

**Submission by Human Rights Watch to the United Nations Committee
on the Rights of the Child concerning Hungary**

*80th pre-sessional working group
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This submission relates to Articles 22, 24, 28, 29, and 38 of the Convention on the Rights of the Child and focuses on migrant and asylum-seeking children, the right to secondary education, and the protection of students, teachers, and schools during armed conflict.

The Situation of Migrant and Asylum-Seeking Children (Articles 22, 24)

During the last review period, Human Rights Watch documented routine pushbacks at the Hungarian border of accompanied and unaccompanied child asylum seekers, the rejection of asylum claims without any meaningful review of their substance, and the holding of child migrants and asylum seekers in poor conditions in transit zones.

In August and September 2015, Hungary established a new border regime that had the following elements:

- A law that restricts access to asylum in Hungary for those who enter from Serbia and permits quick returns of asylum seekers to Serbia on the ground that it is deemed a “safe country” for asylum seekers;
- National authorities are allowed to declare a state of emergency “due to mass immigration” and close border crossing points. The state of emergency has repeatedly been extended since then.
- Irregular entry is now a criminal offense, allowing authorities to imprison people who cross the border irregularly for up to eight years, deport them, and bar their re-entry.¹

In September 2015, Hungary built a razor wire fence and established two transit zones on its border with Serbia where asylum seekers are held while processing takes place. That same month, a law established a fast track asylum procedure requiring most people filing asylum claims to wait inside these transit zones inside the Hungarian border in poor conditions while their claims are processed. By law, vulnerable asylum seekers—which includes families with children and unaccompanied children—are supposed to be exempt from the fast-track asylum procedure and given access to regular processing in reception facilities inside Hungary. However Human Rights Watch research indicates that members of vulnerable groups, including children,

¹ “Hungary: New Border Regime Threatens Asylum Seekers, Closed Borders, Prosecution, and Forcible Returns,” Human Rights Watch news release, September 9, 2015, <https://www.hrw.org/news/2015/09/19/hungary-new-border-regime-threatens-asylum-seekers>.

who are moved into reception centers may still have their claims rejected without any substantive consideration effective access to asylum.²

In October 2015, Human Rights Watch visited five detention centers and two open reception facilities across Hungary.³

Human Rights Watch found that Hungary was detaining accompanied and unaccompanied children, amongst other asylum seekers, for weeks at a time, sometimes in poor conditions. Detainees at the Nyirbator detention center said the facilities were infested with bedbugs, and Human Rights Watch researchers observed rashes and bites on detainees in both parts of the facility.⁴ Staff said that eradicating the problem would be too costly. Though the temperature was cold, around 5 degrees centigrade, many people were without sweaters and were wrapped in bedsheets. Staff said detainees are expected to buy their own clothes.⁵

Human Rights Watch interviewed nine children in two asylum detention facilities who said they were between 14 and 17 years old. All nine said that they had told staff they were unaccompanied children, but staff failed to take the steps necessary to properly assess their ages. Directors at both asylum detention centers denied that any unaccompanied children were detained there. Omar (pseudonym), an Afghan youth, said: “I told them [Hungarian officials] I am 16. They told me I was lying.... Police then took me to a doctor and removed my T-shirt. The doctor just looked at me and said that I’m an adult.”⁶ The age-disputed children Human Rights Watch interviewed either had not been seen by a medical professional at all or had received a cursory examination.⁷

Some said that Hungarian officials had entered an erroneous adult date of birth on their asylum identification cards when they were first registered and that they had been unable to correct the error. Others said that Hungarian police and officials from the Office of Immigration and Nationality simply copied erroneous ages from registration papers obtained in Greece, Macedonia and Serbia, without taking into account their claim to be a child.⁸

On July 5 2016, a new law was adopted which enables Hungarian police to apprehend persons caught inside Hungarian territory within 8 kilometers of the border and push them back to the Serbian border.⁹

² Ibid.; “Hungary: Failing to Protect Vulnerable Refugees, Ensure Prompt Asylum Process; Probe Excessive Force Allegations,” Human Rights Watch news release, September 20, 2016, <https://www.hrw.org/news/2016/09/20/hungary-failing-protect-vulnerable-refugees>.

