

NATIONAL ACTION PLAN

Mexico

What is the UNHCR Global Strategy - Beyond Detention?

In June 2014, UNHCR launched its Global Strategy - Beyond Detention 2014-2019, which aims to support governments to end the detention of asylum-seekers and refugees. The Strategy lays out three main goals: (1) to end the detention of children; (2) to ensure that alternatives to detention (ATDs) are available in law and implemented in practice; and (3) to improve conditions of detention in which detention is necessary and unavoidable, to meet international standards. To support the implementation of the Global Strategy, focus countries have developed National Action Plans ('NAP'). This document is a summary and public version of the NAP.

All documents relating to the Global Strategy - Beyond Detention 2014-2019 are available at: <http://www.unhcr.org/detention>

En español, los documentos podrán ser encontrados en: <http://www.acnur.org/detencion>

The process of developing the National Action Plan

In June 2014, UNHCR Mexico began a process of consultation with relevant actors, both governmental and non-governmental, on identifying the main concerns regarding the detention of asylum-seekers and refugees, as well as areas of opportunity and possible lines of action. The assessment started from the basis of UNHCR's own experience in visiting and monitoring persons of concern to the Office in immigration detention centres in Mexico. Nonetheless, it was enriched by the views of partners such as *Comisión Nacional de Derechos Humanos* (CNDH), the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos* (CMDPDH), the International Detention Coalition (IDC). A common appraisal was evident: immigration detention undermines significantly the access to Mexico's asylum system and procedures, in particular in view of its prolonged duration for those submitting asylum claims, the lack of alternatives to detention, and the inadequacy of the conditions in detention centres for long-duration stays, particularly for children. From this standpoint, UNHCR and its partners have begun reaching out to the relevant authorities, mainly the *Instituto Nacional de Migración* (INM), the *Comisión Mexicana de Ayuda a Refugiados* (COMAR) and the *Sistema Nacional para el Desarrollo Integral de la Familia* (DIF), in close coordination with the Human Rights and Democracy Division within the country's Ministry for Foreign Affairs, for designing and implementing actions in line with the Global Strategy. UNHCR hopes its actions will lead to significant changes and to an enhanced cooperation with Mexican authorities on the subject.

The actions foreseen

Goal 1. End the detention of children

The increasing number of children from the Northern Triangle of Central America reaching Mexican territory, whether accompanied or unaccompanied, and which may have international protection needs, has greatly challenged the capacity of the Mexican authorities' to determine that their best interest in all actions that concern them. Under these difficult circumstances, UNHCR is reinforcing activities to support national authorities, with a focus on the situation of asylum seeking children, and is expanding its case follow-up system in order to gain a better panorama of the scope and challenges faced in particular by the authorities responsible for enforcement of the new Mexican child protection law (*Ley General de los Derechos de Niñas, Niños y Adolescentes*). Similarly, in coordination with UNICEF, UNHCR plans to pursue capacity-building and awareness activities with INM, COMAR and DIF officials, in order to enhance institutional screening capacities and the ability to conduct best interest assessments and determinations, contributing to the implementation of Mexico's child protection law. Finally, UNHCR is planning to sponsor a dialogue in early 2016 with specialized child protection actors from civil society, including shelters dedicated to unaccompanied children, the academia and other international organizations, in order to strengthen their capacity in responding to the protection needs of unaccompanied asylum seeking and refugee children in Mexico.

Goal 2. Ensure that alternatives to detention (ATDs) are available in law and implemented in practice

One of the key challenges faced by Mexico is to ensure that ATDs are not only available in the national legal framework, but also that they are actually implemented in practice. In this regard, UNHCR, in consultation with INM and COMAR, and in close partnership with UNICEF, has contributed to an ATD pilot that IDC, and two leading civil society agencies (Casa Alianza and Aldeas SOS) aimed at securing release from detention and shelter for unaccompanied asylum seeking children. UNHCR also supports legal aid activities by Mexican civil society partners - in

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Beyond Detention 2014-2019

A global strategy to support Governments to end the detention of asylum-seekers and refugees



particular the *Comisión Mexicana para la Defensa y Protección de los Derechos Humanos* (CMDPDH) – which includes the provision of legal representation and orientation to asylum seekers in detention.

