriage, or female genital mutilation – all acutely relevant for asylum seeking children from Somalia and Afghanistan – are violations of children's rights that may be less persuasive when the

[91] Human Rights Watch telephone interview with Vinnytsia Human Rights Group, August 9, 2010.

[92] Children's services in Kharkiv and Kyiv issue a certificate (doruchennia) to appoint legal representatives and mandate them to act on behalf of the child. Migration services in Kharkiv, however, do not accept these certificates and asylum applications filed by legal representatives on behalf of children. In Kyiv, in contrast, migration services accept such certificates. Human Rights Watch telephone interview with Danish Refugee Council, August 11, 2010.

[93] Human Rights Watch interview with Hebrew Immigrant Aid Society (HIAS), Kyiv, May 27, 2010

[94] Human Rights Watch interview S-15, Vinnytsia, May 23, 2010.

applicant is an adult. Also, the impact of harms or threats on a child should be assessed differently than for an adult because the threshold of harm or threat that reaches the level of persecution is lower for children.[95]

Lawyers engaged in the asylum process were aware of only one unaccompanied child who had been granted refugee status in Ukraine.[96] The absence in law of complementary forms of protection, the obstacles in filing applications, and the lengthy decision-making process over several years all work against children's claims.

The UN Committee on the Rights of the Child stipulates that asylum-seeking children shall enjoy access to the asylum procedure regardless of their age. It also views that states' obligations to protect children who seek refugee status include the responsibility to set up a functioning asylum system, enact legislation addressing the treatment of unaccompanied children, and build capacities to make sure children are treated in accordance with international law.[97]

The UN High Commissioner for Refugees (UNHCR) recommends that asylum claims by child applicants be processed on a priority basis, while giving children sufficient time to understand the asylum procedure and prepare for telling about their experiences. UNHCR also regards restrictive age assessments that treat children as adults in asylum procedures as a possible violation of their rights.[98]

Even when unaccompanied children are not granted refugee status or complementary or humanitarian forms of protection, states are still obliged to grant them special protection and their full entitlements under the UN Convention on the Rights of the Child, for as long as they are on the country's territory.[99]

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[95] "Actions or threats that might not reach the threshold of persecution in the case of an adult may amount to persecution in the case of a child because of the mere fact that s/he is a child. Immaturity, vulnerability, undeveloped coping mechanisms and dependency as well as the differing stages of development and hindered capacities may be directly related to how a child experiences or fears harm. […] .To assess accurately the severity of the acts and their impact on a child, it is necessary to examine the details of each case and to adapt the threshold for persecution to that particular child." United Nations High Commissioner for Refugees (UNHCR), "Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees," HCR/GIP/09/08, December 22, 2009, pp.8-9.

[96] Human Rights Watch interviews with HIAS, Kyiv, May 27, 2010; with Danish Refugee Council, Kyiv, January 4, 2010.

[97] CRC, art. 22; UN Committee on the Rights of the Child, General Comment No.6, paras. 64-66.

[98] "United Nations High Commissioner for Refugees (UNHCR), "Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees," HCR/GIP/09/08, December 22, 2009, p. 5.

[99] UN Committee on the Rights of the Child, General Comment No. 6, para.78.

Lack of Documentation

Unaccompanied children who are prevented from entering the asylum procedure remain undocumented.[100] They are subject to constant harassment and, in theory, detention and deportation.

A 15-year-old Somali boy told us he had been unable to ask for asylum until spring 2010 because the authorities failed to appoint a legal representative. He only had a UNHCR protection letter during the entire time. This protection letter has no legal bearing.[101]

> They [the police] check me all the time; sometimes 10 times per month. Every time I go on the streets there's the possibility they check me and I don't want to leave home. If you don't have money they may take your document and won't return it. That happened around 10 times. Then I come to the [Vinnytsia Human Rights Group] and get a new paper.[102]

Other unaccompanied children similarly told us how police harass them for their lack of documents, and sometimes confiscate protection letters:

> "I have the protection letter. . . . I've been stopped so many times. . . . They say it's toilet paper, not a document," a 15-year-old boy told us.[103]

> "I don't have documents; I'm afraid of walking around without documents. The police stopped me twice and took my document away and didn't give it back," a 16-year-old girl said.[104]

Even children who are able to file an asylum application may not immediately be provided documentation. According to the Vinnytsia Human Rights Group, it can take several weeks until the applicant receives a document from the migration service. An unaccompanied boy who arrived in 2009 at the age of 17 was unable to file an asylum application, and said he was still waiting for documentation three weeks after filing his application in spring 2010. [105]

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[100] As discussed earlier in this chapter, asylum seekers in the appeals procedure may also be undocumented.

[101] Such protection letters are also issued by other groups who act as UHNCR partners in the regions. UNHCR has started to issue such letters in spring 2010. Legally, their letters do not qualify as official documents.

[102] Human Rights Watch interview S-3, Vinnytsia, May 22, 2010.

[103] Human Rights Watch interview S-17, Vinnytsia, May 24, 2010.

[104] Human Rights Watch interview S-20, Vinnytsia, May 24, 2010.

[105] Human Rights Watch interview S-16, Vinnytsia, May 24, 2010.

Another 17-year-old boy told us he was still without official documentation from the migration service two months after he applied for asylum.[106]

Corruption in the Asylum Process

Detainees interviewed by Human Rights Watch frequently complained that the only way to be able to lodge an asylum claim, to be released from detention, or to be granted asylum in detention is to pay a bribe. In Zakarpattia, for example, the bribes to file an asylum application from a detention center are usually paid to interpreters who work for the Regional Migration Service. Migrants and asylum seekers said that they believe that the interpreters split the bribes with the decision makers and other relevant authorities.

An Afghan woman, a long-term resident of Ukraine with refugee status, told Human Rights Watch:

> We have refugee status. We bought it. Nobody here gets it otherwise. As far as I know, everybody I know bought their refugee status. We bought it for $200. Initially we bought refugee status for my husband. We took a debt and paid it back slowly.[107]

Those who don't pay often languish. An 18-year-old Afghan spoke with Human Rights Watch about the linkages of bribery with the lodging and processing of asylum claims:

> On May 5 I wrote an application for asylum. I gave it to a lawyer and she gave it to the guard and the guard had to give it to the Migration Service. The lawyer told me I should hear back in two to three weeks. After one month, I asked the IOM guy, and he said that the application was still with the guard…. After that I asked to talk to the head of Chop but it never happened. I saw that lawyer again. She said, "If the guards don't want your application, it's not my problem."
>
> There is a translator called [name withheld]. He works for Migration Services. When he was in Chop, he told us he could stop applications. He wants US$700 to US$750 to pass the application to the Migration Services. I wrote an application and didn't pay him and I never got replies.

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[106] Human Rights Watch interview S-13, Vinnytsia, May 23, 2010.

[107] Human Rights Watch interview S-32, Kyiv, May 29, 2010.

> I don't know about the right to appeal. I know if you pay, you will not get rejected. [Name withheld] works in Chop and for the Migration Service and takes money. Those who can't pay get rejected. I know two Palestinians who paid US$750 each and got released.[108]

A Somali made the same observation as the Afghans quoted above, and said it was the same for other Somalis as well:

> You have to pay the translator US$800 not to get rejected. It's the same amount all Somalis pay. My family sent the money to the translator by a wire transfer. I got the green document issued today, June 18. I was really lucky. There was a guy who didn't pay, [name withheld]. He got rejected today.[109]

Extradition and Ukraine's Nonrefoulement Obligations

In Ukraine the most heightened risk of refoulement—the forced return of a refugee—comes as a result of extradition requests. Uzbek and Russian asylum seekers, in particular, have been threatened with extradition and their cases have been complicated by the accusation of criminality coming from their home governments and the pressure this puts on diplomatic relations between Ukraine and other states of the former Soviet Union.

Until May 2010 authority to decide extradition requests rested largely with the Prosecutor General. The law "On introduction of amendments to the Code of Criminal Procedure in relation to extradition" adopted on May 21, 2010 introduced changes to the Criminal Procedures Code: it lays out the procedure to follow in responding to such requests, delineates the roles of the Prosecutor General and the Ministry of Justice, stipulates authorities and duration of detention, and establishes the criteria for refusing an extradition request.

Given that the new law was enacted during the Human Rights Watch visit to Ukraine, it was too early to tell how effectively and fully it would be implemented. Nevertheless, while codification of the extradition procedure itself is a welcome development, the law, on its face, appears not to close all the gaps in the procedure or to be sufficiently clear on the standards to apply for refusing extradition. For example, while the law says that a refugee should not be extradited, it makes an exception for cases "otherwise provided for by the

[108] Human Rights Watch interview Y-15, Zhuravychi, June 15, 2010.

[109] Human Rights Watch interview B/Y-34, Uzhgorod, June 18, 2010.

international treaty of Ukraine."[110] This vaguely worded reference raises the risk of refoulement based on bilateral extradition treaties or other regional treaties that lack nonrefoulement provisions, particularly since the new law does not explicitly reference Ukraine's nonrefoulement obligations in international refugee and human rights law.

Also, while the law sets limits on duration of detention, it does not clearly prohibit repeat arrests and recurrent detentions.[111] Procedurally, the relationship between the State Committee on Nationalities and Religions (or whatever refugee-status-decision-making authority might replace it) and the Prosecutor General and courts is not clarified by the new law, leaving uncertain whether a refugee determination would be conducted prior to examination of the extradition request.

Finally, while the new law suspends execution of an extradition order that is being appealed to the appellate court, it does not say whether an appeal of the General Prosecutor's initial decision to extradite suspends the execution of that order before it is reviewed by the first-instance court.[112]

Ukraine's recent history on extradition requests has not been encouraging. In an extradition case involving an SCNR-recognized refugee, a Russian named Oleg Kuznetsov, the district administrative court of Kyiv had turned down the Prosecutor General's protest against the SCNR's decision to grant him asylum. Despite the court's affirmation of his refugee status, the Prosecutor General ordered his extradition and he was deported to Russia a week later.[113]

Uzbek Extradition Requests

During Human Rights Watch's visit to Ukraine, on June 15, the authorities arrested Umid Khamroyev, an Uzbek asylum seeker, at his home in Kyiv. Uzbekistan had issued an extradition request against him, accusing him of violations of the criminal code routinely used against dissidents there. He was taken to the Lukianivs'ka SIZO 13 investigative isolation facility in a city near Kyiv called Borodianka.[114] Asylum seekers fighting extradition are often imprisoned in SIZOs, an abbreviation for *slidchyy isoliator*, investigative isolation. Conditions there are reportedly harsher than in the Migrant Accommodation Centers and prisoners there

[110] Code of Criminal Procedure of Ukraine, No.2, 1960, with amendments and additions, art. 466.

[111] Code of Criminal Procedure of Ukraine, art. 463.

[112] Code of Criminal Procedure of Ukraine, art. 468.

[113] Kharkiv Human Rights Group, "Ukraine's Prosecutor General flouts court ruling," July 28, 2008, http://www.khpg.org/en/index.php?id=1220922263 (accessed October 11, 2010).

[114] Human Rights Watch interview B-43, Kyiv, June 26, 2010.

are held together in overcrowded conditions with Ukrainian suspects for longer than the six-month periods for migrant detention allowed under the regular administrative rules.[115]

A friend of Umid Khamroyev, also an Uzbek asylum seeker, told Human Rights Watch that Khamroyev was arrested five days after the Regional Migration Service had rejected his asylum claim but before he was able to launch an appeal within the ten-day period for filing appeals. His friend said he was preparing his appeal when he was arrested. "He lost his case on a Thursday," said his friend. "The administrative court said that it could not accept the filing of the appeal until it had the text of the decision and that he would have to wait until Monday to file the appeal. He was arrested first thing Tuesday morning at his home, and the text of the court case didn't come into until after his arrest."[116]

Within the next two weeks the authorities arrested three more Uzbeks, based on extradition requests. All four men were in various stages of seeking asylum or appealing the rejection of their refugee claims in Ukraine (at a time when the Ukrainian government lacked any legal authority to grant asylum).[117] On July 23 the Shevchenko district court affirmed the Prosecutor General's request to implement an extradition arrest against Khamroyev, which made his forced repatriation look imminent. However, on July 26, the European Court of Human Rights issued an interim ruling under its Rule 39 calling on Ukraine to suspend Khamroyev's and the other three detained asylum seekers' extradition until the court had examined their cases.[118] The Court then declined to extend its interim rule after Ukraine assured the court that it would not decide on the extradition requests while these men were still in the asylum procedure.

Ukraine's Nonrefoulement Obligations

As a party to the 1951 UN Convention on the Status of Refugees and its 1967 Protocol, Ukraine has an obligation not to return people who would face threats to their lives or

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[115] The Council of Europe's Commissioner for Human Rights Thomas Hammarberg commented on the SIZOs after his December 2006 visit, finding them to be "dilapidated and in a poor state of repair," and heard detainee complaints about "lack of light, bad ventilation systems, undernourishment, poor sanitary conditions, lack of beds and failure to separate inmates with infectious contagious diseases." He did not find "a single cell [that] met European standards" in his visits to detention centers in L'viv, Odesa, and Kyiv. "Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on His Visit to Ukraine, 10-17 December 2006," Strasbourg, CommDH (2007)15, September 26, 2007.

[116] Human Rights Watch interview B-43, Kyiv, June 26, 2010.

[117] Amnesty International issued an Urgent Action on behalf of the four. "Ukraine: Uzbekistani asylum-seekers at risk in Ukraine,´ UA: 157/10 Index: EUR 50/009/2010 Ukraine Date: 12 July 2010 http://www.amnesty.org/en/library/asset/EUR50/009/2010/en/9dbf5e57-7cde-48e7-a159-e37939724866/eur500092010en.html

[118] Khamroyev and others v. Ukraine. , ECHR facsimile communication from July 26,2010 ECHR-LE2.2 (on file with Human Rights Watch).

freedom upon return.[119] The UN Convention against Torture and the International Covenant on Civil and Political Rights, to which Ukraine is also a party, prohibit without exception any returns to risk of torture.

The European Convention on Human Rights, by which the Ukraine is legally bound, also strictly prohibits the deportation of any person – no matter what their crime or suspected activity – to a country where they face a real risk of torture or cruel, inhuman, or degrading treatment or punishment.

Ukraine's domestic refugee law is consistent with the European Convention insofar as it bars expulsion or forcible return not only to a person fearing persecution but also for persons who "may suffer torture and other severe, inhuman or degrading treatment or punishment." Ukrainian law further explicitly bars forced return not only to a country where such persecution, torture, or inhuman or degrading treatment would occur but also to countries from which the person might, in turn, be expelled or forcibly returned.[120]

Despite the clarity of the bar on refoulement in international and domestic law, Ukraine on February 14, 2006 forcibly returned ten Uzbeks to Uzbekistan pursuant to an extradition request, despite calls from UNHCR not return them. After the fact, in May 2006, the Ministry of Justice issued a legal opinion saying the deportation was illegal.[121]

UNHCR documented that Ukraine committed refoulement against 12 persons in 2008 and 16 persons in 2009. UNHCR told Human Rights Watch, "We continue to have a difference of opinion with the Prosecutor General with respect to the application of extradition procedures to persons of concern to UNHCR."[122]

[119] Ukraine ratified the Refugee Convention and Protocol without reservations on January 10, 2002.

[120] Law of Ukraine "On Refugees," art.3.

[121] "Ukraine: Country Report on Human Rights Practices," US Department of State, March 6, 2007.

[122] Human Rights Watch interview with UNHCR, Kyiv, June 25, 2010.

VI. Torture and Ill-Treatment of Migrants in State Custody

Most of the foreigners interviewed by Human Rights Watch who had been apprehended and detained for illegal entry or presence in Ukraine told us that the authorities mistreated them. For many this took the form of verbal abuse, but in some cases the extent of abuse was quite severe, constituting torture. This chapter describes abuses—verbal and physical abuse, bribe demands and robbery, and torture—that took place from the time of apprehension, the first hours in custody, and during interrogation sessions. The following chapter, Chapter VI, Detention of Migrants and Asylum Seekers, continues the account of mistreatment during longer-term detention.

Abuses upon Apprehension

Many of the migrants interviewed by Human Rights Watch who had been returned from Slovakia and Hungary, or who Ukrainian border guards caught as they attempted to leave the country, reported that they had been beaten or otherwise ill-treated upon apprehension in Ukraine. Out of 36 testimonies of persons returned from Slovakia, 18 alleged that they had been ill-treated at the hands of Ukraine border guards or other officials. A 17-year-old unaccompanied Afghan boy described severe ill-treatment after being returned from Slovakia to Ukraine:

> I'm scared to talk about Ukrainian soldiers at the border. They beat us a lot. They beat us to speak Russian. As soon as they took us they started beating us…. It was night time…. We walked to another room. A man in civilian clothes was just beating me. "How did you pass the border?" He took us one at a time. He kicked me and also hit me with a police stick and punched me for an hour, beating me the whole time. At first it was just him, then three or four others in uniform hit.[123]

A 22-year-old Tibetan man from China who was returned from Slovakia said he was beaten when the Ukrainian guards could not find a language to communicate with him. "The Ukrainian border guard punched me one time in the chest. I didn't understand what he said. He didn't speak English, so he hit me."[124]

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[123] Human Rights Watch interview B-39: place and date withheld.

[124] Human Rights Watch interview B-25: place and date withheld.

Migrants returned from Hungary reported similar treatment. Out of the 14 testimonies from persons returned from Hungary, 12 included allegations of serious ill-treatment after return to Ukraine. A 36-year-old Afghan man who said that the Hungarian guards treated him well after apprehending him about 30 kilometers inside Hungary and holding him for one day, went on to say:

> They turned us over to the Ukrainian guards the next day. After the Hungarian guards left, the Ukrainian guards started beating us right away. They beat me badly. They broke my wrist [showing the interviewer his crooked forearm]. There were 12 of us in the group. They took us one by one kicking us like a soccer game. They were in military uniforms. They kicked my wrist really hard and broke my arm with a military boot. I was sweating and nauseous. This took place right on the Hungarian-Ukrainian border. They took us to the Baby Lager for one night and then to Chop. A medic saw my wrist and tied a bandage on it.[125]

A 17-year-old Somali girl described being mistreated by a Ukrainian border guard after being sent back by Hungarian border guards:

> One border guard slapped me and he used bad words. There were three of them. They started to beat the boys and one guy slapped me. It was very painful. I think it was at the border checkpoint directly after we were received [back from the Hungarian border guards].[126]

In addition to beatings at the hands of border guards wearing military uniforms, men in plain clothes who arrest migrants also subject them to beatings and other ill treatment. Men in civilian clothes caught a 30-year-old Pakistani on the Ukrainian side of the border with Romania on February 15, 2010:

> They were in a white car, all in civilian clothes. They beat me. One had a pistol and hit me with the pistol on my head. I was on the ground, unconscious. They laid me on the ground in the snow for about one hour. When I was lying on the ground, they hit me on the back and put their foot on my neck. They hit me after I was handcuffed. Two or three guys were beating me. They never showed any documents. Then they took me to a small police

[125] Human Rights Watch interview B-19: place and date withheld.

[126] Human Rights Watch interview S-94: place and date withheld.

> station with the people in blue uniforms. At midnight they took me to a Border Guard station.[127]

Human Rights Watch interviewed others who said they were mistreated by authorities inside Ukraine who suspected them of heading to EU countries. A 24-year-old Afghan man said that men in plain clothes caught him and two other Afghans at the train station at Uzhgorod in March 2010. He said that he had a round-trip train ticket, but no travel documents:

> They beat us at the train station in front of the public. Lots of people watched while they punched and kicked us. It was at dusk. I could see about 20 people watching the police beat us. As soon as they beat me, people started leaving the area. The guys who caught us took US$150 and my cell phone.[128]

We also spoke with others who said they were mistreated upon apprehension well inside Ukraine. For example, a 16-year-old unaccompanied Somali boy said plain-clothes police caught him and two other boys on their way from Kyiv to Vinnytsia:

> All three of us told police our ages. The men who arrested us were detectives. They wore civilian clothes, not uniforms. One was named [name withheld]…. We were held in the police station for nine days. They first took us there in handcuffs with our hands cuffed behind our legs so we were hunched over.
>
> They beat me a lot the first three days. Multiple police beat me, but [name withheld] was the real racist who beat me badly and called me nigger and pirate.[129]… At the police station [name withheld] made me strip naked. All three of us were stripped naked. He took the other two outside and kept one inside and closed the door. He and two other guys put me laying down on the floor. One guy put his foot on my head. One guy beat me with an electric wire and the other guy beat me with a big electric cable. That happened every day for the first three days.
>
> They asked me questions as they beat me. Where did we come from? Are we pirates? Where is our money? Why did we come to Europe? They were

[127] Human Rights Watch interview S-62: place and date withheld.

