



Progress Report mid-2016

BEYOND DETENTION

A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019

August 2016



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The UN Refugee Agency



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Cover Photo: A detention centre for refugees and migrants on Italy's Lampedusa Island. This centre was closed end of July 2007, and replaced with a new one opened in August. © UNHCR / G. Kotschy / 2007.

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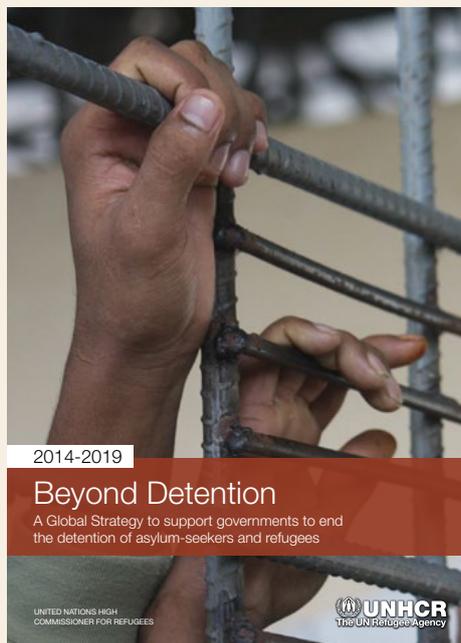
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ACRONYMS AND ABBREVIATIONS

AICHR	ASEAN Intergovernmental Commission on Human Rights
APRRN	Asia Pacific Refugee Rights Network
ASEAN	Association of Southeast Asian Nations
ATD	Alternative to detention
IDC	International Detention Coalition
APT	Association for the Prevention of Torture
AWAS	Agency for the Welfare of Asylum Seekers (Malta)
CBP	U.S. Custom and Border Protection
CBSA	Canada Border Services Agency
CMDPDH	Mexican Commission for the Defence and promotion of Human Rights – <i>Comisión Mexicana de Defensa y Promoción de los Derechos Humanos</i>
CNDH	National Human Rights Commission – <i>Comisión Nacional de Derechos Humanos</i> (Mexico)
COMAR	Mexican Refugee Commission – <i>Comisión Mexicana de Ayuda a Refugiados</i>
CRC	<i>UN Convention on the Right of the Child</i>
CSC	Correctional Service of Canada
CWS	Church World Service
DFT	Detained Fast Track procedure (United Kingdom)
DHS	Department of Homeland Security (United States)
DIF	National System for Integral Family Development – <i>Sistema Nacional para el Desarrollo Integral de la Familia</i> (Mexico)
DTF	Task Force on Detention (Thailand)
DWN	Detention Watch Network (United States)
EU	European Union
FRC	Foreigners Reception Centre (Lithuania)
HMIP	Her Majesty's Inspector of Prisons (United Kingdom)
ICCPR	<i>UN International Covenant on Civil and Political Rights</i>
ICE	U.S. Immigration and Customs Enforcement
ICRC	International Committee of the Red Cross
IDCCC	IDC Coordination Committee (Thailand)
IFDP	Federal Public Defence Institute – <i>Instituto Federal de Defensoría Pública</i> (Mexico)

IHC	Immigration Holding Centre
INM	National Migration Institute – <i>Instituto Nacional de Migración</i> (Mexico)
IOM	International Organization for Migration
IRB	Immigration and Refugee Board (Canada)
IRC	Initial Reception Centre (Malta)
IRCC	Immigration, Refugees and Citizenship Canada
JRS	Jesuit Refugee Service
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
LRCS	Lithuanian Red Cross Society
MHAS	Ministry for Home Affairs and National Security (Malta)
MIDSA	Ministerial Migration Dialogue meeting for Southern Africa
MoU	Memorandum of Understanding
MSDHS	Ministry of Social Development and Human Security (Thailand)
NAP	National Action Plan
NGO	Non-governmental organization
NPM	National Preventive Mechanism, under the OPCAT
OHCHR	Office of the UN High Commissioner for Human Rights
OIN	Office of Immigration and Nationality (Hungary)
OPCAT	<i>UN Optional Protocol to the UN Convention against Torture</i>
ORR	Office of Refugee Resettlement (ORR)
PACE	Parliamentary Assembly of the Council of Europe
SBGS	Lithuania State Border Guard Service
SEDEREC	Secretariat for Rural Development and Equity for Communities – <i>Secretaría de Desarrollo Rural y Equidad para las Comunidades</i> (Mexico)
SUHAKAM	Human Rights Commission of Malaysia – <i>Suruhanjaya Hak Asasi Manusia Malaysia</i>
UNCAT	<i>UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>
UNICEF	United Nations Children’s Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
VAST	Vancouver Association for Survivors of Torture

INTRODUCTION



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:

- ❶ to end the detention of children;
- ❷ to ensure that alternatives to detention (ATDs) are available in law and implemented in practice; and
- ❸ to ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards by, inter alia, securing access to places of immigration detention for UNHCR and/or its partners and carrying out regular monitoring.

The Strategy is a five-year initiative (June 2014 – June 2019), through which UNHCR is working with governments and other relevant stakeholders to address some of the main challenges and concerns around detention policies and practices. For its initial

two year implementation phase, the Global Strategy is being rolled out in 12 focus countries, selected on the basis of a range of criteria, including regional and thematic diversity, size and significance of the problem, likelihood of making an impact in the initial roll-out period (albeit without prejudicing long-term impacts), as well as staffing and resources. The 12 focus countries are: Canada, Hungary, Indonesia, Israel, Lithuania, Malaysia, Malta, Mexico, Thailand, the United Kingdom, the United States and Zambia.¹

This initial *Progress Report* reviews the first two years of the Global Strategy's implementation and presents the progress achieved. Promoting alternatives to detention through technical support and advice to ensure that detention is only resorted to in exceptional circumstances for a legitimate purpose, and based on an assessment of the individual's particular circumstances, has been a central aim of all the protection activities in the 12 countries engaged in the Strategy. These activities included, inter alia, trainings for civil society on monitoring immigration detention, capacity-building programs for immigration and child protection agencies, other State authorities, including national human rights institutions, and UNHCR staff, as well as facilitation and support for pilot projects on alternatives to detention.

UNHCR notes with appreciation the willingness of the governments in the focus countries to engage with UNHCR's national offices towards improvement of the detention situation. In many countries, governments declared their commitment to identifying alternatives to detention, review detention policies, and plans are being developed to expand community-based programs that offer alternatives to detention and open accommodation options.

¹ All documents relating to UNHCR *Global Strategy – Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014-2019*, June 2014, are available at: <http://www.unhcr.org/detention>.

METHODOLOGY

This *Progress Report* provides a first update on the detention situation affecting persons of concern to UNHCR in each of the 12 focus countries following the *Baseline Report*,² which states an overview of the detention situation in the 12 focus countries as at the end of 2013, before the launch of the Global Strategy. For each focus country, this *Progress Report* highlights the main activities undertaken, the positive developments, including their potential, or reported, impact on the detention situation of persons of concern, and the availability of alternatives to detention in the immigration context. As such, it should also be read bearing in mind the national action plans (NAPs)³ developed by UNHCR in the focus countries to organize protection activities to achieve the goals of the Global Strategy.

