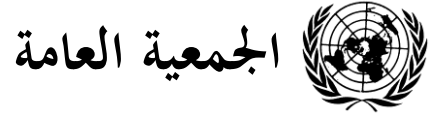


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## مجلس حقوق الإنسان

الدورة الرابعة والأربعون

15 حزيران/يونيه - 3 تموز/يوليه 2020

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### الزيارة إلى هنغاريا

#### تقرير المقرر الخاص المعني بحقوق الإنسان للمهاجرين\*\*

موجز

قام المقرر الخاص المعني بحقوق الإنسان للمهاجرين، فيليبي غونزاليس موراليس، بزيارة هنغاريا في الفترة من 10 إلى 17 تموز/يوليه 2019.

والتقى المقرر الخاص خلال زيارته بالسلطات الحكومية ذات الصلة، وممثلي السلطة القضائية، ووكالات الأمم المتحدة وصناديقها وبرامجها ذات الصلة، والوكالة الأوروبية للحدود وخفر السواحل، ومنظمات المجتمع المدني، فضلاً عن المهاجرين. وبالإضافة إلى الاجتماعات مع المحاورين المعنيين، أجرى المقرر الخاص زيارات إلى مرافق للمهاجرين. ومكنته الزيارات من إجراء مقابلات خاصة مع النساء والرجال والفتيات والفتيان المهاجرين الذين هم في أوضاع صعبة.

وكان الهدف الرئيسي من الزيارة هو تقييم القوانين والسياسات والممارسات القائمة فيما يتعلق بإدارة الهجرة في هنغاريا وأثرها على حقوق الإنسان للمهاجرين من جميع الفئات، بمن فيهم العمال المهاجرون وطالبو اللجوء والمهاجرون الذين هم في وضع غير قانوني.

\* يُعمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيُعمَّم باللغة التي قُدِّم بها فقط.

\*\* تُنق على نشر هذا التقرير بعد تاريخ النشر الاعتيادي بسبب ظروف خارجة عن إرادة الجهة التي قدمته.



الرجاء إعادة الاستعمال

GE.20-06577(A)



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## Annex

# Report of the Special Rapporteur on the human rights of migrants on his visit to Hungary

## I. Introduction

1. The Special Rapporteur on the human rights of migrants, Felipe González Morales, conducted an official visit to Hungary from 10 to 17 July 2019 at the invitation of the Government. The main objective of the visit was to assess existing laws, policies and practices in relation to the governance of migration in Hungary and their impact on the human rights of migrants of all categories, including migrant workers, asylum seekers and migrants in an irregular situation.

2. During his visit, the Special Rapporteur met with the relevant government authorities and representatives of the judiciary, relevant United Nations agencies, funds and programmes, the European Border and Coastguard Agency and civil society organizations, as well as migrants, asylum seekers and refugees. In Budapest, the Special Rapporteur had meetings with representatives of the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Ministry of the Interior, the Hungarian Police, the National Directorate-General for Aliens Policing (formerly the Immigration and Asylum Office), the Constitutional Court, the Budapest Administrative and Labour Law Court and the Budapest regional court. He also had a chance to exchange views with the Deputy State Secretary for Migration Challenges. In Fót, the Special Rapporteur met with representatives of the Ministry for Human Capacities, the Director of the Károly István Children's Centre and the Child Protection Guardian of unaccompanied migrant children. In Szeged, he met with the Vice-President of the regional court. Unfortunately, the Special Rapporteur did not have a chance to meet with representatives of the Office of the Commissioner for Fundamental Rights (Ombudsperson). Direct contacts were established with the Office of the Ombudsperson but the Special Rapporteur was informed that they were moving offices at the time of the visit.

3. In addition to meetings with relevant interlocutors, the Special Rapporteur conducted visits to facilities for migrants. These included the transit zones at Röszke and Tompa, the Károly István Children's Centre in Fót, the closed asylum reception facility in Nyírbátor, the open asylum reception centre in Vámosszabadi and facilities for migrants under the alien policing authorities in Nyírbátor and Győr. During these visits, the Special Rapporteur was able to hold private interviews with migrant women, men, girls and boys, many in difficult situations.

4. The Special Rapporteur expresses his appreciation for the cooperation extended to him by the Government prior to, throughout and after the visit. He was granted access to all the facilities as requested, conducted all the interviews with migrants and asylum seekers that he requested and had the opportunity to meet with all the relevant authorities. The Special Rapporteur thanks the relevant United Nations agencies, funds and programmes for their valuable support and assistance. He also extends his gratitude to every migrant who shared his or her personal testimony with him during the visit.

## II. Security and human rights

5. Hungary experienced a large influx of migrants between 2013 and 2016. Not all migrants who arrived in Hungary sought asylum, but at the peak in 2015, more than 175,000 asylum applications were submitted to the Hungarian immigration authorities. Following the influx of migrants into the country, an anti-migration discourse has become pervasive in both the official and public spheres in Hungary. Some high-level officials of the Government have openly and publicly used discriminatory rhetoric against migrants and asylum seekers. Journalists from local media have also helped to fuel xenophobia and an anti-migration attitude in the country. Despite all the challenges faced by Hungary in receiving migrants and asylum seekers, reports from local media outlets on the influx of migrants and asylum seekers seem to have overlooked the protection needs of these individuals and exaggerated security concerns. In campaigns run by the Government,

migrants have been associated with security threats, including terrorism, and the legitimate work done by civil society organizations promoting the human rights of migrants and asylum seekers has been portrayed as protecting migrants and helping them to commit illegal activities.

6. In response to the challenges in the governance of migration, the Government has been undertaking a security-oriented approach. That is reflected in a series of very restrictive measures adopted by the authorities in the governance of migration, including automatic detention for asylum seekers in very harsh, prison-like “transit zones” and increasing restrictions on the capacity of civil society to operate, express their views, monitor the situation of migrants and asylum seekers, and provide them with legal aid. Shortly before the visit by the Special Rapporteur, the former Immigration and Asylum Office changed its name to National Directorate-General for Aliens Policing and 50 per cent of its personnel became police officers and are now subject to the regulations in the Police Act. The change of name and affiliation of the immigration authorities has reaffirmed the security-oriented approach.

### **III. Normative and institutional framework for the protection of the human rights of migrants**

#### **A. International legal framework**

7. Hungary is party to the core international human rights treaties, with the exception of the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has also ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

8. Hungary has ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It is party to the Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. It has also acceded to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

9. Hungary was one of the five countries that voted against endorsement of the Global Compact for Safe, Orderly and Regular Migration (see A/73/PV.60) and against the global compact on refugees.