[128] Human Rights Watch interview B-16: place and date withheld.

[129] Somalis in Ukraine in 2009 and 2010 were feeling the particular brunt of popular reactions to the capture of a Ukrainian cargo ship by Somali pirates in September 2008.

> detectives from immigration. They had a notebook with pictures in it. They wanted me to identify [individuals in] pictures as smugglers who bring people to Europe.[130]

Major General Borys Marchenko, a senior official at the State Border Guard Service, told Human Rights Watch that allegations of abuse are investigated:

> If I told you there were no problems that would not be true. Let's say four migrants try to cross the border and there are only two officers there to catch them. When they stop and apprehend them, they might use force. In such situations, they should first say, "Stop, we will search you," but it could happen that they would use force first. Each detainee gets a medical exam upon arrival. But we also know about cases where the migrants fight among themselves and where migrants are beaten by traffickers. But every time we hear about cases of abuse, we try to investigate and take sanctions. I don't want to say that such things can't happen. Any time we receive information we make an investigation. And if someone is found guilty he will be sent to another work that doesn't involve migrants. This year we have dismissed eight officers. They weren't proved guilty, but we decided they should not work directly with people.[131]

Torture during Interrogations

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."[132]

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[130] Human Rights Watch interview B-10: place and date withheld.

[131] Human Rights Watch Interview with Major General Borys Marchenko, June 24, 2010.

[132] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), GA res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984); 1465 UNTS 85.

Ukraine's Criminal Code makes torture a punishable offense. It defines torture as the intentional causing of physical pain or physical or mental suffering by physical abuse, cruelty or other violent means in order to force the victim or other person to perform an act against his or her will.[133]

Despite the clear prohibition on torture in international and domestic law, Ukrainian officials in civilian clothing who work closely with the State Border Guard Service either as its own intelligence-gathering arm or as part of Ukraine's security apparatus appear to be committing torture—causing severe pain purportedly to illicit information—against migrants who are caught attempting to cross Ukraine's western border or after being returned from bordering EU countries.[134]

Torture is most likely to occur during interrogations aimed at getting migrants to identify pictures of smugglers and to give information about smuggling routes. The following account from a young Somali man not only attests to intentional and methodical hitting to the point of torture, but also suggests that the smugglers themselves are sometimes very closely connected to the very agencies that are purportedly operating to stop the smuggling networks:

> We crossed to Slovakia on May 28, 2010. It was cold and raining hard. We took a car from that room to a military base. There were six or seven soldiers watching us but they did not stop us. There were three escorting us. They were not wearing uniforms, but by the nature of the place, I could tell they were military.[135] They talked on walkie-talkies. We walked through the base and then crossed a river with the three escorts still with us. They punched and kicked people to keep them moving. We climbed a mountain. They were really pushing us…. [His account continues with how they crossed the border and were caught and treated on the Slovak side, and then returned to the Ukrainian border.]
>
> At the Ukrainian flag [the border crossing], they handcuffed me. Two soldiers took us in a car. I ended up in the same base that I had walked through before. I spent the next seven hours there—in hell. They put us in a room

[133] Criminal Code of Ukraine, art.127. Article 127 stipulates three to five years deprivation of liberty for torture and five to ten years for torture committed by a group of individuals by prior agreement.

[134] The SBGS's intelligence-gathering arm is the ORV (Operatyvno-rozshukovyy viddil, Operational Investigative Department. The security service is the SBU, Sluzhba Bezpeky Ukrayiny, Security Service of Ukraine).

[135] There is no way to tell for certain the branch of service involved; the State Border Guards wear camouflage uniforms that appear to be military, although the SBGS is not part of the Ukrainian army.

together. A man said, "Listen to me carefully. You are in Ukraine, not Slovakia. This is not Germany, this is not England. There is no democracy here. I can get what I want to know any way. I will get it. It's good for you to speak up or you will wind up in the hospital."

After that, they took me to a small office in the second floor of a building with a computer in it, with 11 or 12 soldiers, definitely border guards in camouflage uniforms and a high ranking officer with a green hat and two stars on the shoulder. They took my MP4 player and my money and stripped me naked… There was a civilian in there. He told the soldiers to leave. The officer and the soldiers all left. Now it was just me and the civilian man and a packet of cigarettes…

He asked me questions. He would punch me if he had to ask the same question twice. He said, "If you lie, you will not leave here alive." His English was not that good. I was sitting in a chair facing a big table. He sat close to my ear. He was a short, middle aged man with a good physical body. His hair was very short, completely black, and he was starting to go bald on the top.

Every time I hesitated to answer a question he punched my chest. Every time he punched me with his fist. I can't count the number of times he punched my chest. He punched my chest for six hours, every ten minutes. Another man came over to the interview table. He was the same man who originally took me to the mountain. He was the one who escorted me through the camp. He offered me a cigarette. I looked in his eyes and I started to panic. I realized if I talked I would be in a lot of trouble, and I changed my story completely.[136]

The Somali man said that the base where he was tortured was about a 45 minute drive from Chop, where he was taken the next day, June 1, 2010.

Other migrants returned from bordering EU countries gave similar accounts of beatings by civilians during interrogation very shortly after having been returned across the border. A man from an atypical nationality group was returned from Slovakia to Ukraine in the late afternoon in May 2010:

[136] Human Rights Watch interview B-34: place and date withheld.

> Ukraine accepted me. They took me to another place about 20 minutes away by car. It was a military office. There were four of us together. Two in one room, two in another room. There were two men in civilian clothing and a lot of soldiers coming and going. They asked questions in Russian. I didn't understand. They beat me. They beat my friend worse than me, like a football. I stood and sat up and down during the questioning. I didn't understand the questions. They hit me with their fist, they punched and kicked. They didn't use a stick. They just kept hitting me on my torso. They beat me and questioned me like this for one and a half hours. They punched me many times. Different people hit me. They came and went. They treated me like an animal. They were also punching and kicking my friend at the same time.[137]

The experiences of migrants caught trying to cross the border with Poland are similar. A migrant who asked that we withhold all identifying information recalled his treatment at Mostys'ka on the Polish border:

> In Mostys'ka, there's [name withheld]. He's really bad. He works for the secret service…. I was afraid of being deported and he beat me with his boot and a baton at first. I don't know the name of the other guy. We were all kept in the same room, but sometimes they brought us to another room. He said that the passport [I was carrying] was fake and if you don't say the truth, we will hit you. They beat me three or four times, and I told the truth. After the first time, I told everything. I'm really scared of these people. Please don't tell anybody. They will create problems. I'm really afraid of being deported.[138]

In some cases documented by Human Rights Watch the interrogation sessions involved severe psychological as well as physical abuse, including death threats. A Somali man related the interrogation he underwent while still being held in one of Ukraine's Specially Equipped Premises (SPs) on the site of a border guard base involving threats with a gun to his head and sleep deprivation in addition to the beatings:

> I was caught at the checkpoint [inside Ukraine]. They took us to a military base. It was at the border. I stayed there for one day and one night. They

[137] Human Rights Watch interview B-35: place and date withheld.

[138] Human Rights Watch interview S-63: place and date withheld.

were beating us all the time [there]. It was intelligence and military guys. Some were in uniforms, and some were in plain clothes. They both beat us. They took each of us to a separate room and investigated each one of us separately. There were four intelligence guys and many border guards. In the interrogation room there were only plain clothes officers.

They asked me who I was, my nationality, where we were going and why we were here. I know the name of one of them is [name withheld]. He's the head of intelligence that works at the border. That checkpoint is near the border. There's no other house around.

They beat me and used a gun to threaten me. They pointed the gun to my head and said, "We're going to blow up your head if you don't answer the question why you're here." Three times they pointed the gun at me. Two of them beat me. I was very scared.

They used their fists [when they beat me]. They kicked me. I was handcuffed and standing and I fell down twice. They said, "Get up." I was not naked when I was beaten. Those in uniforms took off my clothes. They said to me that we're pirates and that we took their ship, and they asked me why I came here and who was the Ukrainian smuggler. I didn't know the name of the smuggler. They continued beating me. It was 24 hours of beating….

One [interrogator] guy was with a computer there. In a separate room they took me again. The treatment was the same each time. I didn't sleep. They handcuffed me to the heater and left me there all that period. They showed me photographs. I didn't recognize them. I didn't admit to knowing people I didn't know. I signed four or five papers. I didn't have a choice to sign, otherwise they continue beating. The beating and the threatening [with the gun] was the most horrible. I screamed.[139]

The number and consistency of accounts of sustained punching and other physical mistreatment leads Human Rights Watch to conclude that Ukrainian officials in the Chop-Mukachevo area have committed torture during the interrogation of migrants.

[139] Human Rights Watch interview S-80: place and date withheld.

Accounts of Electric Shock Torture

Three different Human Rights Watch researchers interviewed eight individuals, including Iraqis, Afghans, a Somali, and a Palestinian, who said that they were subjected to electric shock torture during their interrogations. The interviews were conducted separately and privately with no one else present.

A ninth person, a Somali, who said that he was severely beaten during his interrogation, told Human Rights Watch that another Somali man accompanying him was taken into another room. He said, "We didn't see him tortured, but we saw him after. He could not walk. He said they used electricity on him."[140] Human Rights Watch also heard other hearsay accounts by migrants of the use of electric shocks during interrogations, including from a migrant in Hungary who said his relatives had told him they were subjected to electric shocks in Ukraine, and one account from a Tibetan migrant who said that smugglers used electric shocks to torture him.

An Afghan man who was sent back from Hungary in the fall of 2009 said that shortly after his return he was taken to a building that had four rooms in a row with small windows like a jail, and civilians, whom he described as "secret police," questioned him about smugglers:

> They handcuffed me to a chair. They used electrodes on my ears and gave electric shocks as they questioned me. They asked, "Who is your smuggler?" and showed me pictures on a computer to identify.[141]

A Palestinian man caught crossing into Slovakia said:

> Ukrainian border guards caught me, handcuffed me, and took me to an intelligence center. I don't know where it was, but it was not far from where they caught us in the forest. They questioned me and beat me. They used electric shock on my ears. They asked, "Who brought you? Who else was with you? What was the name of your smuggler?" They were not border guards. They were security. They did not wear uniforms.[142]

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[140] Human Rights Watch interview Y-16: place and date withheld.

[141] Human Rights Watch interview B-19: place and date withheld.

[142] Human Rights Watch interview Y-12: place and date withheld.

An Afghan who was interviewed in a different location gave a similar account of electrodes being attached to his ears after being returned from Hungary at the end of April 2010:

> They brought us to a kind of police station where the men were wearing military uniforms, but some were in civilian clothes. First the guys in military clothes beat us, asking who was our smuggler. Then the military guys turned us over to guys in civilian clothes. It was the same place but different offices. The civilians kept us for six hours.
>
> In the civilian place two guys questioned me. One guy asked questions, the other beat me. They had a box-sized object connected to a socket. It had a little metal clip that they attached to my ear lobes and a metal clip on my calves. The electricity was strong. It made me jump from wall to wall. They shocked me twice. The questions were about smugglers.[143]

A couple of the migrants identified the place where electric shock torture occurred as what migrants call the "Baby Lager" in Mukachevo, so named because it holds women and children, though adult men are held there as well. Another Afghan man told Human Rights Watch of his experience after being sent back from Hungary in late March 2010 and taken to the Baby Lager:

> Civilian intelligence guys came to the Baby Lager and beat us and gave us electric shocks there. Three men in civilian clothes took us from our room to another room. They used electric shocks and asked who was your smuggler and beat us. I told them, "I'll tell you anything you want to know."
>
> There was a box. It was not plugged into a wall, but operated with a battery. It was not with a clip but with naked wires. I held it in my hand. I had to hold the bare wires between my finger and thumb. They questioned me. I would tell the truth, but they said, "You are lying," and turned on the electricity. I was shocked four times.
>
> They showed me pictures of cars and people to identify on a lap top computer. The place where this happened was the same building as the Baby Lager. It

[143] Human Rights Watch interview B-40: place and date withheld.

was in the office at the end of the hall, not a dormitory room where this happened. The Baby Lager staff were not in the room when this happened.[144]

Another Afghan, a 16-year-old boy, was sent back from Hungary in April 2010 and was held at the Baby Lager:

> People in civilian clothes took us to the office at the end of the hall. There were two men in civilian clothes and one translator. The interview lasted 30 to 35 minutes and two of us were being questioned. A man brought in electricity. It was like a roll telephone that makes electricity. He cranked it. It had two wires. They were bare wires at the end. They gave me four shocks, three times on my ear lobes and once on my neck.
>
> Before that, they hit my friend. I stood and watched as they shocked him five or six times. It was the same, on the ears. They also hit him with fists and hands. They showed us pictures on their lap top and from their mobiles. We were not able to identify anyone.
>
> They locked the door. When someone came in the room, they would hide the electricity. They told us not to make complaints or we would have problems. They told us they were the secret police, like the FSB, and that they could even arrest the president. The electric machine was about this [he indicates about 12 inches with his hands] long and had a crank.[145]

An Iraqi man interviewed by a different Human Rights researcher in another location in Ukraine said that he was taken to a "police station" that was "very close to the Chop train station," after being arrested by Ukrainian border guards in late April 2010:

> The treatment was savage. They beat us and kicked us and abused us verbally. They also electric shocked me. They shocked me on my ears. I admitted that I wanted to cross the border and that we were smuggled. They were four persons and one interpreter. They said they were security forces, but they were in plain clothes. The interpreter was an Iraqi. I felt my heart was

[144] Human Rights Watch interview B-41: place and date withheld.

[145] Human Rights Watch interview B-42: place and date withheld.

> going to stop. I was sitting on a chair. I just admitted everything, but they didn't stop torturing me.[146]

Human Rights Watch believes that the accounts of torture and use of electric shocks from all eight migrants they interviewed are credible and reliable and indicate that while the practice of such torture may not be systematic, Ukrainian intelligence officials working for the State Border Guard Service or other agencies have used electric shock against migrants in the Chop-Mukachevo area on a repeated basis and with impunity.

First, all accounts were both internally consistent. One of the most striking consistencies in the accounts is that seven of the eight interviewees said that the electric shocks were put on their ears or ear lobes; none of them alleged that they were shocked on their genitalia, toes, tongue, or nipples. All eight people said that their torturers were men in civilian clothes, and all of them believed that these civilians had an official function involving intelligence gathering and were either part of or closely connected to the State Border Guard Service. All eight also gave nearly identical accounts of being asked questions to identify their smugglers and smuggling routes, while being shown photographs of suspected smugglers from lap top computers or mobile phones. They further identified the location of where they were tortured as in or near Chop or Mukachevo, near the borders with Slovakia and Hungary, and stated that the torture occurred shortly after their arrest. They consistently said that they were taken to an office where the torture occurred. Several described the office as being at the end of a dormitory hallway. Two identified the place as the "Baby Lager" at Mukachevo, and others' descriptions were consistent with this location or with the SBGS temporary holding facility at Mukachevo.[147] Both of the people identifying the Baby Lager as the place where they were tortured said that the intelligence-agency interrogators kept secret what they were doing from the staff of the Baby Lager.

Second, the individual accounts were consistent with other accounts of which interviewees would have had no knowledge. The three Human Rights Watch researchers conducted the interviews in private in different locations in Ukraine, and also compared these testimonies with two similar accounts regarding the use of electric shock gathered by the Hungarian

[146] Human Rights Watch interview S-68: place and date withheld.

[147] SBGS officials held a meeting with the Human Rights Watch delegation in the same office at the end of the hall of dormitory rooms on the fourth floor of the Baby Lager.

Helsinki Committee.[148] These two testimonies add additional weight to the eight interviews conducted by Human Rights Watch.

Third, all researchers explained to each interviewee that they would receive no personal benefit for their testimony—no money, material aid, social or legal service—in order to minimize any incentive to fabricate any experience. The interviewers assured each person that the interview would be kept strictly confidential and the interviews were conducted in complete privacy with only the aid of an interpreter who also pledged to each subject that the interview would be confidential.

While the accounts were similar, they were not identical and there are also divergences in some of the detail. For example, the device used to administer the electric shocks is variously described as having a plug-in power source, as being battery-operated, and as having a hand crank. Some described clips that attach to the ears, while others said that bare wires were used. Interviewees also gave different accounts of the number of people present in the room during the torture sessions and the roles they played. Some inconsistencies—for example, in the description of the electrical devices used—could be attributable to the difficulty of translating words such as "sockets" and "cranks" or to the trauma of torture itself and its impact on memory. And some inconsistencies could simply reflect actual variations in practice—different interrogators could use different devices or methods to conduct the same kind of torture. A 21-year-old Somali man who alleged being subjected to electric shocks said that he was so traumatized that he could not remember some of the details of the torture:

> Three times they shocked me. They used it on my ears one time and on my stomach. I was handcuffed. I was sitting. When they put it on my ears I was sitting, on my stomach I was standing. They attached it on my stomach. They told me not to move. When I made a movement they shocked me. I was traumatized; it's very difficult for me to remember. I remember when I fell

[148] The Hungarian Helsinki Committee represented asylum seekers in Hungary who told of their experiences after having been expelled from Hungary back to Ukraine. They provided Human Rights Watch on a confidential basis with summaries of case files of their clients who had been expelled to Ukraine, tortured and ill-treated there, and who subsequently returned to Hungary and succeeded in lodging asylum claims. One, a Somali national interviewed in November 2009, said that "the officers tortured him with electricity to acquire information about human traffickers." A second Somali, interviewed in October 2009, that "he was beaten during his detention [in Ukraine], tortured with electricity and humiliating photographs of him were taken by the Ukrainian policemen."Magyar Helsinki Bizottsag, "Readmitted Somali Clients of the Hungarian Helsinki Committee to Ukraine during 2008-2009," memo presented to Human Rights Watch by email, September 22, 2010, pp. 1-2. Original files with the Hungarian Helsinki Committee to preserve confidentiality. The Hungarian Helsinki Committee also provided other accounts of asylum seekers who had been beaten, handcuffed to radiators, kicked, humiliated, and verbally abused in ways similar to the accounts gathered by Human Rights Watch in Ukraine.

> down on the ground they took me to another room. I don't remember how they attached [the electricity] to my body.[149]

While Human Rights Watch does not believe that torture is systemically or consistently committed against migrants (we heard far more testimonies from migrants caught at Ukraine's western border or returned from neighboring countries who did not allege being subjected to electric shock torture or having been beaten to the level of torture during interrogation),[150] we believe that torture does occur and that it happens with impunity and despite Ukrainian officials' denials of its existence.

[149] Human Rights Watch telephone interview, S-113, August 11, 2010.

[150] Even among those alleging torture, some had been caught and interrogated multiple times and said that torture occurred on one occasion, but not others. For example, the Somali man who couldn't remember how the electrodes were attached to his body made four unsuccessful attempts to cross into neighboring countries, but said that he was subjected to electric shock torture only on one occasion, but not the other three. Human Rights Watch telephone interview, S-113, August 11, 2010.

VII. Detention of Migrants and Asylum Seekers

There are three types of migration detention facilities in Ukraine: Temporary Holding Facilities (THFs) and Specially Equipped Premises (SPs), both of which are run by the State Border Guard Service (SBGS), and Migrant Accommodation Centers (MACs) run by the Ministry of Interior (MoI). At the time of the Human Rights Watch visit in June 2010 there were 10 Temporary Holding Facilities with a capacity to hold 250 people and 73 Specially Equipped Premises throughout Ukraine, including the holding center at the Boryspil' Airport, with a combined capacity to hold about 350 people, and two Migrant Accommodation Centers with a capacity for 330. The MACs were less than half full at that time, holding 143 people (80 in Rozsudiv and 63 in Zhuravychi).[151] There were also two facilities that did not seem to fit these three categories: the Dormitory for Women and Children in Mukachevo, commonly known as the "Baby Lager," and another detention facility on the grounds of the main border guard detachment in Mukachevo that was unoccupied and being renovated at the time of our visit.

