



Hungary: Locked Up for Seeking Asylum

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Hungary is detaining vulnerable asylum seekers and migrants under its new border regime for weeks at a time, sometimes in poor conditions, Human Rights Watch said today.

In October 2015, Human Rights Watch was granted access to five detention centers and two open reception facilities across Hungary and interviewed 81 asylum seekers and migrants. Two detention centers hold asylum seekers pending decisions on their applications. Three hold both rejected asylum seekers and people convicted of irregular border crossing, all awaiting deportation either to their countries of origin or a transit country.

"People seeking protection in Europe shouldn't be detained in Hungary unless their detention is justified by exceptional circumstances," said Lydia Gall, Balkans and Eastern Europe researcher at Human Rights Watch. "Hungary should immediately release vulnerable people, including families with children, unaccompanied children awaiting age determination, people with disabilities, and anyone awaiting deportation who can't be removed within a reasonable time frame."

Guidelines from the United Nations refugee agency, UNHCR, make clear that detention of any asylum seekers should be an exceptional measure, and that members of vulnerable groups generally should not be detained. Human Rights Watch documented cases in which asylum seekers had been detained for as long as 45 days. Many people said that there had been no explanation regarding why some were detained, others were sent to an open reception center, and some were allowed to travel on to other European countries.

Pregnant women, accompanied and unaccompanied children, and people with disabilities were among those detained for long periods, with women and families with young children in some cases sharing facilities with unrelated men.

Faced with large numbers of asylum seekers and migrants, the Hungarian government changed its immigration and criminal law in July and September in ways that effectively deny asylum seekers access to protection. The changes make it a crime, punishable by up to eight years in prison, to enter the country except at official crossing points, and declared Serbia a safe third country, with those entering via Serbia liable to summary return there. Criminal convictions are accompanied by one- to three-year re-entry bans to Hungary that the Hungarian Office of Immigration and Nationality may designate as applying to the entire European Union.

"You escape from death, to end up in prison here," said a 50-year-old woman from Syria who was interviewed by Human Rights Watch. "We're not criminals, we want to join our family."

To deter asylum seekers and migrants, Hungary also built border fences, effectively closing its border with Serbia to those groups on September 15, and its border with Croatia on October 16.

Under the new border regime, asylum claims are determined through accelerated procedures, and most are rejected. Rejected asylum seekers and people convicted by Hungarian courts of irregular entry are held in immigration detention indefinitely, pending removal mainly to Serbia, though it has refused in most cases to accept such returns.

Sixty-two of those interviewed, including nine children, were asylum seekers awaiting a status determination, had been rejected for asylum in an accelerated procedure, or had been deemed irregular migrants and convicted of crossing the border without permission. Those rejected for asylum or convicted of crossing without permission were awaiting deportation to Serbia.

Directors at three immigration detention centers told Human Rights Watch that they had a total of 328 people awaiting deportation, mainly to Serbia. But they said that since the September 15 border closure, deportations to Serbia decreased to between 7 and 10 weekly, from 60 a day before September 15.

Although all three directors claimed they were holding no unaccompanied children, nine unaccompanied young people interviewed told Human Rights Watch that they were under 18 and said they had had either no age assessment or a cursory one. Hungary is a party to the Convention on the Rights of the Child. The Committee on the Rights of the Child, which interprets the treaty, says that if a person claims to be a child, they should be presumed to be until a proper age assessment can be made, and the best interest of the child should prevail.

Although conditions at most facilities were largely adequate, conditions were poor at the Nyirbator detention center, which has one part for asylum detention and another for immigration detention.

Detainees in both sections of 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. Staff said that eradicating the problem would be too costly. Though the temperature was cold, around 5 centigrade, many people were without sweaters and were wrapped in bedsheets. Staff said detainees are expected to buy their own clothes.

Human Rights Watch wrote to the Hungarian interior minister and the director of the Office of Immigration and Nationality (OIN) on November 9, raising concerns identified during the visits. The Interior Ministry has not replied other than to acknowledge receipt. The OIN, in a November 17 response, stated that Hungary only detains asylum seekers as a last resort, that interpreters and legal aid are provided during the asylum procedure, and that all asylum seekers are informed in writing, in a language they understand, of the asylum procedure.

It said that no unaccompanied children are held in asylum detention and if a young person claims to be under 18, a medical examination is ordered to determine the correct age.