#### **B. Regional legal framework and relevant proceedings**

##### **Regional legal framework**

10. Hungary joined the European Union in 2004. It has been part of the Schengen Area since 2007. As a member State of the Council of Europe, Hungary has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). In the area of asylum law, based on the 1951 Refugee Convention and the European Charter of Fundamental Rights, the European Union has developed a common European asylum system. It has enacted a series of regulations and directives covering different aspects of asylum procedures. The regulations are directly binding on member States, which must also translate the relevant directives into their domestic legislation.

11. Those key legal instruments of the European Union relevant to asylum law that are applicable in Hungary include, inter alia, regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member States by a third-country national or a stateless

person, also known as the Dublin III regulation; directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast); directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of asylum seekers; directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on return; and directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on qualification for asylum.

### Relevant regional proceedings

12. In January 2014, the European Commission initiated an infringement procedure against Hungary and two other member States, as it found that they had not fully implemented all the provisions of directive 2011/95/EU. In January 2019, the Commission decided to send reasoned opinions to Hungary and the two other countries for failing to notify the measures taken to implement the current standards provided in the directive. In its reasoned opinion of 2019, the Commission stated that the Government of Hungary had failed to provide a response to the formal notice in 2014. The Commission also stated that it had found the Hungarian transposing measures incomplete with respect to two paragraphs of the directive, but without elaborating on the extent to which the transposing measures were not satisfactory. The countries concerned, including Hungary, were given two months to notify the Commission of the relevant measures taken to ensure the full implementation of the directive, otherwise the Commission might refer the cases to the Court of Justice of the European Union (European Court of Justice). In its additional response to the reasoned opinion, sent in January 2020, the Government of Hungary informed the Commission of the amendments carried out recently, *inter alia* in order to provide a more precise implementation of the paragraphs of the directive in question that had been challenged. The amendments were promulgated in December 2019 and the Government of Hungary informed the Commission thereof in January 2020. No response has yet been received.

13. In 2015, the European Commission initiated a second infringement procedure against Hungary as it found the national asylum legislation in some instances to be incompatible with European Union law (specifically, the recast asylum procedures directive 2013/32/EU and directive 2010/64/EU on the right to interpretation and translation in criminal proceedings). Following a series of exchanges at both the administrative and political levels, the Commission sent a reasoned opinion in December 2017. After analysing the reply by the Hungarian authorities and in view of new legislation adopted by the Hungarian parliament, the Commission decided that it would no longer pursue 4 of the 11 issues identified in the complementary letter of formal notice. However, the Commission considered that the majority of the concerns raised had still not been addressed. Thus in July 2018, the Commission decided to refer Hungary to the European Court of Justice, as it found that Hungarian legislation was incompatible with European Union law, in particular regarding asylum procedures in transit zones, conditions of reception and decisions on returns.<sup>1</sup> The case is pending with the Court.

14. In July 2018, the European Commission initiated a third infringement procedure against Hungary, with regard to new legislation criminalizing activities that support asylum and residence applications and further restricting the right to request asylum in Hungary. In addition, the legislation prevents people who are subject to a criminal procedure under the same law from approaching external borders, including the transit zones where asylum seekers are held at the border with Serbia, thus restricting their freedom of movement and potentially restricting asylum seekers from communicating with and obtaining assistance from relevant national, international and non-governmental organizations.<sup>2</sup> Sanctions for such violations can include temporary confinement, imprisonment for one year or a ban on entering certain areas. The new legislation includes new grounds of admissibility, which allow an application to be deemed inadmissible if an asylum seeker did not enter the country directly from where their life or freedom were at risk.<sup>3</sup> In January 2019, in the second step of the procedure, the Commission sent a reasoned opinion to Hungary, which was given two months to respond. The Hungarian authorities informed the Special

<sup>1</sup> See [https://ec.europa.eu/commission/presscorner/detail/EN/IP\\_18\\_4522](https://ec.europa.eu/commission/presscorner/detail/EN/IP_18_4522).

<sup>2</sup> See section 5 (1c) of the Act on State Borders in conjunction with art. 353 (1) of the Penal Code.

<sup>3</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4522](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4522).

Rapporteur that in its reasoned opinion the Commission had stated that upon consideration of their reply regarding the specific framework applicable to the Office of the United Nations High Commissioner for Refugees (UNHCR), the Commission would not pursue further complaints relating to the impact of the legislation on the functions of UNHCR. The Special Rapporteur also learned that the Commission found that the legislation curtailing the right of asylum seekers to communicate with and be assisted by national, international and non-governmental organizations by criminalizing support to asylum applications was in violation of the asylum procedures directive 2013/32/EU and the reception conditions directive 2013/33/EU. Further, the Commission considered that the new inadmissibility grounds did not fulfil the criteria for the safe third country concept and were therefore in violation of the asylum procedures directive, the asylum qualification directive 2011/95/EU and the Charter of Fundamental Rights of the European Union.<sup>4</sup> In July 2019, the European Commission again determined that most major concerns had not been adequately addressed and therefore referred the case to the European Court of Justice.<sup>5</sup> The case is pending with the Court.

15. In July 2019, the European Commission initiated a fourth infringement procedure against Hungary regarding the poor living conditions in the transit zones at the Serbian border for individuals whose applications had been rejected and who were waiting to be returned to a third country. In its letter of formal notice, the Commission stated that compelling returnees to stay in the transit zones amounted to de facto detention under the return directive 2008/115/EC. Further, the withholding of food in the transit zones was in violation of the return directive and the Charter of Fundamental Rights. As the reply of the Government did not address the concerns of the Commission and given that the concerns were urgent, the Commission decided to proceed to the next step and sent a reasoned opinion in October 2019, to which Hungary had one month to reply.<sup>6</sup> The Commission noted that the European Court of Human Rights had already granted interim measures in several instances, obliging Hungary to provide food to persons detained in the transit zones.

## C. National legal and institutional framework

### 1. National legal framework

16. The Hungarian Constitution, most recently amended in 2018, protects the fundamental rights of all and forbids discrimination on the basis of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status. Article 14 (3) of the Constitution provides that “no one shall be expelled or extradited to a State where there is a risk that he or she would be sentenced to death, tortured or subjected to other inhuman treatment or punishment” and article 14 (2) prohibits collective expulsion. At the same time, article 14 (4) stipulates that individuals are not entitled to asylum “if he or she arrived in the territory of Hungary through any country where he or she was not persecuted or directly threatened with persecution”.<sup>7</sup>

17. Act LXXX of 2007 on Asylum defines the requirements to apply for and grant asylum.<sup>8</sup> The Act stipulates the content of the asylum granted by Hungary, the criteria of recognition as a refugee, a beneficiary of subsidiary and temporary protection, a person with tolerated stay, the procedure aimed at expulsion ordered by the refugee authority, and the recognition and revocation thereof. A number of amendments have been introduced to the Act since 2015.

18. Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (Third Country National Act), along with government decree 114/2007, allows for two types of detention, first “alien policing detention”, and secondly, “detention prior to expulsion”. The Third Country National Act allows for “alien policing detention” initially for 72 hours with extensions up to a maximum of 12 months. Detentions that fall into the

<sup>4</sup> See [https://ec.europa.eu/commission/presscorner/detail/EN/IP\\_19\\_469](https://ec.europa.eu/commission/presscorner/detail/EN/IP_19_469).

<sup>5</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_4260](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4260).

<sup>6</sup> See [https://ec.europa.eu/commission/presscorner/detail/EN/IP\\_19\\_5994](https://ec.europa.eu/commission/presscorner/detail/EN/IP_19_5994).

<sup>7</sup> Fundamental Law of Hungary (2017), available at [www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary\\_20180629\\_FIN.pdf](http://www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary_20180629_FIN.pdf).

<sup>8</sup> Act LXXX of 2007 on Asylum (2016) available at <https://www.refworld.org/docid/4979cc072.html>.

category “detention prior to expulsion” can be ordered for six months and prolonged by six months in exceptional cases if the third country national is not cooperating or if the documents for return cannot be obtained owing to a lack of cooperation on the part of the foreign authorities.<sup>9</sup>

19. Act XXXI of 1997 on Child Protection Guardianship Administration (Child Protection Act) aims at setting rules to guarantee the protection of the rights of children. The Act defines the aims and organization of the child protection services and sets out the principle of non-discrimination in the protection of children. The Act contains provisions on childcare benefits and aims to ensure children’s rights to “physical, intellectual, emotional and moral development”. While the Hungarian Civil Code provides that a minor is a person under the age of 18, the provisions of the Child Protection Act are not applicable to children of or above 14 years of age, in case of a mass migration crisis.

## 2. National institutional framework

20. The Office of the Commissioner for Fundamental Rights was created in 1995 and received status “A” accreditation from the Global Alliance for National Human Rights Institutions in 2014. The accreditation was reviewed in 2019 by the Sub-Committee on Accreditation, which later decided to defer the review to its second session of 2020. Although the Office deals with all human rights issues, it pays particular attention to issues that deal with “the rights of children, the rights of nationalities living in Hungary, the rights of the most vulnerable social groups and the values determined as ‘the interests of future generations’”. The Ombudsperson is responsible for preparing an annual report that is submitted to the parliament detailing the human rights activities undertaken by the Office and the statistics gathered that year.

21. The National Directorate-General for Aliens Policing is an independent budgetary authority under the Ministry of the Interior. It was established on 1 January 2000. It changed to its current name and has been operating as a law enforcement agency since 1 July 2019. The responsibilities of the Directorate-General continue to be matters related to “the entry, stay and settlement of foreign nationals”.<sup>10</sup> At the time of the visit, it was also responsible for managing reception centres in Vámoszabadi, Kiskunhalas, Balassagyarmat and Nyírbátor. The Directorate-General also works with other government offices, such as the Ministry of Foreign Affairs and Trade, and foreign permanent missions, national educational institutions and employment bodies to assist with issuing visas for foreigners, enrolling foreign children in schools and assisting foreign adults to secure work opportunities.

## IV. Asylum procedures and the transit zones

### A. Declaration of a crisis situation and establishment of the transit zones

22. In September 2015, the Government of Hungary declared a “crisis situation due to mass immigration” in two counties on its southern border. Six months later, in March 2016, the scope of the crisis situation was expanded to the entire territory of Hungary. Since then, it has been continuously extended every six months.

23. Since the declaration of the “crisis situation due to mass immigration”, a number of legislative amendments have been introduced in response. Legislation was expedited through the parliament amending the Act on State Borders to permit the establishment of “transit zones” at the borders of Hungary that constitute an external border of the Schengen area. Consequently, on 15 September 2015, two transit zones on the southern border with Serbia became operational, one at Röszke, the other one at Tompa.

24. In March 2017, additional amendments applicable during the “crisis situation due to mass immigration” were introduced to the Asylum Act through Act XX of 2017 on the

<sup>9</sup> See Global Detention Project, “Hungary immigration detention profile”, September 2016.

<sup>10</sup> See [http://bevandorlas.hu/index.php?option=com\\_k2&view=item&id=391:introduction&Itemid=666&lang=en](http://bevandorlas.hu/index.php?option=com_k2&view=item&id=391:introduction&Itemid=666&lang=en).

amendment of certain acts related to restrictions to the procedure carried out in the areas of border management. Based on these amendments, asylum applications from anyone who irregularly enters Hungary can only be submitted in the transit zones.

25. The relevant authority issued an interim decision designating the territory of the transit zones as “a place of accommodation” for asylum seekers. Consequently, all asylum applicants, including families with small children and unaccompanied and separated children of and above the age of 14, are obliged to stay in the transit zones for the entire duration of the asylum procedure until a final decision on their application is issued or, in the case of a Dublin transfer, until the decision becomes enforceable.

## **B. Conditions at the transit zones**

26. The Special Rapporteur visited both the Rösztke and Tompa transit zones. He was given access to all sections of the transit zones and was able to hold private conversations with individuals housed there. On the day of his visit to the transit zones, he did not see any migrant approaching Hungary from the Serbian side of the border. Razor-wire fences surrounded not only the external perimeter of the entire transit zones but also each sector within the zones. There was also razor wire on the roofs of the living containers where unaccompanied asylum-seeking children between 14 and 18 years old, families with small children and pregnant women were accommodated.

27. At the time of the visit, there were approximately 280 individuals in the transit zones. Most of them were families who had been on their journey for years. Over 60 per cent of those in the transit zones were boys and girls, including infants, unaccompanied asylum-seeking children and children with special needs. Many of them had lived in the transit zone for over a year. As of 31 December 2019, according to the Hungarian authorities, 361 individuals, including 197 children were held in the transit zones, the vast majority of them families with children. There were six single men, four single women and one unaccompanied child. Children confined in the transit zones had no access to formal education. Since September 2017, the Hungarian authorities have started providing basic educational and recreational activities for children in the transit zones. Those activities do not seem to be fully tailored to meet the needs of the children.