Although as recently as late 2009, other observers reported overcrowding in Ukrainian detention facilities, at the time of the Human Rights Watch visit in June 2010, none of the detention facilities was full and some were completely empty. The Ministry of Interior has proposed expanding from two Migration Accommodation Centers to eight and the SBGShas proposed doubling the number of Temporary Holding Centers to 20. At a cost of €2.9 million, the EU is conducting feasibility studies on these proposals to design and supervise the construction of these sites.[152] That construction is also coming through EU funding, currently budgeted at €35 million through READMIT—part of capacity building for the EU-Ukraine readmission agreement—that includes €20 million for construction, €6 million for supplies, €4 million for services, and €5 million for "EUBAM-flanking measures."[153]

Specially Equipped Premises are small facilities intended to hold migrants for a matter of hours and for not more than three days. They are normally situated within Border Admission

[151] Interview with Major General Borys Marchenko, June 11, 2010, p. 66, and interviews with officials at Rozsudiv, June 12, 2010, p. 87, and at Zhuravychi, June 14, 2010, p. 97. See also, http://www.globaldetentionproject.org/countries/europe/ukraine/introduction.html (accessed October 21, 2010).

[152] Delegation of the European Union to Ukraine, "Consultancy to set up Custody Centres and Temporary Holding Facilities for Irregular Migrants in Ukraine, Project 2009/215-622," http://ec.europa.eu/delegations/ukraine/projects/list_of_projects/215622_en.htm (accessed October 21, 2010).

[153] Delegation of the European Union to Ukraine, "Re-admission related assistance and EUBAM flanking measures (READMIT), Project 2007/018-962." EUBAM is the European Union Border Assistance Mission to Moldova and Ukraine. Flanking measures are an apparent reference to reducing the influx of irregular migrants on Ukraine's eastern border and on its border with Moldova.

Posts and are not designed to hold more than ten people. From interviews conducted with former detainees, Human Rights Watch believes that the worst abuses of migrants often occur in the SPs.

Temporary Holding Facilities are also intended for stays of short duration of no more than three days, but often hold migrants for weeks, and sometimes longer, as detainees are often left in THFs due to the lack of a court order to transfer them. Many of the THFs were being refurbished or renovated at the time of the Human Rights Watch visit. Allegations of abuse at one in particular, Chop, persisted.

The Interior Ministry's Migrant Accommodation Centers are relatively new and much larger than most Temporary Holding Facilities. MACs hold either people sentenced to less than six months for having violated immigration-related administrative laws or people in custody pending deportation (also not to exceed six months). Conditions in the MACs appeared to be better than the THFs and, based on interviews, the likelihood of guard abuses seems to diminish as one moves from Specially Equipped Premises to Temporary Holding Facilities to Migrant Accommodation Centers.

Besides detention facilities, there are three open centers for asylum seekers and refugees called Temporary Accommodation Centers (TACs) with a total capacity for 330 people under the supervision of the State Committee on Nationalities and Religions (SCNR).

A relatively small number of asylum seekers, including those against whom there are extradition requests, are held in penitentiaries called "SIZOs," an abbreviation for *slidchyy isoliator*, investigative isolation, which are under the authority of the State Department of Ukraine for the Execution of Punishments. SIZOs are commonly used for pre-trial detention of Ukrainians charged with criminal offenses, not generally for administrative detention of foreigners held for immigration violations. People can be held for up to 18 months in a SIZO, where conditions are reputed to be poor.[154] (See the section on Extradition and Ukraine's Nonrefoulement Obligations.)

Legal Authority for Detention

According to Ukrainian law, the arresting authority is required to inform a prosecutor of an irregular migrant's detention within 24 hours from the moment of detention.[155] The State Border Guard Service (SBGS) is allowed to hold migrants in THFs up to ten days with the

[154] Criminal Procedure Code, Article 156, part 2 paragraph 3.

[155] Interview with Major General Borys Marchenko, June 24, 2010.

permission of the prosecutor,[156] but the law also allows the SBGS to hold migrants for as long as necessary for court appearances.

A person cannot legally be transferred from a border guard holding facility to a Ministry of Interior Migrant Accommodation Center without a court order. The court is not required to issue the order until two months have elapsed. Since detainees have ten days to appeal the court order,[157] they can be held another ten days, so it is not uncommon for migrants to be held in the Temporary Holding Facilities for the maximum allowable two months and ten days before being transferred to the MACs.

Chronic delays were reported in 2009 and 2010 because of backlogs in the administrative courts.[158] These are not designated exclusively to hear immigration-related cases, but deal with a wide variety of administrative offenses, such as "minor hooliganism," that involve Ukrainian citizens.[159]

The State Border Guard Service wrote a letter to Human Rights Watch in response to the finding of this report to say: "There are no cases of exceeding the length of detention in temporary holding facilities."[160]

The total time for a single occurrence of administrative detention by law must not exceed six months from the time of first detention in a Specially Equipped Premises or Temporary Holding Facility. But nothing in Ukrainian law prohibits the authorities from re-arresting a migrant shortly after release from a Migrant Accommodation Center and holding him or her for another six months.[161] A 23-year-old Pakistani detainee at the Zhuravychi MAC worried aloud about being at the mercy of traffickers or re-arrested after being released:

> They just open the gates and tell you to leave. We are 40 kilometers from Luts'k. When we Pakistanis come out of jail, there are mafia people [waiting outside] with a list. They ask for US$1,500 and if we pay they will help and if

[156] The Code of Ukraine on Administrative Offenses, art. 263.

[157] The Code of Ukraine on Administrative Offences, art. 289.

[158] For example, IOM's "Observatory Report, Monthly Report" for July 2009, p. 5, says, "Term of detention/accommodation remains longer than prescribed by national law and international standards… One of the primary reasons for the prolonged detention at the THFs is the courts' backlog."

[159] See the Code of Ukraine on Administrative Offenses.

[160] Shysholin P.A., first deputy head of the State Border Guard Service, letter to Human Rights Watch, October 19, 2010.

[161] Article 32 of the Law of Ukraine on Legal Status of Foreigners and Stateless People (1994), as amended in 2003, sets the six-month limit on detention.

not they will tear up our documents and we will go back for another six months of detention.[162]

The Zhuravychi facility administrator told Human Rights Watch that the Ministry of Interior certificates given to migrants upon their release from detention don't have any legal meaning:

> The papers we give have no legal power. They are informative documents that tell the person who reads it that the person holding the paper is on the way to his embassy. If that person is caught three days later in Chop, we will know that he is not trying to get to his embassy, and we can arrest him again.
>
> We are only implementing what we are told. For those detainees with no embassies, that's a problem. There is no procedure for them. We are not trying to hide that problem, but there is no different certificate given for people who do not have embassies, like Sri Lankans and Somalis.[163]

This is a cause of great anxiety for Somalis and others without embassies in Ukraine. A 17-year-old Somali boy who was being held as an adult in the Rozsudiv Migrant Accommodation Center expressed fear about being re-detained after his release:

> I am worried about what will happen to me when I am released from this place. I will have no document when they drop us outside the gates. They will give us a document for five days, but then we can be arrested and put in detention for another six months. I know a Palestinian who is here now for his second six months. We are not thieves or pirates.[164]

When Human Rights Watch asked a senior Ministry of Interior official about the practice of re-arrests, and commented on how vulnerable this made detainees feel as they were nearing the end of their six-month periods of detention, he said:

> Yes, it is possible that someone can be re-arrested within 24 hours of having been released from their six months of detention and for their detention to start again. It's not surprising that they don't know what to do

[162] Human Rights Watch interview B-20, Zhuravychi, June 15, 2010.

[163] Human Rights Watch interview with head administrator for Zhuravychi MAC, June 15, 2010.

[164] Human Rights Watch interview B-11, Rozsudiv, June 12, 2010.

after six months. They *should* feel vulnerable. They didn't feel vulnerable when they crossed our borders illegally.[165]

The European Court of Human Rights held in *John v. Greece* that the immediate re-arrest and detention of a migrant without any additional elements that would justify an independent ground for renewed detention constitutes a violation of the Convention's right to liberty and security.[166]

Inadequate Legal Representation; Lack of Effective Remedies to Challenge Detention

Under the European Convention for Human Rights, to which Ukraine is party, any detained person has the right to challenge the lawfulness of his or her detention, and must be given access to an effective remedy to do so.[167] Ukrainian law provides for the review of migrants' detention in appeals courts, but, in practice, those courts have not always been able to review cases before the maximum time in detention ends. Detained migrants also often lack an effective remedy to challenge the lawfulness of their detention because they lack sufficient access to lawyers to file appeals within the required time limit. The few lawyers who represent migration detainees are too overstretched to provide adequate representation to all who need it.

An NGO lawyer who provides legal aid at the Rozsudiv MAC near Chernigiv told Human Rights Watch in September 2010 that he thought it was pointless to challenge the detention of migrants in the administrative appeals court because the backlog of cases meant that such challenges would not be reviewed before 2012.[168] Given that there is a six-month limit on administrative detention for migrants and that the courts cannot manage to hear their cases within six months, migrants kept at Rozsudiv MAC have no access to an effective remedy against possible unlawful detention. That in itself is a violation of the right to liberty.

The situation is much the same at the Zhuravychi MAC, where many migrants transferred from Temporary Holding Facilities in Ukraine's western border region are held. An NGO lawyer who provides legal aid to migrants there also said that administrative appeal courts

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[165] Human Rights Watch interview with Vitaliy Bondarenko, State Department of Nationality and Registration of Individuals, Ministry of Interior, Kyiv, June 25, 2010. (emphasis added)

[166] European Court of Human Rights, *John v. Greece*, (no. 199/05), judgment of May 10, 2007, paras. 26-36.

[167] European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, ratified by Ukraine on September 11, 1997, arts. 5(1),(2),(4), 13.

[168] He explained that 90 percent of detainees at Rozsudiv MAC are from Kyiv and that the Administrative Appeals Court in Kyiv was severely overburdened. Ibid.

would take longer than six months to review the legality of a person's detention. He told us he often could not challenge migrants' detention within the required 10 days after the court decision because he was too overburdened with an enormous caseload spread over the wide L'viv, Volyn', and Zakarpattia region to prepare their appeals within that time.[169]

It is no surprise that many migrants in Zhuravychi said they unsuccessfully tried to meet with a lawyer and were ill-informed about their rights. The lawyer himself told us that he cannot provide legal aid to everyone and that he tries to prioritize the most vulnerable cases. He also said that he has limited access to detainees at Zhuravychi and is only allowed to meet with those for whom he can provide the authorities a full name that matches their records.[170] The absence of qualified interpreters in both MACs is another obstacle for migrants and asylum seekers to communicate with lawyers and access legal remedies.

Access to legal aid is even harder for migrants detained in Temporary Holding Facilities under State Border Guard Services authority. A majority of persons detained in the Zakarpattia region that borders the European Union told us they had limited interaction with lawyers who provide legal aid in Temporary Holding Facilities. Several explicitly said they did not trust them. Others who were detained in more remote holding facilities, or those detained at the Mukachevo THF said they had not received information about asylum and had not had contact with a lawyer. According to an Iraqi asylum seeker detained at the Mostys'ka THF:

> There was no lawyer, and no information about asylum. I saw one lawyer in Mostys'ka. That guy said, "If you have US$5,000 [I will help] or you may go to prison for three years." I didn't trust him. He was Ukrainian. He said he was a lawyer and can help us with money.... Nobody else ever came.[171]

Another former detainee who was held in Mostys'ka THF for 22 days similarly said: "In Mostys'ka, the guard comes, opens the door, gives food, and closes the door again. I couldn't talk to anybody. I was there with a Bengali and a Kazakh. I asked to talk to a lawyer.

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[169] Human Rights Watch interview, June 16, 2010: place and date withheld. Email communication to Human Rights Watch, September 3, 2010.

[170] Human Rights Watch interview, June 16, 2010: place and date withheld. An IOM-sponsored lawyer visits the detention facility more frequently, has access to all detainees, and helps file asylum applications and provides information on assisted voluntary returns. But he cannot file appeals or challenge detention orders.

[171] Human Rights Watch interview S-63, Zhuravychi, June 15, 2010.

They said 'lawyer?' and made a joke."[172] Similarly, an Afghan family who was held in Luts'k THF for one month said: "No lawyer ever came there. We were there for one month."[173] Many migrants said they had never had a face-to-face hearing before the judge who ordered their detention. Some described how guards made them wait for several hours outside the court building in a car. Others said they never went to court at all. Detainees held at different detention facilities independently told Human Rights Watch:

> I went to the court once. I was supposed to go a second time. They took us there but they didn't let us enter the court. They left us outside the court building and then took us back. I asked the chief where the court was and he said, "You already went to the court."
> — a 20-year-old Iraqi held in Chop[174]

> The court decided I should be kept for six months. I have not been to a court and I never had a lawyer in Chop.
> — a Somali man in his twenties held in Chop[175]

> They took me to the court but I couldn't go inside. We were waiting in the car. I didn't see any court. For two hours we just sat in the car. We were nine persons.
> — a 17-year-old Somali boy held at the Baby Lager[176]

A lawyer who provides legal aid to migrants at the Rozsudiv MAC told us that 90 percent of migrants detained at that facility had not been brought before a court even though that is required under Ukrainian law.[177] He mentioned that migrants often are asked to sign papers they do not understand, in which they waive their right to an appearance before a judge.[178] Numerous migrants indeed told us they signed papers in detention that they did not understand. An illiterate Afghan man who had been held in the Baby Lager said:

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[172] Human Rights Watch interview S-60, Zhuravychi, June 14, 2010.

[173] Human Rights Watch interview S-77, 78: place and date withheld.

[174] Human Rights Watch interview S-69, Zhuravychi, June 15, 2010.

[175] Human Rights Watch interview S-79, Uzhgorod, June 17, 2010.

[176] Human Rights Watch interview S-92, Uzhgorod, June 18, 2010.

[177] Art. 263 of the Administrative Procedure code sets out the periods of administrative detention and says that in certain cases a person can be detained until their case is investigated by a judge. Article 268 stipulates the rights of a person liable for an administrative offense: the right to be present during such investigation, including in court during the hearing, the right to submit petitions, to speak one's native language during the proceedings, etc.

[178] Human Rights Watch telephone interview, September 3, 2010: name withheld.

> I didn't see any lawyer because they made me sign a paper that I couldn't read. People told me it said I don't need a lawyer. The chief of the Baby Lager told me they would deport me…. They sent a letter to the Afghan embassy…. If I go back, they will kill me. They never gave me a chance to make an application for refugee status in Ukraine. I have not been to a court. I had no interview about Afghanistan. They never asked.[179]

Detainees held in Temporary Holding Facilities not only risk arbitrary detention without the possibility of accessing a legal remedy, but those wishing to file asylum claims also risk deportation if they are unable to file an asylum application. A lawyer told Human Rights Watch that border guards did not allow him to visit an Iraqi family detained in Mostys'ka THF in March 2010 whom he thought wanted assistance to file an asylum claim.[180] He further stated that border guards may deport detainees right away who possess travel documents, and only transfer to Migrant Accommodation Centers people who cannot be deported.[181]

Arbitrary Detention

Article 9 of the International Covenant on Civil and Political Rights (ICCPR) forbids arbitrary detention.[182] Even when established by law, detention is considered arbitrary when it is random, capricious, or not accompanied by fair procedures for legal review. The UN Human Rights Committee, which oversees implementation of the ICCPR, says that the concept of arbitrariness should not be equated with "against the law" but must also include such elements as "inappropriateness and injustice." It also says that detention can be considered arbitrary if "it is not necessary in all the circumstances," for example to prevent flight, and that "the element of proportionality becomes relevant in this context." The UN Working Group on Arbitrary Detention holds that a migrant or asylum seeker placed in detention "must be brought promptly before a judge or other authority."[183]

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[179] Human Rights Watch interview B-17, Zhuravychi, June 14, 2010.

[180] Human Rights Watch interview, June 16, 2010: place and date withheld.

[181] Ibid.

[182] Article 9 of the International Covenant on Civil and Political Rights (ICCPR) stipulates that "no one shall be subjected to arbitrary arrest or detention [or] be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law."

[183] In 1999, the U.N. Working Group on Arbitrary Detention developed criteria for determining whether the deprivation of liberty of migrants and asylum seekers is arbitrary. The principles mandate that a migrant or asylum seeker placed in custody "must be brought promptly before a judge or other authority," and that decisions regarding detention must be founded on criteria established by law. Moreover, migrants and asylum seekers in detention must be notified in writing-in a language they understand-of the grounds for detention and that remedy may be sought from a judicial authority empowered to decide promptly on the lawfulness of detention and to order release if appropriate. United Nations Commission on Human Rights, Report of the Working Group on Arbitrary Detention, E/CN.4/2000/4, December 28, 1999, Annex II, Deliberation No. 5, "Situation Regarding Immigrants and Asylum Seekers."

As has been shown above, people held in migration detention in Ukraine do not have consistent, predictable access to a judge or other authority or access to legal representation to enable them to challenge their detention. There generally is no individualized assessment of the necessity or proportionality of detaining migrants or asylum seekers by, for example, assessing their risk of flight or danger to the community. Migrant detention is typically characterized by:

- limited access of lawyers to migrants detained in THFs;
- non-processing of asylum applications in THFs;
- lack of access to telephones in places of detention;
- lack of qualified interpreters in detention centers and the courts;
- insufficient numbers of lawyers for detained migrants in need of legal assistance; and
- lack of information about the right (and the process) for challenging detention and appealing negative decisions.

Moreover when the above are combined with any one of the following factors, also a feature of migration detention in Ukraine, such detention is often arbitrary, and therefore contrary to international standards to which Ukraine is bound:

- use of coercion or deception in getting detainees to sign documents that waive their rights;
- serious delays in court reviews of detention in excess of the maximum time allowed for detention;
- repeat detention of migrants, including shortly after their release; and
- widespread corruption among officials who use detention as a means of extortion with indications that those who can afford to do so can buy their way out.

Paying for Detention and Transfers: Sanctioned (and Unsanctioned) Corruption

Migrants reported widespread corruption among guards in temporary holding facilities, particularly in the Zakarpattia region. Numerous former detainees alleged that guards extorted money by threatening to keep them in detention. Many former detainees told Human Rights Watch that they paid to be released and to obtain documents, including asylum documents. (See the section on A Dysfunctional Asylum System.) Typical of such accounts was that of a Somali asylum seeker: “Each person has to pay US$800 to be released. If you don’t pay you don’t get released and they will transfer you to Luts’k [the name most migrants give to the Zhuravychi MAC].”[184]

[184] Human Rights Watch telephone interview S-113, August 11, 2010.

Migration detainees in Ukraine not only are expected to bribe some officials for their release from detention, but are legally required to pay for their own detention. Furthermore, detainees transferred from one detention facility to another are required to pay the fuel and related costs of the State law enforcement officials transferring them. A young Afghan couple with a baby told Human Rights Watch:

> The police in military uniforms took us from the police station to the Baby Lager. They said we had to pay for the fuel between the police station and the Baby Lager. It cost 200 hryven' for about 150 kilometers. Later, we paid US$1,000 to get released from the Baby Lager and for the Migration Service document. There was an interpreter at the Baby Lager, [name withheld], who told me I had to pay money. He was working for the Migration Service. The first time you get arrested they take US$500 to get released, for a couple, it's US$1,000, for a single man they take US$700, for the second time you have to pay US$750 for each one of a couple and single guys have to pay US$1,000. We paid US$1,000 to get out of there and to get the Migration Service document good for 20 days, and that interpreter got another US$50.[185]

Most detainees were convinced that Border Guard and other law enforcement officials were robbing or extorting them. When Human Rights Watch raised this issue with Major General Marchenko of theSBGS, he responded:

> According to our law, Article 32 of the Foreign Citizens and Stateless Persons Act, detainees are required to pay for their detention if they have the money. We have a fixed rate for each region. If the detainee or migrant does not have money, the State pays, but if not, the migrant pays. There are people who have paid US$400 for their stay. We have proper documents for this.
>
> Regarding paying bribes for release, we don't have much information on attempts at bribes. Most pay for their detention after a decision of the court. They can decide to go voluntarily back home and have the opportunity to pay for their own deportation. For those who buy their own ticket and the end of their detention stay, we provide a service and if they have the money, they pay.