ROLL-OUT AT THE GLOBAL LEVEL	<i>Overview of the main actions undertaken and tools produced by UNHCR and partners to support the roll-out of the Global Strategy.</i>
STRATEGY IMPLEMENTATION	<i>Illustration of the various types of activities UNHCR offices in the focus countries have engaged in, under the Global Strategy during the initial roll-out period.</i>
PROGRESS TOWARDS ACHIEVEMENT OF THE GOALS	<i>Overview of the progress achieved under each of the three main goals in the first two years of the Global Strategy's implementation, based on the detention checklist⁴.</i>
RESULTS BY COUNTRY	<i>Overview of major in-country trends related to asylum and detention during the reporting period and most important detention-related developments in 12 country-specific pages. Indicators corresponding to the three main goals are also presented.</i>

The report is based on qualitative and quantitative data and information provided by UNHCR offices in the focus countries, informed by regular dialogues with all stakeholders, including asylum-seekers, refugees and other persons of concern to UNHCR detained during the reporting period. This analysis has been structured through two sets of indicators: a detention checklist developed based on *UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*⁵ (“UNHCR Detention Guidelines”) which reflect the state of international law relating to detention on immigration-related grounds of asylum-seekers, refugees and other persons of concern to UNHCR, and indicators related to each goal of the Global Strategy, most of them extracted from UNHCR’s Results Framework.⁶

Where figures are presented, the sources are either direct monitoring by UNHCR or partners funded by UNHCR,⁷ or the regular detention data reports shared by immigration authorities and recorded by UNHCR. As data collection processes may differ according to the operating contexts, so does the level of detail and data available to the analysis in each of the twelve focus countries. All data refer only to individuals who are

² UN High Commissioner for Refugees (UNHCR) *Baseline Report, Detention situation as of end 2013. Beyond Detention, A Global Strategy to support Governments to end the detention of asylum-seekers and refugees*, August 2016.

³ The national action plans are available at www.unhcr.org/detention.

⁴ The detention checklist is available in the annex 2.

⁵ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html> (UNHCR Detention Guidelines).

⁶ The detention checklist and the Global Strategy indicators are available in the annex 2 and 3.

⁷ Hereinafter “partner(s)”.



A crowd of Syrian refugees gathers around the revolving door of the Hungarian transit zone at Tompa, as authorities grant access for another family. During the spring and summer of 2016, several hundreds of refugees were waiting at the Hungary-Serbia border, while a maximum of 30 people were admitted each day in the transit zones. © UNHCR/Zsolt Balla/May 2016.

detained for immigration-related purposes, including, but not limited to, asylum-seekers, refugees, stateless persons and other persons of concern to UNHCR and excluding those detained as a result of being suspected or convicted of a non-immigration-related offense. To analyze and report on the situation of children, a distinction is made between UASC (unaccompanied children and separated children)⁸ and children with (nuclear) family members.

In line with UNHCR *Detention Guidelines*, "detention" refers to the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.

Overall, this report analyses detention-related initiatives undertaken in the 12 focus countries, and UNHCR's actions in the first two years of the Global Strategy. The main audience of this report are the governments and other actors engaged in monitoring detention and protection of children. In addition, this report may also be a useful reference to governments from other countries looking for good practices as well as to other non-state actors interested in protection. Similar to the *Baseline Report*, it is intended to serve as a basis for further discussions on detention and for UNHCR to offer its support to governments and all stakeholders on these issues. It is also intended to guide decision-makers and practitioners in remedying the shortcomings in national frameworks pertaining to detention and to support policy formulation, especially in the area of ATDs, assisting States to fulfil their international commitments.

⁸ Unaccompanied children are persons under the age of 18 who are outside their country of origin or habitual residence and who have been separated from both parents and other relatives and who are not being cared for by an adult who, by law or custom, is responsible for doing so. Separated children are children separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

EXECUTIVE SUMMARY

GOAL 1:

END THE DETENTION OF CHILDREN

Positive developments in law and in practice are noted mid-2016 compared to end 2013 (baseline):

- Whereas all focus countries detained children for immigration-related purposes, two focus countries (Israel and Lithuania) have ceased detention of asylum-seeking children.
- Two additional countries (Mexico and Malta) adopted protective laws intended to ensure children are not detained, meaning this critical safeguard is enshrined in national law mid-2016 in a total of five focus countries.⁹
- Precedent-setting judgments from the Lithuanian Supreme Administrative Court, the United States Court of Appeals for the Ninth Circuit, and the High Court of Justice in Israel which should lead to the implementation of a non-detention policy for children in these three countries.¹⁰

Focus countries also demonstrated their interest in implementing new community-based reception options and ATDs for children and families, though some challenges are noted:

- Indonesia, Mexico and the United States initiated pilot projects on care arrangements for children or ATDs for families. Indonesia expanded the number of places available for UASC and Malaysia is preparing a first ATD pilot project for UASC in partnership with a number

of stakeholders, including the National Human Rights Commission of Malaysia and NGOs specialised in child protection.

- In all focus countries, care arrangements for UASC are implemented in practice, though they are not always readily and/or available for all children.
- As of mid-2016, ensuring the provision of ATDs to families remains a challenge in most focus countries. With the exception of Lithuania, families were still detained in all of the other focus countries mid-2016.

Consideration for the best interests of the child in the detention context is still problematic:

- With the exception of Lithuania and Malta, where some progress has been noted, the best interests of the child is generally not considered when decisions to detain are made in the focus countries. Positively, Canada, Malaysia¹¹ and the United States have taken steps to prioritise asylum claims of children in detention. Efforts are also under way in Indonesia, Malta and Mexico to increase access to age-appropriate information for children in detention.

Compared to 2014, and based on figures available in the context of regular monitoring and regular dialogues on detention with national authorities, a 14 per cent decrease in the number of children detained was observed end 2015 across the twelve focus countries.

⁹ In Mexico, the *Regulations (Reglamento) for the Law on the Rights of Children* prohibit the immigration detention of children. In Malta, the new legal framework provides that minors and families should only be detained as a measure of last resort and for the shortest possible period. Canada, Hungary and the United Kingdom are the other focus countries with a legal framework ensuring that children are not detained, except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period.

¹⁰ In Israel, migrant children are still detained, and in the United States, following the case *Flores v. Lynch*, in July 2016, the Court of Appeals for the Ninth Circuit ruled that a national settlement agreement applies to all children whether accompanied or unaccompanied by their parents, requiring the government to release children from immigration detention without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody.

¹¹ In Malaysia, UNHCR undertakes refugee status determination under its mandate. The detention authorities generally cooperate with UNHCR's request that children have prioritized access to UNHCR in detention for refugee status determination.



