

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review:

2nd Cycle, 25th Session

HUNGARY

I. BACKGROUND INFORMATION

Hungary acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1989. Hungary acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 2001 and to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) in 2009

As a member of the European Union since 2004, Hungary has broadly transposed the relevant EU asylum-related *Directives* into national legislation. The *Asylum Act* was adopted in June 2007,¹ followed by enabling provisions to the law, which cover the structures and procedures to determine international protection needs and to provide reception and integration services.² Amendments to the *Asylum Act* were promulgated on 13 July 2015, with entry into force on 1 August 2015.³

¹ *Act LXXX of 2007 on Asylum*. The *Act* was adopted by the National Assembly on 25 June 2007 (date of promulgation: 29 June 2007), with entry into force 1 January 2008. The *Act* was subject to multiple amendments since, the last being *Act CXXVII of 2015* adopted by the National Assembly on 6 July 2015 (date of promulgation: 14 July 2015, entry into force: 1 August 2015).

² *Government Decree No. 301/2007 (XI.9.) on the implementation of the Act on Asylum*. The *Decree* was adopted and promulgated by the Government on 9 November 2007, with entry into force on 1 January 2008. The *Decree* was subject to multiple amendments since, the last being *Government Decree 13 of 2014* (date of promulgation: 29 January 2014).

³ The *Act CXXVII of 2015* on the establishment of a temporary border control fence and on the amendment of certain migration-related acts was promulgated in the *National Gazette no. 102*. The *Act* entered into force on 1 August 2015.

The number of asylum applications in Hungary has grown exponentially over recent years:

Year	Asylum applications	International protection provided by Hungary		
		Refugee status	Subsidiary protection	Tolerated stay
2012	2,157	68	240	47
2013	18,900	173	183	4
2014	42,777	260	252	27
2015	172,017 ⁴	87 ⁵	177 ⁶	3 ⁷

Notwithstanding the pressure placed on the asylum system due to increased new arrivals and asylum applications, it should be noted that of the total number of asylum applications lodged, approximately 66 per cent were discontinued in 2013 and 57 per cent in 2014, due to the applicants' explicit withdrawal or implicit abandonment of the application (because of irregular onward movement in the European Union). 15,685 asylum applications were pending and 2,700 beneficiaries of international protection were recorded in the civil population register as of the end of 2014. 137 stateless persons have been recognized by the authorities since July 2007.

In April 2012, UNHCR expressed serious concerns⁸ about certain aspects of the relevant national laws and the protection situation in Hungary. UNHCR remains concerned that arbitrariness continues to be a main feature of Hungary's detention policy, because of deficiencies in the law and the wide latitude of interpretation of the law. In addition, since February 2015, the Government has carried out a strong anti-refugee campaign through the so called National Consultation, the poster campaign and by closing its borders with Serbia (for more details see Section III, Issue 2).

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 1st cycle UPR recommendations

Linked to 1st cycle UPR recommendations no. 94.1: “Continue the process of ratifying OP-CAT (Czech Republic);” no. 94.2: “Consider ratifying OP-CAT (Brazil); no. 94.3: “Ratify OP-CAT (Afghanistan);” and no. 94.4: “Proceed with the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without delay (Denmark).”⁹

⁴ 1 January – 17 September 2015; inclusive of 603 unaccompanied/separated child asylum-seekers registered in 2014 and 8,600 in January – 14 September 2015. Most applicants are from Syria (63,807) Afghanistan (44,619), Kosovo (23,619), and Iraq (8,408).

⁵ January – June 2015.

⁶ January – June 2015.

⁷ January – June 2015.

⁸ UNHCR, “Hungary as a country of asylum - Observations on the situation of asylum-seekers and refugees in Hungary,” 24 April 2012, available at: <http://www.unhcr.org/refworld/docid/4f9167db2.html>.

⁹ “Report of the Working Group on the Universal Periodic Review: Hungary,” A/HRC/18/17, 11 July 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/HUSession11.aspx>.

Hungary acceded to the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* in January 2012.¹⁰ Subsequently, the Parliamentary Commissioner for Fundamental Rights¹¹ assumed its new functions as the independent National Preventive Mechanism as of January 2015. Since then, with a team of nine, it has conducted systematic unannounced visits to facilities of interest (including the asylum detention centre in Debrecen.)¹²

Additional achievements and positive developments

Hungary acceded to the *1954 Convention relating to the Status of Stateless Persons* in 2001 and statelessness status determination has been carried out by the Office of Immigration and Nationality (OIN) since July 2007. 224 applications have been registered so far and 137 persons have been recognized as stateless.¹³ An in-house quality assurance mechanism for status determination is in place and regular joint reviews of interview records and decisions have been conducted. Furthermore, Annual Professional Days for status determination officers have been held in cooperation with UNHCR. The Hungarian Government is actively pushing statelessness forward on the international agenda by promoting accession to the *1954 Convention* and to the *1961 Convention* through bilateral contacts, receiving country delegations for study visits and sending senior Government officials abroad as resource persons to share lessons learnt. The Government withdrew reservations to Articles 23 and 24 of the *1954 Convention* in 2012.¹⁴

The Constitutional Court of Hungary recently addressed one of the major shortcomings of the Hungarian statelessness status determination procedure, which was that only lawfully staying persons could apply for stateless status in Hungary. This made it impossible for unlawfully staying applicants to get their cases examined on the merits. The Court declared¹⁵ that the wording of Section 76 (1) of *Act II of 2007* on the entry and stay of third country citizens is not in compliance with Article 1 of the *1954 Convention* (as it excludes applicants staying unlawfully in Hungary) and annulled the said provision as of 30 September 2015.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 1st cycle UPR recommendations

Issue 1: Reception conditions for unaccompanied and/or separated children

Linked to 1st cycle UPR recommendations no. 94.112: “Improve the living conditions of asylum-seekers (Islamic Republic of Iran);” and no. 94.113: “Step up efforts directed

¹⁰ *Act CXLIII of 2011* (adopted by the Parliament: 24 October 2011, promulgation in the official gazette: 3 November 2011).

¹¹ *Act CXI of 2011*, www.ajbh.hu.

¹² Report available at:

http://www.ajbh.hu/documents/14315/1887891/Report+on+monitoring+the+Debrecen+Guarded+Refugee+Reception+Centre++366_2015.pdf/4a45943e-f0f6-42d6-acc5-21d050e81f2f.

¹³ Statistical information covering July 2007 – June 2015, provided by the Office of Immigration and Nationality.

¹⁴ By *Act LIII of 2012* as of July 3, 2012: <http://treaties.un.org/doc/Publication/CN/2012/CN.350.2012-Eng.pdf>.

¹⁵ Resolution No. 6/2015 (II.25.) of the Constitutional Court in case III/1664/2014, promulgated in the Official Gazette no.22 of 25 February 2015.

towards the improvement of conditions and treatment of asylum-seekers and refugees (Belarus).¹⁶

Due to the increase in asylum applications by unaccompanied and separated children (UASC)¹⁷ the facility that accommodates these children in Fót is extremely overcrowded. With a capacity of 34, it now hosts from 180 to 300 children at a time. The main preoccupation of the management is to provide basic services, such as shelter and meals. No capacity or resources are left to provide psycho-social counselling and services such as organized community activities or access to the Internet. The enrolment of asylum-seeking UASC in school may take several months. In addition, due to the high fluctuation and turn-over caused by secondary movement and increasing arrivals, schools are reluctant to accept such children. While UASC should benefit from legal counselling, unhindered access is not ensured for a number of technical reasons, including the requirement that lawyers¹⁸ can contact the children only with the consent of a child protection guardian. As the appointment of a guardian takes several months, legal representation during this crucial period is not ensured. Protection monitoring missions have revealed that children may not directly approach the legal advisor as the management of the facility prevents direct contacts with the children. Instead, it is the head of the facility who refers children's complaints to the lawyers.

Recommendations:

UNHCR recommends that the Government of Hungary:

- a. Ensure sufficient resources to meet the special reception needs of UASC;
- b. Provide access to appropriate, state-funded and sufficient psychological counselling;
- c. Ensure that children involved in asylum procedures are provided with legal representation, in addition to the appointment of a guardian, in line with paragraph 36 of the Committee on the Rights of the Child's *General Comment No. 6 (2005)*;¹⁹ and
- d. Ensure full access to and meaningful participation of all refugee and asylum-seeking children in the education system in Hungary by providing appropriate programmes suited to their specific needs, education level and language knowledge.

Issue 2: Xenophobia

Linked to 1st cycle UPR recommendation no. 94.31: “Establish and implement a comprehensive integration strategy for an early-stage integration of migrants, refugees and asylum-seekers (Poland).”