[185] Human Rights Watch interview S-105+106, Latorytsia, June 20, 2010.

> It is also possible for a detainee to buy additional food and services, like TV, while in detention. All is documented and can be tracked. Detainees make accusation of bribes and tell a lot of stories, but after checking we will come to a legal decision.[186]

Article 32 of the Law of Ukraine on Legal Status of Foreigners and Stateless People does stipulate, "Foreigners and stateless people to be expelled shall repay expenses related to the expulsion according to the procedure specified by law."[187] However, to say that all detention costs and the costs of transfer between detention centers are expenses "related to expulsion" presumes that all detainees will be expelled and that the parliament intended "expulsion" to include detention rather than the specific transportation costs incurred in returning a person to his or her home country.

Although Major General Marchenko did not cite it, Decree No. 1074 of the Cabinet of Ministers of Ukraine of December 29, 1995, article 45, does provide a legal basis for charging for detention. It says that "Foreigners who are to be deported administratively … shall compensate costs, incurred by administrative deportation and detention." It further specifies that such expenses include "costs of detention of the foreigner in a specialized facility of a body of the Ministry of Interior."

A similar policy was provided for under S.209 of the Australian Migration Act of 1958, until it was repealed following harsh criticism from human rights organizations and bodies, as inconsistent with human rights standards. While no international treaty specifically addresses the question of whether any detainee should be forced to bear the costs of their incarceration, Article 45(3) of the United Nations' Standard Minimum Rules for the Treatment of Prisoners, specifies that "the transport of prisoners shall be carried out at the expense of the administration."[188] No other detainees, including those who are incarcerated for having committed a crime are required to bear the costs of their detention, and immigration detainees, by definition all of whom are non-Ukrainian citizens, are therefore singled out for discriminatory treatment. The committee which oversees the Convention for the Elimination of All Forms of Racial Discrimination, a treaty to which Ukraine is a party, notes that "any differential treatment based on citizenship or immigration status will constitute

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[186] Interview with Major General Borys Marchenko, June 24, 2010.

[187] Law of Ukraine on Legal Status of Foreigners and Stateless People (1994), as amended in 2001, art.32.

[188] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977.

discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim."[189] Under this test, singling out immigration detainees as the sole detainees who have to bear the costs of incarceration constitutes unlawful discrimination. [190]

Whatever justification, legal or otherwise, the authorities give for taking money from detainees to pay for their own detention, the practice is abhorrent on its face and in the minds of the detainees indistinguishable from the corrupt money shakedowns they experience every step of their journeys.

An Afghan couple with children was heartsick at the money the authorities took from them:

> The soldiers robbed me. They took US$6,951 but brought us here and only gave us back US$3,300. They told us to empty our pockets of cameras, phones, money. On the way to bringing us here, they took another US$400 and gave us back 325 hryven'. The military guys who transported us said we had to pay for transportation and food. They told us that the court decided that we had to pay. They also took my watch.[191]

This incident suggests that legal sanction to take money from utterly vulnerable foreign detainees will enable corrupt officials, including low-level officials such as transport drivers, to take even more money and possessions from detainees under their control.

Detention of Unaccompanied Children

Unaccompanied migrant children, as do adults, face arrest and detention for undocumented stay in Ukraine or for irregular border crossing. They may not be detained in Ministry of Interior Migrant Accommodation Centers (unless police register them as adults – see

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[189] General Recommendation No. 30: Discrimination against Non Citizens, from January 10, 2004. International Convention on the Elimination of All Forms of Racial Discrimination, General Assembly resolution 2106 (XX), December 21, 1965, entry into force January 4, 1969, ratified by the Ukraine on March 7, 1969.

[190] The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, reflects the consensus that differential treatment for migrants in detention is not acceptable. The Convention provides that: " Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation"; and "if a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising there from", article 17 (7) and (8).

[191] Human Rights Watch interview B/Y-22+23, Zhuravychi, June 15, 2010.

Chapter VII). However, they are routinely detained by border guards, including for several weeks at a time. Worse, children may be kept with adults, and girls with boys and men. Contrary to the testimonies given by children and adults, the deputy head of the State Border Guard Services wrote in a letter to Human Rights Watch that unaccompanied children apprehended by border guards are held "only for the shortest possible time" and then handed over to either children's services, migration services, or Ministry of Interior structures for children.[192]

Unaccompanied children and families in SBGS custody in western Ukraine are primarily detained in the so-called "Baby Lager" in Mukachevo, which officials euphemistically call a "dormitory." Despite its name and assurances by officials that the regime there is relaxed, there is no doubt persons held there are being detained in a jail-like facility.

The Baby Lager was almost empty at the time of the Human Rights Watch visit (only three males were being held there), though the International Organization for Migration (IOM) reported that 56 people were being held there in October 2009 and 64 in July 2009.[193]

Many former detainees told Human Rights Watch about their treatment and conditions in the Baby Lager (including allegations of torture sessions taking place by intelligence officers in the office at the end of the dormitory—see the section on Torture during Interrogations). A 17-year-old Somali boy's account of the Baby Lager after spending one month and four days there in April and May 2010 is typical:

> The guards were corrupt. They took money from our pockets. The food was very bad. A detainee has no freedom.... You can watch the sun for some minutes, and they you have to go back. Every other day [they let us out] for five minutes. We watched TV and we walked in the corridor.
>
> The food was just like wheat, beans, bread. No onions, no fruit, no tomatoes, no cucumbers... I was with the men. Adults and boys were mixed.... The guards forced us to clean. We cleaned the floor. They insulted us and called

[192] Letter from P.A. Shysholin, first deputy head of the State Border Guard Services, to Human Rights Watch, October 19, 2010.

[193] IOM, "Observatory Mechanism Monthly Report," October 2009, p. 4 and IOM, "Observatory Mechanism Monthly Report," July 2009. The 56 held there in October 2009 included 44 males and 12 females of whom 13 were children with parents and 23 were unaccompanied children. Of the 64 held there in July 2009, 43 were male and 21 were female, including 39 children from ages 12 to 17, of whom 38 were unaccompanied. The total also included a two-year-old child with parents.

> us "Somali pirates" and *"nakhui"* and *"bliad'"*[194] … They boxed me to get me silent. I just kept silent.[195]

There appears to be little awareness of detention standards and risks for child detainees among officials at the Baby Lager. When we raised concerns that children are detained jointly with adults and at risk of violence, the head of the facility told us: "We make sure they are not mistreated by others. A 16-year-old [boy] for Afghans is a man so he cannot be subjected to some type of violence… according to Afghan culture."[196]

Not only are unaccompanied children detained jointly with adults, girls are also held with boys and men. One 17-year-old Somali girl told us:

> The boys and girls are in one place. The boys were all Afghans… They tried to spy on me in the shower. There were up to six girls and 30 to 40 boys. We didn't go to the toilet freely. They stood and smoked and we were scared. You don't get time to shower. I was afraid repeatedly. I would go to the shower at night when everybody was asleep.
>
> There were two rooms for girls. [Once] Pakistani and Afghan [boys] entered [our room] at night. One girl allowed one guy to enter. I said, "Before you enter knock the door." One time they tried to enter by force… Some boys were not underage. It was obvious.[197]

It appears that detention limits set out in law may not be respected for children at the Baby Lager. SBGS officials in the Baby Lager contradicted themselves when we asked how long unaccompanied children were detained there: "[Migrants in general] cannot be detained for more than two months. We never had a case of detention of more than two months," and "no unaccompanied child has been detained for longer than 10 days," we were told.[198] They further said that unaccompanied children who want to stay in Ukraine are transferred to the Latorytsia Temporary Accommodation Center in Mukachevo and that those waiting to be

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[194] Profane insults in Ukrainian.

[195] Human Rights Watch interview S-92, Uzhgorod, June 18, 2010.

[196] Human Rights Watch interview with SBGS official, Mukachevo Baby Lager, June 18, 2010.

[197] Human Rights Watch interview S/Y-94, Uzhgorod, June 18, 2010.

[198] Human Rights Watch interview with Igor Koval' and other SBGS officials of the Baby Lager detention facility, Mukachevo, June 18, 2010.

deported "are detained because they cannot stay in Latorytsia. That is under the State Committee for Nationalities and Religions."[199]

The same officials said that the three male detainees held at the Baby Lager at the time of our visit were underage and unaccompanied, had been arrested 28 days earlier, and had spent 15 days at the Baby Lager. We received reliable information that one of these detainees was in fact detained for six months at the Baby Lager.[200]

Lack of Gender Sensitivity and Cultural Respect

Many of the detainees in Ukraine are Muslim and some said that detention officials treated their religion and religious practices with disrespect. We also heard accounts from women and children that suggested that they were treated with a lack of sensitivity to their needs in detention, particularly with regard to hygiene.

Muslim women voiced particular concerns that guards did not respect their modesty and their cultural norms and that the detention centers failed to provide them with necessary sanitary items.[201] Human Rights Watch interviewed a 17-year-old Somali girl while she was still in quarantine in one of the detention centers after having arrived only hours before. She was quite upset during the interview because of the way the doctor had treated her during the medical examination upon arrival:

> There is no woman doctor here. The man doctor made me take off my clothes when I arrived. He touched my breasts and my private parts. I only want a woman doctor. I told him I am a Muslim woman and it is not allowed for a man to see me. He screamed at me to remove my clothes. He said, "*Bliad*, remove your clothes, I am a doctor." There was a police woman in the room. I told him to have the police woman check me. He said no, that he was the doctor. He didn't have good English. I said, "Sir, I can't do this. I'm not allowed to do this." He removed everything to make me naked.[202]

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[199] Ibid.

[200] Human Rights Watch interview (all details withheld).

[201] The Standards outlined by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, provide that: The specific hygiene needs of women should be addressed in an adequate manner. Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels and tampons, are of particular importance. The failure to provide such basic necessities can amount, in itself, to degrading treatment. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf/E (2002) 1-Rev.2009, p. 82.

[202] Human Rights Watch interview B-27: place and date withheld.

A different 17-year-old Somali girl described her reception at a Specially Equipped Facility where she was immediately interrogated about how she was smuggled. She said the man in civilian clothes interrogating her "started to scare me. He wanted to take off my head scarf. I refused and he forcibly removed my scarf and took pictures."[203]

We spoke to an Afghan woman about her experience of being detained at the Luts'k Temporary Holding Facility in mid-2009 together with her three children between the ages of 8 and 12. Based on her account, the facility staff appeared indifferent—to the point of inhuman and degrading treatment—toward the basic sanitary needs of a woman and the needs of children not only for decent hygiene, but also for fresh air, natural light, and recreation:

> I was detained alone with my three children in one room; my husband was in the other room. We were able to go outside for one hour. We stayed inside our cell, they locked the cells. They didn't let us inside the corridor. My children peeked through the holes in the door. They were constantly crying.
>
> The border guards in Luts'k didn't give sanitary pads. I used toilet papers; it wasn't sufficient. I was one month without showering. There was one sink but with cold water. We wanted to heat some water? … in a small pot and mixed hot with cold water. My children also didn't shower for 1 month. We were locked up inside our room. We couldn't always go to the toilet. We had to knock at the door; we had to knock a lot…. Sometimes the kids urinated in the room. It happened two or three times. We had empty bottles and the boys peed inside those. It happened often that we knocked on the door but the guards didn't open…. They didn't give information about asylum.[204]

Preparations for Visitors: Clean Up and Concealment

It was obvious both from our observations and from talking to detainees that the authorities in all facilities made preparations to improve the look of detention centers prior to the Human Rights Watch visit (and, we heard from current and former detainees, prior to the visits of other foreign visitors as well).

The walls of facilities glistened with new coats of fresh (in some cases, still wet) paint, and the dominant smell in latrines and kitchens was of disinfectant. Detainees told us that the

[203] Human Rights Watch interview S-94: place and date withheld.

[204] Human Rights Watch interviews S-77+78: place and date withheld.

food was better on the days of our visits, and that fruit baskets set out on tables at the time of our visit were taken away after we left.[205]

Of greater concern than such cosmetic changes were accounts we heard of intimidation of detainees regarding their interviews with Human Rights Watch researchers, as well as indications, discussed below, that certain detainees were being transferred, released, or concealed to prevent us from meeting them. During the Human Rights Watch delegation's tour of the Zhuravychi MAC, for example, the director of the facility excused himself while we inspected the kitchen. Detainees informed us that while we were in the kitchen, he gathered them together and told them that it would be bad for any detainee who said anything bad to the visitors.[206]

There were strong indications that officials were transferring or concealing detainees prior to the days of the Human Rights Watch visits. The Chernigiv THF was completely unoccupied at the time of our visit, and we toured an empty facility.[207] Likewise, the Boryspil' Airport detention facility was completely empty and we were also told that no people refused entry were in the departure lounge. We were told that the Luts'k THF was being renovated. We asked permission to tour the site anyway, but were refused. We were also told that the Mukachevo THF was being renovated and, after an initial refusal, were allowed to visit that site, which, in fact, was being renovated but which, consequently, was also empty.

Detainees told Human Rights Watch that the authorities at the Chop THF released 14 people the day before our visit—11 Somalis and 3 Afghans. (The authorities knew that we would be arriving with a Somali and an Afghan interpreter.)[208] Human Rights Watch also notes that Chop officials had forwarded only nine asylum applications in the first five months of 2010 (fewer than two per month), but that in the yet-to-completed month of June, prior to the Human Rights Watch's June 19 visit, they forwarded 11 asylum applications, compared to an average of less than two per month in the five previous months.[209]

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[205] The report of the European Committee for the Prevention of Torture after its 2007 visit to Ukraine said that detention staff were "trying to depict an idealized picture by holding back information on certain problems or attempting to mislead the delegation." See "Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 10 December 2007," CPT/Inf (2009) 15, May 19, 2009, http://www.cpt.coe.int/documents/ukr/2009-15-inf-eng.htm (accessed October 18, 2010).

[206] Human Rights Watch interview S-66, Zhuravychi, June 15, 2010.

[207] The Chernigiv facility was also empty at the time of a March 24, 2010 donors' visit within the framework of the GUMIRA Observatory Mechanism.

[208] Human Rights Watch interviews, Y-29: place and date withheld.

[209] Human Rights Watch interview with SBGS officials at the Baby Lager detention facility, Mukachevo, June 18, 2010.

Despite apparent efforts by officials to keep these Somalis and Afghans apart from Human Rights Watch, we ended up interviewing nearly all of the detainees released or transferred from Chop in the days before our visit. We located some in Uzhgorod. We spoke to one on the phone after his release. We met others at the Zhuravychi MAC because we were there when the Border Guard Service transferred them from Chop; The SBGS officials might not have known that Human Rights Watch was at the facility run by the Ministry of Interior. Human Rights Watch interviewed the former Chop detainees while they were still in quarantine at the Zhuravychi MAC.

We talked to some of the former Chop detainees the same evening of the day they were released, the day before our visit to Chop. The following account from one of the men released from detention that day shows the relationship between the sudden surge in accepted asylum applications and release from Chop:

> Five days ago something changed. They started acting nicely. Six days ago I didn't know I would go anywhere. I just thought I'd be in prison for six months. But then they started cleaning, painting the walls…. Chop was overcrowded when I first got there—18 people in one room, but six days ago they sent maybe 25 people to Luts'k. I got released today.
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> The officer in charge from L'viv came on Tuesday. He took us to an empty room and said he could release us, and took our [asylum] applications. Before that, I asked them three or four times to take my asylum application.[210]

A former detainee at Chop told Human Rights Watch about what happened there when other foreigners visited Chop:

> They told us if any Europeans are visiting and if any of us speak, they will kill us. So, we used to say, "Everything is okay," because we couldn't speak. One person spoke to the Europeans and the guards took him out [afterwards]. When he was returned he was unable to move. They said, "Even if Bush comes, you can't speak."[211]

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[210] Human Rights Watch interview B/Y-34, Uzhgorod, June 18, 2010.

[211] Human Rights Watch interview S-88, Uzhgorod, June 18, 2010. The European Committee for the Prevention of Torture has reported subsequent to a visit to detention facility under the responsibility of the State Department for the Execution of Sentences that "it was fully apparent from the delegation's interviews with prisoners that the latter were terrified of speaking to the delegation for fear of reprisals…. [S]ome prisoners had been deliberately hidden inside the establishment to prevent them from approaching the delegation. By way of example, two inmates whom the delegation found in the colony had been

Later, we learned that a detainee at the "Baby Lager" was taken away just prior to the Human Rights Watch visit and brought back shortly afterwards. Only three people were held at the time of the Human Rights Watch visit. They appeared to Human Rights Watch researchers at the time to be frightened and intimidated. A Human Rights Watch researcher and interpreter met with them in their room. Border guards could be seen demonstratively walking by the open door of their room. One guard hovered at the door eavesdropping and the researcher had to ask him to leave. Human Rights Watch received reliable information that guards intimidated them prior to our visit and threatened to keep them in detention should they say anything negative.[212]

Ukrainian authorities denied hiding detainees or otherwise making special preparations prior to Human Rights Watch's detention center visits. Major General Marchenko said:

> We are open and sincere. We are not hiding anything. It was just a coincidence that no detainees were at Mukachevo or Boryspil'. We move people all the time from one place to another. This is a general procedure, not part of your visit. About Chop, no one was moved because of your visit and cleaning was normal, not part of your visit. The premises at Mukachevo you've seen refurbished. One month ago, Caritas said they needed refurbishment.[213]

The day after the last of the three Human Rights Watch researchers left Ukraine, the authorities arrested nine Somalis residing in Uzhgorod, including several who had spoken with Human Rights Watch prior to our visit to Chop. They were questioned about what they had said to the Human Rights Watch team. One interpreter working for the Border Guards and the Migration Service started making harassing phone calls to an interpreter who had worked for Human Rights Watch; unknown men in civilian clothes tried to locate him and he went into hiding, fearing for his safety. Another Human Rights Watch interpreter was arrested in the days following the departure of the Human Rights Watch researchers and briefly held.

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moved – as soon as the delegation's arrival was announced – between various sections of the establishment, and only returned to the detention section in the evenings, after the delegation's departure. In addition, the delegation received clear indications that a number of prisoners…did not feel able to speak freely because they had been advised not to make complaints and feared repercussions. In fact, the delegation had to intervene to stop staff noting the names of those prisoners with whom it spoke." The Committee emphasized to the Ukrainian government "that all forms of intimidation or reprisal against a person, before or after an interview with a member of a CPT delegation, are incompatible with the obligations of Parties to the Convention." CPT/Inf (2007) 22, Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2005, para. 7.

[212] Human Rights Watch withholds further details to protect the source of information.

[213] Interview with Major General Borys Marchenko, June 24, 2010.

Conditions of Detention and Treatment in Detention

Human Rights Watch's 2005 report on Ukrainian migrant detention centers, *On the Margins: Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union*, documented substandard conditions of detention in migrant detention centers throughout Ukraine, including overcrowding, unhygienic facilities, poor nutrition, and limited access to recreation, natural light, and health care.[214] Conditions of detention for migrants have greatly improved in the five years since the publication of that report. All of the facilities visited looked clean and well-ordered.

Far from being overcrowded, the detention centers Human Rights Watch researchers visited in June 2010 were, at most, half filled, and in some cases entirely empty, although, as described above, some detainees appear to have been moved just prior to our visit.

Most of the current detainees interviewed in most locations had no complaints regarding lack of hygiene or overcrowding during the period of the Human Rights Watch visit. The most frequent complaints were about the food, both quality and quantity, and about lack of access to lawyers, telephones, internet, and television.

Human Rights Watch heard fewer allegations of mistreatment by guards and staff in the Ministry of Interior-administered Migrant Accommodation Centers than in Temporary Holding Facilities administered by the State Border Guard Service. The worst allegations of beatings and other abuses related to interrogation by plain-clothed officials, including in places of detention, which likely occurred in some of the Specially Equipped Premises. (See Chapter VI.)

