

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 26/19, 25/32, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the Government of Hungary's actions which prevent the mobility of asylum seekers and migrants by, for example, sealing off a train station to prevent them from leaving Hungary and plans to erect a four-meter-high fence to seal its 175-kilometer border with Serbia, as well as the anti-migrant billboard campaign and the questionnaire on immigration sent by the Government to its citizens.**

According to information received:

At the end of April 2015 the Government announced its intention to spend 2 billion Hungarian forints on a questionnaire with leading questions which incite hatred and fear of and actively promote hostility towards migrants and risk spreading xenophobia within the country. In May 2015, your Excellency's Government mailed more than eight million questionnaires entitled "national consultation on immigration and terrorism" to its citizens. Allegedly, the questions form a direct link between migratory phenomena and security threats. Citizens are asked whether they agree with statements such as whether "economic migrants jeopardise the jobs and livelihoods of Hungarians" and if "mismanagement of the immigration question by Brussels may have something to do with increased terrorism." In a letter accompanying the questionnaire, the Prime Minister Mr. Victor Orban describes immigration as a threat that needs to be stopped and dismisses asylum seekers as economic migrants who come to abuse the welfare system. The letter also states that economic migrants represent a

“new threat” to Hungary and that the country must decide how to “defend itself against illegal immigrants”.

In addition, it has been reported that in early June 2015 your Excellency’s Government launched a controversial billboard campaign against migration reading: “If you come to Hungary, you cannot take away Hungarians’ jobs”. Moreover, the police enforcement agency has allegedly, been ordered to guard the billboards and several human rights defenders have been detained in connection with defacing the billboards put up under the Government’s “national consultation” campaign on migration.

On 17 June 2015, the Minister of Foreign Affairs and Trade Péter Szijjártó announced that the Government had instructed the Minister of Interior Sándor Pintér to prepare for closure of the Hungarian-Serbian border “in order to protect the borders of the country and to ward off the flood of illegal migrants”. This would be achieved by erecting a four-meter-high fence by the 175-kilometre long border section.

Furthermore, Hungary’s parliament has passed new legislation tightening asylum rules. The new law approved on 6 July 2015 by the majority of the Parliament allows the detention of migrants in temporary camps, speeding up of the asylum application review process and limiting the possibility for appeal. Subsequently, work on the construction of a sample section of the temporary border control fence has begun outside the town of Mórahalom on 12 July 2015.

On 1 September 2015, it was reported that the Hungarian police sealed off a major railway station in Budapest in order to prevent migrants from leaving Hungary.

Grave concern is expressed regarding the xenophobic rhetoric that is being allegedly disseminated by your Excellency’s Government, most recently through the questionnaire on immigration and terrorism sent to its citizens and an anti-migration billboard campaign which illustrates a worrying pattern of racism, racial discrimination and xenophobia against foreigners, migrants and asylum seekers. Concern is expressed that such questionnaire and campaign may risk spreading xenophobia throughout the country and incite hatred, fear and promote hostility towards migrants and asylum seekers. The situation escalated when your Excellency’s Government announced plans to erect a four-meter-high fence to seal its 175-kilometre border with Serbia and recently prevented asylum seekers and migrants from travelling outside of Hungary. Serious concerns are also expressed as plans to limit the mobility of migrants and asylum seekers by barring them from railway stations or erecting the fence may force them to adopt more risky routes and modes of transport, putting them at greater risk of abuse by smugglers and further denying them the international protection that Hungary is obligated to provide under international human rights and refugee law.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about measures taken to prevent xenophobic crimes and foster mutual understanding, social harmony between citizens and non-citizen and to promote tolerance and respect for cultural diversity.
3. Regarding the groups of asylum seekers and migrants prevented from leaving Hungary –particularly by train, please provide information regarding the measures to be taken to ensure the principle of non-refoulement as well as the right to life, physical, and mental integrity of migrants, in particular of the vulnerable groups.
4. Please provide in details, the undertaken measures by your Government in order to respect the recommendations made through the UPR mechanism and the CERD.
5. Please provide information on how the erection of a fence on the border would comply with Hungary’s international obligations to protect individuals covered by the 1951 Convention who are vulnerable to suffer human rights violations.
6. Please provide information on the action that will be taken in relation to the responses received from the questionnaire that was circulated.