The Hungarian Government adopted an official policy on migration in 2013²⁰ and prioritized integration as one of its pillars.²¹ The Government *Strategy* highlights that Hungarian society

¹⁶“Report of the Working Group on the Universal Periodic Review: Hungary,” A/HRC/18/17, 11 July 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/HUSession11.aspx>.

¹⁷ In the period of January – April 2015, 690 asylum-seeking UASC were registered (compared to a total of 603 in 2014).

¹⁸ Such as the Hungarian Helsinki Committee which provides free legal assistance to asylum-seekers and refugees.

¹⁹ UN Committee on the Rights of the Child (CRC), *General Comment No. 6 (2005) on the treatment of unaccompanied and separated minors outside of their country of origin*, 01 September 2005, CRC/GC/2005/6, para. 36, available at <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>. “In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.”

is negative and suspicious rather than being receptive or tolerant in terms of attitudes towards migrants in Hungary. It also points out that the Government's public relations work is reactive and there is a need for more pro-active media and information campaigns in order to address negative social stereotypes. However, the policy document fails to describe the extent of xenophobic movements and does not elaborate on a Government communication strategy aimed at generating community understanding, awareness and acceptance of migrants, asylum-seekers and refugees.²²

Despite the *Resolution* and the *Strategy* in force, the Government launched a 'National Consultation on Immigration and Terrorism' on 24 April 2015 as a reaction to the increased arrivals of irregular migrants and asylum-seekers.²³ Twelve leading questions were mailed to citizens over 18 years old (altogether eight million people) in a process that has fuelled xenophobia and hatred²⁴ through linking immigration and refugees with terrorism (see title). The consultation triggered widespread criticism from civil society, NGOs,²⁵ academia²⁶ and the international community.²⁷ UNHCR also spoke out against the growing expression of xenophobia in Hungary²⁸ and raised concerns over efforts by the Hungarian Government to vilify refugees as a threat to the country. It called on Hungary, as a party to the *1951 Convention*, to respect international law. Nevertheless, in June 2015, the Government continued its offensive against foreigners using a billboard campaign with xenophobic messages.²⁹

As a result, xenophobia in Hungary is higher than ever before. The social distance towards migrants has increased, as currently 46 per cent of the adult population is 'openly xenophobic' (compared to 39 per cent in 2014 and 36 per cent in 2013) and would not allow any refugees in the country. 45 per cent of the population is 'implicitly xenophobic' (compared to 51 per cent in 2014 and 53 per cent in 2013) and would allow some refugees,

²⁰ *Government Resolution no. 1698/2016.(X.4.)* on the Migration Strategy and the Planning Document in support of the Asylum and Migration Fund 2014-2020.

²¹ *Government Resolution 1698 of 2013. (X. 4.)* on the Migration Strategy and the seven year strategy in support of the Asylum and Migration Fund to be established by the European Union in the period of 2014-2020, available at: <http://www.kormany.hu/hu/dok?page=3&source=1#!DocumentBrowse>.

²² UNHCR Comments and Recommendations on the draft modification of certain migration-related legislative acts for the purpose of legal harmonisation; p. 4, available at: <http://www.unhcr-centraleurope.org/pdf/where-we-work/hungary/unhcr-comments-and-recommendations-on-the-draft-modification-of-migration-related-acts-april-2013.html>.

²³ See: <http://www.kormany.hu/en/prime-minister-s-office/news/national-consultation-on-immigration-to-begin>. Among the questions citizens are asked whether or not illegal immigrants should be detained and whether immigrants who are proven to be taking advantage of European regulations should be immediately expelled and whether they should be expected to work while in Hungary to defray the cost of accommodation and food.

²⁴ It may qualify as hate speech as per Recommendation No. R(97)20 of the Committee of Ministers (Council of Europe) to Member States on "Hate speech", available at: [http://www.coe.int/t/dghl/standardsetting/hrpolicy/Other_Committees/DH-LGBT_docs/CM_Rec\(97\)20_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/Other_Committees/DH-LGBT_docs/CM_Rec(97)20_en.pdf).

²⁵ See: <http://budapestbeacon.com/public-policy/hungarian-helsinki-committee-the-government-wants-national-consultation-camps>.

²⁶ See: http://hvg.hu/velemeney/20150430_Visszaeles_a_nemzeti_konzultacio_tobb_tar.

²⁷ Frans Timmermans, the First Vice-President of the European Commission Commissioner for Rule of Law and Charter of Fundamental Rights criticized the Hungarian government about the National Consultation on migration on his Facebook Page; MEPs of the European Parliament also challenged the survey. See: <https://euobserver.com/beyond-brussels/128513> etc.

²⁸ See: <http://www.unhcr.org/554cc16e9.html>, 8 May 2015.

²⁹ The Government has set up billboards reading: "If you come to Hungary, you cannot take away Hungarians' jobs."

but exclude others.³⁰ In a report on hate crimes,³¹ Háttér Society, Hungarian Helsinki Committee and the National and Ethnic Minority Rights Protection Office highlighted that the prevalence of racist and xenophobic attitudes, the legal atmosphere, weaknesses in the investigation process, lack of support for victims, difficulties with the collection of data and the lack of sensitivity training have proven to be the main challenges in fighting hate crimes in Hungary. The European Commission against Racism and Intolerance report released on 09 June 2015 criticized the refugee integration measures taken by the Government as ineffective and encouraged the authorities to run awareness-raising campaigns to promote a positive image of asylum-seekers and refugees and to ensure that the need for international protection is understood.³² Recently, the OSCE has also shared concerns about worrying expressions of anti-Semitism in public discourse and added that political leaders must take decisive action to counter anti-Semitism in Hungary.³³

Recommendations:

UNHCR recommends that the Government of Hungary:

- a. Respect international law and refrain from carrying out xenophobic campaigns; and
- b. Take effective measures, including by ensuring sufficient funding, to address discrimination and xenophobia, including against asylum-seekers and beneficiaries of international protection, in a meaningful and measurable manner.

Issue 3: Detention of asylum-seekers

Linked to 1st cycle UPR recommendations no. 95.25: “Reduce to the minimum possible administrative detention of migrants, asylum-seekers and refugees and only use it in exceptional cases (Mexico);” and no. 95.26: “Take all relevant measures to avoid prolongation of administrative detention of asylum-seekers during which the freedom of movement is considerably restricted (Czech Republic).”³⁴

The *Asylum Act* provides for extensive grounds for “asylum detention,” some of which are vaguely formulated.³⁵ The aim of detention is to generally ensure the availability of the applicant for the asylum procedure and to discourage economic migrants from abusing the

³⁰ See: National Identity, minorities and social conflicts – development of the attitudes of the Hungarian society between 1992 and 2014, Bori Simonovits in: TARKI, Report on the state of Society, page 413, available at: <http://www.tarki.hu/hu/publications/SR/2014/>.

³¹ Háttér Society, Hungarian Helsinki Committee and the National and Ethnic Minority Rights Protection Office, “Hate Crimes in Hungary – Problems, Recommendations, Good Practices,” 2014, available at: <http://helsinki.hu/wp-content/uploads/tanulmany.pdf>.

³² European Commission against Racism and Intolerance, “ECRI Report on Hungary: Fifth Monitoring Cycle,” 9 June 2015, available at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/HUN-CbC-V-2015-19-ENG.pdf>.

³³ OSCE, “Political leadership key to implementing zero-tolerance policy towards anti-Semitism in Hungary, say OSCE officials during joint visit,” 19 June 2015, available at: <http://www.osce.org/odihr/165361>.

³⁴ “Report of the Working Group on the Universal Periodic Review: Hungary,” A/HRC/18/17, 11 July 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/HUSession11.aspx>.