³ “Hungary: Locked Up for Seeking Asylum, Long Detention, Poor Conditions, Little Help for Vulnerable People,” Human Rights Watch news release, December 1, 2015, <https://www.hrw.org/news/2015/12/01/hungary-locked-seeking-asylum>.

⁴ Currently most asylum seekers in Hungary are accommodated in substandard border “transit zones” following a 2017 policy change.

⁵ Hungary: Locked Up for Seeking Asylum, Long Detention, Poor Conditions, Little Help for Vulnerable People,” Human Rights Watch news release, December 1, 2015, <https://www.hrw.org/news/2015/12/01/hungary-locked-seeking-asylum>.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ 2007. évi LXXXIX. Törvény az államhatárról, July 6, 2016,

https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=Ao700089.TV×hift=20160717; “Hungary: Migrants Abused at the Border, Ensure Asylum Access; Investigate Cruel, Violent Pushbacks,” July 13, 2016, <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>.

In July and September 2016, Human Rights Watch found that some of the most vulnerable asylum seekers, including children, were kept stranded on the Hungarian border in poor conditions for weeks while they waited to enter the country and file their claims. Human Rights Watch also documented cases of violence against migrants and asylum seekers, including four unaccompanied children and a family with young children, who crossed irregularly into Hungary after July 5, 2016. Migrants and asylum seekers reported being severely beaten by people wearing uniforms consistent with those of Hungarian police, army, or local paramilitary—so-called “field guards.”¹⁰

On March 7, 2017, the Hungarian government adopted the latest comprehensive set of amendments to asylum laws, allowing for the automatic detention, solely on the ground of their immigration status, of almost all asylum seekers. This includes families with children, as well as unaccompanied children above age 14. These amendments stipulated that asylum seekers would be held in border “transit zones” for the duration of their asylum process, including any appeals.¹¹ One of the amendments also enables the summary expulsion of all persons found in an irregular situation in Hungary to the external side of the country’s extensive border fences. Coupled with recent restrictive amendments to the asylum law, which bar asylum seekers from meaningful access to the asylum procedure, authorities limited daily entry of asylum seekers, leaving thousands, including children, stranded in Serbia in poor conditions.¹²

These measures violate the rights of all asylum seekers and migrants, including children, who enter the territory of Hungary.¹³ As a result, the only way those without legal status in Hungary will be able to request protection through the asylum system is to gain admission to a transit zone established on the Hungarian-Serbian border. By mid-November 2017, there were 455 asylum seekers detained in the two transit zones, including 243 children, among them 19 unaccompanied children.¹⁴ In February 2018, the United Nations High Commissioner for Refugees (UNHCR) noted that the Hungarian authorities were, on average, only allowing

¹⁰ “Hungary: Migrants Abused at the Border, Ensure Asylum Access; Investigate Cruel, Violent Pushbacks,” July 13, 2016, <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>; “Hungary: Failing to Protect Vulnerable Refugees, Ensure Prompt Asylum Process; Probe Excessive Force Allegations.”

¹¹ 2017/XX law on the severity of proceedings performed at the areas of border control and the amendments of related legislation, March 7, 2017, https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1700020.TV×hift=fffffff4&txtrerer=oooooooo1.TXT; “Hungary: Draft Law Tramples Asylum Seekers’ Rights, EU Should Seek To Halt Plan to Hold Asylum Seekers in Transit Zones,” March 7, 2017, <https://www.hrw.org/news/2017/03/07/hungary-draft-law-tramples-asylum-seekers-rights>; Joint Letter to the European Parliament to Adopt a Resolution on the Situation in Hungary, April 25, 2017, <https://www.hrw.org/news/2017/04/25/joint-letter-european-parliament-adopt-resolution-situation-hungary>.

¹² “Hungary: Draft Law Tramples Asylum Seekers’ Rights, EU Should Seek To Halt Plan to Hold Asylum Seekers in Transit Zones;” “Human Rights Watch World Report 2018, European Union,” 2018, <https://www.hrw.org/world-report/2018/country-chapters/european-union#fa79c3>.

¹³ Reception Conditions Directive, Directive 2013/33/EU, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN> (accessed July 13, 2017); Refugee Convention of 1951; European Convention on Human Rights.