Equally relevant, UNHCR plans to develop, in close collaboration with INM and COMAR, a protocol for assessing the necessity, reasonableness and proportionality of detention of each asylum-seeker, which will allow these authorities to legally evaluate, on a case-by-case basis, the situation of each person of concern to UNHCR, prior to continue resorting to detention. Finally, similar to what is envisaged under Goal 1, UNHCR will sponsor consultations with relevant civil society stakeholders regarding ongoing challenges for the practical implementation of Mexico's legal framework in relation to ATDs.

Goal 3. Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards

Conditions in immigration detention centres are generally suitable for short-term stays of no longer than one or two weeks. However, detained asylum-seekers often face periods of detention of at least three months, and in some complex cases involving administrative or judicial remedies, up to six or seven months. Accordingly, UNHCR will prioritise visits to persons of concern in immigration detention and pay specific attention to enhancing cooperation with INM management and staff stationed in *Estaciones Migratorias*, based on the confidential sharing of appropriate recommendations and observations. Achieving full access to persons of concern in detention centres in all parts of the country is therefore the foremost priority. Based on UNHCR's Detention Guidelines, the office in Mexico also plans to develop a monitoring tool (questionnaires, participatory assessments and tables for systematizing data), in collaboration with INM authorities and other actors involved in monitoring detention, in particular the CNDH. This gathering of a greater level of information should support the identification of the main needs related to detention conditions and serve as a basis for further technical assistance and support to INM authorities. At the invitation of the authorities, trainings have been conducted in 2015 and will continue under this strategy with INM officials, focusing in particular on the special protection needs of special groups, such as LGBTI, survivors of sexual or gender-based violence, elderly people, unaccompanied children, women at risk. Enhanced legal assistance and representation to detained asylum-seekers will also be pursued, through the organisation of trainings with the public defender's office (*Instituto Federal de la Defensoría Pública*).

Detention overview

Mexican legislation foresees detention in *Estaciones Migratorias* as an *a priori* measure applicable to every adult person found to be in an irregular migratory situation in the country. Children in such a situation must be automatically referred to a DIF shelter. Alternatives to detention are provided in the law but only in a very limited set of circumstances, and is seldom used, in part due to practical and operational challenges. Detention of children, in particular, offers a complex situation, as very few unaccompanied children – both migrant and asylum seekers - benefited from alternative care arrangements or alternatives to detention. The effective identification of international protection needs, in particular among unaccompanied children, by migration and other authorities remains a challenge. Ongoing efforts to enhance protection screening and the effective identification of international protection needs among unaccompanied children are being enforced in particular through the pilot implementation of an identification protocol by both COMAR and INM. The absence of best interests determination and assessment procedures for unaccompanied children, in particular those from the Northern Triangle of Central America, continues to lead to their return and deportation without adequate assessment of international protection needs. This situation is expected to improve as Regulations for the new legal framework on child protection will soon be in place. In fact, the new *Ley General de los Derechos de Niñas, Niños y Adolescentes* foresees the establishment of a Child Protection Authority (*Procuradora de Protección*) who will be in charge of developing *individual protection plans*, the Mexican legal equivalent to best interest determinations.

Good practices and alternatives to detention

According to Mexico's Migration Law and the Law for Refugees, Complementary Protection and Political Asylum, only those who have been intercepted by INM and who decide to apply for asylum while in detention are detained until the completion of the refugee status determination procedure. In contrast, those individuals who manage to file an asylum claim directly with an office of COMAR (in Mexico City, Tapachula, in Chiapas State, or Acayucan, in Veracruz State), or a regularization office of INM are not detained. Mexican legislation establishes that migratory detention centres must have separated places for men and women. However, there may be an exception to this safeguard directed to protect the principle of family unity. According to the Migration law, children in detention must be supported by child protection officers (*Oficiales de Protección a la Infancia* or *OPIs*) from INM. These officers are required to conduct age-appropriate interviews with unaccompanied or separated children in order to gather data on their identity, nationality, immigration status and whereabouts of their family, as well as to screen for protection, medical or psychological needs, including for access to asylum procedures. The information gathered by *OPIs* should also contribute to best interest assessments (BIA).

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