³⁵ E.g. no objective criteria is laid down in legislation to assess potential abuse by the applicant (“reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision”) for the correct application of Section 31/A (1) b) of the *Asylum Act*. Similarly, clear criteria is lacking to assess risk of absconding under Section 31/A (1) c) of the *Asylum Act* (“there are well-founded grounds for presuming that the person seeking recognition is delaying or frustrating the asylum procedure or presents a risk of absconding, in order to establish the data required for conducting the asylum procedure”).

asylum system. In practice, some 80 per cent of asylum-seekers were detained in 2012; 25 per cent in 2013; 11 per cent in 2014; and 2 per cent in January – June 2015. While the percentage of asylum-seekers detained has decreased, the absolute numbers of those detained has increased (except for 2015 so far). 1,266 asylum-seekers were detained in 2012; 1,825 in 2013; 4,829 in 2014; and 1,248 in January – June 2015. The reason for imposing less detention on asylum-seekers so far in 2015 is that the Office of Immigration and Nationality lacks: 1) the necessary human resources to proceed with the extremely bureaucratic administration of imposing detention;³⁶ and 2) sufficient capacity in detention facilities (currently 250, soon to be expanded).³⁷

The main problems related to the detention of asylum-seekers remain as follows:

Arbitrary asylum detention: In Hungary, there is a lack of clarity regarding who gets detained and who does not (and why). Neither professionals and experts nor foreigners subject to detention understand the rationale of a detention decision. UNHCR has observed in the past and recently that asylum-seekers from the same country with the same profile, (e.g. not having been in Hungary previously), are often treated arbitrarily, with some being accommodated in an open reception centre and others placed in a detention centre. When UNHCR asked the authorities about the parameters that serve as a basis for differentiation, the response was that the placement of asylum-seekers is a matter of whether there is a vacancy in detention or in reception facilities. Based on observations by UNHCR, it also appears that some nationalities are far more likely to be detained than others (e.g. Pakistanis and Kosovars tend to end up in detention, while Afghan, Somali and Syrian applicants are less likely to be detained). Furthermore, between September 2014 and late February 2015, exclusively families with children were detained but since March 2015, no families with children have been detained, while the applicable law remained unchanged. Furthermore, it appears that Dublin returnees generally tend to be detained upon return. In their cases, rather than assessing on an individual basis, the authorities (OIN) seem to take it for granted that they would abscond and not wait for the decision on their application, since they already once had left Hungary in an irregular manner.

Extensive use of detention: In its Concluding Observations on Hungary, the Committee against Torture emphasized the principle that “detention of asylum-seekers is used only in exceptional circumstances or as a last resort and then for the shortest possible time.”³⁸ According to Guideline 4.1 of UNHCR’s *Detention Guidelines*,³⁹ detention of asylum-seekers must be an exceptional measure. Unfortunately, the detention policy applied to asylum-seekers in Hungary follows a different approach. After its country mission in 2013, the UN Working Group on Arbitrary Detention expressed concerns about the “overuse of detention” in Hungary.⁴⁰

³⁶ See page 9 of EASO, “Description of the Hungarian Asylum System,” 4 June 2015, available at: <https://easo.europa.eu/wp-content/uploads/Description-of-the-Hungarian-asylum-system-18-May-final.pdf>.

³⁷ With the opening of the asylum detention facilities in Nyírbátor and Kiskunhalas. Information provided by OIN on 7 August 2015.

³⁸ UN Committee Against Torture (CAT), Conclusions and recommendations of the Committee against Torture: Hungary, 6 February 2007, CAT/C/HUN/CO/4, available at: <http://www.refworld.org/docid/45f6baaa2.html>.

³⁹ UN High Commissioner for Refugees (UNHCR), *UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-seekers and Alternatives to Detention*, 2012, available at: <http://www.unhcr.org/refworld/docid/503489533b8.html>.

⁴⁰ See press release available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13817&LangID=E>.

Detention is not applied for the shortest possible time: The *Asylum Act* provides that detention can be prolonged for 60 days at a time, which is an excessively long period. This is not in line with international principles – also enshrined in the *recast Reception Conditions Directive*⁴¹ – whereby applicants should only be detained for as short a period of time as possible. Practice so far shows that the asylum authority, for practical reasons, automatically requests the court to prolong detention for the maximum period of 60 days (in order to spare paper work relevant to the process).

Decisions ordering detention are not individualized: According to the law, asylum detention should be applied in a differentiated, individualized manner, as a last resort when no other means can ensure the legal aim.⁴² However, the wording of administrative decisions imposing (or prolonging) detention is identical, with only the personal identification details being changed. Thus, the justification does not elaborate on the particular reason why, in a given individual case, it is necessary and reasonable to impose detention. Nor is any information provided on exactly why, in his/her case, detention is the only way to ensure availability in the asylum procedure.

Ineffective judicial review: The review of the lawfulness of asylum detention is channelled through an automatic judicial process performed every 60 days by local courts, generally by criminal law judges in a manner and spirit normally applied in criminal cases. According to the observations of UNHCR and its NGO implementing partner, the court customarily renders decisions for groups of 5 to 15 detainees within some 30 minutes, allocating less than 3 minutes per case. Due consideration, in an individualized manner, of whether detention is still justified in a given case is not possible in such a hearing. In 2012, the Supreme Court (Kuria) did set up a Working Group to analyse the local courts' practice on reviewing and prolonging detention.⁴³ It found that out of the 8,000 decisions analysed, in only three cases was detention discontinued. In the remainder, the court simply rubberstamped OIN's proposals for prolongation.⁴⁴ The Kuria therefore explicitly stated that the court review is ineffective. Hungarian detention cases decided upon by the European Court of Human Rights (ECtHR)⁴⁵ are illustrative in this respect, raising the question of the ineffectiveness of legal remedies in law and practice in cases of detained asylum-seekers. The decision by ECtHR in the *Lokpo et Touré v. Hungary* case is a prime example.⁴⁶ Based on the findings of the survey, the Kuria issued guidance in 2013 for local courts on how to review and prolong detention, but implementation of these changes has been slow.⁴⁷

⁴¹ Article 9(1) of the *recast Reception Conditions Directive* applies, available at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2013:180:SOM:EN:HTML>.

⁴² See Section 31/A(2) of the *Asylum Act*.

⁴³ See: http://www.lb.hu/sites/default/files/joggyak/idegenrendeszeti_osszefoglalo_velemen_y_kuria.pdf.

⁴⁴ References to such a practice have been included in the press release by the UN WG on Arbitrary Detention, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13816&LangID=E>.

⁴⁵ *Al-Tayyar Abdelhakim v. Hungary*, Application no. 13058/11, Council of Europe: European Court of Human Rights, 23 October 2012, available at: <http://www.refworld.org/docid/512639e32.html>; *Hendrin Ali Said and Aras Ali Said v. Hungary*, Application no. 13457/11, Council of Europe: European Court of Human Rights, 23 October 2012, available at: <http://www.refworld.org/docid/51263aa32.html>.

⁴⁶ *Lokpo et Touré v. Hungary*, Application no. 10816/10, Council of Europe: European Court of Human Rights, 20 September 2011, available at: <http://www.refworld.org/docid/4e8ac6652.html>.

⁴⁷ Adopted by the Curia's College for Administrative and Labour Law Cases on 23 September 2013, available in Hungarian at: http://www.lb.hu/sites/default/files/joggyak/idegenrendeszeti_osszefoglalo_velemen_y_kuria.pdf.

Lack of effective legal remedy: No effective legal remedy is available against a decision imposing detention on asylum-seekers.⁴⁸ An objection can be submitted against such a decision, but the law fails to specify the timeframe and the addressee who is supposed to deal with the objection.⁴⁹ Furthermore, the objection is not permitted to question the legal basis of a detention order. Thus, there is no effective means to challenge a detention order.⁵⁰

Problematic age assessment and the detention of age disputed minors: UNHCR found many age disputed asylum-seekers in detention in Hungary. UASC asylum-seekers explained to UNHCR in August 2013 that they were transported from Nyírbátor all the way to Békéscsaba (184 km) for an examination to establish their ages. Each of the examinations took approximately 5 minutes with the doctor merely glancing at the boys, without any meaningful communication (as there was no interpreter present) and without any physical examination. For one of the boys who claimed to be 16 and actually appeared to be that age, it took 17 days for the authorities to organize such an examination, despite having received the request from a lawyer. The minor had to endure even more time in detention until the outcome of the examination became available for the authorities. This is in spite of legal obligations stipulating that the principle of the best interests of the child should be respected,⁵¹ as well as the principle of *in dubio pro minor* and preferential treatment for “persons with special needs,”⁵² including UASC.

According to the Working Group of the Kuria, in case of doubt, the judge may deliberate on the validity of the medical opinion concerning the age of an asylum-seeker, as the opinion is inexact due to the lack of established medical protocols. In order to qualify an opinion as an official medical expert opinion, the detailed justification would need to contain the contribution of multidisciplinary experts such as anthropologists and psychologists.⁵³ However, the Working Group of the Kuria found that judges often do not question the validity of the medical opinions even if they perceive any discrepancy between the age specified by the medical opinion and the appearance of the young detainee standing in front of them. This results in an automatic prolongation of detention.

Detention of families with children for up to 30 days:⁵⁴ The law stipulates that families with children can only be detained as a last resort.⁵⁵ In 2014, 1,230 asylum-seeking families with children were detained. From September 2014 till late February 2015, exclusively families with children were detained in Hungary (since March 2015, no families with children have

⁴⁸ Section 31/C(2) of the *Asylum Act*.

⁴⁹ Unlike Section 31 (2) of the *Asylum Act* providing a legal remedy against the reduction/withdrawal of reception conditions.