28. The Special Rapporteur observed that any movement of asylum seekers within the transit zones, whether to visit other sectors, to meet with their attorney or to visit the medical unit, was done under escort by armed security guards. Toddlers are normally escorted together with their parents. Although according to the relevant police rules and normal practice, the number of escorts normally equals the number of asylum seekers escorted, but must be at least two persons, in the case of escort outside the zones, one extra person is added. According to information gathered at one transit zone, one pregnant woman was reportedly escorted by a number of guards on her way to the hospital for a regular pregnancy check-up. Asylum seekers, including young children, were confined to their designated sectors and interaction between sectors was very limited. Visits to other sectors were generally allowed for up to one hour a day, upon request, but visits could exceed one hour when social programmes were taking place.

29. While the general hygiene conditions of the transit zones seemed to be satisfactory, the Special Rapporteur was concerned about the lack of appropriate medical and psychological care and treatment. Based on the information collected during his visit, a doctor was present in the transit zones for only a few hours a day and there was no gynaecologist or paediatrician, while a large percentage of the asylum seekers in the transit zones were women and children. Visits to gynaecologists needed to be arranged upon request. Although a paediatrician visited both transit zones twice a week and a maternity nurse once a week, not all asylum seekers in the transit zones were aware of this. Asylum seekers, including women and children, with serious chronic diseases and cancer remained untreated for months. According to the information gathered, when they managed to consult a doctor, the consultation was often conducted without interpretation. Many asylum seekers reported difficulties in communicating with the doctor. There were other cases where the doctor simply failed to provide a diagnosis. Access to a specialist or a hospital check-up was limited. Those who received treatment at local hospitals shared their experience with the Special Rapporteur. One example concerned an asylum-seeking woman who had had an operation at the local hospital, where she was handcuffed to the bed for

five days without sufficient food and without proper explanation. Such experiences discourage other asylum seekers from putting forward their medical requests.

30. Asylum seekers in the transit zones expressed their frustration and desperation about their situation. The Special Rapporteur was concerned that all asylum seekers, including pregnant women, children as young as 8 months old and unaccompanied minors between 14 and 18 years old, were automatically confined to the transit zones for the entire duration of the asylum procedure. Under international standards, the detention of adult asylum seekers should be a measure of last resort and cannot be applied to children. Although the Hungarian authorities do not consider the transit zones as places of detention, departure from the transit zone is only possible in the direction of Serbia, very often resulting in the termination of the asylum application.

31. The Special Rapporteur takes note of the judgment of November 2019 of the Grand Chamber of the European Court of Human Rights in the case of *Ilias and Ahmed v. Hungary* and its annex, namely the partly dissenting opinion of Judge Bianku, joined by Judge Vučinić. In order to determine whether someone has been “deprived of his liberty” within the meaning of article 5 of the European Convention on Human Rights, the Court emphasized that “account must be taken of a whole range of factors, such as type, duration, effects and manner of implementation of the measure in question” (para. 212). In its judgment, the Court stressed that “the difference between deprivation and restriction of liberty is one of degree or intensity, and not of nature or substance” (ibid.). In determining the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of foreigners in airport transit zones and reception centres for the identification and registration of migrants, the Court further summarized a number of factors that should be taken into consideration. These included “i) the applicants’ individual situation and their choices, ii) the applicable legal regime of the respective country and its purpose, iii) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events, and iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants” (para. 217).

32. In the context of the transit zones in Hungary, the Special Rapporteur observes that although individuals, including families with children and unaccompanied children, entered the transit zones of their own accord, it is important to emphasize that they entered the transit zones for the purpose of seeking asylum in Hungary. Knowing that leaving the transit zones in the direction of Serbia would lead to the termination of their asylum claims, asylum seekers are given virtually no other option but to remain confined in the transit zones for the entire duration of their asylum proceedings. That results in many of them living in the prison-like transit zones for over a year. In the absence of any individual assessment of the possible danger to each asylum seeker when returned to Serbia, the Special Rapporteur considers that the notion that leaving the transit zone for Serbia is risk-free is mere speculation. Confinement in the transit zones is automatic and without any judicial decision. None of the asylum seekers in the transit zones could challenge the necessity of the measure of confinement in the zones that they are subjected to before a court. According to the law, the lawfulness of placement in a transit zone can be challenged before the competent administrative court, together with the decision rejecting the asylum application.

33. Considering the above-mentioned factors, in particular the severe restrictions on freedom of movement within the transit zones, the lack of possibility to leave during asylum proceedings and the length of confinement, the Special Rapporteur concludes that confinement to the transit zones in many cases constitutes a de facto deprivation of liberty of the asylum seekers. The Special Rapporteur stresses that restriction of movement of adult asylum seekers must be necessary, reasonable, proportionate and based on individual assessment. Automatic placement of asylum seekers in detention is in breach of international human rights standards. The availability, effectiveness and appropriateness of alternatives to detention must be considered before recourse to detention.

34. In addition, taking into consideration the overall conditions of the transit zones, particularly the prison-like environment, the severe restrictions on freedom of movement within the zones and the lack of access to health care and education, the Special Rapporteur stresses that the transit zones are definitely inappropriate and inadequate for accommodating children, whether accompanied or unaccompanied, or for other individuals with special needs. In that respect, the Special Rapporteur notes with appreciation that



following his visit, the Hungarian authorities transferred a family with a child who had special needs from the transit zone to an open facility. The asylum authorities made the decision to ensure continuation of the medical treatment that the child was receiving from a specialist. The Special Rapporteur was pleased to know that the vulnerability of the child had been taken into consideration in this case.

### **C. Unaccompanied and separated children and families with children**

35. Under normal circumstances, the Asylum Act contains a general prohibition of detention of unaccompanied asylum-seeking children, and families with children can only be detained as a last resort for up to 30 days. The Asylum Act also requires the authorities to arrange the placement of a child in a child protection institute and to request the guardianship authority to appoint a child protection guardian to represent the child.

36. However, as mentioned above, in March 2017, the Hungarian authorities adopted new legislation, Act XX of 2017 on the Amendment of Certain Acts Related to Restrictions to the Procedure Carried Out in the Areas of Border Management. The law entered into force on 29 March 2017 amending, among others, the Asylum Act (Act LXXX of 2007). Pursuant to this law, all asylum seekers, except unaccompanied children under the age of 14, must stay in a transit zone for the duration of their asylum procedure. In the meantime, amendments were introduced to Act XXXI of 1997 on Child Protection and Guardianship Administration. According to the amended law, children aged between 14 and 18 are considered capable of representing themselves and are no longer provided with a child protection guardian, but only an ad hoc guardian. In reality, the ad hoc guardian engages primarily with the child during the asylum procedure but not in general child protection.