"Some good, some bad," was the typical response when Human Rights Watch asked current and former detainees how THF and MAC detention center guards and staff treated them. Most of the allegations of guard mistreatment in THFs and MACs involved shouting, shoving, and the use of racial epithets, sometimes as a result of guards' drunkenness or loss of temper. Such behavior occurs in an environment of impunity in which threatened and abused detainees do not feel their complaints are taken seriously or that they will be protected if lodging a complaint. A Somali held at the Mukachevo SBGS center for 38 days in July and August 2009 told Human Rights Watch:

> Once at 3 a.m. the guard came to me and asked me for money. He said we were Somalis and have money. I said I didn't have the money and that the money I

[214] Human Rights Watch, *On the Margins: Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union*, Human Rights Watch, Vol. 17, No. 8(D), November 2005, http://www.hrw.org/en/node/11521/section/2.

> had was in the registry. He said, "You cheat me," and he hit me. It was inside the cell. He was drunk. When he left I told the other guard and asked why he had opened the door. The guy who hit me was his superior, he had a star [on his shoulder]. The other guard didn't have a star. We didn't tell the boss of the prison. You can't do anything because you're locked up. If you do something [about it], they try to treat you worse. It doesn't help to tell the boss.[215]

The head of the SBGS in L'viv, Zakarpattia, and Chernivtsi regions told Human Rights Watch that two officers and six guards had been transferred from Chop to other posts that did not involve contact with foreigners "because they did not provide order as part of their responsibilities." No one has been dismissed for improper treatment of detainees since 2008 and, according to this official, no criminal charges have been filed against SBGS officials for misbehavior in six years.[216] An SBGS letter to Human Rights Watch in response to the findings of this report said that "no cases of mistreatment and torture of detained persons by the SBGS have been identified and that the only guard officials to be subject to disciplinary actions were "for failures relating to the organization of the walks of detained persons."[217]

Specially Equipped Premises

Information about Specially Equipped Premises is sketchy because they are usually no more than designated places for holding and questioning recently apprehended migrants in a Border Admission Post until they can be transferred to a Temporary Holding Facility. Migrants rarely identify Specially Equipped Premises by name or location, and the premises appear to operate with less regard to detention standards than the longer term facilities. For example, the following account of an 18-year-old Somali woman in February 2010 shows that basic standards that prohibit commingling of unrelated men and women in detention were ignored when she was held in an overcrowded Specially Equipped Premises near the border:

> I was arrested at the border trying to enter Ukraine. I've been kept for three nights in a place like a jail. We were a group of ten persons, five women and

[215] Human Rights Watch interview S-22, Vinnytsia, May 24, 2010.

[216] Human Rights Watch interview with Lieutenant Igor Petrovych Koval', SBGS, Chop, June 18, 2010.

[217] Shysholin P.A., first deputy head of the State Border Guard Service, letter to Human Rights Watch, October 19, 2010. He said that the confirmation that no torture or mistreatment had taken place in SBGS custody "was confirmed by internal investigations carried out at the Kharkov, Mukachevo, and Chop border guard detachments as well as by prosecutor checks of the specially equipped premises (SP) and by the records of medical examinations of the detained persons." (Letter translated by Human Rights Watch. On file with Human Rights Watch.)

> five men, not husbands and wives. I was kept with the men in one room, at night too, for three days together, with the men.[218]

Some migrants reported to Human Rights Watch that they were beaten during their short stays in the Specially Equipped Premises. A 20-year-old Pakistani man spoke about the eight hours he spent in a border station after being returned from Slovakia in May 2010 and before being transferred to the Chop THF:

> The first night I spent in a border place. People there were hitting me. They said, "You speak Russian," and they beat me. I asked for food; the border guards said: "Fuck you." They were animals. That night we didn't eat. They stripped us naked and made fun of us. There were eight or nine persons. They had uniforms on. They only beat me, not the others. The others could see how I was beaten. They stripped the others and made them sit and stand…. I stayed for eight hours in that Border Guard station. I don't know its name. It was 30 minutes from the border. They were hitting me for ten minutes. They were five persons hitting me for no reason…. They punched me on my heart, also on my mouth and my back. I fell on the ground and they hit me more. I felt pain for 12 days.[219]

Boryspil' Airport

Boryspil' Airport is not a remote border post Specially Equipped Premise, but rather the largest airport in Ukraine and the port-of-entry for more than half of air travelers to Ukraine. The airport opened a new SP detention facility in June 2008 that consists of a line of four detention cells, each of which has a capacity to hold four persons. It was completely empty at the time of the Human Rights Watch visit. The small facility has no recreation area, no common sitting area, and no direct access to toilets, requiring detainees to ask the guards for each bathroom use. Detainees eat in their rooms. The only possibility for detainees to exercise is by "walking" down the corridor, which is about one meter wide and about four or five meters long.

We were told that the facility had only held 37 people in the past five months.[220] One airport immigration official said that migrants were detained there for a maximum of ten days and an average of two. Another airport immigration official said, "People are usually held for

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[218] Human Rights Watch interview S-58, Rozsudiv, June 12, 2010.

[219] Human Rights Watch interview S-61, Zhuravychi, June 14, 2010.

[220] Human Rights Watch interview with Boryspil' Border Guard Service officials, Boryspil' Airport, June 17, 2010.

three days and can be held for ten days if sanctioned by the prosecutor, but can be held for as long as necessary, but no longer than six months."

Local NGOs have had great difficulty negotiating with the authorities for access to detainees at Boryspil' Airport. "We spent six or seven years negotiating for access," the head of HIAS's Kyiv office told Human Rights Watch.[221] A lawyer working for a different NGO said, "We tried for years to be let in there. I have never seen where they keep people. They don't allow local NGOs there."[222] UNHCR has access to detainees who file asylum applications but cannot monitor whether detainees are given access to the asylum procedure. Five asylum applications were filed last year from Boryspil', according to the airport immigration authorities.[223] When asked about unaccompanied children, an official said, "We have never had an unaccompanied child here in the ten years I've worked here."[224]

Significantly larger numbers of people are restricted to Boryspil' Airport's international departure hall, though airport immigration officials gave contradictory statistics on the numbers held there and on why they are held there rather than at the small temporary holding facility in the airport. Those restricted to a separate waiting lounge inside the departure hall are people who are refused entry to Ukraine who cannot be returned immediately. We were told that there were no detainees in the departure area at the time of our visit and that there was no space in the departure hall that segregated them from other passengers. However, a Human Rights Watch researcher awaiting her own departure observed a room next to the smoking area divided by a glass wall with a guard sitting at the entrance. The room had only chairs, no beds, and two persons were held there that day. The appearance of the room matched descriptions provided by other organizations and by a former detainee quoted below.

Detainees held in the departure hall are transferred there from the passport control zone while the airlines arrange for their return. By law, they are not supposed to be held there for longer than 48 hours, but officials were vague about how long people are restricted there; Amnesty International reported that a Palestinian was held in the departure lounge for almost six months in 2009.[225]

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[221] Human Rights Watch interview with HIAS, Kyiv, June 16, 2010.

[222] Human Rights Watch interview, August 18, 2010: name, organizational affiliation, and place withheld.

[223] Interview with Boryspil' Border Guard Service officials, Boryspil' Airport, June 17, 2010.

[224] Ibid.

225 Amnesty International, Ukraine: 'Put Deeds before Words,' Deliver Human Rights for Ukraine, Amnesty International, EUR 50/004/2010, April 2010, http://www.amnesty.org/en/library/info/EUR50/004/2010/en (accessed October 21, 2010), p. 7.

A Tunisian man who had been refused admission and was held in the Boryspil' departure lounge for four days in July 2009 told Human Rights Watch:

> There's a corner with a guard where they keep foreigners who are not permitted entry. There is no bed, only metal chairs. I was with Georgians, Indians, Africans, and a Kuwaiti. People [officials] asked for money. If you gave US$500 or US$600 you could enter [Ukraine]. They didn't give anything to eat and no water. I drank from the toilet tap. I didn't eat for four days. They said, "If you have money, we will let you enter." I was deported to Tunisia.[226]

Temporary Holding Facilities

The Border Guard Service is responsible for 10 Temporary Holding Facilities scattered throughout Ukraine with a total capacity for 250 people.[227] Many of the THFs have been—or are in the process of being—refurbished, usually with EU funding and with the assistance of the International Organization for Migration (IOM).

Human Rights Watch visited two Temporary Holding Facilities—Chernigiv, which was empty of migrant detainees and Chop, which is one of the largest THFs, but which had far fewer detainees than its capacity. SBGS officials told us that the Luts'k THF facility was under renovation and denied our request to visit the renovation site. We also visited two facilities that are not designated as Temporary Holding Facilities, but which hold people longer than Specially Equipped Premises, are run by the SBGS, and appear to operate as THFs: the detention facility at the main SBGS headquarters in Mukachevo, which was being refurbished and was empty at the time of our visit, and the so-called "Baby Lager" in Mukachevo, which the authorities describe as a "dormitory," and held three detainees at the time of our visit.

Chop

Chop is the SBGS's main migrant detention center in the Zakarpattia oblast in western Ukraine near the borders of Slovakia and Hungary. Major General Marchenko told Human Rights Watch that the Border Guard Service has been interested in refurbishing Chop or building a new detention center there for some time, but that funding to do so had not come through. "We are hoping that the EU will stop procrastinating on building a new facility in Chop and other new facilities."[228]

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[226] Human Rights Watch interview S-46, Kyiv, June 10, 2010.

[227] The Temporary Holding Facilities and their capacities are: L'viv (32), Chop (68), Chernovici (13), Mostys'ka (14), Sumi (30), Chernigiv (21), Luts'k (35), Kotovsk (13), Belgorod-Dnistrovsky (10), Ismail (14).

[228] Interview with Major General Borys Marchenko, June 11, 2010.

Based on the number of people at Chop (and other migrant detention centers) at the time of the Human Rights Watch visit, as well as the numbers recorded by other monitors and the government's own apprehension statistics for the past year, there would seem to be little reason to expand existing Ukrainian migrant detention space.

Chop officials informed Human Rights Watch the day before the visit that the facility currently held 26 people, but Human Rights Watch researchers only counted 18 on the following day when we visited the facility. (See the section on Preparations for Visitors.) The previous day's count included four Afghans and two Somalis, none of whom were seen, although we asked the authorities specifically to meet with any members of these two nationalities. A former detainee told us that there were 54 detainees two weeks prior to our visit, and in June 2009 Chop was reported to hold 168 detainees.[229] Chop, officially, has a capacity to hold 70 people.[230]

Although Human Rights Watch researchers were able to conduct private interviews with seven detainees being held at Chop, much of our information about the facility comes from former detainees, including people who had been held there more than a year earlier and others who were released the day before our arrival.

The two detainee blocks at Chop looked newly renovated, clean, and not overcrowded at all. Migrants are segregated according to nationality and gender so that one block, we were told by detention authorities, held mostly South and East Asians and Africans and the other held migrants mostly from the former Soviet Union.

The building for Africans and Asians, comprised of three rooms with a total of 19 beds, had been refurbished, but still had little natural light through small, glazed windows, a television awkwardly placed in a corridor with no place to sit to watch it, and no direct access to the bathroom, requiring detainees to ask permission to go to the bathroom at night and other times when they are confined to their cells. One room had almost no natural light and the room's walls were damp. Most strikingly, the building had no telephone. A detention official leading the facility tour told Human Rights Watch, "We just finished renovation, so the phones are not yet installed, but we give all who are apprehended an opportunity to call home when they first arrive."[231]

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[229] "Fact Finding Missions: Chop Detention Centre, March and April 2009 (Update January 2009)," Border Monitoring Project (in the Region of Zakarpattia), p. 7. Human Rights Watch interview S-69, Zhuravychi, June 15, 2010.

[230] Michael Peterson, Migration and Human Rights Advisor, EC Consultancy to Set up Custody Centres and Temporary Holding Facilites for Irregular Migrants in Ukraine, email message to Human Rights Watch, August 19, 2010.

[231] Human Rights Watch interview with Chop detention official, June 19, 2010.

The lack of access to telephones to contact the outside world, except for once a month for a few minutes, was a source of great anxiety and frustration for detainees.[232] A 23-year-old Pakistani man, a recently transferred detainee, said:

> In Chop, they checked my phone when I entered and didn't give it back. The biggest problem at Chop is that they don't allow us to make phone calls. I don't know what is happening with my family. They only give you two minutes to call on the public phone when you first arrive. I made only one call in the 25 days I was there.[233]

The larger dormitory building is divided in half by an iron-barred door with men occupying one half of the building and women and children the other, as well as the guard station and a staff conference room. The women and children's area has four rooms and opens onto a small enclosed recreational area with a play ground and cherry trees that is not accessible to the men. There were no women or children at Chop at the time of the Human Rights Watch visit, and this area was empty.

The men's section had a corridor with four cells with inside latrines on either side and latrines and rooms at the end of the hall that were undergoing renovation at the time of the visit. The building was not air conditioned and had no TV. The only telephone was in the guard station on the other side of the barred door. Officials on the tour told Human Rights Watch that detainees had access to a room on the women's side of the building to watch TV, but it unquestionably looked like a meeting room for staff with a conference table and Ukrainian flag.

In contrast to a facility that was not crowded and looked clean at the time of the Human Rights Watch visit, previous visitors have reported a very different looking place. The Border Monitoring Project, an NGO consortium, which visited Chop in March and April 2009, found the facility "grossly overcrowded and indeed shocking."[234] And migrants interviewed by Human Rights Watch who had been detained there as recently as late 2009 described it similarly. For example, a 36-year-old Afghan man who had made several failed attempts to cross to neighboring EU countries had been held at Chop multiple times recalled conditions at Chop less than a year previously in the fall of 2009:

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[232] The May 2010 MSF report, "MSF Assessment in four detention centres in Ukraine," also says, "Detainees [at Chop] were not allowed to keep or use their mobile phones. They are given telephone cards (through the Ukrainian Red Cross) to call relatives once a month," p. 7.

[233] Human Rights Watch interview B-20, Zhuravychi, June 15, 2010.

[234] "Activity Report, Period: November 2008 to June 2009," Border Monitoring Project (Uzhgorod, Zakarpattia), p. 2.

> Chop was really dirty. There were insects in the room, flies, mosquitoes and mice running in the rooms. There were 40 guys in one 10 x 10 meter room and people were sleeping on the floor. Two people had to share one mattress. I was there for three months. The guards treated us very badly. They talked bad to us; they only gave us pork to eat, so as Muslims we couldn't eat anything.[235]

The same man then talked about improvements he observed during his second detention at Chop in 2010:

> They brought us directly to Chop. I spent one month and 16 days there. Chop was better this time; not good, but better. There was no change in the food or the treatment, but the conditions were better. One guard, [name withheld], who was usually on duty at night would lock the door on us and make us wait a long time to go to the toilet and all the time telling us really low-level lies. Once one young guy went to the toilet and [name withheld] followed him to the toilet and threatened him with a gun.[236]

Chop has a reputation as one of the more brutal Temporary Holding Facilities. A Somali who has made several failed attempts to cross from Ukraine to neighboring countries and has been detained in various facilities, and who was detained in Chop in 2009 and 2010, rates Chop as the worst:

> We arrived in Chop in early January 2009. It was a very harsh winter. All security guards were cruel. We realized there were people even more cruel than the border guards [who beat us at the checkpoints]…. There were about 40 people in a room with 18 beds. Some slept on the ground. In the wintertime nobody could take the cold from the ground. We had very dirty blankets, unsanitized. There was no hot water at all. I took a shower in cold water without soap, without shampoo….
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> The treatment was worse in Chop [in 2010]. They kept us in isolation cells. It's called the Georgian rooms. They put 11 people in a single room [he indicates a size about 10 to 12 square meters] with six beds. The toilet was inside the room with an awful smell. The toilet was close to the beds. They

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235 Human Rights Interview B-19, Zhuravychi, June 15, 2010.

236 Ibid.

made an investigation every day and kicked and beat everyone. They insulted us every day. They took me about four times to another room. Once they used tear gas. It was in the room where we were sleeping. Everyone fell down…. We called for the doctor and when he came the doctor was angry at them, but he cannot talk to the chief….The doctor was good. I can't forget how much he helped us… They took me and asked for money to get released. They asked for US$400 or US$500.[237]

Mukachevo

The Mukachevo detention facility was undergoing renovation at the time of the Human Rights Watch visit, so was unoccupied. It is located within the grounds of the large State Border Guard Service headquarters in Mukachevo close to the "Baby Lager." Former detainees describe the Mukachevo detention facility as three small rooms in a big building, which is consistent with the place Human Rights Watch observed being renovated. A Somali who was held there for ten days in 2008 and again for one month in 2009 described it:

> The prison was very bad. They give you little food sometimes. The Somalis were the last to eat, and we always worked. We cleaned all the time. Only the Somalis worked [not the Georgians or Moldovans]…Sometimes they didn't let us go to the toilet. It was very bad, very dirty. The blankets were very dirty. The bed was dirty. We always cleaned the corridor. We never saw the outside in ten days. After ten days we paid money, each of us paid US$600 and then we got out.
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> The second time [in 2009] was worse. The food was very bad and the KGB came every day and took people for interrogation and they would ask questions and beat you.[238]

Another Somali who spent 20 days in the Mukachevo detention facility in 2009 spoke both about the cramped, dirty conditions there and about being taken out for interrogations and beaten:

> They beat me in that military place. The same intelligence guys came to that place and beat me….They kicked us with their legs and beat us with their

[237] Human Rights Watch interview S-79, Uzhgorod, June 17, 2010.

[238] Human Rights Watch interview S-19, Vinnytsia, May 24, 2010.

> fists. My Somali colleague fainted and fell down on the ground…. They asked us the same questions about the smugglers and I said I don't know. It was in very bad conditions. The room was very small and the food bad. They gave us bread and tea with no sugar and a kind of mixed kasha full of salt. It was not clean. We were in a very small room, four beds, about 4 by 2 meters with a very small window only. There was very little daylight. They closed the door day and night. There was no lamp. We had five minutes outside every day. The toilet was outside. Sometimes they opened the door to let us out, sometimes not.[239]

Detainees there commonly paid to be released from the Mukachevo detention facility. A Somali who spent seven days there in June 2009 explained how he was released:

> We received a paper in there from the Migration Service. We paid $600 to receive these papers….We called relatives and paid it because we were like hostages. Someone sent money through Western Union. It was a very secret process. Everyone was afraid. We used other people's names to pick up the money. A Somali [picked it up]. I never saw that money. My relatives paid that money. I had no interview with the Migration Service before I got the paper. I got a green paper.[240]

Migrant Accommodation Centers

The Ministry of Interior-run Migrants Accommodation Centers, where migrants are held up to six months for violating entry regulations or pending deportation, both opened in mid 2008 and still had a new, fresh look at the time of the Human Rights visits in June 2010. While the facilities are clearly designed for detention, surrounded with double fences topped with coiled concertina wire and movement sensors, the design is mindful of modern detention-construction standards, such as provision for natural light, even in isolation cells.

One of the most striking impressions on visiting the MACs was how few detainees were being held in them at the time of our visit. Both looked half full during a summer month that historically is a time when the largest numbers of Europe-bound migrants are usually moving and being detained. It was odd, therefore, to hear Interior Ministry officials telling us that

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[239] Human Rights Watch interview S-80, Uzhgorod, June 17, 2010. Migrants sometimes use the Soviet intelligence service's acronym "KGB" to refer to security officials in Ukraine.

[240] Human Rights Watch interview S-79, Uzhgorod, June 17, 2010.

Ukraine was planning to build five additional MACs in anticipation of the implementation of the EU readmission agreements.[241]

The most common, nearly universal, complaint among detainees in the MACs related to the quality and quantity of food. Detainees commonly complained that the food was not fit for humans. Interior Ministry officials provided Human Rights Watch with a document outlining the daily dietary requirements for detainees, which provide for almost 3,000 calories per day, including almost 100 grams of protein, but detainee testimonies raised doubts that these standards were being met.[242]

Rozsudiv

The Rozsudiv MAC, refurbished military barracks located in a very isolated, wooded area near Chernigiv, has a capacity for 208 persons, but was only holding 80 at the time of the Human Rights Watch visit in June 2008. The facility had been operating for about 23 months at the time of the visit and looked clean and well-run.[243]

Detainees who were interviewed privately and confidentially at the facility spoke positively about treatment by the guards, except for one who accused them of verbal abuse. The most common complaints were about lack of access to lawyers and to the telephone, and the quality of the food.