⁵⁰ The UN WG on Arbitrary Detention has also expressed concerns about the lack of effective legal remedy against detention, see press release available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13816&LangID=E>.

⁵¹ Section 4 (1) of the *Asylum Act*.

⁵² Section 4 (3) of the *Asylum Act*; Section 2 (k) defines the term “person with special needs.”

⁵³ Summary Report of the Working Group analysing the alien policing legal practice (adopted on 30 May 2013 and approved on 23 September 2013 by the Kuria and the Administrative and Employment Council of the Kuria), available at:

http://www.lb.hu/sites/default/files/joggyak/idegenrendeszeti_osszefoglalo_velemenye_kuria.pdf.

⁵⁴ Section 31/A (7) of the *Asylum Act*.

⁵⁵ Section 56 (3) of the *Act II of 2007 on Third Country Nationals' Entry and Stay* reads: “With respect to the best interest of the child primarily, detention can only be ordered in respect of a family with minor children as a last resort for a maximum term of thirty days provided that the alien control authority has ascertained that the purpose of ordering the detention may not be accomplished by way of the application of the provisions of Section 48 (2) or Section 62 (1) of this Act.”

been detained).⁵⁶ Besides the non-compatibility with international treaty body case law,⁵⁷ the legal ground of the current Hungarian provision of law is questionable as not much can be accomplished in the asylum procedure in thirty days.⁵⁸ The Parliamentary Commissioner for Fundamental Rights⁵⁹ found that the detention of children with their families amounts to discrimination based on family status as UASC are not subject to detention in Hungary.⁶⁰ It also found that child-friendly conditions were not provided in detention in Debrecen, which hosted exclusively families with children.⁶¹

Inhuman and degrading treatment: According to asylum-seekers, abuse and harassment by guards in detention centres is not unusual. Complaints about brutality have been shared with UNHCR and NGOs, with particular guards and shifts allegedly provoking detainees and then beating them up and/or harassing them verbally. Furthermore, the Parliamentary Commissioner for Fundamental Rights found⁶² that the manner in which clothes search and search prior to initial medical check-up were conducted amounted to degrading treatment as it is not conducted by a same sex guard. In addition, female detainees were made to undress in front of male armed guards and their children and the armed guards were present during the medical check-up.

The Parliamentary Commissioner also found a gap in legislation whereby the current law governing asylum detention does not set a maximum time period applicable to isolation for the purposes of medical check-up. Furthermore, the law lacks details concerning rules on solitary confinement in the event of violence or misbehaviour (e.g. who is responsible for ordering solitary confinement, the age limit of detainees against whom solitary confinement can be ordered, registration requirements etc.). Accordingly, the Parliamentary Commissioner found that such gaps in legislation jeopardize the prohibition of torture, inhuman and degrading treatment and punishment.

The systemic use of leashes and handcuffs may amount to inhuman and degrading treatment. When escorted from the detention facility to court for hearings, or on other outings (to the hospital, bank or post office), detainees are handcuffed and escorted on leashes, which are normally used for the accused in criminal proceedings.⁶³ Treating asylum-seekers who only

⁵⁶ Popov c. France, Requête nos 39472/07 et 39474/07, Council of Europe: European Court of Human Rights, 19 January 2012, available at: <http://www.refworld.org/docid/4f1990b22.html>.

⁵⁷ See: *Popov c. France*, Requête nos 39472/07 et 39474/07, Council of Europe: European Court of Human Rights, 19 January 2012, available at: <http://www.refworld.org/docid/4f1990b22.html>.

⁵⁸ For example, the Hungarian Helsinki Committee reported the 22-day of detention of a Roma family from Kosovo with three minor children (aged 2, 6 and 10) in Békéscsaba in July 2013, see: http://helsinki.hu/wp-content/uploads/MHB-Jelentes-latogatasrol-Bcsaba_Nagyfa-20130718_19_final.pdf.

⁵⁹ Before 1 January 2012: Parliamentary Commissioner for Human Rights, *Act CXI of 2011*, available at: www.obh.hu.

⁶⁰ See report 4019/2012 of the Parliamentary Commissioner for Human Rights, available at: <http://www.ajbh.hu/documents/14315/131278/REPORT+-+Temporary+Detention+Facility+in+B%C3%A9k%C3%A9scsaba/31afb9fc-cb20-4972-b8ef-87e45ef5a22c;jsessionid=7C57064B36ABDDF3C3BFCADC55AADF8?version=1.1>.

⁶¹ See report AJB 366/2015 of the Parliamentary Commissioner for Human Rights in its capacity of National Preventive Mechanism under the OPCAT, available (in Hungarian) at: http://www.ajbh.hu/documents/14315/1887891/Report+on+monitoring+the+Debrecen+Guarded+Refugee+Reception+Centre++366_2015.pdf/4a45943e-f0f6-42d6-acc5-21d050e81f2f.

⁶² *Ibid.*

⁶³ See the Chapter on Hungary in UNHCR's regional AGD report 2010: "Being a refugee" available at: <http://www.unhcr-centraleurope.org/pdf/what-we-do/age-gender-and-diversity-mainstreaming/being-a-refugee-2010.html>. This practice prevails in 2015 too.

committed a minor offence of unlawful entry or stay as criminal suspects does not comply with the standards of the ECtHR in *Saadi v UK*.⁶⁴

Alternatives to detention rarely applied in practice: As of July 2013, an alternative to detention is stipulated by law, in the form of asylum bail. However, in practice it has rarely been applied.⁶⁵ Furthermore, there is a lack of screening and early identification of vulnerable groups, which leads to detention of persons belonging to these groups. There is a need to set up alternatives to detention that can meet the specific needs of these groups (e.g. pregnant women found in detention).

Conditions of detention: Conditions of detention in the short-term police detention centre close to the border with Serbia (Szeged) are worrisome, in particular as a result of overcrowding in the prefab, “cage-like” cells, lack of access to sanitation/hygiene upon arrival, etc. In particular, the lack of appropriate interpretation services in detention is a concern, leading to lack of information and increasing tension and stress level among both the detainees and guards. In order to cover the costs of interpretation services, the Government is waiting for the AMIF to become available.

While, on a positive note, the Government has set up the Hungarian *OPCAT* National Prevention Mechanism Department (Office of the Commissioner for Fundamental Rights) and it first visited the OIN asylum detention centre in Debrecen (which at the time exclusively hosted asylum-seeking families with children), there is a need to reinforce the capacities of the Public Prosecutor Office, which is the first line controller of immigration detention conditions.

Recommendations:

UNHCR recommends that the Government of Hungary:

- a. Ensure that the detention of asylum-seekers is applied in a transparent, comprehensible and predictable manner, and only in exceptional cases as a last resort and then for the shortest possible time, in an individualized manner;
- b. Set up appropriate screening and early identification mechanisms for vulnerable persons to avoid their detention;
- c. Set up new alternatives to detention and increase their use, in particular for vulnerable groups;
- d. Refrain from detaining children in all cases;
- e. Ensure detainees are informed in a language they understand of the reasons for their detention;
- f. Ensure that detainees are provided with an effective legal remedy and that they are able to effectively challenge detention decisions;

⁶⁴ In *Saadi v. United Kingdom*, 13229/03, Council of Europe: European Court of Human Rights, 29 January 2008, available at: <http://www.refworld.org/docid/47a074302.html>, ECtHR stipulated that “to avoid being branded as arbitrary, ... detention [under Article 5 § 1 (f)] must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorized entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that <the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country> *emphasis added* [see Amuur, § 43]; and the length of the detention should not exceed that reasonably required for the purpose pursued.”

⁶⁵ In 2014, bail was authorized and deposited for a total of 116 cases and for 32 cases in January – April 2015.

- g. Conduct age assessment using a multidisciplinary approach that draws on relevant expertise;⁶⁶
- h. Set up a screening mechanism to detect vulnerable cases and asylum-seekers with specific needs; and
- i. Improve conditions in the short-term police detention facility in Szeged and allocate the necessary financial resources for interpretation, even before AMIF becomes available.

Additional protection challenges

Issue 4: Best Interests Assessment and Determination

Although the *Asylum Act* contains a reference to the best interests of the child,⁶⁷ law and policies do not define how the principle should be applied in practice and there is no formal, individualized Best Interest Determination (BID) procedure in place. Therefore, there is a high risk that the authorities responsible for protecting the child’s best interests might act arbitrarily in the absence of procedural guidelines, based on what they deem appropriate.⁶⁸ With respect to the development of a BID mechanism, consultations started with the Hungarian Government in 2012, as a result of which a common understanding on BID and recommendations for its practical implementation in Hungary have been developed. UNHCR welcomes the Ministry of Human Resources’ inclusion of UNHCR and other stakeholders in consultations relating to the reception, legal status and provision of durable solutions for unaccompanied foreign children, and the cooperation extended in its efforts to establish a national BID mechanism. Yet the fact that consultations do not take place on a regular basis hinders efficient communication flow between the stakeholders and renders systematic discussion of upcoming prevailing issues difficult.