37. Consequently, in the case of a “crisis situation due to mass immigration”, asylum-seeking children with their families and unaccompanied or separated asylum-seeking children between 14 and 18 years old are deprived of the relevant safeguards with regard to the protection of children as provided for in domestic legislation. Unaccompanied children aged between 14 and 18 are deprived of protection measures, such as being housed at a child protection institution during the asylum procedure and having a child protection guardian appointed, as provided for in domestic legislation.

38. Child protection guardians are only appointed to unaccompanied migrant children under 14 years old. Such unaccompanied migrant children, including asylum-seeking children under 14 years old are placed at the Károly István Children’s Centre in Fót. Unaccompanied children aged between 14 and 18 are only placed in the special child protection system and provided with a child protection guardian after a positive assessment of their asylum application.

39. With regard to facilities that could be used to accommodate asylum-seeking families with children, the Special Rapporteur visited the open asylum reception centre in Vámoszabadi. The centre can accommodate between 200 and 300 individuals. At the time of the visit, three families with special needs were housed there, 11 individuals in total, including 5 children. Individuals housed at the reception centre were allowed to move freely within and outside the facility. The centre has a large garden, which provides a playground for the children, and is equipped with a kitchen, classrooms and a medical unit. The Special Rapporteur learned that language courses and other activities were normally provided to residents at the facility. However, owing to the fact that all three families had recently been transferred to the centre, language courses were not yet in place at the time of the visit.

### **D. Legal aid and judicial review**

40. The Special Rapporteur received testimonies from many asylum seekers who had been trying to appeal against negative administrative decisions on their asylum claims. Asylum seekers are entitled to free legal aid, as provided for in domestic legislation.<sup>11</sup> In reality, free legal aid is mostly provided by one civil society organization. The

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<sup>11</sup> See the Act on Legal Assistance and Act LXXX of 2007 on Asylum.

Government-sponsored legal aid system has limited capacity owing to various factors, including the lack of adequate interpretation services, the limited provision of procedural information and the lack of direct contact with asylum seekers during the procedure. In addition, the Special Rapporteur is particularly concerned about the lack of substantive judicial review of the administrative decisions on asylum claims made by the asylum authorities and the absence of assessment and review of the merits of the claims.

41. In 2018, a new inadmissibility ground for asylum claims was introduced into the legislation. According to the amended legislation, an application shall be considered inadmissible if an applicant has arrived through a third country where she or he is “not exposed to persecution” or a risk of serious harm, or if “sufficient protection” is available in that country.<sup>12</sup> Claims submitted from individuals who had transited through Serbia were therefore all declared inadmissible because Hungary considered Serbia to be a safe third country.<sup>13</sup> The Special Rapporteur was informed that when reviewing those administrative decisions, the competent court in Hungary frequently referred cases back to the asylum authority for an in-merit assessment. Judges acting in asylum cases also initiated preliminary ruling proceedings before the European Court of Justice.<sup>14</sup> The asylum authorities stopped applying the new inadmissibility ground as of July 2019.

42. Under general rules, asylum seekers are given seven days to challenge the inadmissibility of their claims. However, during a crisis situation, the general procedural time frame is shortened to three days, according to section 80 K (1) of the Asylum Act. Asylum seekers are given only three days to lodge an appeal against a rejection on the basis of admissibility and prove that Serbia is not a safe country for them. Judges at the Budapest Capital Administrative and Labour Law Court, which is in charge of reviewing appeals in relation to asylum claims, are required by law to conclude decisions on rejected applications due to inadmissibility within eight days. The Special Rapporteur learned that at the time of the visit, the vast majority of asylum cases the court was working on related to inadmissibility, since almost all asylum claims were submitted from the transit zones. These cases were automatically considered inadmissible by the asylum authorities, while the merits of the claims had not been examined. In a judicial review proceeding concerning the inadmissibility of the asylum claim, the Court is not empowered to assess the merits of the application either.

43. Furthermore, the power of the reviewing courts to overturn administrative decisions made by the asylum authorities on the inadmissibility and merits of asylum claims was revoked in September 2015 through amendments to the relevant domestic legislation.<sup>15</sup> Following the amendments, the reviewing court no longer has the power to overturn administrative decisions on asylum claims. The court can only annul decisions that are considered unlawful and order the relevant authorities to conduct a new procedure.<sup>16</sup> The Special Rapporteur learned that apparently the asylum law is not the only field of law in which courts are precluded from overturning administrative decisions subject to judicial review.

44. On 29 July 2019, shortly after the Special Rapporteur’s visit to Hungary, the European Court of Justice delivered a judgment on case C556/17 *Alekszij Torubarov v. Bevándorlási és Menekültügyi Hivatal*. The Court stated that article 46 (3) of directive 2013/32/EU, read in conjunction with article 47 of the Charter of Fundamental Rights, must be interpreted as meaning that if a first instance court or tribunal has found that an applicant must be granted international protection, after which the administrative or quasi-judicial body adopts a contrary decision without establishing that new elements have arisen that justify a new assessment, “that court or tribunal must vary that decision which does not comply with its previous judgment and substitute its own decision for it as to the

<sup>12</sup> Section 51 (2) (f) of Act LXXX of 2007 on Asylum.

<sup>13</sup> UNHCR considers that both in law and in practice, the application of the new inadmissibility ground and the relevant judicial review provision are at variance with international and European Union legal standards regarding the adoption of decisions based on safe country concepts and the judicial review of such decisions. See “UNHCR statement on safe country concepts and the right to an effective remedy in admissibility procedures” (September 2019).

<sup>14</sup> The ruling of the European Court of Justice is discussed in detail in para. 44.

<sup>15</sup> Law No. CXL of 2015 Amending Certain Laws in the Context of Managing Mass Immigration.

<sup>16</sup> *Ibid.*, art. 68 (5).

application for international protection, disapplying as necessary the national law that would prohibit it from proceeding in that way". The Special Rapporteur was informed that after the delivery of the judgment of the European Court of Justice, the national court in Hungary that had requested the preliminary ruling, had granted the applicant international protection.