A 23-year-old Afghan expressed the typical view of Rozsudiv:

> It's not bad. It's like a jail. Everything is livable but not likeable. I have to eat to live, but the food is bad. One woman brings food for a high price if you give her money. The biggest problem here is no lawyer. Each time I'm asking a guard to talk to a lawyer, but he says I can't, there is no lawyer. We want information and we have questions, but he's not here. The chief says tomorrow, the day after tomorrow. The security guards have a good character. I have no complaints.[244]

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[241] Human Rights Watch interview with Ministry of Interior official, Zhuravychi, June 14, 2010.

[242] Decision of the Cabinet Ministers of Ukraine, No. 336, June 16, 1992, supplement No. 1, entitlement No. 3. On file with Human Rights Watch.

[243] Rozsudiv opened July 17, 2008; Zhuravychi opened on September 11, 2008.

[244] Human Rights Watch interview S-56, Rozsudiv, June 12, 2010.

Zhuravychi

The Zhuravychi MAC in Volyn' oblast is also the site of refurbished military barracks, situated in a pine forest, one hour from Luts'k, a city in northwestern Ukraine. The facility, with a capacity for 181 persons, held only 63 people at the time of the Human Rights Watch visit.[245] Some dormitory buildings were completely unoccupied.

Zhuravychi is a relatively relaxed place where the relationship between guards and detainees appeared to be good. The most common complaints were about the food, both the quality and quantity, and the lack of soap, shampoo, and washing powder. One of the detainees gave what could be considered a typical account of conditions at Zhuravychi:

> The treatment here is okay. The food is a disaster. Every day for five weeks we get the same food—for breakfast, kasha or over-boiled macaroni or old bread and tea that is hot water with no taste; for lunch, buckwheat and chicken bone; for dinner, every day mashed potatoes and fish balls.[246]

The Ministry of Interior administrator for Zhuravychi acknowledged that "the food rations are small," but explained, "We follow the standards set in law. If I don't follow them, I will be jailed myself. Our hands are tied. It is the same for all penitentiary facilities."[247]

International Standards on Conditions of Detention

The ICCPR maintains that all persons deprived of liberty "shall be treated with humanity and with respect to the inherent dignity of the human person."[248] Various international human rights instruments, including the ICCPR, the Convention against Torture, and the European Convention on Human Rights, to all of which Ukraine is party, prohibit inhuman or degrading treatment or punishment.[249] Ukraine is also a party to the European Convention for the Prevention of Torture which establishes a Committee to oversee the extent to which states are adhering to their obligations on treatment of all persons in detention.[250]

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[245] Human Rights Watch interview with Ministry of Interior official, Zhuravychi, June 14, 2010, p. 97 and 105.

[246] Human Rights Watch interview S-64, Zhuravychi, June 15, 2010.

[247] Human Rights Watch interview with head administrator for Zhuravychi, June 15, 2010.

[248] ICCPR, art. 10(1)

[249] ICCPR, art. 7; CAT, art. 16, European Convention on Human Rights, art.3.

[250] European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, European Treaty Series 126, Strasbourg, November 26,.1987, ratified by Ukraine on May 5, 1997. The European Committee for the Prevention of Torture (CPT) established under the Convention have visited the Ukraine on 7 occasions in 1998, 1999, 2000, 2002, 2005, 2007 and 2009: see http://www.cpt.coe.int/en/states/ukr.htm (accessed October 21, 2010).

Under United Nations rules, states should as far as possible keep women in separate institutions from men. In case they are detained in the same institution, the premises allocated to women shall be entirely separate.[251] This is also the standard required by the European Committee on the Prevention of Torture.[252] The Convention on the Rights of the Child as well as the International Covenant on Civil and Political Rights obliges states parties to separate children from adults in detention.[253] The European Court of Human Rights held in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* that the prolonged detention of an unaccompanied child jointly with adults amounted to inhuman or degrading treatment.[254]

With regard to the detention of children generally, the Convention on the Rights of the Child limits the administration and duration of detention for children. Their detention must be lawful, for the shortest appropriate time, and may be used only as a measure of last resort.[255] The Convention stipulates that the best interests of the child shall be a primary consideration in all actions taken by authorities, including detention.[256] The Committee on the Rights of the Child, the body that oversees the Convention's implementation, has specified that "[unaccompanied] children should not, as a general rule, be detained," and that "detention cannot be justified solely … on their migratory or residence status, or lack thereof."[257]

In a previous chapter of this report, Torture and Ill-Treatment of Migrants in State Custody, we address the question whether Ukrainian officials perpetrate torture and other cruel and inhuman treatment during interrogations of migrants. We have also commented in this chapter on the arbitrariness of detention based on the lack of effective remedies. (See the section on Arbitrary Detention.) With respect to conditions of detention, we note that Ukraine has considerably improved since our last report of 2005 and that it is still in the process of

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[251] United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, para. 8(a).

[252] The CPT Standards state that: "The duty of care which is owed by a State to persons deprived of their liberty includes the duty to protect them from others who may wish to cause them harm….As a matter of principle, women deprived of their liberty should be held in accommodation which is physically separate from that occupied by any men being held at the same establishment." European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf/E (2002) 1-Rev.2009, p. 80.

[253] CRC, art. 37 (c), ICCPR, art. 10(b).

[254] "The Court notes that the second applicant was detained in a closed centre intended for illegal immigrants in the same conditions as adults; these conditions were consequently not adapted to the position of extreme vulnerability in which she found herself as a result of her position as an unaccompanied foreign minor," *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, (Application no. 13178/03), Judgment of 12 October 2006, available at www.echr.coe.int, para. 103.

[255] CRC, art. 37(b).

[256] CRC, art. 3(1),(2).

[257] UN Committee on the Rights of the Child, General Comment No.6, para 61.

renovating detention facilities. We also note that the short-term facilities, called Specially Equipped Premises (SPs), where migrants are held in the hours immediately following apprehension are the most problematic in terms of detention conditions and treatment of detainees, according to interviews with former detainees, and that conditions progressively improve as migrants are transferred from SPs to Temporary Holding Facilities and from those facilities to the Migrant Accommodation Centers.

This report does not focus on the provision of health care in migration detention centers because Médecins Sans Frontières published an assessment of four detention centers in Ukraine in May 2010 with a detailed focus on health care. The MSF report found "a significant lack of basic medical equipment and inadequate staff presence" in all detention centers it assessed (the Chop and Mukachevo "Baby Lager" THFs and the Zhuravychi and Chernigiv MACs).[258] The MSF report detailed the following gaps in the provision of medical services in all four detention facilities:

- lack of access to medical services;
- inadequate diagnosis;
- inadequate treatment;
- poor management of contagious disease outbreaks;
- lack of access to secondary care;
- lack of mental health support; and
- inadequate monitoring of access to medical services and health care.[259]

As noted above, Human Rights Watch heard some accounts of former detainees in Temporary Holding Facilities—particularly from Chop—that described severe overcrowding, albeit in late 2009, with twice as many detainees as beds staying in the same room under clearly unsanitary conditions. While such conditions appear to have been inhuman and degrading, based on our observations and interviews, we would not characterize the conditions in the THFs and MACs in the summer of 2010 as inhuman and degrading. Based on interviews and observations, we would, however, identify the following serious continuing problems:

- in some locations (particularly the Baby Lager), failure to segregate male and female, as well as adult and child detainees;
- in some locations, lack of sanitary napkins for women and insufficient hygiene items for detainees generally;
- in some locations, limited access to toilets and showers;

[258] Médecins Sans Frontières, "MSF assessments in four detention centres in Ukraine," May 2010.

[259] Ibid., pp. 17-18.

- in at least one location (the Baby Lager), restriction on access to drinking water at night;
- in at least one location (Chop), poor quality of drinking water;
- in some locations (including Chop), inadequate ventilation and natural sunlight;
- in some locations, infestations of mosquitoes, and other insects;
- in some locations, insufficient bed linens;
- in many locations, discriminatory treatment by nationality/race/language, such that non-European, nonwhite, non-Russian speakers are required to clean the facility but white, European, Russian speakers are not;
- in many locations, verbal abuse from guards and staff, some of which is racial in nature;
- in many locations, inadequate access to telephones;
- in many locations (including the Baby Lager and Boryspil') inadequate access to recreation, open space, and fresh air;
- in many locations, lack of access for NGOs and other providers of social services, psychological counseling, and humanitarian aid;
- in all locations, substandard quality and quantity of food, including numerous complaints in some locations from Muslim detainees about being served pork without alternative dietary offerings (an allegation detention personnel denied);
- in all locations, lack of competent interpreters and staff who speak non-Slavic languages;
- in all locations, lack of sensitivity toward women of other cultures;
- in all locations, an environment of corruption that pressures detainees to pay for food, services, other goods, and even release from detention.

VIII. Protection, Education, and Housing for Unaccompanied Migrant Children

The Ukrainian government does not keep track of the number of unaccompanied migrant children who enter Ukraine and there is considerable disagreement over how many unaccompanied children are in the country. Estimates range from a few dozen by the government's State Committee for Nationalities and Religions to 100 to 200 children by NGOs.[260] Organizations that provide services to these children believe that their number is on the rise.

Unaccompanied migrant children are not necessarily correctly identified and they have almost no way to obtain legal status in Ukraine. They may obtain temporary status as asylum seekers but access to the asylum procedure is cumbersome or impossible in certain regions. In addition, there is only one known case of an unaccompanied child being granted asylum, and Ukrainian law provides no possibility of temporary residence on humanitarian grounds or on grounds of complementary protection. (See also Chapter IV.)[261] Although Ukrainian child protection legislation guarantees protection for orphans and children deprived of parental care, unaccompanied migrant children face a plethora of obstacles that prevents them from being granted that status and protection.

Without proper identification mechanisms, no regular status, and sometimes even with temporary status, unaccompanied children often find themselves out of school, without access to state-sponsored housing, or in detention.

Age Assessment

The law does not provide that age assessments on migrant children should be conducted and there are no guidelines on how to deal with undocumented migrants whose age is contested.[262] In the absence of any procedure some officials accept the declared age of a person; some register children as adults; some systematically contest declarations of persons who say they

[260] Human Rights Watch interview with Natalya Naumenko, June 8, 2010. Statistics provided by the State Committee on Nationalities and Religions to the Danish Refugee Council show that a total of 143 unaccompanied migrant children sought asylum between 2007 and 2010. Human Rights Watch interview with Danish Refugee Council, Kyiv, January 4, 2010, and email correspondence from Danish Refugee Council to Human Rights Watch, October 4 and November 11, 2010. The Danish Refugee Council and its partners provide assistance to approximately 100 to 200 unaccompanied children. These organizations' figures only reflect activities in five regions of the country.

[261] Complementary protection is often called subsidiary protection, especially in Europe.

[262] Practitioners told us that age assessments are only permitted for the purpose of establishing criminal responsibility, or in the course of an autopsy. Article 76 of the Criminal Procedure Cod of Ukraine regulates the use of medical examination to establish the age of an accused.

are underage; some ask for physical exams despite the absence of a legal basis to determine age; and others push children to declare a higher age. Other officials register adults as underage after collecting a bribe. Practice varies from one region to the next and there is no guarantee that unaccompanied children are correctly identified and treated as such.

In Mukachevo, for example, doctors in the "Baby Lager" detention facility told us they take the lower end of any margin resulting from an age exam. They also added, however, that in all cases where age assessments have been performed, persons were declared adults.[263] In Vinnytsia, with a predominantly Somali migrant community, children's services require a document proving that the person is underage. Without such proof they refuse to assign legal representatives. In the absence of procedures to determine age, this request is impossible to fulfill. As a result, children remain in legal limbo and without access to protection. (See also the section on Unaccompanied Children Seeking Asylum in Chapter V.)

A child's age may be registered differently by different officials. Two unaccompanied children who were detained at the Baby Lager in Mukachevo were initially registered as underage. Migration service officials pushed them to declare themselves as adults during the asylum interview, and threatened that they would be kept in detention should they refuse to have their age changed. An unaccompanied girl who was 16 at the time of her detention told us:

> A translator came, an Arab, and he asked us to give him a lot of money. He scared us and said if we don't pay we would be detained for six months. [Name withheld] is his name, he's from Iraq. He took US$650… the migration service came [to the Baby Lager] after I paid…. When I told them my age she said "I will bring a psychologist," "I will not give you a document," and that I would go to prison. I said, "I'm 16." She said, "I don't believe you," and "I give you one chance to change [your age]. If not I get a psychologist." And then she pushed me and said, "Think, think, and change your age." Then I wrote a false age. I wrote I'm 18.[264]

A 16-year-old boy who was detained in a Migrant Accommodation Center under the authority of the Ministry of Interior said authorities did not believe his declarations and registered him as an adult:

> I have a birth certificate. I can get it from the internet. I told the police who arrested me that I was 16 years old. They said, "You are going to Europe" and

[263] Human Rights Watch visit to the Baby Lager detention facility, Mukachevo, June 18, 2010.

[264] Human Rights Watch interviews S-94: place and date withheld.

> that I was not cooperating with them. The police wrote a different age than what I told them. They said that this detention center would not accept me if I was under 18 so they said I was born in 1990. But that is not true.[265]

His is not the only case of an unaccompanied child who may have been illegally detained in a Migrant Accommodation Center. A 17-year-old Somali girl told us, "They registered me…. They asked about my age. They gave me a paper to write down my name and birthday and took it. I don't know what age they registered for me."[266] She said she was held for six months in the Zhuravychi Migrant Accommodation Center.[267] (See also Chapter VII for a discussion of unaccompanied children in detention.)

Another 17-year-old boy told us border guards in Chop beat him until he agreed to being registered as an adult: "At Chop I told them I was 17. They beat me when I said I was 17. They beat me so I said, 'What do you want, please write what you want, but don't beat me.' They made me older."[268]

Several adults told us they bribed officials to be taken to the Baby Lager detention facility where they were registered as underage: "I gave 1,000 hryven' to go to the Baby Lager, to be considered underage," one adult former detainee told us.[269] When we visited that detention facility we were introduced to three migrants whom border guards registered as unaccompanied children and whose age they did not contest. Two of them clearly looked and behaved like grown men. The use of bribes to be registered as underage means these adults may be housed in temporary accommodation centers for asylum seekers with unaccompanied children. As described further below, such practice puts children at risk of abuse.

Access to Education and Housing

Unaccompanied children's access to protection, education, and state-sponsored accommodation is dependent on their legal status and documentation. Those who do not or are unable to file an asylum application, or those whose claim has been rejected, are considered to be illegally on the territory of Ukraine and are unable to access education or

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[265] Human Rights Watch interview (B): place and date withheld.

[266] Human Rights Watch interview S-5, Vinnytsia, May 22, 2010.

[267] HIAS told Human Rights Watch of another boy who was detained in the Rozsudiv migration detention center and repeatedly said he was underage. He was released on the basis of being underage after four months in detention. Human Rights Watch interview with Hebrew Immigrant Aid Society (HIAS), Kyiv, May 27, 2010.

[268] Human Rights Watch interview B-39: place and date withheld.

[269] Human Rights Watch telephone interview S-112, July 21, 2010. He explained to Human Rights Watch that the regime at the Baby Lager detention facility is more relaxed and that it was easier to be released from there through bribing.

state accommodation. But even children who are in the asylum procedure and have legalized their stay in Ukraine may find themselves barred from accessing these entitlements.

Access to Housing

By law, unaccompanied children who file an asylum claim are entitled to stay in centers run by the State Committee for Nationalities and Religions. Others are entitled to stay in shelters for orphans and children deprived of a family environment. In practice, however, they are often unable to access such accommodation because of bureaucratic obstacles, authorities contesting their age, or corruption.

Some are unwilling to move to centers because smugglers might instruct them not to and because centers for asylum seekers are in remote places with few opportunities for education, integration, or employment. Moving to these centers would also mean children lose the social networks they have established after arriving in Ukraine. Most children therefore live in shared flats with fellow adult nationals and pay rent. NGOs in some regions occasionally check their living arrangements. Whether children are safe in their living environment, however, is often not known. They told us how they are trying to cope:

> Housing is a problem. I have friends. I lived for two days on the streets. That was six months ago. It was very cold. Then I found friends. My friends are around 30.
> —a 17-year-old Afghan boy in Kyiv.[270]

> I live with one woman and eight men. We are ten persons in three rooms. The relationship is good. I clean most of the time because I'm the girl.
> —a 16-year-old Somali girl in Vinnytsia.[271]

> The smuggler brought us to the Afghan people at the bazaar… We begged an Afghan man to take us in. We cried a lot and we asked to please, please give us a place just for one night. First he said no then he invited us. He's a good man. We can stay there now…. We are working for [his wife]. We cook sometimes and take care of the children…because they give us a home.
> —two unaccompanied Afghan sisters ages 16 and 17.[272]

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[270] Human Rights Watch interview S-29, Kyiv, May 26, 2010.

[271] Human Rights Watch interview S-21, Vinnytsia, May 24, 2010.

[272] Human Rights Watch interviews S-23, S-24, Kyiv, May 26, 2010.

Housing for Asylum Seeking Children

The State Committee for Nationalities and Religions runs three shelters for asylum seekers, and has 20 places designated for unaccompanied children.[273] In spring 2010, it opened a new center in Perechyn, Zakarpattia, but the center was almost empty in mid-June, despite the fact that we met with several children and adults who said they have asked officials for a place to stay. The request to be housed in these centers has to be filed with the regional migration services.

A 17-year-old unaccompanied asylum-seeking girl told us about her unsuccessful efforts to access state-sponsored accommodation:

> I was released [from detention] in September 2009. I asked for a place to live. They refused. At that time there was a center [in Mukachevo] but they refused to give me [a place]. I asked the migration service and said I needed somewhere to live. I was living with a Ukrainian woman and her son. She wanted too much for the rent. I went to the [center] and I went to [a local NGO]. [They] said they're not the manager… I called UNHCR in Kyiv, they said they will check and call me back. After three weeks they called me back. At the same time I had paid rent already and they said they would send a lawyer to write an application…. He helped me and submitted an application. The migration service was angry. At that moment Latorytsia [the Mukachevo center] was full. The lawyer said he will try Perechyn. The migration service said 'no way' she can go to Perechyn…. They said, "Perechyn is for families and you are not a family." It's a lie… I think it's because I'm Somali or maybe because I needed to pay money.[274]

Accommodation in these centers is foreseen for three months only, dependent on the availability of places and possession of valid documents as asylum seekers. Rejected asylum seekers must leave the center within one day.[275] In practice, though, some asylum seekers and refugees have stayed for years in these centers. The statutes of these centers do not foresee unaccompanied children's enrolment in local schools or their integration in the community. (See also below section on Access to Education.)[276]

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[273] These places have been designated within the framework of a Danish Refugee Council project funded by the European Commission. Email from Danish Refugee Council to Human Rights Watch, October 5, 2010.

[274] Human Rights Watch interview (S): place and date withheld.

[275] Order of the State Committee on Nationality and Migration, September 5, 2002, no. 31, para. 3(5).

[276] Ibid.

Housing for Children Deprived of Family Care

All unaccompanied children, irrespective of whether they seek asylum, by law would be entitled to stay in shelters for children without family, which are run by children's services. These shelters primarily house Ukrainian street children, orphans, and children deprived of parental care.

To be placed at these shelters children need to be recognized as deprived of a family environment. By law, they need to produce a court order with the removal of parental custody or death certificates for parents, as well as a birth certificate, family history, property, and civil registration documents.[277] Migrant children typically lack such documents. A shelter in Sumy which has housed several groups of migrant children is an exception, as is the one case reported from a shelter in Kharkiv.[278]

More important than these administrative obstacles, these shelters are not designed as a permanent solution. They are to provide for three-month transitory accommodation until a permanent placement in a foster home or family is identified. In the absence of permanent legal status, however, unaccompanied migrant children cannot be permanently placed and therefore have little chance to access the transitory solution prior to such placement.[279]

Single Adult Males in Centers for Families and Unaccompanied Children

As noted in the preceding section, officials may register adults as underage and offer them access to state-sponsored accommodation after collecting bribes. This means that unaccompanied children end up housed jointly with unrelated adults.
We interviewed several migrants in the Latorytsia center for asylum seekers who beyond reasonable doubt looked and behaved like grown men far past their teenage years. Nevertheless, authorities registered them as underage and housed them jointly with unaccompanied children.