Recommendation:

UNHCR recommends that the Government of Hungary:

- a. Establish a fully-fledged national Best Interests Procedure and ensure that Best Interests Assessments and Best Interests Determinations are carried out systematically.

Issue 5: Appointment of a child protection guardian

The effective and timely access by UASC asylum-seekers to competent, meaningful guardianship – by guardians trained on refugee issues – has been hindered by a number of factors so significantly that it undermines the effectiveness of guardianship as a child protection mechanism in Hungary. As a result of legal amendments, a child protection

⁶⁶ UN High Commissioner for Refugees (UNHCR), “Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe,” October 2014, page 34, available at: <http://www.refworld.org/docid/5423da264.html>.

⁶⁷ *Asylum Act* Section 4 (1): “When implementing the provisions of the present Act, the best interests and rights of the child shall be a primary consideration.”

⁶⁸ For further information please refer to IOM report: “Overview of guardianship systems for unaccompanied minor asylum-seekers in Central Europe SYNTHESIS REPORT,” 2012, available at: http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=41_7&products_id=827.

guardian has taken over the role of a temporary guardian as of 1 January 2014.⁶⁹ However, the appointment process of the child protection guardian is excessively prolonged and according to new rules, staff members of the child protection institutions/homes can no longer be appointed as guardians. While a child protection guardian has to take full responsibility for a child, the compensation package (status and salary, etc.) received in return is not considered attractive among them. The capacity of the Pest County Department of Child Protection Services (TEGYESZ) – which became responsible to carry out guardianship tasks for children accommodated in Fót – was not and is still not sufficient to cover this new task.

Thus, the appointment of a guardian may take approximately three to six months, during which time most asylum-seeking children abandon the procedure and leave the country in an irregular manner (often with the help of smugglers and/or traffickers). This practice clearly contravenes Section 35(7) of the *Asylum Act*, which stipulates that asylum applications submitted by UASC should be handled as a matter of priority as no refugee status determination interview can be conducted without an appointed guardian. As a result, the Office of Immigration and Nationality cannot even start the asylum procedure for UASC for several months. Even if a guardian is assigned, the quality of their contribution is uncertain due to lack of capacity building for them with a focus on separated asylum-seeking children. NGOs active in the field offer occasional, thematic training, but the lack of commitment and willingness on behalf of the guardians to participate in them has hindered its effectiveness.⁷⁰ Moreover, no forms of guardianship supervision, monitoring, evaluation and quality assurance are in place in Hungary.⁷¹

Recommendations:

UNHCR recommends that the Government of Hungary:

- a. Ensure timely, effective access by UASC asylum-seekers to competent, meaningful guardianship as stipulated by Articles 20 and 22 of the *Convention on the Rights of the Child*;
- b. Provide the Guardianship Agency with sufficient human resources to carry out its responsibilities defined by law in order to better represent the best interests of UASC; and
- c. Provide systematic training for child protection guardians and establishes forms of guardianship quality control through supervision, monitoring and evaluation.

Issue 6: Access to family reunification

UNHCR wishes to note that a number of problematic aspects with regard to the applicable law and procedure for family reunification in Hungary remain and concerted action is required by the Government. While the *Asylum Act*⁷² and the *Aliens Act*⁷³ specifically foresee

⁶⁹ Amendment of Sections 11 and 87 of the *Child Protection Act*. The child protection guardian is expected to represent the interests of the child, promote the enjoyment of their rights, become familiar with and mediate him/her to the care institution or authorities. The child protection guardian is also to carry out the legal representation of the child and initiate procedures in cases defined by law.

⁷⁰ International Organization for Migration report on *Overview of guardianship systems for unaccompanied minor asylum-seekers in Central Europe Synthesis Report*, 2012, see footnote 9, available at: http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=41_7&products_id=827.

⁷¹ *Ibid.*

⁷² Sections 2 (j) and 7 (2) of the *Asylum Act*.

and allow for family reunification of refugees, in practice, this is often beyond their reach. This is particularly true for people (e.g. Somalis) whose national passports are not accepted by the European Union and therefore cannot be issued a Hungarian visa. Since 2011, people with subsidiary protection no longer have access to family reunification under the more favourable clauses covering refugees. Moreover, the concept of “family” in Hungary is restricted to only the most immediate family members.

Even when criteria for family reunification are met, there is still space for improvements in access to information regarding the procedures, the application process and the procedures’ operation in practice. As one example, the Kuria (the highest court of Hungary)⁷⁴ determined that due to the failure of the Hungarian consular services,⁷⁵ a group of applicants – family members of a former unaccompanied child – could not submit an application for family reunification within the six months deadline set by law for preferential treatment. Among others, the Kuria established that the omission of the Consulate might give reasons to have the claim examined as if it had been submitted within the six-month deadline since the failure to comply with that deadline was not attributable to the applicant.⁷⁶ This decision highlighted the substantial systemic problems relevant to the application process, which have been jeopardizing family reunification in Hungary.

Recommendations:

UNHCR recommends that the Government of Hungary:

- a. Ensure that beneficiaries of international protection have full and effective enjoyment of their right to family reunification by improving access to information regarding the procedures (application and operation in practice);
- b. Apply the same favourable rules for family reunification to beneficiaries of subsidiary protection as to refugees;
- c. Elaborate Standard Operating Procedures for consulate officials on the proper receiving and processing of applications for family reunification in a timely manner, taking into account the specific needs of refugees; and
- d. Apply broader criteria in identifying family members who can reside in the country as a unit or, if separated, who can be admitted into the country for purposes of family reunification.

Issue 7: Access to health care

Beneficiaries of international protection face extreme difficulties in accessing health insurance entitlements. Asylum-seekers are only entitled to basic (family doctor) and emergency health care services.⁷⁷ If they are not covered by any social security system,⁷⁸

⁷³ Section 13 (1) e)-g) of the *Aliens Act (Act II of 2007)* and Section 57 of *Government Decree 114/2007. (V.24.)* on the implementation of the *Aliens Act*.

⁷⁴ *Z.K. v. Office of Immigration and Nationality*: ref.no. 21.K.20.059/2011/6., Kfv. II. 37.374/2011/8; 10 February 2011 (Fejér County Court) and 9 May 2012 (Kuria).

⁷⁵ The authorities unnecessarily delayed and suspended the procedure by first not registering the application properly and then by issuing calls to complete the files.

⁷⁶ The Kuria emphasized that the Consulate is not entitled to reject an application because of that being incomplete. Thus, the application should have been examined under the preferential conditions foreseen for the family reunification of refugees initiated within the six-month deadline.

⁷⁷ Sections 26-28 of *Government Decree 301/2007.(XI.9.)*.

⁷⁸ *Government Decree 301/2007 (XI.9.)* on the implementation of the *Asylum Act*.

refugees are entitled to health care services⁷⁹ for one year from the date the decision on their recognition becomes legally binding. Refugees who are enrolled in the State-run integration programme,⁸⁰ cannot settle their health insurance entitlement through “being in need” because their monthly income exceeds the threshold of being in need.⁸¹ In this case, they could sign a contract with the National Health Insurance Fund.⁸² However, to do so, they have to have a continuously registered permanent address for at least one year.⁸³ This precondition represents an unduly strict requirement for refugees who have often not even been within the country for a year. Without having a registered residence for one year, refugees do not account as “domestic” persons and can only cover their health insurance for around 165 EUR monthly. The cost of health care service is excessive taking into account that the maximum amount of integration support is 295 EUR/month. As a result, the majority of refugees cannot access health services.

Refugees complain about insufficient medical services⁸⁴ in terms of lack of interpretation services and lack of information on access to health services. Psychological services for refugees are not provided for by law. Psycho-social rehabilitation for torture victims and persons with PTSD is not covered by the Government. Currently, this service is provided on a limited basis by the NGO Cordelia Foundation.⁸⁵ Medical assistance for seriously mentally challenged people remains unavailable. Without access to interpretation and translation services, refugees are often unable to communicate with health professionals and be referred to the right treatment. Refugees only had access to interpretation for health-related issues in Debrecen, for which funding ended at the end of June 2015. Complaints about xenophobic or discriminatory attitudes among doctors and other staff have been reported to UNHCR. Access to dental treatment also remains a problem.⁸⁶ Transportation is not arranged for outpatient treatment in a hospital or other specialized medical institute (e.g. kidney dialysis), and refugees are expected to cover the cost of public transportation or taxi fees.⁸⁷ Access to mid-wife services is not available for mothers in the reception facilities Debrecen and Vámoszabadi.