GOAL 2:

ENSURE THAT ALTERNATIVES TO DETENTION ARE AVAILABLE IN LAW AND IMPLEMENTED IN PRACTICE

During the initial roll-out period of the Global Strategy, half of the focus countries worked more actively on ATDs:

- All focus countries had had some experience in the implementation of ATDs by mid-2016. In addition to the pilot projects initiated by four focus countries (Indonesia, Malaysia, Mexico and the United States) for UASC and/or families mentioned under Goal 1, the United Kingdom tested a specific pilot project for male ex-offenders aged 18-30 at risk of long-term immigration detention and Canada has taken steps to set up a national ATD program. In all cases, the ATD pilot projects are being implemented in partnership with one or more NGO partner(s).
- In eight focus countries (Canada, Indonesia, Lithuania, Malaysia, Mexico, the United Kingdom, the United States and Zambia) case management, which is an important factor for successful implementation of ATDs, is also provided or has been tested during an ATD pilot project.

The baseline end 2013 showed that all focus countries have appropriate legal frameworks to refer UASC, children in families and adults to care arrangements and ATDs. However, as of mid-2016, decision making with regards to detention and referrals to ATDs remain a challenge in a majority of the focus countries:

- In nine focus countries (all except Canada, the United Kingdom and Israel), ATDs are rarely or never considered in each individual case before resorting to detention. This correlates with the absence, in a majority of focus countries, of procedures to assess the necessity, reasonableness and proportionality of detention in each individual case, before resorting to detention. However, some progress was recorded in Israel and Lithuania during the reporting period.
- Only five countries (Canada, Indonesia, Lithuania, Malta and Zambia) have screening and referral mechanisms in place to ensure that asylum-seekers are referred to ATDs.

Overall, a need for greater transparency in quantitative reporting related to alternatives to detention was observed.

ENSURE THAT CONDITIONS OF DETENTION, WHERE DETENTION IS NECESSARY AND UNAVOIDABLE, MEET INTERNATIONAL STANDARDS

Progress has been moderate with regards to ensuring compliance of domestic frameworks with international standards:

- Israel introduced a maximum time limit on detention in law. As a result, by mid-2016, eight out of twelve focus countries now have a time limit on detention. In the other four countries (Canada, Malaysia, Thailand and the United Kingdom), the absence of appropriate safeguards in law means that asylum-seekers and refugees are at risk of indefinite detention.
- In contravention of the *1951 Refugee Convention*, in nine countries (all except Canada, Malta and Mexico) asylum-seekers are penalised for their irregular entry and in seven (all except Canada, Indonesia, Malta, Mexico and the United States) for their irregular stay.
- Despite actions undertaken in Lithuania and Hungary to avoid commingling of asylum-seekers with suspected or convicted criminals in detention, similar to the situation in 2013 and in contravention of international standards, most focus countries detain persons of concern to UNHCR together with persons suspected or convicted of a crime.

Major concerns remain in ensuring rights and procedural safeguards in detention:

- Access to asylum procedures while in detention is ensured in Canada, Hungary, Indonesia, Malta, the United Kingdom and the United States, but remains problematic in the other focus countries. However, some progress was made in Zambia and Lithuania as a result of increased cooperation with immigration authorities, legal aid service providers and appropriate referral and screening of asylum-seekers.

- Access to legal advice, although enshrined in the national frameworks of 10 focus countries (all except Indonesia and Israel), is not guaranteed in practice in the majority of the focus countries. This links to the finding that in half of the focus countries (Hungary, Indonesia, Israel, Malaysia, Mexico and Thailand), persons in detention are not informed of their right to access legal advice.
- Similar to the situation at end of 2013, access to detention reviews (being the initial review of the detention decision, the regular periodic reviews of the necessity for the continuation of detention and *habeas corpus*) are not enshrined in national legislation in all focus countries. In focus countries where detention reviews are provided in law, their implementation proved problematic.

During the reporting period, UNHCR increased detention monitoring activities by 22%. Compared to 2013, by the end of 2015 UNHCR witnessed a five per cent increase of the number of persons detained for immigration-related purposes in the focus countries. Asylum-seekers represented 12 per cent of the overall detained population in 2013, while in 2015 they represented 17 per cent of the total number of persons detained for immigration-related purposes.

THE ROLL-OUT AT THE GLOBAL LEVEL

The Global Strategy was launched on 3 July 2014 in Geneva on the occasion of the 60th meeting of the Standing Committee¹² with the participation of State representatives from Argentina and the United Kingdom, who shared their respective experiences and gave valuable insights on alternative forms of reception for children and detention monitoring respectively. A third speaker from the International Social Service Hong Kong Branch, shared useful examples of ATDs to raise awareness amongst the participants of the feasibility of these alternatives.

In April 2015, with the support of the International Detention Coalition (IDC) and the Oak Foundation, and in close cooperation with the Canadian authorities, UNHCR convened the *Second Global Roundtable on Reception and Alternatives to Detention*, in Toronto, Canada.¹³ The Roundtable brought together 53 experts and officials from Governments, civil society, NGOs, international organizations, academia and other experts, drawn from 24 countries. The results and main outcomes of the Roundtable have been compiled in a *Summary of Deliberations Report* that broadly reflects the themes, issues and understandings that emerged from discussions.¹⁴

Features of successful ATDs identified by States and other actors present at the Second Global Roundtable on Reception and Alternatives to Detention in Toronto, Canada (April 2015) included:

- Taking holistic approaches to ATDs – i.e., approaches that apply from the beginning to the end of the asylum or migration process, and that identify and address individual needs in a comprehensive way;
- Developing and implementing ATDs in a way that is context-specific. No single alternative to detention will be fully replicable in every context.
- Ensuring close working partnerships between governments and civil society;
- Having the leadership of Government ministers and parliamentarians is often essential, and the collaboration and support of local authorities, host communities and asylum-seekers or migrants themselves can be instrumental in the successful design, implementation and sustainability of alternatives to detention.

¹² Established in 1995 to replace sub-committees on international protection and on administrative and financial matters, UNHCR Standing Committee meets three times a year and examines thematic issues included by the plenary in its program of work; reviews UNHCR's activities and programs in the different regions (as well as its global programs) adopts decisions and conclusions, as it deems appropriate, on issues included by the plenary in its program of work; and discusses other issues that it deems of concern. For more information, see <http://www.unhcr.org/excom-structure-meetings.html>.

¹³ UNHCR, *Global Roundtable on Reception and Alternatives to Detention: Summary Conclusions*, April 2015, available at: <http://www.unhcr.org/55df05769.pdf> and UNHCR, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, July 2011, available at: <http://www.refworld.org/docid/4e315b882.html>.

¹⁴ The report together with all the documentation related to the Roundtable is publicly available at: <http://www.unhcr.org/3e5f78bc4.html>.

In September 2014, a first training workshop based on the methodology developed in the UNHCR, Association for the Prevention of Torture and the International Detention Coalition, *Monitoring Immigration Detention: Practical Manual*¹⁵ (“UNHCR, APT and IDC *Monitoring Manual*”) was organized jointly with the Association for the Prevention of Torture (APT) for UNHCR staff from offices in Europe and the Americas, in order to support the implementation of the third goal of the Global Strategy at national level and to strengthen and professionalise UNHCR’s capacity to monitor immigration detention places. In November 2015, UNHCR held its second *Detention Monitoring Learning Programme training* on the use of the manual for staff and civil society partners from the MENA region. The training was held in Tunis, with support from experts sharing their experience as members of National Preventive Mechanisms. A *High Commissioner’s policy on monitoring immigration detention*¹⁶ was also adopted in November and released in December 2015 for use by all UNHCR operations, ensuring that UNHCR monitoring methodology, developed with the APT and the IDC, is consistently applied.