Human Rights Watch encountered several asylum seekers who said they had been returned to Hungary from Austria, Germany, and Slovakia under the Dublin III Regulation, which allows an EU country to return most asylum seekers to the first EU country to which they arrived. This is despite the lack of meaningful access to asylum under Hungary's abusive border regime and its routine detention of asylum seekers, including vulnerable people, in poor conditions.

EU member states should refrain from returning any asylum seekers to Hungary until it reforms its laws and practices to ensure meaningful access to asylum, ends unjustified detention of asylum seekers, establishes age assessment procedures that comply with international human rights standards and procedures to protect vulnerable groups, and provides adequate conditions for asylum seekers as they wait for their application to be determined.

On September 23, the European Commission initiated 40 infringement proceedings against member states, including two for Hungary, "for failing to fully implement legislation making up the Common European Asylum System." The European Commission, on October 6, sent Hungary a formal letter of notice - the first step in infringement proceedings - for failing to explain the measures it had taken to implement EU requirements for asylum applications and treatment of asylum seekers.

"Hungary is clearly failing to meet its EU and international obligations to asylum seekers and migrants," Gall said. "Brussels needs to press Budapest to end its abusive border regime and to call a halt to detaining and prosecuting people for crossing the border to seek protection."

Detention of Asylum Seekers and Migrants

Legal and policy changes in effect since August 2015 mean that asylum seekers and migrants are routinely detained in Hungary. Between April and September 15, more than 170,000 asylum seekers and migrants entered Hungary, sometimes up to 3,000 people a day. Hungarian authorities initially tried to process and register them in accordance with EU regulations. By August, authorities became overburdened and stopped systematically registering asylum seekers and migrants, resulting in the majority of asylum seekers and migrants continuing their journeys to Western Europe.

Under the law, asylum seekers and migrants may be detained in three different ways: detained following conviction for irregular border crossing, detained as rejected asylum seekers, and detained while their asylum claims are determined. People in the last group are held in a special category of detention known as asylum detention.

Although the September 15 changes that criminalized irregular border crossing specified that those convicted could serve prison terms, Human Rights Watch found that most of those convicted had instead been sent to immigration detention, along with rejected asylum seekers, to await deportation.

Human Rights Watch interviewed 40 people who were detained for either of these reasons. Many said they had gone to the police seeking protection, but instead were detained following summary proceedings they did not understand. As of December 1, 724 people have been prosecuted for irregular entry, with 703 convictions.

Asylum seekers detained in the Bekescsaba and Nyirbator closed asylum detention said that OIN officials seemingly referred some asylum seekers to closed facilities and others to open centers arbitrarily, without any clear criteria.

In its November 17 response, the Office of Immigration and Nationality said that asylum seekers have an opportunity each day to inquire about asylum procedures and the status of their cases.

Assed (pseudonym), 43, from Afghanistan, said the police caught him and his wife and three children in a group of about 20 people on October 2, at the border with Serbia, and that he didn't understand why his family and some others were detained while others were sent to open reception facilities:

"Nobody has explained to me why my family and I have to be here, when others are put in free camps [open reception facilities]. We also explained to staff here that 5,000 people cross the border [Croatia-Hungary prior to October 16] every day and that nobody has imprisoned them."

Hassan (pseudonym), 22, also from Afghanistan, arrived in Hungary from Serbia on September 17:

"Nobody explained why I and three others had to come here and the remaining 51 people ended up in open reception facilities. I have been here for nearly 40 days now, in prison."

In some cases, asylum seekers said that government interpreters told them they would not be detained if they applied for asylum, but detained them anyway when they did.

Mahmoud (pseudonym), a 17-year-old Iraqi who had been traveling with his 19-year-old brother, said he and his brother were held in a police station for two days. Then the judge reviewing his detention order told him, through an interpreter, that if he did not apply for asylum, he would go to prison for three years. He said the judge told him that if he applied he would stay in prison for three days and then be transferred to an open reception facility. He applied for asylum but had already been detained in the Bekescsaba center for 20 days when he was interviewed.

Mohammed, 25, from Afghanistan, held in the asylum detention facility at Nyirbator, said the Hungarian police told him he had been one of the unlucky ones since friends with whom he crossed the border on September 17 had gone on to Germany. "I told them if it's the rule then it should be the same for everyone," he said.