Recommendations:

UNHCR recommends that the Government of Hungary:

⁷⁹ In accordance with Sections 26-28 of the *Decree*.

⁸⁰ Refugees not enrolled in the state integration programme are entitled to free health services, if their income is not more than the threshold for people in need (42750/34200 HUF [around 137/110 EUR] depending on whether single or in family).

⁸¹ According to Section 54 (1) of *Act III on Social Assistance* the Government agency establishes social neediness in order to acquire health services of a person, in whose family the monthly income per person does not exceed 34,200 HUF (110 EUR), in case (s)he is single, the monthly income does not exceed 42,750 HUF (137 EUR).

⁸² The cost of which is currently around 22 EUR/month.

⁸³ Section 39 (2) of the Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services: That domestic person, who is not ensured and who is not entitled to health services through point a)-p) and s)-w) neither Section 13, shall pay for the health service. 3) Another condition of the obligation described in Section is 2) that the natural person has a registered residence without interruption prior to their registration.

⁸⁴ Many residents reported that special medical needs were not met, especially of those asylum-seekers who are only entitled to emergency health care services.

⁸⁵ Funding for these services remains insecure after 30 June 2015. The services do not cover all reception centres and no services are available in Balassagyarmat and Vámoszabadi.

⁸⁶ Especially for those accommodated in Debrecen and Balassagyarmat.

⁸⁷ With the exception of the reception facility in Vámoszabadi where camp management organizes transport to hospitals.

- a. Provide targeted medical and psychosocial care to asylum-seekers and refugees in the reception facilities, including access to interpretation; and
- b. Ensure that all beneficiaries of international protection can have effective access to free health services in practice and that access to health care and services in Hungary is ensured by law and in practice, fully taking into account the special circumstances and needs of refugees.

Issue 8: Prevention of Statelessness

UNHCR wishes to note with concern that although domestic legislation on nationality includes some safeguards against statelessness at birth, several gaps remain. Currently, the *Act on Hungarian Citizenship* contains a safeguard against statelessness for children born stateless in the country to stateless parents with domicile in Hungary. Children born stateless because their parents are unable to pass on their nationality may acquire Hungarian nationality through a declaration if the child had domicile in the country at the time of birth and has had five years of domicile in the country prior to the declaration. Children born stateless who do not have domicile in the country or whose stateless parents are without domicile will remain stateless because the current safeguards in the law do not address their situation.

Recommendation:

UNHCR recommends that the Government of Hungary:

- a. Ensure that the *Act on Hungarian Citizenship* provides adequate safeguards against statelessness at birth, in line with the *1961 Convention on the Reduction of Statelessness*.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
September 2015**

ANNEX

Excerpts of Recommendations from the 1st cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

HUNGARY

We would like to bring your attention to the following excerpts from the 1st cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Hungary.

I. Universal Periodic Review

Recommendation ⁸⁸	Recommending State/s	Position ⁸⁹
Asylum		
94.31. Establish and implement a comprehensive integration strategy for an early-stage integration of migrants, refugees and asylum-seekers.	Poland	Supported
94.111. Proceed to forced expulsions only in strict compliance with international and regional standards	Switzerland	Supported
94.112. Improve the living conditions of asylum-seekers.	Islamic Republic of Iran	Supported
94.113. Step up efforts directed towards the improvement of conditions and treatments of asylum-seekers and refugees.	Belarus	Supported
95.27. Establish adequate mechanisms to identify potential asylum-seekers in border procedures; undertake measures aimed at avoiding prolongation of administrative detention of asylum-seekers and at	Brazil	Noted ⁹⁰

⁸⁸ All recommendations made to Hungary during its 1st cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review: Hungary," A/HRC/18/17, 11 July 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/HUSession11.aspx>.

⁸⁹ Hungary's views and replies can be found in the Addendum, A/HRC/18/17/Add.1, 14 September 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/HUSession11.aspx>.

⁹⁰ Addendum 95.27: "For the first part of the recommendation: The Hungarian Government firmly believes that adequate mechanisms are in place in Hungary to identify potential asylum-seekers in border procedures. According to the Act on the Entry and Stay of Third Country Nationals (Act II of 2007) in Hungary escorting back at the border and return cannot be ordered and carried out to a country which cannot be considered as a safe country of origin or a safe third country (in accordance with the principle of non-refoulement). Conformity with this principle and access to the asylum procedure is regularly monitored by the Hungarian Helsinki Committee, a non-governmental organization in accordance with a tripartite border monitoring agreement between the Hungarian Police, the UNHCR Regional Representation in Central Europe and the Committee. Third country nationals have the right to apply for asylum at any time during their presence in Hungary and legal provisions ensure that their application is forwarded to the competent authority without delay. For the second part: see the answers regarding recommendations 95.25 and 26.

For the third part: The Government of Hungary is constantly striving to ameliorate the living conditions of asylum seekers and refugees. It is worth noting that persons granted international protection in Hungary (refugees and beneficiaries of subsidiary protection) enjoy the same rights as Hungarian nationals with a few exceptions, and also receive special benefits and support. The living conditions provided for asylum seekers comply with the relevant EU legislation, the Reception Conditions Directive (2003/9/EC). Furthermore the Ministry of Interior supports projects aiming to better the living conditions of both persons granted international protection and asylum seekers using the sources of the European Refugee Fund to complement national actions."

improving the living conditions and treatment of asylum-seekers and refugees.		
95.28. Recognize and guarantee the human rights of all foreigners, independent and regardless of their migratory status.	Ecuador	Noted ⁹¹
Detention		
95.25. Reduce to the minimum possible administrative detention of migrants, asylum-seekers and refugees, and only use it in exceptional cases.	Mexico	Noted ⁹²
95.26. Take all relevant measures to avoid prolongation of administrative detention of asylum-seekers during which the freedom of movement is considerably restricted.	Czech Republic	Noted ⁹³
Racism, xenophobia and hate crimes		
94.29. Establish as soon as possible a plan of action to prevent racist attacks, so that members of vulnerable groups, including Roma, can live in safety and dignity	Switzerland	Supported
94.44. Intensify measures to tackle extremism and discrimination against religious and ethnic minority groups, including the Roma people	Australia	Supported
94.45. Continue to take necessary measures to combat racism and hate crimes	Palestine	Supported
94.46. Take effective measures to curb racial hatred and discrimination against the Roma population	Bangladesh	Supported
94.47. Take concrete measures to prevent and combat violence against	Republic of Korea	Supported

⁹¹ Addendum 95.28: “The basic guarantee of the respect of the human rights of foreigners is in the Constitution of Hungary that requires respect of human rights of all persons regardless of their nationality. Furthermore the EU acquis (first and foremost the EU Charter of Fundamental Rights) and the international human rights instruments acceded to by Hungary (such as the European Convention of Human Rights and the International Covenant on Civil and Political Rights) also guarantee human rights to all persons therefore these rights are granted by Hungary to all persons regardless of their nationality.

Respect for human rights is ensured at all stages of the asylum and the aliens policing procedure. Special rules are relevant to the procedures and the reception of persons with special needs providing more favourable treatment for them. Hungary is one of those few Member States of the European Union that provides protection in the form of a separate, autonomous legal status for both stateless persons and victims of trafficking while detailed rules provide protection for unaccompanied minors – with this setting an example for other countries.”

⁹² Addendum 95.25: “In compliance with the Return Directive (2008/115/EC) the Act on the Entry and Stay of Third Country Nationals in Hungary (Act II of 2007) as modified by the Act CXXXV of 2010 ensures that the administrative detention of third country nationals can only be ordered in the cases set out in national law and only unless other sufficient but less coercive measures can be applied effectively in a specific case The same Act stipulates that detention shall be immediately terminated when its ground ceases to exist, and its implementing decree provides that the authority ordering the detention shall endeavour to ensure that the detention is ordered for the shortest period possible. The legality of the detention is ensured by continuous judicial control: the aliens policing authority can only order detention for a maximum of 72 hours and the prolongation of the detention have to be decided by a court. In accordance with the Return Directive the term of administrative detention (of third country nationals) amounts to a maximum of 6 months that can be prolonged by the court with a maximum of 6 months in certain cases laid down in national law. Furthermore the Prosecution Service also has the possibility to examine the legality of the infringement of personal freedom. It is worth noting that persons recognised as refugees in Hungary cannot be placed in administrative detention.”