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[277] Cabinet of Ministers of Ukraine, Resolution No. 866, September 24, 2008, "Matters of the Body Trustee- and Guardianship Activities, Related to Child's Rights Protection," arts. 21-25, 37.

[278] Human Rights Watch telephone interview with Danish Refugee Council, August 11, 2010. The Ministry of Family, Youth and Sports informed us that in the first six months of 2010, 38 refugee children below age 16 received assistance from such shelters; 11 were children from outside the CIS region. The Ministry does not have data on the overall number of children until age 18 who receive such assistance. It is also unclear whether these children are unaccompanied. Human Rights Watch for example interviewed a single mother from Afghanistan with refugee status who had six of her children in state care as she was unable to provide for them.

[279] Ibid.

One boy told us about the violence and harassment he experienced at the hands of adults placed in the same center and his continuing fear of them.[280]

The risks for children, especially younger ones, to experience violence, intimidation, and abuse if housed in institutions with adults or older peers are serious and well-documented.[281] The government of Ukraine should provide accommodation for all asylum seekers for the duration of their claim's examination. At the same time, it has an obligation to ensure that those who are most vulnerable are protected from violence.

In care settings, unaccompanied children should be separated from adults, and more vulnerable children, especially younger ones, should be protected from possible violence by peers.[282] Regular supervision and assessments of a given care arrangement, including of informal care provided by non-relatives and outside the child's place of residence, should be undertaken in order to ensure protection from violence, access to education, and conformity of the arrangement with the child's best interests.[283]

Access to Education

None of the unaccompanied children we interviewed attended classes in state schools, even though national legislation provides for children's entitlement to education.[284] Even children who had spent months or close to two years in Ukraine were not enrolled in school. At best, they attended a few hours of language classes offered by NGOs.

The obstacles barring children from access to education are manifold. They include: lack of documentation and regularized status; absence of effective guardianship; inability to make informal payments to support teachers and schools; and absence of support to ensure their quick integration in local schools.

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[280] Human Rights Watch interview S-100, Mukachevo, June 20, 2010

[281] Paulo Sérgio Pinheiro, World Report on Violence against Children, Geneva, United Nations Secretary-General's Study on Violence against Children, October 2006, http://www.unicef.org/violencestudy/5.%20World%20Report%200n%20Violence%20against%20Children.pdf (accessed September 20, 2010), pp. 180-189.

[282] CRC, arts. 19, 20.

[283] UN Committee on the Rights of the Child, General Comment No.6, arts. 39-40. UN Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including Right to Development: Guidelines for Alternative Care of Children, A/HRC/11/L.13, June 15, 2009, paras. 68-99.

[284] Law of Ukraine "On the Protection of Childhood", art. 19. Constitution of Ukraine, 1996, art. 53.

Most children we interviewed lived in self-arranged housing, often with adults, and had difficulty making ends meet with the stipend they receive from UNHCR.[285] Some children told us they were occasionally working in markets in Kyiv, others said they were performing domestic work.

Many children told us about their desire to learn and go to school and many felt they were wasting their time in Ukraine if unable to go to school.

> I just want to go to school, everything-else will be ok. The language is difficult here…. I have missed two years of school so I'd like to go to school now. I can't go anywhere-else. I don't have anywhere to go – I'm here so I'd like to try and see.
> —a 17-year-old West African girl who has spent eight months in Ukraine.[286]

> The problem is when I was in Somalia I wanted to get an education and a job and a normal life…. All I get now is sleep and food.
> —a 16-year-old Somali boy who has spent six months in Ukraine.[287]

> I want to study. Here the police bother you. You can't study, you can't work…. The worst is to be bored here. I only think about when to sleep and what to eat.
> —a 17-year-old Somali boy who has spent seven months in Ukraine.[288]

> This is my time to study, to learn something, but in Ukraine it is too complicated. I can't do anything about it. I don't like living in Ukraine.
> —a 15-year-old Afghan boy who has spent 14 months in Ukraine.[289]

Even the unaccompanied children we spoke to who enjoy free housing in the Latorytsia Temporary Accommodation Center in Mukachevo do not attend local schools, in contrast to several children who stay there with their families. At best, unaccompanied children attend as little as six hours of language classes per week, which are sponsored by the Danish Refugee Council: "We have language courses…. on Monday, Wednesday, Friday, from 12pm to 2pm.

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[285] Unaccompanied children receive a small stipend every two months from UNHCR. Those in Zakarpattia region only receive food items.

[286] Human Rights Watch interview S-25, Kyiv, May 26, 2010.

[287] Human Rights Watch interview S-99, Mukachevo, June 20, 2010.

[288] Human Rights Watch interview S-13, Vinnytsia, May 23, 2010.

[289] Human Rights Watch interview S-40, Kyiv, May 31, 2010.

Always three times a week. I have a notebook. We only have notebooks…. The class is in Ukrainian and Russian language…. I'm very bored here, really," a 16-year-old boy told us.[290]

We asked the Ministry of Family, Youth, and Sport, as well as the mayor of Vinnytsia for an explanation as to why these children were not in school and for steps they have taken to address these shortcomings. Neither government body provided any explanation about these shortcomings in their response to us.

Under international human rights law, all children, irrespective of whether they have regular status, have the right to education. States are obliged to ensure children's access to education without discrimination and they should also ensure access to education during a child's displacement. That entails the registration of the child with school authorities as soon as possible and assistance to maximize learning opportunities.[291]

Trafficked Children

Trafficking in human beings is typically organized by illegal and well-structured criminal networks that reap huge profits from their exploitation.[292] The illegal nature of the activity and the ruthlessness of traffickers make research difficult and sometimes dangerous. Victims are often reluctant to openly talk about the circumstances of their migration or the exploitation and abuses they experience because of stigma or because they fear that the traffickers will retaliate against them or their families.[293]

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[290] Human Rights Watch interview S-99, Mukachevo, June 20, 2010.

[291] CRC, arts.2, 28. UN Committee on the Rights of the Child, General Comment No.6, paras. 41, 42.

[292] a) "'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) 'Child' shall mean any person under eighteen years of age," Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol), adopted November 15, 2000, G.A. Res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol.I) (2001), ratified by Ukraine on May 21, 2004, art. 3.

[293] According to available data, women and children constitute the majority of identified victims. It is also known that child trafficking is detected in all regions of the world, and that proportion of children among victims of human trafficking increased from about 15 percent to about 22 percent between 2003 and 2007. United Nations Office on Drugs and Crime (UNODC), "Global Report on Trafficking in Persons," February 2009, http://www.unodc.org/documents/Global_Report_on_TIP.pdf, (accessed September 13, 2010), p.49.

Ukraine has long been a source and transit country for trafficking in human beings. Factors contributing to the trafficking of human beings in Ukraine are corruption, a weak judiciary, insufficient victim protection, and minimal sentencing for offenders. Children deprived of a family environment or in institutions are reported to be most at risk.[294]

Human Rights Watch found strong indications that trafficked children are among those migrating to or transiting through Ukraine. Three girls told us that they spent several weeks in houses of smugglers in Russia before their arrival in Ukraine. Although they denied experiencing any abuse, the fact that they were undocumented and at risk of being detained if detected by authorities, in a foreign place, and at the mercy of smugglers made them very vulnerable to exploitation and abuse.

A 16-year-old Somali girl appears to have been trafficked first within Africa before being moved to Russia, and then Ukraine:

> I left Somalia in 2007, transited Ethiopia, and went to Uganda. I worked there as a housemaid. I worked [from 5am] until 9pm at night. I didn't have a day off…. I was not able to walk around in Kampala. If I had left I would have been fired…. I met people who told me I could go to Russia…. I stayed almost two years in Russia. I stayed in a smuggler's house. He was African. He wasn't really nice. I couldn't leave…. After I stayed for one year I was transferred to another house…. They locked us up. The African also locked us up and said if you go out the police will catch you and put you in prison. I stayed in that house for six months. Then I found a computer and communicated to others who then found someone to help me get out [of Russia] and [then] to Ukraine.[295]

Another unaccompanied girl from Somalia who was 16 years old when she arrived in Russia and Ukraine told us: "In November 2008 I arrived to Russia, Moscow. After four months I came to Ukraine. I stayed with the smuggler in Moscow. They were hiding us. We didn't have documents. We were seven Somalis. Me and six men…. It was dangerous but what could I do?"[296]

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[294] US State Department, Trafficking in Persons Report 2010, June 14, 2010, http://www.state.gov/documents/organization/142979.pdf (accessed August20, 2010), pp. 332-333.

[295] Human Rights Watch interview S-12, Vinnytsia, May 23, 2010.

[296] Human Rights Watch interview (S): place and date withheld.

Ukrainian law fails to protect victims of trafficking with any form of legal status and its asylum law does not provide for humanitarian grounds of protection.[297] As a consequence, unaccompanied migrant children and other migrants who are victims of trafficking are treated as any other irregular migrant.

States have an obligation to take appropriate measure to prevent trafficking of children, such as correct identification of unaccompanied children, monitoring of their whereabouts, and passing appropriate legislation. Children who are victims of trafficking must be given access to the asylum procedure and the standards for protection should include grounds that protect victims of trafficking.[298]

[297] A draft with provisions for the protection of and assistance to victims of human trafficking has been prepared in 2008, but remains under review. Ukraine has only signed but not ratified the Council of Europe Convention on Action against Trafficking in Human Beings.

[298] CRC, arts. 20, 34-36, UN Committee on the Rights of the Child, General Comment No.6, paras. 50-53.

IX. Readmissions from Neighboring EU Countries

Both the number of migrants apprehended in Slovakia and Hungary after entering from Ukraine and those deported to Ukraine have been in steady decline in recent years.

	Number of migrants apprehended who entered from Ukraine		Number of migrants deported to Ukraine[299]
Slovak Republic	2008	978	691[300]
	2009	563	425[301]
	2010 (January – June)	203	140[302]
Hungary	2008	980	425[303]
	2009	436	284[304]
	2010 (January – August)	185	164[305]

These figures suggest that efforts to strengthen enforcement capacity at Ukraine's western border have been successful. It is likely that the EU will build on that success with the EU-Ukraine readmission agreement that came into effect on January 1, 2010. As of the writing of this report, however, implementing protocols had not been finalized and border guards in

[299] Those not deported were permitted to stay in either country, including because they entered the asylum procedure. Hungary admitted 555 migrants who entered from Ukraine into the asylum procedure in 2008, 152 in 2009, and during the first eight months of 2010. Slovakia could not provide us with separate figures on how many migrants were permitted to stay because they entered the asylum procedure.

[300] 670 of those deported were third-country nationals.

[301] 399 of those deported were third-country nationals.

[302] 125 of those deported were third-country nationals.

[303] 260 of those deported were third-country nationals.

[304] 98 of those deported were third-country nationals.

[305] 17 if those deported were third-country nationals

Ukraine, Hungary, Poland, and Slovakia were still operating informally according to the bilateral protocols from the mid 1990s.[306]

According to the bilateral agreements, migrants caught entering Poland, Slovakia, and Hungary without permission can be summarily returned if caught within 48 hours of crossing.[307] The launching of an appeal in Slovakia and Hungary does not suspend the return and returnees do not have access to minimal information on arrest and return. In practice, Human Rights Watch found that migrants were often tricked into believing they would not be returned, were asked to sign papers they did not understand, and were not always given an opportunity to contact a lawyer, NGOs, or UNHCR.

Under the EU-Ukraine readmission agreement, the EU state seeking to return a third-country national or stateless person to Ukraine need not prove the person's nationality, only that the migrant crossed directly and illegally from Ukraine into the EU. A ticket or a passenger list will suffice as proof. Less strong evidence (which Ukraine will be able to investigate and challenge within 20 days), will include witness statements, receipts or bills from Ukraine etc. Evidence from the migrant will only be sufficient if it is given in a judicial or administrative proceeding.[308]

Under the EU-Ukraine readmission agreement's accelerated procedure, border guards are supposed to be able to show that the migrant crossed directly from Ukraine.[309] The EU state must send the application within two days of apprehending the third-country national or stateless person, and Ukraine then has two days to respond.

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[306] Ministry of Interior officials of the Slovak Republic told Human Rights Watch that they used the bilateral agreement in parallel to the EU agreement, as the EU agreement did not exclude such parallel application, and did not contain any provisions contrary to the bilateral agreement. We were also told that Poland did the same. Human Rights Watch interview with Jana Jurickova, Department for International Cooperation, Ministry of Interior, Slovak Republic, Bratislava, September 10, 2010.

[307] Article 7 part 1 of the Hungary – Ukraine Readmission Agreement and Article 6 part 1 of the Slovakia – Ukraine Readmission Agreement:"Each Party shall readmit citizens of third states or persons without citizenship who have illegally crossed the common state border from its territory. If less than 48 hours have elapsed from the time of the illegal crossing by this person of the common state border, the readmitting Party shall readmit such a person without prior notification and unnecessary formalities."

[308] Annex 3B documents: "Official statements made, in particular, by border authority staff of the Requesting State and other witnesses who can testify to the person concerned crossing the border; documents, certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, car rental agreements, credit card receipts etc.) which clearly show that the person concerned stayed on the territory of the Requested State; information showing that the person concerned has used the services of a courier or travel agency; official statement by the person concerned in judicial or administrative proceedings." Agreement between the European Community and Ukraine on the Readmission of Persons, CE/UA/READ/en 1, in "Council Decision on the signing of the Agreement between the European Community and Ukraine on readmission of persons," 9312/07,Council of the European Union, Brussels, June 5, 2007

[309] Agreement between the European Community and Ukraine on the Readmission of Persons, CE/UA/READ/en 1, Article 5(3), in "Council Decision on the signing of the Agreement between the European Community and Ukraine on readmission of persons," 9312/07,Council of the European Union, Brussels, June 5, 2007.

The requesting state must still submit evidence showing direct departure from Ukraine, but official statements "by authorized border authority staff who can testify to the person concerned crossing the border from the Requested State directly to the territory of the Requesting State" will suffice under the accelerated procedure.[310] Ukraine can challenge that evidence within 20 days or is deemed to accept it.

Slovakia

The most common complaint Human Rights Watch heard from migrants who had been returned from Slovakia was that their asylum claims were ignored and that they were treated in summary fashion, quickly sent back within hours of apprehension in Slovakia with little opportunity to make any claim to remain. Although there were some accounts of abusive treatment, many migrants also told us that Slovak border guards had treated them correctly.

Most of the migrants Human Rights Watch interviewed in Ukraine who had been returned from the EU had been sent back from Slovakia. Ukrainian officials speculated that the higher numbers from Slovakia are because parts of the Slovak border region are more mountainous than the areas around the Polish or Hungarian borders and therefore offer better opportunities to evade detection.[311]

Human Rights Watch collected 36 testimonies of migrants who said they were returned from Slovakia, of whom two were returned in 2008, 10 in 2009, and 24 in the first five months of 2010, after the EU-Ukraine readmission agreement had officially come into force.[312] Of the 36 testimonies of migrants who had been returned to Ukraine 25 said they had asked for asylum in Slovakia—often in the form of tearful begging and pleading—but that Slovak officials had ignored their requests. We also interviewed one person who was accepted into the asylum procedure after entering Slovakia from Ukraine.[313]

Migrants reported to Human Rights Watch a wide range of accounts about their treatment at the hands of Slovak Alien Police. Their comments ranged from good and kind treatment,

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[310] Agreement between the European Community and Ukraine on the Readmission of Persons, CE/UA/READ/en 1, Annex 3B, in "Council Decision on the signing of the Agreement between the European Community and Ukraine on readmission of persons," 9312/07,Council of the European Union, Brussels, June 5, 2007.

[311] Interview with Border Guard officials, Mukachevo, June 18, 2010. This view was confirmed by Border Police and Ministry of Interior officials in both Bratislava and Budapest.

[312] The total number of persons interviewed is fewer than 36 because some interviewees crossed the border multiple times.

[313] Human Rights Watch interview S-110, Humenné reception center, Slovakia, June 23, 2010.

including one migrant making a big smile and a two-thumbs-up gesture,[314] to accounts of beating and abuse. One of the latter accounts, from a 20-year-old Pakistani, starts with his arrest 10 minutes after crossing the border:

> I was alone. It was December 24, 2009. A Slovak guard beat the shit out of me. From night 'til morning he beat me. At first when I was captured a soldier beat me in front of other soldiers, and then at the detention center they beat me. They were in military uniform. They took us to a room with a computer and men in civilian clothes and they beat me again. They used batons and belts to punch and kick me to one another. I can't stretch out my right leg because of it. My armpit and back hurt. They questioned me while beating, "Where are you from? Who is the smuggler?" They kept me at the border for three hours and then transferred me to Ukraine.[315]

Such allegations of beatings were rare, though it was not uncommon to hear of verbal abuse. The most common complaint of migrants recounting their experiences in Slovakia is that the authorities ignored their pleas for asylum and made them sign papers they did not understand. A 36-year-old Afghan returned from Slovakia in March 2010 recalled:

> They never gave us a chance to talk about being a refugee or asylum in Slovakia. We said we wanted a lawyer. We said we wanted the UN. We asked for asylum. They never accepted. They took our fingerprints and photos. They didn't beat us but they talked badly to us, yelling at us. They forced us to sign a deportation paper to Ukraine. I was not willing to sign, but they got mad at me so I signed. They had a really bad interpreter who couldn't explain anything or help. We spent one night in Slovakia and they took us the next morning back to Ukraine.[316]

Others spoke about Slovak Alien Police not only ignoring requests for asylum but for medical attention as well. A 20-year-old man was one of several in his group who had been badly beaten and injured by their smugglers, but whose injuries went untreated by Slovak officials:

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[314] Human Rights Watch interview B-20, Zhuravychi, June 15, 2010.

[315] Human Rights Watch interview B-14, Zhuravychi, June 14, 2010.

[316] Human Rights Watch interview B-19, Zhuravychi, June 15, 2010.

> I said I wanted asylum. He [the Slovak Alien Police officer] did not respond. He put us in a car… They took us back in the direction we came from and brought us o a police station. There they wore different uniforms from the ones who caught us. They gave us water. We were wet and muddy. They gave us blankets. I asked three times for medical attention. I spoke English. I told them I was injured. I also asked for asylum. They called us one by one that night. I translated for everyone. They asked where I came from, my nationality, what are you doing here… I clearly said I wanted asylum. They took our fingerprints. They gave us food. They treated us well with food. I had a headache but they would give no painkillers. Another guy without fingers, his hand was bleeding for two or three hours. I told them he needed medical attention, but they didn't do anything. It was a cold room. Outside it was raining…
>
> We did not see a lawyer, we just saw the police. They treated us like criminals. They searched us naked, outdoors and in the corridor of the police station…They told us to sign papers. I told them I could not sign because I did not understand what they said. But they told me it was in my interest to sign and put a lot of pressure. They made all of us sign the papers. They would not tell us what was going on…Twenty minutes later I heard someone shouting. I realized they were sending us back.[317]

The fast-track procedure is only supposed to be in effect for people apprehended within 30 kilometers of the border and within 48 hours of crossing. Although migrants' estimates of time and distance are often understandably rough, several, including this 22-year-old Indian, seemed sure that they had traveled some considerable distance inside Slovakia:

> After I entered Slovakia I walked for five days. I had no food or water. I passed Snina, I think I got near Bratislava. I went very far …They caught us on the road at about 8 a.m. on May 22, 2010. It was rainy, very cold. I told the police, "I need to stay." There was no judge, no court. I only saw police. Four police cars came. They put us in a car and drove us 45 minutes to a police station. They took our fingerprints and our names.
>
> They gave me a paper and said, "I will let you stay if you sign here." I signed the document that I couldn't understand and they deported me. I never told

[317] Human Rights Watch interview B-34, Uzhgorod, June 18, 2010.