Finally, in response to requests by States participating in the 2015 Roundtable on Reception and Alternatives to Detention in Toronto, UNHCR, with the support of the Oak Foundation and in partnership with the IDC, developed a *vulnerability screening tool*, to support appropriate screening and referral of asylum-seekers with special circumstances and needs. This tool will soon be made available online at: www.unhcr.org/detention.



“A Tale of Two Children”, a video on child-appropriate care arrangements, was produced for this Roundtable in coordination with the International Detention Coalition, as an institutional advocacy and awareness raising piece. The video is available online at: <http://www.unhcr.org/pages/53aa90d86.html>.



UNHCR also prepared two “Options Papers”, *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families* and *Options Paper 2: Options for governments on open reception and alternatives to detention* to raise awareness among governments and other stakeholders of the available options for reception, alternatives to detention and other good practices, including alternative care arrangements for children and families.

Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families, available at: <http://www.refworld.org/docid/5523e8d94.html>.

Options Paper 2: Options for governments on open reception and alternatives to detention, available at: <http://www.refworld.org/docid/5523e9024.html>.

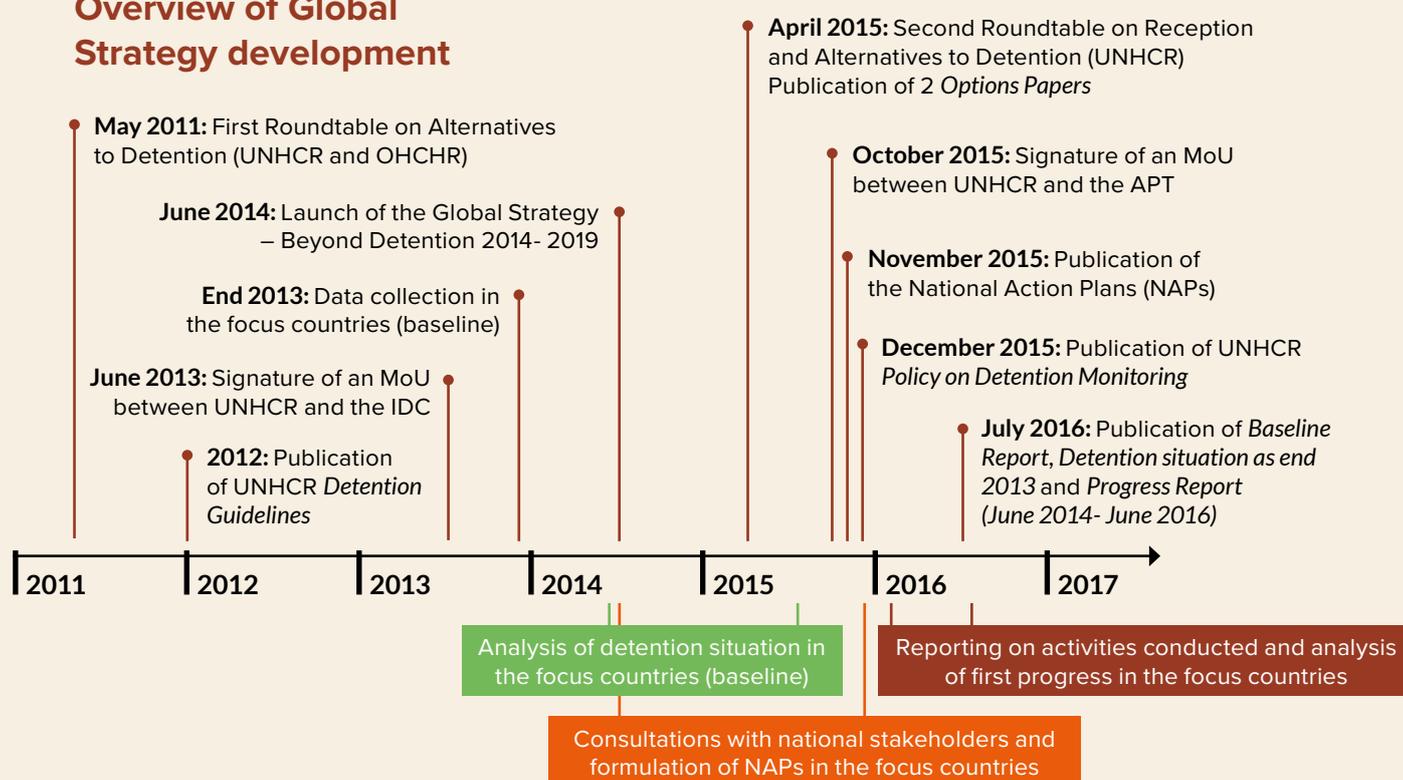
¹⁵ UN High Commissioner for Refugees (UNHCR), Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), *Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>

¹⁶ UN High Commissioner for Refugees (UNHCR), *Policy on Detention Monitoring*, 3 December 2015, UNHCR/HCP/2015/7, available at: <http://www.refworld.org/docid/564199b54.html>

Based on the initial assessment of detention practices and challenges in the 12 focus countries, during the roll-out period a baseline study was conducted and published in the *Baseline Report*. The analysis of the detention situation in the focus countries was structured through a set of detention indicators based on the UNHCR *Detention Guidelines*, which reflect the state of international law relating to detention on immigration-related grounds of asylum-seekers, refugees and other persons of concern to UNHCR. This set of indicators is also used in this initial *Progress Report* to measure progress made across the 12 countries (see section with results by country).

Throughout this initial roll-out phase, the Division of International Protection's Protection Policy and Legal Advice (PPLA) Section in UNHCR has also provided support to UNHCR offices in focus countries for the implementation of the Global Strategy by holding country and regional roundtables¹⁷ and conducting support missions.¹⁸ Annual workshops were organized for the detention focal points of the 12 countries in September 2014 in Budapest, and in September 2015 in London. These workshops allowed for fruitful exchanges with experts specialising in ATDs, child protection and detention monitoring as well as in specific advocacy interventions, such as strategic litigation and campaigning.

Overview of Global Strategy development



¹⁷ UNHCR *Regional Protection Meeting Europe*, Brussels, Belgium, 27 November 2015; *Regional Seminar, Detention, Alternatives to Detention and Access to an Effective Remedy for Asylum-Seekers in the Baltic States, including an introductory seminar on the Council of Europe/UNHCR e-learning course on the European Convention on Human Rights and Asylum*, co-organized jointly by UNHCR, the Council of Europe and Supreme Administrative Court of Lithuania, Vilnius, Lithuania, 28 September 2015; *Round Table, Detention and Alternatives to Detention of Asylum-Seekers and Refugees, including an introductory seminar on the Council of Europe/UNHCR e-learning course on the European Convention on Human Rights and Asylum*, co-organized by UNHCR and the Council of Europe, Budapest, Hungary, 15-16 June 2015, Asia Pacific Refugee Rights Network (APRRN), ASEAN Intergovernmental Commission on Human Rights (AICHR), International Detention Coalition (IDC), *Report on Regional Expert Roundtable on Alternatives to Immigration Detention for Children*, Bangkok, Thailand, 19th – 20th November 2015.