We would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that your Government re-consider the adoption of the above measures and consider alternative measures to tackle the situation of migrants from a human rights perspective.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the human rights of migrants

Mutuma Ruteere
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would also like to remind your Excellency's Government of its obligations under the International Convention on the Elimination of All forms of Racial Discrimination (ICERD), to which it acceded on 4 May 1967. In particular, articles 2, 4, 5 and 6 address applicable States' obligations. With regards to the discriminatory practice of public matters, we recall article 2, paragraph 1 (b) and (c) on effective State review of policies which create or perpetuate racial discrimination on the non-sponsoring, defence, or support racial discrimination by any persons or organizations. Article 4 outlines criminalizing the dissemination of ideas based on racial superiority and prohibiting public authorities from promoting racial discrimination. Article 5 enumerates States' obligations to protect persons' rights to security, protection against bodily harm, and to nationality. Article 6 describes how States will assure every person within its jurisdiction effective protection against racial discrimination and remedies.

Furthermore, we would like to draw the attention of your Excellency's Government to General Recommendation No. 30 on Discrimination Against Non-Citizens of the Committee on the Elimination of Racial Discrimination (CERD). The Committee recommends addressing xenophobic attitudes and behaviour towards non-citizens; ensuring that legislative protections against racial discrimination apply to non-citizens regardless of their immigration status; and guaranteeing non-citizens equal protection of the law. On issues specific to this case, the Committee advises in its recommendation No. 25 to ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies. The Committee has also elaborated relevant States' obligations in General Recommendation No. 35 on combating racist hate speech. Paragraphs 6 and 13 address States' measures to combat manifestations of hate speech. Paragraph 22 specifies that States ought to combat public expressions of racism, especially those of high-ranking officials, with disciplinary actions such as removal from office. Paragraph 47 encourages States to legislate against hate speech.

Additionally, the European Court of Human Rights has affirmed that freedom of expression as guaranteed under article 10 of the European Convention on Human Rights "constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man." The European Court has also stated that "the exercise of this freedom carries with

it certain duties and responsibilities and is subjected to certain restrictions as set out in article 10(2) of the European Convention, in particular those that concern the protection of the rights of others” and that “it is particularly conscious of the vital importance of combating racial discrimination in all its forms and manifestations”. Thus, the European Court has emphasised in its case law concerning Article 10 of the European Convention on Human Rights that “that tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any “formalities”, “conditions”, “restrictions” or “penalties” imposed are proportionate to the legitimate aim pursued.”

We would also like to remind your Excellency’s Government that the enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR) to which the Republic of Hungary acceded on 17 January 1974, are not limited to citizens of States parties but “must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10). Thus, article 6, paragraph 1, of the ICCPR imposes an obligation for states to “assure to everyone within their jurisdiction effective protection and remedies...against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.” Moreover, article 20, paragraph 2 further states: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Additionally, article 26 entitles all persons to equality before the law, as well as equal protection. Furthermore, we would also like to refer to paragraph 9 of the General Comment No. 20 of the Human Rights Committee in which it states that State parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement.”

Furthermore we recall paragraph 30 of the Durban Programme of Action which “urges States to develop and implement policies and action plans and to [...] implement preventive measures in order to foster greater harmony and tolerance between migrants and host societies, with the aim of eliminating manifestations of racism, racial discrimination, xenophobia and related intolerance, including acts of violence, perpetrated [...] by individuals or groups [...]; (c) implement specific measures involving the host community and migrants in order to encourage respect for cultural diversity, to promote the fair treatment

of migrants and to develop programmes, where appropriate, that facilitate their integration into social, cultural, political and economic life”.

Additionally, Human Rights Council Resolution 15/16 and General Assembly Resolution 68/179 call upon States “to respect the human rights and the inherent dignity of migrants” and to “strongly condemn the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them including on the basis of religion or belief, and urges States to apply and, where needed, reinforce the existing laws when hate crimes, xenophobic or intolerant acts, manifestations or expressions against migrants occur in order to eradicate impunity for those who commit those acts.”

Finally, allow me Excellency to recall that Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants, "requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party". Resolution 9/5 also "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants" and "urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international commitments, the principle of the best interest of the child and family reunification".

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Hungary ratified in 1987 and wish to draw the attention of your Excellency's Government to its article 3 which provides that, “[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”; and that, “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. As a result, every State is obliged to give immigrants a fair opportunity to state a claim that an impending extradition, deportation or expulsion puts him or her at risk of torture.