> them I came from Ukraine. They found no paper on my clothes from Ukraine. They took me in a police car about one hour to drive to the Ukrainian border. The Slovak police treated us properly. They sent us back to Ukraine the same day they caught us, about 4 or 5 in the afternoon. It was not even dark.[318]

Slovak officials told us that whether a migrant is accepted back by Ukraine under the accelerated procedure often depends on the personal relations between the officials at the border posts. They noted that cooperation works well and that Ukrainian officials generally do not challenge requests for readmission. Ukrainian officials more readily accept migrants who are arrested close to the border as evidence that they came directly from Ukraine. Officials in Slovakia further maintained, contrary to many statements by migrants, that a professional interpreter is always present, and that all documents are read out to migrants before being signed by the officer, the interpreter, and the person being returned.[319]

In December 2009, right before the coming into force of the EU readmission agreement with Ukraine, the Slovak Ministry of Interior abrogated an agreement with UNHCR and the Slovak Human Rights League that had since 2007 permitted NGO lawyers to monitor return procedures at the border. Currently, the NGO only has access to migrants who cannot be immediately returned under the accelerated procedure who are transferred to detention centers.[320]

The decision whether to expel a person from Slovakia is exclusively made by the Alien Police at the border. The Department of Alien Police officials in Bratislava said the border police would consider whether the expelled person would be endangered if returned to Ukraine. They were, however, unaware of the UNHCR position that Ukraine is not a safe third country.[321]

A migrant has in theory the right to appeal an administrative expulsion decision within 15 days to the relevant border police department, and subsequently to a court if the appeal is not upheld. The police have discretion whether or not to suspend the removal of a person making an appeal. The police decision not to suspend removal cannot be appealed even while the underlying appeal is still pending. The border police could not tell us how many

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[318] Human Rights Watch interview B-35, Chop, June 19, 2010.

[319] Human Rights Watch interview with Milan Tvorik, director, Department of Alien Police, Ministry of Interior of the Slovak Republic, Bratislava, September 10, 2010.

[320] Human Rights Watch interview with Miroslava Mittelmannova, Slovak Human Rights League, Bratislava, September 9, 2010.

[321] Human Rights Watch interview with Milan Tvorik, Bratislava, September 10, 2010. In its October 2007 "Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers," UNHCR advised states "to refrain from returning third country asylum-seekers to Ukraine," (paragraph 52, p. 14) and has continued to refer to that guidance as recently as its May 2010 "Note on the protection of refugees and asylum seekers in Ukraine" (p. 1).

appeals of expulsion orders they have received from migrants at the border and how often they have made use of their discretion to expel migrants with appeals pending. The expulsion orders usually do not allow migrants appealing the order to have their removal suspended, according to the Slovak Human Rights League. This likely discourages migrants from appealing their expulsions.[322]

The expulsion orders also normally include a prohibition on entry for five years.[323] According to Slovak officials, unaccompanied children are not deported to Ukraine under the readmission agreement and Alien Police are obliged to immediately transfer persons who declare themselves underage to child protection services.[324] Despite these clear obligations in law, we heard very different accounts from children returned.

A 17-year-old unaccompanied Afghan boy who was deported from Slovakia at the end of 2009 or early 2010, told us:

> We passed the Slovakia border, but we were caught. We asked the police to help us. After one day and one night we were deported. The Slovak soldiers treated us good. They didn't ask why I left Afghanistan. They only asked me my age. I told them October 1, 1992. I wrote that date on their paper. I could not understand the paper I signed. They said they would take us to the lager for migrants, but they deported us.[325]

A 16-year-old girl from Somalia who was travelling with her young adult husband was caught inside Slovakia on May 17, 2010 and returned the following day. We do not know whether Slovak officials treated her as unaccompanied but the girl told us they changed her birth date from 1994 to 1984:

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[322] Human Rights Watch interview with Branislav Cervenka, Department of Alien Police, Ministry of Interior of the Slovak Republic, Bratislava, September 10, 2010. Human Rights Watch interviewed a Palestinian asylum seeker who was returned to Ukraine from Slovakia on June 16, 2010, with a leaflet in Arabic on his right to seek asylum, and an administrative expulsion order that stated any appeal would not have suspensive effect as he represented a threat to public order. The expulsion order only had the name of an interpreter, which was Slovak, but not the signature. A copy of the order is on file with Human Rights Watch.

[323] Human Rights Watch obtained a copy of a migrant's expulsion order, which includes the prohibition on re-entry, citing Article 56(1) of the Act on Stay of Aliens. (Copy of the expulsion order on file with Human Rights Watch.)

[324] Human Rights Watch interview with Milan Tvorik, and with Lydia Mlynkova, department of social affairs and child protection, Ministry of Labour and Social Affairs, Bratislava, September 10, 2010.

[325] Human Rights Watch interview B-39: date and place withheld.

> We said the birth dates were wrong. I cried in front of them, but they didn't listen. I said, "Please let me stay." We said we were Somali refugees. They took our fingerprints and deported us after one night.[326]

Hungary

Human Rights Watch heard 14 testimonies from migrants who were returned from Hungary, of whom five were returned in 2008, four in 2009, and five in the first five months of 2010, after the EU-Ukraine readmission agreement had formally come into force.[327]

With one exception, none of the people interviewed by Human Rights Watch who had been returned from Hungary alleged that they were beaten by guards or police and many commented favorably on their treatment. However, nearly everyone interviewed said that they had asked for asylum and that their requests were ignored and that they were pressured or tricked into signing papers they did not understand, or told they would be driven to a reception center, before being deported to Ukraine. A 24-year-old Somali who was caught inside Hungary in February 2010 gives a typical account:

> They took us to the police station inside Hungary. They took each of us in a separate room. They asked us questions—where I'm from, how I arrived. I said I came from Russia. I said I was Somali. I said we want to ask for asylum. They said they would accept me and bring me to a camp. They took fingerprints and a photograph. We signed papers. They told us if we signed the paper they would take us to the camp. That's why I signed….
>
> They were nice. They stripped us naked and checked us. They registered our belongings. There was no interpreter. I was arrested at 3 p.m. They deported us at midnight. They gave us some bread and water. Then they said, "Let's go," and said they would bring us to the camp in a car. I took my bag. When I closed the door they said, "We'll deport you to Ukraine and you can't come back for three years. I started crying and begging them not to return us. The others also started crying.[328]

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[326] Human Rights Watch interview B-27, Zhuravychi, June 15, 2010.

[327] Some migrants were returned multiple times from Hungary.

[328] Human Rights Watch interview S-81, Uzhgorod, June 17, 2010.

Hungarian immigration enforcement officials insisted to Human Rights Watch that they only return those migrants to Ukraine against whom there is evidence that they crossed directly from Ukraine and that the distance they are apprehended from the border does not matter. Aliens Police officer Olga Kerezsine Petis explained their protocol:

> If we can prove that they came from Ukraine, then they are the responsibility of Ukraine. If no proof of stay in Ukraine, then they are referred to our immigration committee. There is no 30 kilometer rule. It doesn't matter if he goes one meter or a great distance; we need evidence of illegal border crossing. If we can't readmit the person the competent authority is the immigration office.[329]

Officer Petis said that cooperation between Ukrainian and Hungarian border guards was good and that it was rare that Ukrainian guards contest the return of a migrant.[330] She said:

> We meet with Ukrainian border guards at the border to show them the evidence [that a returnee crossed illegally from Ukraine to Hungary]. Hungary doesn't send them back unless we have proof. We have good cooperation between Ukraine and Hungary. Ukraine is very cooperative. The Ukrainian authorities are good about taking them back because they want to make interviews about the smuggling networks.[331]

Petis said that the system operates differently for a person asking for asylum: "If the person asks for asylum, we must examine the claim even if we have proof that the person came from Ukraine."[332] Asylum seekers who had been returned from Hungary disputed her account of the procedure. A Somali man who was returned from Hungary in July 2009 said that he told the Hungarian authorities that he had come from Ukraine but also made it unmistakable to them that he was seeking asylum:

> They gave bread, butter, and one liter of water for each of us. When they gave us that and we saw the Hungarian flag, we were so happy and thought we could live there. One English-speaking girl came. Where they took us there was the UNHCR flag on the wall, in the police station. She asked us how we

[329] Interview with Olga Kerezsine Petis, Aliens Police, Nyírbátor, Hungary, June 22, 2010.

[330] Since 2009 Ukrainian officials have accepted all requests for readmission from both Slovakia and Hungary.

[331] Interview with Olga Kerezsine Petis.

[332] Ibid.

> arrived, our nationality, and those questions. We answered all the questions, that we came from Ukraine and that we wanted asylum. We asked for help because of the war in Somalia and that we want asylum….We asked whether we could receive asylum and she said, "I'm only an interpreter."…
>
> They caught us at 6 p.m. They took fingerprints and a photo…. We slept there, in Hungary. They handcuffed us to the bed without mattresses. They closed the door and handcuffed each of us to the bed. After four hours they opened the handcuffs. If we wanted to go to the toilet, we could call them. We stayed in the police station 24 hours. We drove 20 minutes and arrived at the border and saw the Ukrainian flag. We were without feelings…. There was no possibility to call anybody. One of us was a girl and two were underage…. We were all returned.[333]

The Hungarian authorities in practice seem to make no allowances for unaccompanied children crossing their border. A 16-year-old Afghan boy said that the authorities there never disputed his age, but sent him back anyway:

> I walked in the jungle 16 hours in Hungary. I was with one other friend and a smuggler. We went to the road and the Hungarian police came and asked for our documents. They took us to the police station and searched our pockets. They wore border guard uniforms. I was caught on April 19, 2010 and sent back the morning of April 20. The behavior of the Hungarian police was good. The smuggler escaped. When I was caught I said I was a refugee. There was a Palestinian lady who translated. I said, "Where is here?" She said, "Hungary." A woman from UNHCR took my case. She was Hungarian.
>
> I gave them my age. [He is 16.] And my friend was also under 18. They accepted my date on their paper. On the deportation paper it also said this date and on all my papers here. They said they would help me, and then they deported me.[334]

A Somali girl who was 16 at the time she was returned from Hungary gave a similar account, including that she was detained in Hungary for 24 hours.[335] Aliens Police Officer Petis told Human Rights Watch: "Children are treated just the same as adults. They must say 'asylum' in order not

[333] Human Rights Watch interview S-22, Vinnytsia, May 24, 2010.

[334] Human Rights Watch interview B-42, Latorytsia, June 21, 2010.

[335] Human Rights Watch interview S-94: place and date withheld.

to be returned. If there is evidence that they came from Ukraine and they don't want to be an asylum seeker in Hungary they should be returned to Ukraine regardless of age. Why not?"[336]

In contrast, immigration and police officials in Budapest answered the same question in line with Hungarian law and maintained that unaccompanied children could only be returned for family reunification or if adequate institutional care is arranged for them, and that they could not be detained. They had no statistics to share but said it was very rare for unaccompanied children to be returned.[337]

According to Budapest officials, the decision whether to deport a third-country national to Ukraine is made jointly by the Alien Police and the Office of Immigration and Nationality (OIN). Alien police interview the person arrested at the border and then ask the OIN whether the person's deportation would be in breach of Hungary's nonrefoulement obligations under the Refugee Convention and the European Convention on Human Rights. The OIN issues an expert opinion on the basis of the interview, which is mandatory for the police:

> We ask the OIN to give an expert opinion whether a [third-country national] can be returned. The OIN gives the opinion on the basis of country-of-origin information and UN reports. According to these reports Ukraine is a safe country…. The OIN always says the person can be returned. There has never been a case that the OIN said the person should not be returned. We don't know of a case of a negative answer.[338]

Police officials explained that a person issued an expulsion order may file an appeal in court within eight days and a decision would be issued within 15 days. Such appeals, however do not suspend removal and a person appealing could be returned while the appeal was pending. Asked whether many appeals were filed at the border, they said: "It happens very rarely that a person appeals because our decisions are well-founded."[339] Hungary does not allow NGOs to monitor returns procedures in border police stations.[340]

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[336] Human Rights Watch Interview with Olga Kerezsine Petis and Krisztian Kakocz, Aliens Police, Nyírbátor, Hungary, June 22, 2010.

[337] Human Rights Watch interviews with István Ördög, director, and Árpád Szép, head of department, Directorate of Refugee Affairs, Hungarian Office of Immigration and Nationality, and with Tari János, deputy head, and Gergely Bajnóczi, police lieutenant, Alien Policing Division, National Police Headquarters, Budapest, September 9, 2010.

[338] Human Rights Watch interview with Tari János, deputy head, and Gergely Bajnóczi, police lieutenant, Alien Policing Division, National Police Headquarters, Budapest, September 9, 2010.

[339] Ibid.

[340] It does, however, permit lawyers from the Hungarian Helsinki Committee to consult police files of persons returned whose names and power of attorney they have obtained. Human Rights Watch interview with Julia Ivan, Hungarian Helsinki Committee, Budapest, September 8, 2010.

Hungary and Slovakia's International Legal Obligations Governing the Returns of Migrants and Asylum Seekers and the Right to Seek Asylum

The principle of nonrefoulement in international refugee and human rights law forbids the expulsion or return of a person to a place where he or she would face persecution, torture, or inhuman or degrading treatment.[341]

The 1951 Convention relating to the Status of Refugees prohibits the return of refugees "in any manner whatsoever" to places where their life or freedom would be threatened.[342] Hungary and Slovakia, as well as all other EU member states, are bound to the principle of nonrefoulement of refugees and asylum seekers as parties to both the Refugee Convention and its 1967 Protocol.

International human rights law in the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment and the International Covenant on Civil and Political Rights (ICCPR) also prohibit returning anyone to face torture. The UN Human Rights Committee elaborates on this prohibition in the ICCPR, saying states "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion, or refoulement."[343]

EU states are also obliged under the EU Charter of Fundamental Rights not to remove, expel, or extradite anyone to a state where he or she would be at serious risk of being subjected to torture or other inhuman or degrading treatment or punishment.[344] This principle is implemented through EC directives on procedures for granting and withdrawing refugee status and on standards for qualification for refugee status or other grounds of international protection, both of which have been transposed into the national legislation of each member state.[345] Further, the EU Charter of Fundamental Rights obliges EU member states to guarantee the right to asylum.[346]

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[341] The ban on returning somebody to torture or inhuman or degrading treatment is absolute. The Refugee Convention lists in article 1.6.F grounds on which a person fleeing persecution can be excluded from protection as a refugee.

[342] Refugee Convention, art. 1.A.2.

[343] General Comment No. 20 (1992) of the Human Rights Committee (HRI/HEN/1/Rev. 1, July 28, 1994) when commenting on Article 7 of the 1966 International Covenant on Civil and Political Rights.

[344] Charter of Fundamental Rights of the European Union, art. 19.2.

[345] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML (accessed September 14, 2010); Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2008/aprile/direttiva-83-2004-en.html (accessed September 14, 2010).

[346] Charter of Fundamental Rights of the European Union, adopted on December 14, 2007, 2007/C 303/01, entered into force December 1, 2009, art. 18.

With regard to the return of unaccompanied children, EU member states are bound by the UN Convention on the Rights of the Child, which not only prohibits return to torture, or inhuman or degrading treatment or punishment, but also obliges a state to take the best interests of the child as "a primary consideration" in deciding whether to return a child.[347] The UN Committee on the Rights of the Child, the body overseeing the Convention's implementation, stipulates that the return of unaccompanied children is not an option if there is a "reasonable risk" that such return would result in the violation of fundamental rights of the child, and in particular, if the principle of nonrefoulement applies.[348]

The threshold of what constitutes inhuman and degrading treatment may be considerably lower for a child than for an adult. for The European Court of Human Rights held in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, which involved the deportation of a five-year-old Congolese girl, that the child's deportation amounted to inhuman and degrading treatment, including because Belgium "did not seek to ensure that she [the child] would be properly looked after or have regard to the real situation she was likely to encounter on her return to her country of origin."[349]

The European Convention on Human Rights grants any person whose rights and freedoms are violated under the Convention's provisions the right to an effective remedy.[350] The European Court of Human Rights specified that states have an obligation to guarantee an effective remedy against the risk of rights violations and that the "remedy required by Article 13 must be 'effective' in practice as well as in law."[351]

The provisions in the EU-Ukraine readmission agreement primarily deal with the operational part of a person's return to Ukraine and lack specific human rights safeguards for migrants. The agreement is, however, without prejudice to EU member states obligations arising under international human rights law.[352]

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[347] CRC, art. 3(1).

[348] UN Committee on the Rights of the Child, General Comment No. 6, para. 84.

[349] European Court of Human Rights, Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, (Application no. 13178/03), Judgment of October 12, 2006, available at www.echr.coe.int, para 68.

[350] ECHR, art. 13.

[351] "Secondly, even if the risk of error is in practice negligible… it should be noted that the requirement of Article 13, and of the other provisions of the Convention, take the form of a guarantee and not of a mere statement of intent or a practical arrangement." European Court of Human Rights, Conka v. Belgium, (Application no. 51564/99), Judgment of 5 May 2002, available at www.echr.coe.int, para. 83. European Court of Human Rights, Z and others v. The United Kingdom, Application no. 29392/95, Judgment of 10 May 2001, available at www.echr.coe.int, para. 108.

[352] Agreement between the European Community and Ukraine on the Readmission of Persons, preamble.

As this report has shown, migrants face a real risk of torture or inhuman and degrading treatment or punishment upon return to Ukraine. They further are at risk of arbitrary detention in Ukraine. Ukraine's dysfunctional and corrupt asylum system effectively deprives refugees of protection.

Human Rights Watch research has documented numerous allegations from asylum seekers that Slovakia and Hungary have denied them the right to seek asylum and that neither country has been guided by the best interests of the child when returning children to Ukraine. Neither Slovakia nor Hungary currently offers an effective remedy in law or practice that would protect migrants from treatment contrary to their fundamental rights. The Slovak police routinely disallow the suspensive effect of appeals before they are even lodged and the Hungarian Office of Immigration and Nationality does not, in practice, make any substantive assessment of the risk of torture or persecution on return to Ukraine. Furthermore, neither country allows independent organizations to fully monitor their return procedures.

This report has shown that Slovakia and Hungary have violated the principle of nonrefoulement in both refugee and human rights law, as well as their obligation under EU law to provide access to asylum. This report documents that Ukrainian officials have tortured migrants returned from Slovakia and Hungary and subjected them to inhuman and degrading treatment and that asylum seekers returned from Slovakia and Hungary have not been provided effective protection from return to places where they have a well-founded fear of being persecuted or of being exposed to other serious harm.

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Buffeted in the Borderland

The Treatment of Migrants and Asylum Seekers in Ukraine

The European Union has long seen Ukraine as a stepping point for refugees and migrants on their way to Europe. Accordingly, it has spent tens of millions of Euros to divert the flow of migrants and asylum seekers and shift the burden they generate away from the Union and into Ukraine. One cornerstone of its strategy was the conclusion of an EU-wide readmission agreement with Ukraine, which entered into force in January 2010.

The EU's monetary support has largely focused on securing Ukraine's borders and constructing migrant detention facilities. The EU has not done enough to ensure that migrants in Ukraine are treated humanely, that they are not arbitrarily detained, and that asylum seekers and members of vulnerable groups are protected.

Migrants and asylum seekers in Ukraine, including children, face a real risk of ill-treatment at the hands of border guards and police, and they often are detained arbitrarily. Some migrants recounted how officials tortured them, including with electric shocks, after they were apprehended trying to cross into the EU or following their deportation from Slovakia and Hungary. Ukraine's asylum system is deeply dysfunctional and rife with corruption. Ukrainian law does not provide for protection of those who flee generalized violence and war, or for trafficking victims. No Somali nationals and only one unaccompanied child are known to have been granted refugee status. The latter are barred from entering asylum procedures altogether in some regions of the country.

This report includes the accounts of asylum seekers, including unaccompanied children, who managed to leave Ukraine and enter the EU at its eastern border, but whom Slovak or Hungarian border authorities quickly returned without allowing them to register asylum claims or challenge their deportation to Ukraine.

The European Union's legitimate interest in controlling its external borders cannot put the lives and well-being of migrants, asylum seekers, and children at risk. The EU should suspend its readmission agreement until Ukraine demonstrates its capacity to provide a fair hearing for asylum seekers, to treat migrants humanely, and to guarantee effective protection for refugees and vulnerable individuals.

Migrants from Afghanistan, Pakistan, Palestine, Democratic Republic of Congo and Somalia peer out from behind a fence of a temporary holding facility for migrants in Chop, Western Ukraine.