¹⁸ Missions to Israel (October 2014), Thailand and Malaysia (November 2014), Hungary (June 2015), Malta (July 2015) and the UK (September 2015).

STRATEGY IMPLEMENTATION

Problem analysis and diagnosis

During the initial roll-out period, UNHCR took steps in each focus country to engage respective governments in the Global Strategy, and initiated the development of **national action plans (NAPs)** to address detention-related challenges at country level, with technical support from UNHCR's Division of International Protection. In November 2015, UNHCR offices in the 12 focus countries finalized their NAPs for implementation in the subsequent four years. Tailored to their national contexts and building on consultations with various stakeholders including immigration authorities, child protection and welfare agencies, national human rights institutions, as well as NGOs already implementing ATDs and persons of concern, these NAPs highlight how UNHCR has undertaken protection activities to achieve the goals of the Global Strategy. The specific actions and initiatives of the 12 NAPs, as set out in greater detail below, included: advocacy interventions; awareness-raising and campaigning; capacity-building (including training); strengthening partnerships; information sharing, data collection and reporting; research; detention monitoring; and, facilitation of pilot projects and support for community-based programs that offer ATDs and open accommodation options, including care arrangements for children. The 12 NAPs are now available at: www.unhcr.org/detention.

Advocacy interventions

Advocacy refers to influencing decision-making processes at the local, national, regional and international levels. It is an essential element of any NAP and may be pursued through many forms such as the development of coalitions and alliances; research and publications; conferences and events; communications and media work; public campaigning, common messaging, and social mobilization; and strategic litigation. Well-planned, evidence-based advocacy interventions can change attitudes, leading to positive advances in policy and/or practice.

Amongst the various avenues for advocacy interventions, UNHCR focused on: promoting the use and dissemination of available protection tools; building dialogue with governments and NGO partners, including by sharing good practices and developing working groups; providing comments on national legislation and policies, participating in parliamentary/government inquiries or commissions and making submissions to international, regional or national human rights bodies; and, engaging with the judicial and legal community. This section provides an overview of these advocacy initiatives.

Promoting the use and dissemination of available protection tools

Promoting the use and dissemination of protection tools related to detention among the relevant stakeholders, including government officials, detaining authorities and NGOs, is a key component of the implementation of the Global Strategy. As a first step, some UNHCR offices in focus countries have translated the relevant materials, particularly the UNHCR *Detention Guidelines*, which are now available in 20 languages.¹⁹ They have been shared with the relevant stakeholders in ten of the focus countries (Canada, Hungary, Israel, Lithuania, Malta, Mexico, Thailand, the United Kingdom, the United States and Zambia). Other tools related

¹⁹ UNHCR's *Guidelines on the Applicable Criteria and Standards relating to the detention of Asylum-Seekers and Alternatives to Detention* are available in: Arabic, English, Estonian, French, Georgian, German, Greek, Hebrew, Hungarian, Italian, Japanese, Korean, Latvian, Lithuanian, Portuguese, Romanian, Russian, Spanish, Thai and Turkish.

to detention have also been widely disseminated. The Global Strategy document was shared in ten focus countries (Canada, Hungary, Indonesia, Israel, Lithuania, Malaysia, Malta, Mexico, the United Kingdom, the United States and Zambia) and the two *Options Papers* were disseminated in ten of the focus countries (Canada, Hungary, Israel, Lithuania, Malaysia, Malta, Thailand, the United Kingdom, the United States and Zambia). The UNHCR, APT and IDC *Monitoring Manual* has been shared in all focus countries.



Strengthening dialogue with governments and NGO partners

Understanding the reasons why, who and how the State detains, as well as States' legal and policy frameworks and practices, is essential to identifying the best ways to respond to detention concerns and challenges and to propose context-specific ATDs. This understanding is best achieved through continuous dialogue with relevant ministries and/or law enforcement agencies, and hence many UNHCR offices have set up appropriate coordination mechanisms or ATD working groups at the national level.

With the launch of the Global Strategy at the national level, four focus countries (Canada, Indonesia, Malaysia, Thailand), set up coordination mechanisms to follow detention and ATD developments in partnership with the authorities and/or NGO partners. Some focus countries (Hungary, Israel, Malta, Thailand, the United Kingdom, the United States and Zambia) are also using existing fora to update stakeholders and discuss the roll-out of the NAP. These initiatives contribute to making the implementation of the NAPs a transparent and inclusive process and ensure that advocacy strategies are evidence-based.

²⁰ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>.

²¹ UN High Commissioner for Refugees (UNHCR), *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014-2019*, 2014, available at: <http://www.refworld.org/docid/536b564d4.html>. The Global Strategy 'Beyond Detention' 2014-2019 document is available in: English, French, Hungarian, Hebrew and Spanish.

²² UN High Commissioner for Refugees (UNHCR), Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), *Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>.

²³ *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, available at: <http://www.refworld.org/docid/5523e8d94.html> and *Options Paper 2: Options for governments on open reception and alternatives to detention*, available at <http://www.refworld.org/docid/5523e9024.html>.

Providing comments on national legislation and policies, participating in parliamentary/government inquiries or commissions and making submissions to international, regional or national human rights bodies

UNHCR in ten focus countries (Canada, Hungary, Indonesia, Israel, Lithuania, Malta, Thailand, the United Kingdom, the United States and Zambia) submitted observations and proposed amendments to national legislations and policies, with a focus on detention-related provisions. In the United Kingdom and Malta, UNHCR also took part in national inquiries on detention and migration issues. During the reporting period, UNHCR in Hungary,²⁴ Thailand²⁵ and the United States²⁶ also submitted public evidence to the Universal Periodic Review,²⁷ to increase the visibility of detention-related issues and reinforce key messages on improving the detention situation in each country.

Judicial engagement

Judicial engagement broadly encompasses a wide range of activities such as: building partnerships with the legal and judicial community; supporting professional development of lawyers and judges; ensuring legal aid and representation as well as access to courts (“access to justice”). UNHCR may support strategic litigation undertaken by others, and, act as an intervener in court.²⁸

During the reporting period, UNHCR in nine focus countries (Canada, Hungary, Israel, Lithuania, Malaysia, Malta, Thailand, the United States and Zambia) undertook activities related to judicial engagement. These activities included keeping track of relevant case law, identifying precedent setting cases for court interventions (either direct interventions by UNHCR or assistance to NGOs or other partners) and building sustainable partnerships with the legal and judicial community. Among others, a positive example is UNHCR Israel’s increased engagement in the identification, training and ongoing counselling of pro bono lawyers. As a result, 94 attorneys were trained to provide legal assistance on asylum issues, 35 of whom have already assisted asylum-seekers in various proceedings, including on detention-related cases. In 2015, UNHCR in Hungary and Lithuania organized seminars on international and EU detention-related standards for members of the judiciary, in collaboration with the Council of Europe. These seminars were attended by 70 professionals in Lithuania and 100 in Hungary. UNHCR Hungary also supported a thematic conference organised by the Debrecen Administrative and Labour Law Court concerning adjudication in asylum cases, with special emphasis on detention cases.