45. According to section 80 K (5) of the Asylum Act, during a crisis caused by mass immigration, the court will conduct personal interviews in the transit zone or through a telecommunications network. Based on the information gathered during the visit, the Special Rapporteur noted that asylum seekers in the transit zones did not seem to have a chance to actually appear before a judge, either physically or on a video link. Although there is a container designated as a temporary courtroom at each transit zone, none of the asylum seekers to whom the Special Rapporteur spoke had been to the container or seen a judge, including those who had been there for over a year.

46. The Special Rapporteur is of the view that personal interviews carried out by the courts form an important part of the procedure whereby asylum seekers are given the opportunity to present their claims before a judge in person. He brought this observation to the attention of the relevant authorities and learned that applicants or their legal representatives could actually request a hearing. Judges could also decide, at their own initiative, to hold a hearing. However, on the one hand, judges are not obliged to conduct a hearing, especially since the majority of asylum claims are assessed and reviewed on the ground of inadmissibility, which is considered a matter of law, independent of any presentation by the applicants. On the other hand, judges at the competent court in Budapest seem to be reluctant to hold hearings on inadmissibility cases, either physically or through a video link, as they have a very heavy workload with short deadlines.

## **E. Risk of refoulement and non-provision of food by law**

47. The Special Rapporteur also paid a visit to individuals under the alien policing procedure, most of whom are pending removal from Hungary. In the transit zones, individuals under the alien policing procedure are held in a separate sector. It was brought to the attention of the Special Rapporteur that many of these "rejected" asylum seekers were threatened with deportation to their countries of origin, where they might face persecution, without having the merits of their asylum claims examined on an individual basis. In view of the relevant legislative framework and its practical operation, the Special Rapporteur is of the view that there is a lack of procedural safeguards to protect asylum seekers against refoulement. The asylum procedure at the transit zones did not seem to be accompanied by appropriate safeguards, nor did it provide a real opportunity for asylum seekers to present the merits of their cases. Individual assessment of the risk of ill-treatment in case of removal was also lacking. Earlier in 2019, three families from Afghanistan were nearly put on a flight provided by the European Border and Coastguard Agency to be deported to Afghanistan. Although the flight was cancelled in the end, the Special Rapporteur is concerned that the relevant authorities did not conduct an individual assessment on the risk of refoulement before implementing the removal procedure to send those individuals back to their country of origin.<sup>17</sup>

48. Another issue of concern in connection with the alien policing procedure is that adult men held under this procedure are sometimes denied food as a result of an existing gap in the domestic legislation.<sup>18</sup> Based on the information received, the Special Rapporteur learned that asylum seekers whose claims had been rejected and those considered as "repeat" or "subsequent" applicants were provided only with accommodation in the transit zone without access to other material provisions, such as food. The provision of material, including food, is not guaranteed in the relevant domestic legislation, although food is provided to women and children. Within families, as a practical solution, children and women shared their food with the male members of the family, although it was not necessarily sufficient. Male adults who had not travelled with family were on several occasions not provided with food by the authorities. Following requests by the attorneys of

<sup>17</sup> See also UNHCR, "Hungary's coerced removal of Afghan families deeply shocking", 8 May 2019.

<sup>18</sup> Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

asylum seekers, a number of interim measures were granted by the European Court of Human Rights under rule 39 of the rules of the Court, to urge the Government of Hungary to ensure that asylum seekers in the transit zones were not deprived of food. Based on the information received, in response to the interim measures granted by the Court, the Government has reinstated the provision of food to rejected asylum seekers in the transit zones on a case-by-case basis.

49. The Special Rapporteur is further concerned by accounts that certain personnel used the non-provision of food for rejected asylum seekers to dissuade those whose asylum applications were still ongoing from pursuing judicial reviews against negative decisions on their claims and pressure them to return “voluntarily” to Serbia. Rejected asylum seekers were told they would not be given food in the transit zone but could freely decide to return to Serbia, where they could buy food at their own expense at any time.

## **F. Extension of the “crisis situation”**

50. During the visit, the Special Rapporteur raised concerns about the seemingly automatic extension of the “crisis situation due to mass immigration” in the past years. In view of the then upcoming expiration of the crisis situation in September 2019, at the end of his visit, the Special Rapporteur strongly recommended that Hungary re-evaluate its assessment in relation to migration.

51. After the visit, on 6 September 2019 Hungary extended the crisis situation for another six months, effective until 7 March 2020. In March, the Hungarian Government further extended the crisis situation until 7 September 2020. The reason given was the coronavirus disease (COVID-19) pandemic and the security risk emanating from Turkey, namely the situation at the border between Turkey and Greece. In response to the inquiries made by the Special Rapporteur after his visit about the procedures and legal basis of the extension, the relevant Hungarian authorities reported that the Government had delivered the decision and the proposal had been prepared by the Ministry of the Interior based on a report from the Alien Policing Authority and the chief of the headquarters of the national police. According to the information provided by the Government, the decision was adopted mainly based on an assessment of the security risks, which in turn was based on an analysis of data and information at the disposal of the Government. According to the Government, the main aim of the measures introduced was to guarantee the security of Hungarian citizens.

52. Apart from articles 80/A (1) (a) and (b) of the Asylum Act, the crisis situation may be extended for other vaguely defined migration-related situations, as provided for in paragraph (1) (c) of article 80/A of the Act.

53. The Special Rapporteur was also informed that the Government had a duty to report to the parliament on the prolongation of the validity of a government decree. Currently, government decree No. 32/2020. (III.5) is in force, which modifies previous government decree No. 41/2016. (III.9) on ordering a crisis situation due to mass migration covering the whole territory of Hungary and on the rules regarding the ordering, termination and existence of the crisis situation.

## **V. Restrictions on civil society working on the rights of migrants**

54. During his visit, the Special Rapporteur met with representatives of civil society organizations working on the protection and promotion of the human rights of migrants from various aspects. He is grateful for their time and impressed by their professionalism and commitment to assisting the relevant United Nations human rights mechanisms to enhance the protection of the rights of migrants. Civil society provides an important contribution to the governance of migration from a human rights perspective at a time when global cooperation and solidarity are required to ensure respect for the rights of migrants. Democracy and the rule of law can only thrive with an independent, dynamic and strong civil society.