Amira, 50, from Syria, who was detained with her two adult sons in the immigration detention facility at Nyirbator, was the only woman among 147 men there the day Human Rights Watch visited. "You escape from death, to end up in prison here," she said. "We're not criminals, we want to join our family."

"I left Mosul because of Daesh [ISIS]," said a 44-year-old Iraqi man detained in the immigration detention facility at Nyirbator after being convicted of irregular entry. "We escaped from death to be in prison. When the police caught us, we were 53 people. Six of us got caught, three of us are here, and three in Budapest. The other 47 are in Europe, in Germany, Sweden, Finland, and Switzerland. What did we do wrong?" He said the government interpreter had said they would go to prison if they didn't apply for asylum. "Here we die every day," he said.

Linda, 38, from Syria, was detained with her 18-year-old son in the Kiskunhalas immigration detention center. She said she had crossed the border from Serbia on September 15. "We were with another family, my brother and my husband's cousin," she said. "They let them go at the police station and they got to Germany."

Samir, 55, from Iraq, detained with his wife, 22-year-old son, and 16-year-old daughter in the immigration detention centre of Kiskunhalas, said: "Are we criminals? We're people asking for safety and our rights. We've come from torture to find another kind of torture. Why did some get to go to Austria, and others are left in prison?"

Unaccompanied Children in Asylum Detention

In late October, 2015, Human Rights Watch interviewed nine youth in the Bekescsaba and Nyirbator asylum detention facilities who said they were between 14 and 17 years old and whose appearance strongly suggested that they were under 18. 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. (Human Rights Watch did not encounter any detainees in immigration detention facilities who said that they were under 18.)

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. After this, they brought me here [Bekescsaba]."

Taher (pseudonym), another Afghan youth held in Bekescsaba, told officials that he was 17 but had been subjected to a cursory assessment in which a female medical professional took a quick look at him and determined that he was 20.

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 OIN officials simply copied erroneous ages from registration papers obtained in Greece, Macedonia and Serbia, without taking into account their claim to be a child.

Ali (pseudonym), an Afghan youth who said he was 14, said a Serbian smuggler provided him with papers stating he was 19. He described what happened in Hungary, where he had been detained for a month and a half:

"When police caught us and brought us to the station, they saw my papers that the Serbian smuggler gave me. I tried to explain that I'm only 14 years old, but they [police] simply copied my document. I never saw a doctor."

Moslem (pseudonym), from Afghanistan, who said he was 16, said he had been recorded as an adult after he was officially returned to Hungary from the Czech Republic under the Dublin III Regulation, though when he first entered Hungary in July, he had been assessed to be an unaccompanied child. He said the Czech Republic authorities assigned him an adult date of birth and then returned him to Hungary in early September:

"I tried to tell them that I am 16 and that it should be in their system. But they [Hungarian officials] didn't care.... They just copied the date of birth as stated on the Czech papers."

In its November 17 response to Human Rights Watch, OIN said that no unaccompanied children were currently detained in asylum detention in Hungary, and that if there is any doubt about the age of an asylum seeker, authorities send the person for a medical examination to establish their age.

But 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 consisting of questions. Some said medical staff only looked at them, and in one case a staff member asked a detainee to remove his T-shirt.

The Committee on the Rights of the Child has advised governments that age assessment "should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child- and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, s/he should be treated as such."

Age assessments should ideally be carried out by an independent panel of experts, and the individual should be given the effective opportunity to appeal the decision. Hungary's procedures fail to comply with applicable international standards.

Other Groups at Greater Risk in Detention

The Office of Immigration and Nationality wrote, in its response to Human Rights Watch, that measures are in place to address the needs of people with psychosocial and physical disabilities, including access to psychiatric care both inside and outside the facilities, and that they can arrange for alternate accommodation when needed in open reception facilities.

Directors at the two asylum detention centers visited said, though, that the in-house psychiatric care offered by the non-governmental Cordelia Association, to which the OIN refers in its letter, was suspended in July 2015 and is not expected to be operational again before January 2016. For an asylum seeker to be referred for outside care and alternate accommodation in open reception facilities, the person must be referred by a general practitioner to a specialist - a process that can take months.

Human Rights Watch found five cases in both immigration and asylum detention where people with psychosocial or physical disabilities and a pregnant woman had been detained. There had not been adequate efforts to move them to a facility suitable to address their special needs.