As further discussed in the section dedicated to the progress towards achievements of the goals, strategic litigation revealed to be a useful means to achieve better compliance with international standards.

²⁴ UN High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: Hungary*, September 2015, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/UPRHUUNContributionsS25.aspx>

²⁵ UN High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: Thailand*, September 2015, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/UPRTHUNContributionsS25.aspx>

²⁶ UN High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report – Universal Periodic Review: United States of America*, October 2014, available at: <http://www.refworld.org/docid/55474c1b4.html>

²⁷ More information on the Universal Periodic Review is available on <http://ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

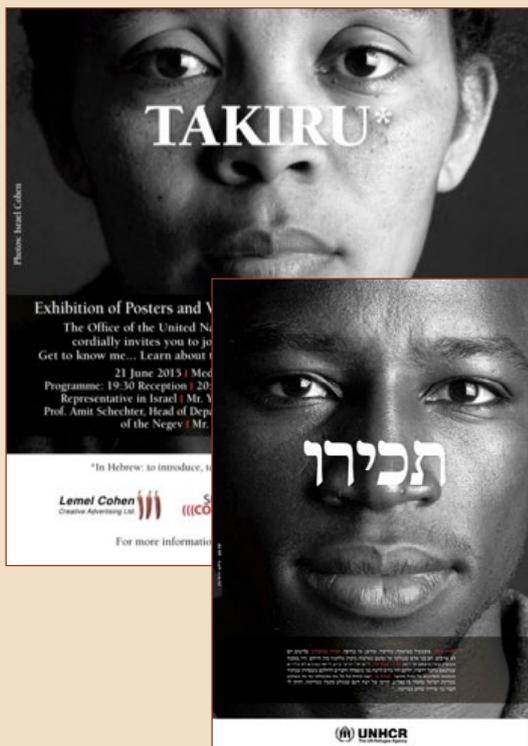
²⁸ UN High Commissioner for Refugees (UNHCR), *UNHCR, Asylum Access and HiAS, Second Annual Roundtable on Strategic Litigation and International Refugee Protection: Trends and Best Practices*, 20 June 2014, Switzerland, available at: <http://www.refworld.org/docid/543e73074.html>



Photo of the Office of the Seimas (author Olga Posaškova).

Launch of UNHCR Global Strategy – Beyond Detention 2014-2019 in the Seimas, the Parliament of Lithuania – March 2015

The conference “Is detention the only option? The issues and challenges of the detention of asylum-seekers and other foreigners in Lithuania” was jointly organized by the Seimas’ (Parliament) Human Rights Committee, the Seimas Ombudsmen’s Office, and UNHCR at the Parliament in Lithuania.



“Takiru” Campaign – Israel – June 2015

In Hebrew, *Takiru* means “to introduce, to get to know, to acknowledge, to recognize, to learn about”.

Awareness raising and campaigning

Garnering support for the global goals of the Global Strategy can lead to changes in public opinion and in turn to legislative and other needed changes. National initiatives may be reinforced by regional and global advocacy. Experience demonstrates that effective campaigning and awareness-raising strategies should be evidence-based, have a clear aim and develop a clear message to be communicated to the public and decision-makers. They should also involve those whose rights they seek to promote and protect.

At the national level, UNHCR has developed communication strategies to raise awareness on immigration detention issues, with offices in five focus countries (Hungary, Israel, Lithuania, Thailand and the United Kingdom) launching campaigns and awareness-raising activities during the reporting period.



At the global level, UNHCR supports the *Global Campaign to End Immigration Detention of Children*,²⁹ launched during

the 19th Session of the UN Human Rights Council in 2012. The Campaign coordinates international, regional and national activities with the goal of raising awareness on the issue of child immigration detention and encouraging states to “expeditiously and completely cease the immigration detention of children” consistent with the Committee on the Rights of the Child’s guidance. The Agency is also participating in events organized by the Parliamentary Assembly of the Council of Europe (PACE) who launched a two year *Campaign to End Immigration Detention of Children*³⁰ as part of the Global Campaign, on 20 April 2015. Through this campaign, the Parliamentary Assembly seeks to encourage States to adopt ATDs that fulfil the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved. Finally, UNHCR is part of the Inter-Agency Working Group to End Child Immigration Detention, which includes representatives from 22 leading UN agencies and NGOs working to coordinate their efforts to protect children and families from arbitrary immigration detention.

²⁹ <http://endchilddetention.org/>

³⁰ <http://website-pace.net/web/apce/children-in-detention>

Providing/strengthening technical knowledge and capacity-building for all stakeholders (including training)

Capacity-building activities are an essential component of NAPs. UNHCR has provided or supported trainings and capacity-building activities on detention issues, including on child protection issues related to detention. They include, inter alia, training for carers and case-workers implementing ATDs and training for detention facility staff on refugee rights and the specific needs of persons in situation of vulnerability or at risk.

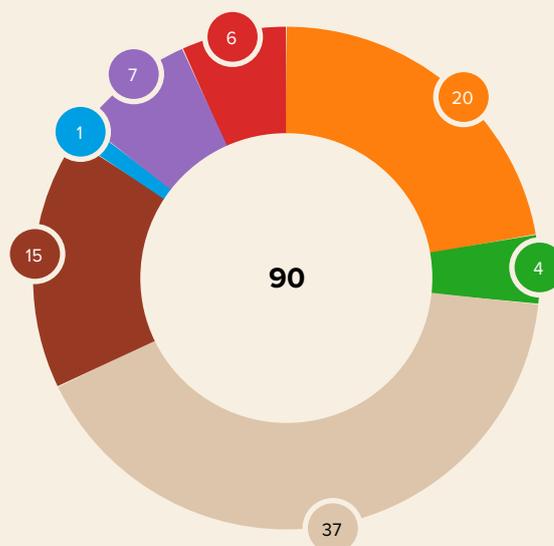
Strengthening partnerships

Developing and strengthening partnerships is fundamental to achieving the global goals. Partnerships multiply the effectiveness and impact of the various planned activities, by providing additional or different expertise, diversifying skills, enhancing resources, and increasing political awareness.

In October 2015, a **Memorandum of Understanding**³¹ (MoU) was signed with the Association for the Prevention of Torture (APT) to work jointly on technical cooperation, capacity-building, monitoring immigration detention and developing immigration detention monitoring workshops and training tools. In addition to the partnerships established with the IDC and the APT through MoUs, UNHCR has also developed a close working relationship with OHCHR. In December 2015, the two agencies agreed on a set of joint actions in the area of detention, including capacity-building initiatives aimed at strengthening detention responses of national human rights institutions and a joint research study on ATDs. UNHCR also meets periodically with the International Committee of the Red Cross (ICRC) to discuss issues of mutual interest in the area of detention monitoring.