¹⁴ “Human Rights Watch World Report 2018, European Union,” 2018, <https://www.hrw.org/world-report/2018/country-chapters/european-union#fa79c3>.

two asylum seekers a day to enter the country through the two “transit zones,”¹⁵ leaving 4,000 asylum seekers and migrants stranded in Serbia, many in inhumane conditions.¹⁶

Human Rights Watch recommends that the Committee ask the government of Hungary:

- What are the procedures for age assessments of accompanied and unaccompanied migrant and asylum-seeking children?
- What steps are being taken to improve access to asylum for anyone seeking protection, including children?
- Will the government follow the Committee’s recommendation that member states should not detain children for immigration purposes, even as a last resort?
- What services do migrant and asylum-seeking children have access to including physical and mental health services and education?
- What steps are being taken to improve the quality of living conditions in state-run facilities, detention centers, and transit centers for migrant and asylum-seeking children?
- Has the government investigated any allegations of excessive use of force and violence by border officials and prosecuted any, where applicable? If so, how many and with what outcome?

Human Rights Watch recommends that the Committee call upon the government of Hungary to:

- Comply with the European Union reception directive and international refugee law and take steps to improve access to asylum for anyone seeking protection, including children.
- Conduct non-invasive, comprehensive age assessments of accompanied and unaccompanied migrant and asylum-seeking children, in line with international legal standards.
- Follow the Committee’s recommendation that member states should not detain children for immigration purposes, even as a last resort.
- Provide full access to quality physical and mental health services that meets international standards of accessibility, availability, acceptability, and quality.
- Provide access to quality, inclusive education for migrant and asylum-seeking children.
- Otherwise improve the quality of living conditions for migrant and asylum-seeking children.
- Investigate any allegations of excessive use of force and violence by border officials and prosecute, where applicable.

Right to Secondary Education (Articles 28, 29)

In 2012, Hungary lowered the age at which children must attend school from 18 to 16.¹⁷ Following this reduction in the age of compulsory attendance, by 2015 25,000 students are estimated to

¹⁵ United Nations High Commissioner for Refugees (UNHCR), “Hungary: UNHCR dismayed over further border restrictions and draft law targeting NGOs working with asylum-seekers and refugees,” February 16, 2018, <http://www.unhcr.org/en-us/news/press/2018/2/5a86dcff4/hungary-unhcr-dismayed-further-border-restrictions-draft-law-targeting.html> (accessed February 22, 2018).

¹⁶ UNHCR, “Serbia Update 05-18 February 2018,” <https://data2.unhcr.org/en/documents/details/62188> (accessed February 22, 2018).

¹⁷ Public Education Act (Law CXC. Of 2011) [2011. évi CXC. Törvény a nemzeti köznevelésről]. (2011). 45. § (2).]

have voluntarily left school before completing their secondary education.¹⁸ According to the European Commission, in 2016 the early school leaving rate increased to 12.4 percent, above the European Union average of 10.7 percent. While the early school leaving rate has been decreasing steadily across the European Union, it has not fallen in Hungary since 2010.¹⁹

Human Rights Watch recommends that the Committee ask the government of Hungary:

- What percentage of the children who have voluntarily dropped out of school at age 16 or 17 since 2012 come from economically disadvantaged backgrounds, or from the Roma community and could you provide the data on early leavers disaggregated by gender, ethnicity, religion, disability, as applicable?
- What is the gender breakdown of children who have voluntarily dropped out of school at age 16 or 17 since 2012?
- What measures is the government taking in accordance with article 28(e) to encourage regular attendance at schools and the reduction of drop-out rates?

Human Rights Watch recommends that the Committee call upon the government of Hungary to:

- Ensure that the reduction in the compulsory age of school attendance does not discriminate in access to education against either boys or girls, children of lower socio-economic backgrounds, or Roma children.
- Take immediate measures to reverse drop-out rates.

Protection of Education during Armed Conflict (Articles 28, 38)

As of January 2018, Hungary was contributing 71 troops and 12 staff officers to United Nations peacekeeping operations around the world. Hungary's peacekeepers are deployed in Cyprus and the Central African Republic, both of which have endorsed the Safe Schools Declaration.