⁹³ Addendum 95.26: “The general rules of administrative detention are described above – those are also relevant in case of the detention of asylum seekers. However in their case detention is immediately terminated where the person concerned is granted international protection as its legal basis and its aim is extinguished. Besides the general guarantees the aim that the administrative detention of asylum seekers is reduced to the shortest period possible is ensured by the provision that requires the prioritisation of the examination of the applications of international protection lodged by detained persons. Where the reason of the detention is the so-called Dublin procedure (according to Regulation 343/2003/EC) the Hungarian authority always requests an urgent reply in order to speed up the procedure. In order to avoid the unnecessary detention of asylum seekers the Hungarian law stipulates that an asylum seeker shall not be held in detention for the sole reason that he/she is an asylum seeker.”

members of other minorities and vulnerable groups, especially racially motivated hate crimes against and discrimination of the Roma and to promote their integration into society		
94.53. Make efforts to actively combat homophobic, anti-Semitic and anti Roma rhetoric, including by ensuring law enforcement and judicial authorities are made aware of guidelines on identifying and investigating racially motivated crime	United Kingdom	Supported
94.54. Strengthen the implementation of non-discrimination and hate crime legislation by continuing to monitor incidents; by ensuring that racially motivated violence is fully and effectively investigated; and by implementing measures to encourage Roma and other victims to report hate crimes and to ensure their protection from reprisal when they do	Thailand	Supported
94.55. Continue its efforts to achieve full social integration of minorities, especially the Roma and take urgent measures to combat and prevent racist incidents and hate crimes	Uruguay	Supported
94.81. Ensure that racially motivated violence and other hate crimes are fully and effectively investigated and that those responsible are prosecuted under the laws providing for sanctions which reflect the gravity of the human rights abuses	Indonesia	Supported
94.82. Introduce professional training, capacity-building and cooperation for law enforcement and judicial authorities to identify and address racially motivated crimes	Norway	Supported
94.83. Ensure that victims of hate crimes have access to assistance and protection, including counselling and legal assistance	Austria	Supported
94.84. Ensure adequate training for the police and judiciary to promptly and effectively deal with hate crimes	Austria	Supported
94.85. Ensure training for police officers, prosecutors and judges in order to ensure that they can recognize, investigate and prosecute hate crimes	Canada	Supported
Ratification of OP-CAT		
94.1. Continue the process of ratifying OP-CAT	Czech Republic	Supported
94.2. Consider ratifying OP-CAT	Brazil	Supported
94.3. Ratify OP-CAT	Afghanistan	Supported
94.4. Proceed with the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without delay	Denmark	Supported
Trafficking in persons		
94.68. Rehabilitate and socially integrate women and girl victims of trafficking.	Republic of Iran	Supported
94.69. Investigate the causes of human trafficking and compile statistical data on the subject in order to find the most effective means to combat this phenomenon.	Honduras	Supported
94.70. Take further measures for the rehabilitation and social integration of women and girls who are victims of trafficking,	Azerbaijan	Supported
94.71. Strengthen measures for the rehabilitation and social integration of women and girls victims of trafficking.	Brazil	Supported
94.72. Increase efforts to effectively prevent trafficking in women and girls for sexual exploitation and domestic servitude and take measures for rehabilitation and social integration of women and girls who are victims of trafficking.	Republic of Moldova	Supported
94.73. Step up efforts to combat the trafficking in human beings, including the development of international cooperation with interested Governments, international organizations and NGOs.	Belarus	Supported

94.74. Consider the question of toughening the criminal liability for trafficking in human beings.	Belarus	Supported
94.75. Adopt measures to collect disaggregated data on the phenomenon of human trafficking and adopt and implement policies to address it.	Egypt	Supported
Discrimination		
94.12. Ensure that the cardinal laws, resulting from the new Fundamental Law, do not contain provisions that discriminate against people with disabilities, women and LGBT people.	United Kingdom of Great Britain and Northern Ireland	Supported
94.13. Strengthen hate crimes laws to protect against violence motivated by gender identity, sexual orientation and intolerance, and implement public awareness campaigns to include law enforcement officials and to combat intolerance.	United States of America	Supported
94.30. Introduce the necessary measures to ensure full respect for the rights of persons with disabilities and women, as well as persons with a different sexual orientation.	Switzerland	Supported
94.52. Confirm its commitment to equality and non-discrimination by explicitly prohibiting any discrimination on grounds of sexual orientation and gender identity.	France	Supported
95.10. Draft and implement a fully comprehensive law on gender equality and a law on combating gender violence.	Spain	Noted ⁹⁴
95.11. Adopt a comprehensive gender equality law that contains a definition of discrimination against women in accordance with CEDAW.	Netherlands	Noted ⁹⁵

II. Treaty Bodies

Committee on the Elimination of Discrimination against Women

Concluding Observations, 28 March 2013, [CEDAW/C/HUN/CO/7-8](#)

Violence against women

20. While welcoming the announcement of the State party that it would criminalize domestic violence in the Criminal Code, the Committee remains concerned about the lack of specific provisions related to other forms of violence, such as economic and psychological violence and stalking. The Committee notes the Act LXXII of 2009 on restraining orders related to violence between relatives and is concerned that such orders are not provided on a long-term basis and do not cover relationships between unmarried partners. The Committee is also concerned about the lack of information on the number of investigations, prosecutions and

⁹⁴ **Addendum 95.10:** “Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities protects women against discrimination, as well as guarantees their equal treatment.”

⁹⁵ **Addendum 95.11:** “This recommendation is not relevant since Hungarian legislation and judicial practice comply with international conventions, including CEDAW.”

convictions in cases of violence against women, as well as about inefficiencies of the redress mechanism for victims of violence. The Committee is also concerned about the insufficient number of shelters specifically dedicated to women victims of violence. The Committee is further concerned about the lack of information on different types of violence against women with disabilities, Roma women and older women, as well as the absence of specific measures to prevent violence against them. While noting the new provisions on rape in the Criminal Code, the Committee remains concerned about the use of violence, threats and coercion, which continue to be elements of the statutory definition of rape rather than the lack of voluntary consent by the victim. The Committee is further concerned that rape cases are underreported due to inadequate health care providers support to women victims of rape and provision of medical and forensic examination.

21. In accordance with its general recommendation No. 19 (1992) on violence against women and the recommendations contained in its previous concluding observations, the Committee urges the State party to:

- (a) Adopt a law on domestic violence and criminalize different types of violence against women, including economic and psychological violence and stalking;**
- (b) Amend its legislation concerning restraining orders with a view to providing adequate protection to victims in all types of cohabitation and extend the duration of restraining orders;**
- (c) Provide mandatory training to the legal profession on the strict application of legal provisions dealing with violence against women and train police officers on standardized procedures to deal with women victims of violence;**
- (d) Provide adequate assistance and protection to women victims of violence and their children, by increasing the number and capacity of State-supported shelters, specifically those dedicated to women victims of violence, and adequate geographical distribution, as well as by strengthening cooperation with and funding to NGOs providing shelter, assistance, support and rehabilitation to victims;**
- (e) Encourage women to report acts of domestic and sexual violence, by de-stigmatizing victims and raising awareness of the criminal nature of such acts;**
- (f) Collect statistical data on all forms of violence against women disaggregated by sex and age and on the relationship between the victims and the perpetrators in cases of domestic and sexual violence against women;**
- (g) Amend its Criminal Code to ensure that rape is defined on the basis of the lack of voluntary consent of the victim;**
- (h) Ensure appropriate and easily accessible health-care services for women victims of rape combined with immediate medical and forensic examination to collect the evidence needed for prosecution of perpetrators; and**
- (i) Ratify as soon as possible the Council of Europe Convention on preventing and combating violence against women and domestic violence.**

Trafficking and exploitation of prostitution

22. While noting the more comprehensive definition of trafficking in human beings in the Criminal Code and the adoption of a national mechanism for identification of victims, the Committee remains concerned about the insufficient number of shelters for women who are victims of trafficking and their limited access to justice and to adequate remedies, including compensation. The Committee observes with concern the information on stigmatization of the children victims of sexual exploitation. The Committee is also concerned about

discrimination against women sex workers and the lack of State party's action aimed at ensuring safe working conditions and exit programmes for those wishing to leave this activity.

23. The Committee recommends that the State party:

- (a) Consider including in its new strategy against trafficking in human beings for the period 2013–2016 measures to address the root causes of trafficking in women and girls;**
- (b) Increase the number of State-run temporary shelters for women victims of trafficking and enhance the responsiveness of territorial centres to their needs;**
- (c) Provide adequate assistance and protection to all women victims of trafficking in human beings, including by ensuring legal aid for victims and their reintegration into the society;**
- (d) Ensure that children in prostitution are not treated as offenders but as victims; and**
- (e) Adopt measures aimed at preventing discrimination against sex workers and ensure that legislation on their right to safe working conditions is guaranteed at national and local levels.**
- (f) Ratify the Council of Europe Convention on Action against Trafficking in Human Beings (2005).**

Disadvantaged groups of women

36. The Committee is deeply concerned that women belonging to ethnic minorities, such as Roma women and women with disabilities, are subjected to multiple discrimination and exclusion, in the absence of a comprehensive plan of action aimed at protecting their rights and improving their living conditions. It notes with concern that Roma women are disproportionately affected by poverty and a low standard of living and that they have limited access to health services, education and employment, especially in rural areas. The Committee is also concerned about the lack of disaggregated data on the situation of Roma women, women with disabilities, older women and refugee women. It also notes with concern that asylum-seeking and migrant women in reception centres receive inadequate assistance and are often confined to such centres for prolonged periods.