55. Regrettably, the Special Rapporteur observed that civil society organizations working on the rights of migrants in Hungary experienced multiple obstacles in carrying

out their legitimate and important work. Those obstacles resulted from legislative amendments, financial restrictions and other operational and practical measures taken by the relevant authorities. As a result, some civil society organizations have been deterred from cooperating with the United Nations entities assisting migrants and refugees (see, for example, A/HRC/42/30, annex, paras. 47–50 and A/HRC/39/41, annex, paras. 51–55). In addition, the Special Rapporteur learned that a number of civil society organizations had been subjected to smear campaigns, in some cases followed by administrative or criminal investigations. Although the criminal charges against the non-governmental organizations concerned were dropped one year later, the organizations and individuals involved in the smear campaigns and investigations all suffered reputational damage at the very least. For instance, in November 2019, a few months after the visit of the Special Rapporteur, the Supreme Court of Hungary ruled that the Government had damaged the reputation of the Hungarian Helsinki Committee, an association active in the area of asylum law, over a 2017 national consultation questionnaire, which contained false allegations about the Committee.<sup>19</sup>

## A. Legislative measures

56. In July 2018, a criminal offence “supporting and facilitating unlawful migration” was introduced into the Criminal Code through Act VI of 2018 on Amending Certain Acts Relating to Measures to Combat Unlawful Migration. The new stand-alone offence criminalizes, *inter alia*, organized activities aimed at the initiation of an asylum procedure, punishable with up to one year of imprisonment and in the case of foreign perpetrators, expulsion. According to the Government, such “organized activity” does not include providing legal advice, information or humanitarian assistance, or presenting the relevant legal regulations, thus these actions are still allowed. However, these vaguely defined “criminal activities”, without explicitly stated humanitarian exemptions, could be interpreted as any support or assistance provided by civil society organizations to asylum seekers exercising their legal right to submit an asylum application.<sup>20</sup> Although up until the time of drafting the present report, there had been no criminal prosecution on the basis of the new criminal offence, the Special Rapporteur is concerned about the negative impact it could have on the legitimate work carried out by civil society organizations assisting asylum seekers and migrants in need of international protection. The uncertainty about the scope of application of this provision creates a chilling effect on civil society organizations engaged in activities that could fall under the offence, depending on how the provision is interpreted and applied. Organizations that are affected may apply self-censorship and reduce or terminate services, which further hinders asylum seekers and migrants from exercising their right to seek asylum and international protection, as many of them rely on the services provided by civil society organizations, such as legal advice and representation, in their asylum- or protection-seeking processes.

## B. Financial and other constraints

57. The Government has also introduced a so-called special tax on immigration. Based on the new regulation, Act XLI of 2018 on Amending Certain Tax Laws and Other Related Laws, Including a Special Tax on Immigration, a tax of 25 per cent is imposed on the financial support provided for any activities supporting or promoting immigration in Hungary (art. 253). However, the definition of an “activity supporting immigration” seems very broad and includes any programme, action or activity that is “directly or indirectly” aimed at promoting immigration and is realized by “carrying out a media campaign”, “organizing education”, “building networks” and propaganda activities portraying

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<sup>19</sup> The court ordered the Office of the Prime Minister to pay 2 million Ft in damages to the Hungarian Helsinki Committee. The court also ruled that the Government must publish an apology to the Committee, both through the National Press Service and on the home page of the official Government website, visible for 30 days. See [www.kormany.hu/en/cabinet-office-of-the-prime-minister/news/communication](http://www.kormany.hu/en/cabinet-office-of-the-prime-minister/news/communication).

<sup>20</sup> See also “UNHCR observations on the legislative amendments adopted in Hungary in June and July 2018” (November 2018), paras. 25–28.

“immigration in a positive light”. Potential sanctions for failure to comply with this tax obligation include a fine of up to 200 per cent of the amount of tax that has not been paid (Act CL of 2017 on the rules of taxation, art. 215) and from 3 months’ up to 10 years’ imprisonment for tax fraud (Criminal Code, art. 396.), the duration of the imprisonment being dependent on the amount of the fraud. The Special Rapporteur understood that the special tax must be self-levied. That means that organizations conducting taxable activities must obtain a certificate from their donors indicating that the donor has paid the tax for such activities. If the certificate is not provided, regardless of the reasons for non-provision, the organization must pay the tax instead, on a monthly basis. According to media reports, at the time of the visit no organization had yet paid any tax based on self-assessment of the scope of the special tax. However, the concern is that should the tax authorities decide to launch a tax investigation into any civil society organization and find a taxable activity with the tax unpaid, then the provisions cited above would be applicable. The overly broad description of the activities mentioned in the relevant provisions generates speculation. The possibility of having to pay a 25 per cent tax on donations creates uncertainty and a chilling effect on both organizations and their donors.

58. In the meantime, several organizations that used to receive funding from the European Union Asylum, Migration and Integration Fund through the Ministry of the Interior for projects providing humanitarian or integration support to migrants, asylum seekers and refugees, no longer receive any funds. At the beginning of 2018, the Ministry of the Interior withdrew all calls for tenders under the Fund. Consequently, by 30 June 2018 all activities through programmes that relied on the Fund to provide integration support had had to cease.<sup>21</sup> Many organizations had had to terminate their activities and those services that had been terminated were not then provided by the Government. The interruption or termination of services provided by civil society organizations has had a negative impact on the realization of the rights of migrants, asylum seekers and refugees. The Special Rapporteur was particularly worried by the fact that in May 2016, Hungary had reduced the period of free accommodation provided to those who were granted international protection to 30 days and drastically reduced integration assistance through Act XXXIX of 2016 on Amending Certain Acts Relating to Migration and Further Related Acts. The lack of integration support had made it very difficult for foreigners who did not speak Hungarian to find a job and secure a stable income in a short period, which partly explained why some refugees had ended up in homeless shelters.

59. In addition to financial constraints, restrictions on access to clients or the scope of work had been imposed on some organizations, including some intergovernmental ones. In that regard, the Special Rapporteur was particularly concerned that civil society organizations did not have access to the transit zones for monitoring activities. As for the provision of legal aid, the attorneys of civil society organizations, who had passed the bar exam, could access the transit zones in their personal capacity to meet existing clients or to take power of attorney for people who had specifically requested their personal assistance. The fact that legal assistance providers from civil society are not present and that it is mandatory to know the specific name of an attorney in advance of requesting assistance has added one more challenge for asylum seekers to navigate.

## VI. Migrant workers

60. The increasing numbers of Hungarians emigrating has led to demographic challenges and a labour shortage in the country. Migrant workers could contribute to filling the labour gaps in the market and Hungary has indeed facilitated the arrival of an increasing number of migrant workers from other countries. In 2018, nearly 50,000 migrants received work visas in Hungary, including more than 16,000 Ukrainians and a considerable number from Serbia and China. Similarly, in the first 10 months of 2019, 64,779 applicants requested residence permits for employment purposes and 47,232 permits were granted.