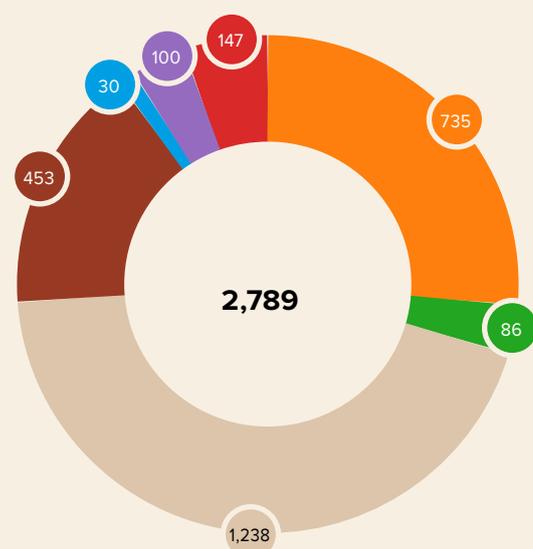
³¹ UN High Commissioner for Refugees (UNHCR), *Memorandum of Understanding between the Association for the Prevention of Torture and the Office of the United Nations High Commissioner for Refugees*, 30 October 2015, available at: <http://www.refworld.org/docid/563892104.htm>

TRAININGS UNDERTAKEN BY FOCUS COUNTRIES DURING THE REPORTING PERIOD



- Asylum Law, including UNHCR *Detention Guidelines*
- Detention monitoring methodology
- Child protection
- Attention to vulnerable groups
- Reception and Alternatives to detention
- Detention conditions standards
- Screening and referral

NUMBER OF PERSONS TRAINED



- Asylum Law, including UNHCR *Detention Guidelines*
- Detention monitoring methodology
- Child protection
- Attention to vulnerable groups
- Reception and Alternatives to detention
- Detention conditions standards
- Screening and referral



Begum Ali from Bangladesh is the owner of a restaurant. She says her family wants to live in Hungary and that is why they opened their restaurant.
UNHCR / Á. Stiller

2015 World Refugee Day Campaign – Hungary – June 2015

Billboard campaign in the Budapest underground portraying four refugees living in Hungary. Launched for the 2015 World Refugee Day, this campaign encourages Hungarians to get to know refugees.

Promoting information sharing, data collection and reporting

Having access to, collecting and managing reliable information is the first step in developing NAPs. It is also vital to improving accountability and transparency, in relation to the treatment of detained persons, to ensuring their protection and to preventing arbitrary detention. The rights to liberty and security of persons are fundamental human rights, and independent monitoring and oversight – including the collection and collation of statistics – can contribute to the minimisation of unnecessary or disproportionate forms of detention. While there are governments that have adopted consistent and public reporting practices, a sizeable number of governments neither collect nor report publicly at the national level on detention statistics, nor on ATDs. There is also no consistency at the global level in reporting on migration-related detention. This opacity creates difficulties for national and international actors who seek to promote improved detention practices and support effective ATDs for asylum-seekers and migrants.

Transparent mechanisms for requesting data, as well as collecting and sharing such data, need to be established to address gaps in knowledge and information on detention policies and practices. In this context, UNHCR in Canada and Hungary has successfully advocated with the national authorities to share more detailed statistical information. In Canada, the main government agencies involved in asylum and migration also established a network of detention focal points at national level.

Investing in, carrying out and disseminating research

Research can help identify some of the main protection gaps and challenges, as well as creative policy and practical solutions to them. Particularly with respect to ATDs, research has also been instrumental in furnishing empirical evidence to support their use.

During the reporting period, UNHCR in Canada, Hungary, Thailand and the United States supported or invested in research projects. In May 2016, UNHCR in Hungary produced a paper titled “*Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016*”³², presenting UNHCR’s observations on the legal measures and practices, including with regards to detention, adopted by Hungary between 1 July 2015 and 31 March 2016, in the course of the unfolding refugee and migration situation in Europe. In Thailand, UNHCR presented a series of research papers to the Royal Thai Government on the existing provisions in Thai law which permit non-detention, including non-detention of children, the State’s responsibilities pursuant to treaties to which Thailand is a party (ICCPR, CRC, UNCAT) and the elements of existing Thai law regarding a temporary protection framework for Rohingya persons. The office also invited academics and renowned practitioners to reflect upon the links between Buddhism and Humanitarianism, in particular regarding the protection of refugees. In Canada, the International Human Rights Program of the University of Toronto, in 2015, published a report titled “*We have no rights*” highlighting the routine detention of migrants with mental health issues, to which UNHCR Canada had provided input. This report recommended the creation of an independent oversight body, the set-up of a screening tool for Canada Border Service Agency’s front-line officers to assist with identification of vulnerable persons, the use of ATDs, and that long-term immigration detainees be permitted to seek *habeas corpus* in relation to their length of detention and detention conditions. The report was presented to the Human Rights Committee in advance of its review of Canada’s compliance with its obligations under the *International Covenant on Civil and Political Rights* in July 2015. In the United States, UNHCR released a report in October 2015, titled “*Women on the Run: First Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico*”,³³ compiling interviews of 160 women, most of whom were in immigration detention. Detention was mentioned as the number one obstacle to seeking international protection.³⁴

Monitoring immigration detention

Monitoring places of detention is an essential activity and part of UNHCR’s supervisory responsibility. In line with UNHCR *High Commissioner Policy on Detention Monitoring*,³⁵ regular monitoring of immigration detention facilities aims to ensure that detainees have access to asylum procedures and assess that detention conditions meet international standards. In all 12 focus countries, UNHCR monitors the presence of persons of concern in detention, either directly through on-site visits or through its partners.

During the reporting period, UNHCR in focus countries has strengthened these activities by negotiating unhindered access to places of immigration detention, planning and carrying out visits and identifying and supporting monitoring visits of other bodies. In Lithuania, UNHCR conducted consultations with the Foreigners Reception Centre and the Lithuania State Border Guard Service (SBGS) to secure access to the detention unit for its partner, the Lithuanian Red Cross Society (LRCS). In Israel, there are weekly monitoring missions to Saharonim and Holot, as well as monthly visits to the Givon detention facility in Ramle.

In Lithuania and Hungary, other independent national bodies (the Parliamentary Ombudsmen’s Office and the Public Defender’s Office respectively) also conducted monitoring visits to immigration detention places during the reporting period.

³² UN High Commissioner for Refugees (UNHCR), *Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016*, May 2016, available at: <http://www.refworld.org/docid/57319d514.html>

³³ UN High Commissioner for Refugees (UNHCR), *Women on the Run: First-hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico*, 26 October 2015, available at: <http://www.refworld.org/docid/56307e2a4.html>

³⁴ *Ibid.*, p. 47.