Hungary's peacekeeper troops are required to comply with the UN Department of Peacekeeping Operations' UN Infantry Battalion Manual (2012), which includes the provision that "schools shall not be used by the military in their operations."²⁰ Moreover, the new 2017 Child Protection Policy of the UN Department of Peacekeeping Operations, Department of Field Support, and Department of Political Affairs notes:

United Nations peace operations should refrain from all actions that impede children's access to education, including the use of school premises. This applies particularly to uniformed personnel. Furthermore, recognizing the adverse impact of the use of schools for military purposes, in particular its effects on the safety of children and education personnel, the civilian nature of schools, and the right to education, United Nations peace operations personnel shall at no time and for no amount of time use schools for military purposes.²¹

¹⁸ "Brutális adatok: itt a tankötelezettség leszállításának eredménye," October 19, 2016, *168 ora*, <http://168ora.hu/ithon;brutalis-adatok-itt-a-tankotelezzetseg-leszallitasanak-eredmenye-2611> (accessed February 22, 2018).

¹⁹ European Commission, "Education and Training Monitor 2017, Hungary," 2017, https://ec.europa.eu/education/sites/education/files/monitor2017-hu_en.pdf (accessed February 2, 2018), pp., 3, 5.

²⁰ United Nations Infantry Battalion Manual, 2012, section 2.13, "Schools shall not be used by the military in their operations."

²¹ UN Department of Peacekeeping Operations, Department of Field Support and Department of Political Affairs, "Child Protection in UN Peace Operations (Policy)," June 2017.

In June 2015, the UN Security Council unanimously adopted resolution 2225 (2015) on children and armed conflict, which:

Expresses deep concern that the military use of schools in contravention of applicable international law may render schools legitimate targets of attack, thus endangering the safety of children and in this regard encourages Member States to take concrete measures to deter such use of schools by armed forces and armed groups.²²

That same year, Hungary expressed concern at the UN Security Council open debate on children and armed conflict that “attacks on schools and hospitals have become a common feature in most armed conflicts, putting children at peril and impeding their access to education and health services,” and at the increasing use of schools for military purposes.²³

Human Rights Watch believes that an example of such a concrete measure to deter the military use of schools would be for Hungary to endorse and implement the Safe Schools Declaration.²⁴ The Safe Schools Declaration is a political commitment to better protect students, educational staff, schools, and universities during armed conflict. It was drafted through a consultative process led by Norway and Argentina in 2015. The Declaration includes a commitment to use the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*.²⁵ The Committee on the Rights of the Child has previously recommended endorsement of the Safe Schools Declaration stating it is particularly relevant in the context of the State party’s participation in UN peacekeeping operations.²⁶

As of February 2018, 73 countries—representing more than one-third of all UN member states—have already endorsed the Safe Schools Declaration, including 20 of Hungary’s fellow European Union states, and 20 of Hungary’s fellow NATO states.

Human Rights Watch recommends that the Committee ask the government of Hungary:

- What steps has Hungary taken in line with UN Security Council Resolution 2143 (2014) and 2225 (2015) to deter the use of schools for military purposes?

²² UN Security Council, Resolution 2225 (2015), S/RES/2225 (2015), http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2225.pdf (accessed October 9, 2017), para 7.

²³ Permanent Mission of Hungary to the UN, New York, “Open debate of the Security Council on Children and Armed Conflict: Children Victims of Non-State Armed Groups, Intervention by H.E. Ambassador Katalin Bogyay, Permanent Representative,” 25 March 2015, <https://ensz-newyork.mfa.gov.hu/assets/71/15/76/e6af1556049805974efde6bf5096b74628cd7561.pdf> (accessed February 16, 2018).

²⁴ Safe Schools Declaration, May 28, 2015, https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf (accessed October 19, 2016).

²⁵ Global Coalition to Protect Education from Attack, *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*, March 18, 2014, http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf (accessed October 19, 2016).

²⁶ UN Committee on the Rights of the Child, “Concluding observations on the report submitted by Bhutan under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,” CRC/C/OPAC/BTN/CO/1, June 27, 2017 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPAC%2fBTN%2fCO%2f1&Lang=en (accessed February 6, 2018).

- Are protections for schools from military use included in any policies, rules, or pre-deployment trainings for Hungary's armed forces?
- Will Hungary commit to protecting students, teachers, and schools during armed conflict, and endorse and implement the Safe Schools Declaration, including by bringing the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict* into domestic military policy and operational frameworks?

Human Rights Watch recommends that the Committee call upon the government of Hungary to:

- Endorse and implement the Safe Schools Declaration, including by bringing the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict* into domestic military policy and operational frameworks.