61. The Hungarian authorities have also put in place a scholarship programme, which has attracted an increasing number of international students from countries, including the Islamic Republic of Iran, Iraq and the Syrian Arab Republic. In the academic year 2019/20,

<sup>21</sup> See Asylum Information Database, *Country Report: Hungary*, 2018 update (March 2019).

the Stipendium Hungaricum Scholarship Programme, which was based on bilateral agreements with over 70 countries across five continents, granted scholarships to over 5,000 students to study in Hungary. The Special Rapporteur understood from the relevant authorities that the scholarship programme did not include a post-study workplan. The aim of the programme is to assist development through education and to address the root causes of migration. Normally, foreign students are expected to return to their countries of origin after concluding their studies in Hungary. The Special Rapporteur welcomes the generous gesture demonstrated by Hungary in sponsoring foreign students to pursue higher education in the country.

62. It was also brought to the attention of the Special Rapporteur that in addressing the issue of labour shortage, Hungary was granting an increasing number of work and residence permits to migrant workers, especially from neighbouring countries such as Serbia and Ukraine, as well as from China. In the meantime, the Special Rapporteur received information about migrant workers and non-Caucasian Hungarian nationals experiencing xenophobia, particularly since 2015. The increase in the number of migrants in the country requires an urgent examination of the existing anti-migrant rhetoric in both official and public discourses, as it may negatively affect the daily life of migrants, thus hindering their integration into society.

## VII. Conclusions and recommendations

63. Security concerns can be legitimate grounds for States to adopt pertinent measures, provided that the fundamental rights of all, including migrants, are respected. The Special Rapporteur noted with concern that in Hungary, the security-oriented approach to the governance of migration was presented and implemented without enough consideration for the human rights of migrants and asylum seekers. Many of the measures adopted seemed disproportionate to the real situation, overly emphasizing the security aspect and overlooking the rights aspect.

64. The Special Rapporteur reiterates his call to the Government of Hungary to conduct a meaningful reassessment of the current situation and its migration policies. Hungary should terminate the so-called crisis situation, which does not correspond to reality and has a severe negative impact on the human rights of migrants, asylum seekers, the freedom of civil society organizations and the power of the judiciary. It should also lift all other restrictive measures with similar features and consequences.

65. In relation to the transit zones, the Special Rapporteur urges Hungary to:

- (a) End the practice of automatically confining all asylum seekers to the transit zones;
- (b) Transfer, as a priority, all children under the age of 18, whether with families or unaccompanied, from the transit zones to alternative reception facilities, including open centres or appropriate child protection institutes, as the conditions at the transit zones are not adequate or appropriate for any child;
- (c) Explore alternatives to detention for all asylum seekers;
- (d) Improve the physical conditions and lift restrictions on freedom of movement in the transit zones. Asylum seekers should not be held in a prison-like, punitive facility where their freedom of movement within the zones is severely restricted;
- (e) Improve access to medical services and legal assistance for all asylum seekers currently held in the transit zones;
- (f) Ensure that all personnel working in the transit zones refrain from dissuading asylum seekers from pursuing their right to seek asylum and to appeal asylum decisions before a court;
- (g) Grant civil society organizations access to the transit zones to ensure the provision of services, including legal assistance, interpretation and translation, psychosocial support and other services that asylum seekers may require, as well as monitoring conditions at the transit zones.

66. Hungary should continue to incorporate international and European Union standards in the area of human rights into domestic legislation and repeal recent amendments introduced to relevant domestic legislation, inter alia the Asylum Act and the Criminal Code, which have had a negative impact on the protection of the rights of migrants and asylum seekers, including children. The Special Rapporteur calls on Hungary to repeal all amendments to domestic law that are inconsistent with its international human rights obligations, particularly with respect to the right to seek asylum, the right to liberty and the right to challenge the legality of detention, ensuring the principle of non-refoulement and the principle of the best interests of the child, providing adequate and appropriate reception and other conditions.

67. Individuals and civil society organizations working on the promotion and protection of the human rights of migrants, asylum seekers and refugees should be able to operate without interference. In that regard, Hungary should consider repealing article 353/A of the Penal Code, as modified by Act VI of 2018, which criminalizes assistance to migrants and asylum seekers.

68. In the area of asylum law, the power of judicial review should be strengthened. Hungary should revise the relevant provisions in domestic legislation that weaken the power of the judiciary. More specifically, Hungary should consider repealing Law No. CXL of 2015 Amending Certain Laws in the Context of Managing Mass Immigration, which revoked the power of the courts to overturn administrative decisions on asylum claims.

69. Prolonged administrative detention of asylum seekers without the possibility of an administrative or judicial review or remedy amounts to arbitrary detention. The Special Rapporteur strongly recommends that regular hearings are held in person by competent judges in the transit zones, including at the admissibility stage of asylum claims. In addition to ensuring adequate judicial review, that would send a powerful message about the independence of the judiciary vis-à-vis the immigration authorities, contribute to the transparency of the transit zones and provide some relief to those held at such facilities.

70. Regarding the pervasive anti-migration discourse in the official sphere, the Special Rapporteur calls on the Government and politicians at all levels to refrain from advocacy of ethnic or racial hatred and xenophobia that constitutes incitement to discrimination, hostility or violence. Any such advocacy should be prohibited by law. Perpetrators of hate crimes should be brought to justice and Hungary should strengthen its efforts to eradicate discrimination against and stereotyping of migrants, including asylum seekers, by promoting tolerance and respect for diversity through public campaigns.

71. The media, especially local media outlets, play an important role in forming the public discourse on migration. The Special Rapporteur encourages media workers to ensure that reports in the media on migrants and migration are based on data and evidence. Journalists should use humane and protection-sensitive language when portraying migrants, asylum seekers and refugees and refrain from spreading anti-migrant statements and rhetoric or contributing to xenophobia and hatred of people on the move. The Special Rapporteur encourages journalists to conduct interviews with migrants themselves and give them the opportunity to tell their stories. It is important to recognize in media coverage the country's obligations under international law to respect the human rights of migrants and refugees, independent of their status.

#### **Recommendation to the European Border and Coastguard Agency**

72. The Special Rapporteur recommends that the European Border and Coastguard Agency strengthen the human rights provisions included in its joint operational plans with member States and enhance the monitoring function of its Fundamental Rights Office to assist States in upholding the principle of non-refoulement.