Majd (pseudonym), 22, was eight months pregnant when Human Rights Watch interviewed her on October 27, 2015, in the immigration detention center in Kiskunhalas, where she had been detained for 45 days with no extra food or dietary supplements:

"I spent two days in a hospital. If they hadn't taken me, I would have lost my baby. They took me alone to the hospital. There was no interpreter. There were two police officers inside the room, men

and women, changed every three hours. They were also there during the night. It happened that they were two male police officers at night, it was hard, I couldn't speak to anyone. I'm alone."

Directors of immigration and asylum detention centers told Human Rights Watch that no psychological counseling was available.

Jihad, 23, from Iraq, detained in Nyirbator asylum detention facility for two weeks, showed Human Rights Watch scars on his arms and chest, saying they were from self-inflicted cutting resulting from mental distress:

"I tried to commit suicide two days ago [by trying to swallow a lightbulb]. The doctor just gave me a sleeping pill."

The director at the center told Human Rights Watch that Jihad had been taken to a general hospital when he attempted to swallow the lightbulb but had been given no psychiatric or psychological care.

In the Gyor immigration detention center, Human Rights Watch encountered a Kenyan man, who was described by fellow detainees and the center director as someone who did not interact with others. He was lying in what appeared to be a catatonic state on a bunk bed in a room he occupied alone.

The OIN said that families, single women, and mothers in the Bekescsaba facility are housed in a guarded section, separately from single males. However, common facilities - such as laundry rooms, dining rooms, and the courtyard - are used jointly by all detainees.

But Human Rights Watch interviewed several families with young children, single women, and mothers, who described unsuitable accommodation in detention centers. Aziza (pseudonym), a 21-year-old Afghan woman, said she had to share a cell in Kiskunhalas immigration detention center with her brother, a distant male relation and one unrelated single man.

Nour (pseudonym), 61, a Syrian woman who has diabetes, had been detained for over a month in Kiskunhalas, sharing a cell with four unrelated men. She said she had not seen her husband, who was also diabetic, since they were in court, where they were convicted of irregular border crossing. She said he was being held in another detention center.

In the Bekescsaba asylum detention center, families, single women, and mothers had separate living quarters but shared common facilities, including the laundry room, dining hall, and courtyard, with single males, putting younger girls in a vulnerable position. Hayat (pseudonym), 16, from Afghanistan, said she felt restricted because of all the single men around the common facilities:

"I don't feel good about it all.... I often have to stay in the room or with my parents all the time to avoid being disrespected."

Poor Conditions in Nyirbator

Conditions in the Nyirbator detention center were poor in both the asylum and immigration sections, though conditions in other facilities that were visited appeared adequate for the most part.

In response to the reports of bedbug infestation, the director of the immigration detention center said that while rooms had been fumigated on more than one occasion, the bugs had not been exterminated. To change all beddings and mattresses would be too costly, he added.

Detained asylum seekers in Nyirbator said they were handcuffed and roped together during trips outside the detention facility - for instance, for medical appointments or to receive Western Union money transfers. Mohammed (pseudonym), 22, from Afghanistan, said:

"Are we refugees or criminals? Because they act as we are criminals. The doctor is in the other building and we were put in handcuffs and escorted there by six police officers. Whenever we receive money from our families through Western Union, police handcuff us and rope us together just like criminals. The whole town is watching us. It's very shameful. It's like a prison here."

"We thought European countries would respect our rights, but we're in hell," said Ahmed (pseudonym), 25, from Afghanistan, who was interviewed separately in the Nyirbator asylum detention facility. "One day they put us on a leash to go to Western Union, we were ashamed."

Despite the cold weather, the facility's director said detainees had to buy their own clothes.

Taher (pseudonym) from Afghanistan, who said he was 17, sat outside in a T-shirt: "I don't have any money so I can't buy any clothes. All I have is summer clothes, T-shirts. They don't give us any warm clothes here. I don't know what I will do in winter."

"They detained us in the summer," said Nabeel, from Iraq. "On September 14 it was hot, but since then we've had no warm clothes."

Detainees in Nyirbator center said they had been told they could put in weekly shopping orders, but that only a few people had received what they ordered. They said many who had placed orders remain without basics including clothes, hygiene items, and snacks.

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