37. The Committee urges the State party to:

- (a) Include specific components in public policies and budgets to address the needs of women belonging to minorities, including Roma women and women with disabilities, in order to eliminate all forms of discrimination against them;**
- (b) Ensure that migrant and asylum-seeking women receive adequate assistance and are not subjected to prolonged administrative detention, and that they benefit from integration policies as well as family reunification measures; and**
- (c) Collect disaggregated data on the situation of women facing multiple forms of discrimination, in particular older women, women with disabilities, women belonging to minorities, including Roma women.**

Committee on the Rights of the Child

Concluding Observations, 14 October 2014, [CRC/C/HUN/CO/3-5](#)

Non-discrimination

The Committee notes that Act C of 2012 criminalizes acts that are racially motivated, and acknowledges programmes and projects to promote tolerance among schoolchildren. However, the Committee is concerned about the still-prevalent discriminatory attitude of the public against children in marginalized and disadvantaged situations —such as children with disabilities, children living in family forms other than heterosexual marriage, children belonging to ethnic or religious minorities, children with different sexual identities, and migrant and unaccompanied children — which has been exacerbated by the economic crisis and poverty. Furthermore, the Committee is concerned about the intrinsic gender stereotypes in the society, which have a significant negative effect on girls.

The Committee urges the State party to implement its laws that prohibit discrimination against categories of children in marginalized and disadvantaged situations, such as children with disabilities, children born out of wedlock or living with same - sex parents, children belonging to the Roma or Jewish minorities, migrant and unaccompanied children, lesbian , gay, bisexual, transgender or intersex children, and girls, and to take measures to educate the public about equality and non-discrimination and to expand its programmes in schools. The Committee further recommends that the State party include information in its next periodic report on measures and programmes relevant to the Convention and undertaken by the State party in follow-up to the Durban Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance as well as the outcome document adopted at the 2009 Durban Review Conference.

Asylum-seeking, unaccompanied and refugee children

The Committee welcomes the 2013 amendments to Act LXXX of 2007 on Asylum, which states that the detention of asylum seekers can only be ordered in exceptional cases as a measure of last resort. Nevertheless, the Committee is concerned about reports of the administrative detention of children, in particular in jails for aliens. The Committee is also concerned that the methods used for assessing the age of unaccompanied minors focus only on physical aspects.

The Committee recommends that the State party ensure that asylum - seeking, unaccompanied and migrant children are not administratively detained under any circumstance. It also recommends that age assessment tests take into account all aspects, including the psychological and environmental aspects, of the person under assessment.

Committee on the Rights of the Child

Concluding Observations, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (3 November 2014)

[CRC/C/OPAC/HUN/CO/1](https://www.unhcr.org/refugees/crc/c/opac/hun/co/1)

Data

The Committee regrets the lack of data on asylum-seeking, refugee and migrant children who enter the State party and may have been recruited or used in hostilities abroad.

The Committee recommends that the State party establish a mechanism for the comprehensive collection of data, disaggregated by sex, age, nationality and ethnic origin, on asylum-seeking, refugee and migrant children who enter the State party and may have been recruited or used in hostilities abroad.

Measures taken to protect the rights of child victims

The Committee notes that Act LXXX on Asylum of 2007 defines the notion of a “person in need of special treatment” and prioritizes asylum applications of unaccompanied children. Nevertheless, the Committee is concerned at the lack of mechanisms in place to identify at an early stage refugee, asylum-seeking and migrant children who enter the State party and may have been recruited or used in hostilities abroad.

The Committee recommends that the State party put in place mechanisms to identify at an early stage refugee, asylum-seeking and migrant children coming from countries where there are or have been armed conflicts and who may have been involved in hostilities. It also recommends that the State party ensure that the personnel responsible for such identification are trained in child ren’s rights, child protection and interviewing skills. The Committee further recommends that the State party develop protocols and specialized services to ensure that such children are provided with appropriate assistance for their physical and psychological recovery and social reintegration.

International cooperation

The Committee encourages the State party to continue to strengthen its cooperation with United Nations peacekeeping operations, the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees and the Special Representative of the Secretary-General for Children and Armed Conflict, and to explore increased cooperation with other relevant United Nations entities in the implementation of the Optional Protocol.

Committee on the Rights of the Child

Concluding Observations, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (3 November 2014)
[CRC/C/OPSC/HUN/CO/1](https://www.refworld.org/docid/5d4d4d4d.html)

Trafficking in children for sexual purposes

The Committee notes the efforts made by the State party to address trafficking in human beings by adopting strategies and legislative acts. It is concerned, however, that the State party remains a source and transit country for trafficking in women and girls for sexual exploitation. The Committee is also concerned about the overrepresentation of Roma children from care institutions among trafficking victims. Furthermore, the Committee is concerned that the State party does not provide adequate incentives for victims to participate voluntarily

in the process of investigation and prosecution of their traffickers, and regrets the lack of information on the use of witness protection programmes.

The Committee recommends that the State party take the measures necessary to conduct a comprehensive study to assess the causes, nature and extent of trafficking in children for sexual purposes, in particular in relation to Roma children. The Committee also recommends that the State party take measures to reduce and prevent trafficking, including by raising the awareness of professionals and the general public of the problem of trafficking in children through education, including media campaigns, and establishing cooperation with the authorities of the States to which children are trafficked. Furthermore, the Committee recommends that the State party take measures to provide adequate incentives and protection to victims of trafficking to participate in the process of investigation against traffickers.

Measures taken to protect the rights of child victims

The Committee welcomes the amendments made in 2012 to the Act on Crime Victim Support and State Compensation, which requires the State party to provide shelter for identified victims of trafficking and other crimes, including child victims. It is concerned, however, about the lack of information about the treatment and compensation provided to child victims of the crimes enumerated in the Optional Protocol.

The Committee strongly recommends that the State party ensure that children who are victims of offences under the Optional Protocol are always provided with adequate treatment and compensation, and with prompt information on how to obtain them. It also recommends that the State party ensure, through adequate legal provisions and regulations, that all child victims or witnesses of crimes are provided with the protection required in the Convention, and that the State party take fully into account the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

III. Special Procedures

Report of the Working Group on Arbitrary Detention – Mission to Hungary (23 September to 2 October 2013), 3 July 2014, [A/HRC/27/48/Add.4](#)

VI. Recommendations

130. On the basis of its findings, the Working Group makes the following recommendations to the Government:

(c) Asylum seekers and refugees should never be held in penal conditions. The State party should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages;

(d) Authorities should assure that decisions on expulsion, return or extradition are dealt with expeditiously and follow the due process of the law;

- (e) Authorities should adopt specific measures to raise awareness in order to promote tolerance and diversity in society and ensure that judges, magistrates, prosecutors and all law enforcement officials are trained to be able to detect hate and racially motivated crimes;
- (g) Authorities should take effective measures to ensure that the fundamental legal safeguards for persons detained by the police or Border Guard staff are respected, including access to a lawyer as well as to an independent medical examination or a doctor of their own choice, the right to receive information about their rights and their right to inform their relatives about their detention;
- (h) Detention of asylum seekers and other non-citizens should only be used in exceptional circumstances or as a last resort, and then only for the shortest possible time;
- (i) Authorities should also ensure that courts carry out a more effective judicial review of the detention of these groups. They should have an effective, independent and impartial review of decisions on expulsion, return or extradition;
- (k) The Government should intensify its efforts to combat discrimination against and ill-treatment of the Roma, persons belonging to national minorities and non-citizens by law enforcement officials, especially the police, including through the strict application of relevant legislation and regulations providing for sanctions, adequate training and instructions to be given to law enforcement bodies, and the sensitization of the judiciary;
- (l) All necessary measures should be taken to ensure that persons below 18 are only deprived of liberty as a last resort and that children, if detained, remain separated from adults and protected from any form of ill-treatment; and to implement alternative measures to deprivation of liberty, such as probation, community service and suspended sentences;
- (n) The Government should continue to be committed, via its Equal Treatment Authority, to implement and provide training on its policies of non-discrimination.