³⁵ UN High Commissioner for Refugees (UNHCR), *Policy on Detention Monitoring*, 3 December 2015, UNHCR/HCP/2015/7, available at: <http://www.refworld.org/docid/564199b54.html>

A GLOBAL PARTNERSHIP WITH THE INTERNATIONAL DETENTION COALITION (IDC)

In 2013, UNHCR signed a Memorandum of Understanding with the IDC. The IDC is a leading global network of over 300 civil society organizations and individuals in more than 70 countries that advocates for, undertakes research on, and provides direct services to refugees, asylum-seekers and migrants affected by immigration detention. In line with the priorities of the Global Strategy, the MoU aims to further the collaborative work to end the detention of children, expand the use of alternatives to immigration detention and improve conditions and monitoring of places of detention.

Following the Second Global Roundtable in Toronto, UNHCR was invited to participate in a two-day Regional Expert Roundtable on Alternatives to Detention for Children in November 2015 hosted by Thailand's representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR) and co-organized by the IDC and IDC Advisory Committee member, the Asia Pacific Refugee Rights Network (APRRN). 50 participants, including representatives from governments, NGOs, UNHCR and academics from three focus countries (Indonesia, Malaysia and Thailand) participated in the event. A key objective of the Roundtable was to bring together policy-makers, practitioners and researchers to discuss the most recent developments in ATDs, as well as to present the latest good practices from the ASEAN region and beyond. Participants were given the opportunity to identify remaining challenges and discuss appropriate responses that could be taken in their respective countries to explore and implement ATDs for children.

As a result of the Roundtable, participants from Indonesia agreed on the necessity to go beyond detention as a migration management tool, and that children must be released from immigration detention centres. Recommendations were made to establish a working group to conceptualise care arrangements for children in Indonesia and to develop standard operating procedures and screening tool to enable the government to assess the vulnerabilities of asylum-seeking and refugee children and refer them to the community. UNHCR is closely engaged with the authorities regarding the implementation of these recommendations, and provides support to its partner, Church World Service (CWS), who places UASC with foster families in the community.

Participants from Malaysia agreed that ATDs for children should be implemented in Malaysia. The tripartite working group comprised of representatives from the government, *Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM)*, the Human Rights Commission of Malaysia) and NGOs, has been exploring the piloting of an ATD model consisting of a temporary/transit shelter in which UASC will be placed until appropriate care arrangements in the community can be made. The participants noted the importance of cooperation between different stakeholders and proposed the creation of a 'working document' to set out the roles and responsibilities of each stakeholder and how the group members could best support each other. UNHCR Malaysia participated in the round-table and since then has been working with the Asia Pacific Regional Coordinator of the IDC, *SUHAKAM* and other members of the working group to support the pilot project and the implementation of other recommendations.

Participants from Thailand, including NGOs representatives, academics and international agencies, expressed their desire for ATDs to be developed more systematically, and to be grounded in formal laws or policies. Among others, recommendations were made to explore the model of delegating the day-to-day care of children and foster care arrangements to NGOs or the Ministry of Social Development and Human Security (MSDHS), prioritising small scale and family-based arrangements, accompanied by case management support. The Coalition for the Rights of Refugees and Stateless Persons was established as a follow-up, in which UNHCR Thailand is an active participant.

During the reporting period, UNHCR and its partners conducted 2,662 monitoring visits in the 12 focus countries. Principal findings and practical recommendations were shared with the authorities as part of UNHCR's role in supervising the well-being of persons of concern.

Facilitating and supporting pilot projects on alternatives to detention

UNHCR *Detention Guidelines* define "alternatives to detention" as any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. Alternatives to detention must not become alternative forms of detention, nor be imposed where no conditions on release or liberty are required, that is where there are no grounds for detention. They should respect the principle of minimum intervention and pay close attention to the situation of particularly vulnerable groups. In line with international standards, liberty and freedom of movement for asylum-seekers should always be the first option. UNHCR therefore strongly advocates for the implementation of community-based reception options and ATDs.

There are a range of options that can permit individuals and families to reside in the community with a degree of support and guidance ("supervision") and/or case management. Living independently in the community in private accommodation is the preferred approach, to allow asylum-seekers and others to resume "normal lives" as far as possible. In advocating for the setup of new ATD pilot projects, focus countries should consider these six questions or steps:³⁶

1. Is policy reform or an amendment to the law necessary to start a pilot project? Is the current (child protection) framework permissive to start a pilot ATD project?
2. Is new research on the national context needed? Is all relevant information relating to the country and its detention and reception practices available to determine which ATDs may work? Which ATD would work in this country, and which ones are not advisable in this specific context?
3. Who could be the future implementers of the pilot ATD project? Is a working group needed gathering Government agencies (child or family welfare), NGOs, and/or any other private stakeholders?
4. What type of pilot project could support the specific challenges faced by the Government?
5. Should the ATD focus on a particularly vulnerable group?
6. What will be the timing and milestones for the development of this ATD? Which indicators and evaluation criteria should be measured to monitor and evaluate the success of this ATD?

For UASC, priority should be given to family-based care arrangements, building on existing community care systems, with residential or institutional care always being the last resort. Alternative care should build on existing community care systems, and be viewed as an interim measure whilst family tracing is carried out and until the time when children can be reunited with family members.³⁷

UNHCR in five focus countries (Canada, Indonesia, Malaysia, Mexico, and the United States) facilitated or supported pilot projects on ATDs during the initial roll-out period. These included alternative care arrangements for UASC (Indonesia, Malaysia, Mexico), as well as ATDs for families (Mexico, United States) and adults (Canada). As illustrated by the three initiatives below, depending on the implementation context and available actors, pilot projects on ATDs for families and care arrangements for UASC can vary greatly.

³⁶ Summary of discussions held at the annual workshop for focus countries, in partnership with the IDC, London, UK, September 2015.

³⁷ UN High Commissioner for Refugees (UNHCR), *Child Protection issue Brief, Alternative Care*, Geneva, January 2014, available at: <http://www.refworld.org/pdfid/52f0e4f34.pdf>.

MEXICO – COMMUNITY-BASED PILOT IN MEXICO CITY

In October 2014, at the initiative and with the facilitation of the IDC, an agreement was made with the Advisory Committee of the National Migration Institute (IMN) to develop and implement a community-based pilot project together with the INM and IDC's national partners *Casa Alianza* and *Aldeas Infantiles*. The project aims at developing mechanisms for identification, referral and reception of UASC subject to migration or asylum procedures, by referring them to children's shelters with specialized care and case management models.

In part financed by the *Secretaría de Desarrollo Rural y Equidad para las Comunidades* (SEDEREC), the project was adopted by the INM and fits into the Mexican legal framework which foresees that when the transfer of a UASC from the immigration stations to a lodging provided by the National System for the Integral Development of the Family (DIF) is not possible, the INM can resort to private lodging. The pilot ran from August 2015 until April 2016. At the time of writing, follow-up to institutionalize internal procedures and coordination mechanisms between different authorities is underway. UNHCR is participating in and closely supporting this follow-up process. The pilot's positive outcomes have spurred INM to independently launch spin-off pilots for asylum-seeker families and adults, and seek new opportunities for community-based reception options.

INDONESIA – GOVERNMENT-RUN SHELTER FOR UASC IN MAKASSAR

In December 2015, the Coordinating Ministry on Political, Legal and Security Affairs launched a new shelter in Makassar, managed by the Department of Social Affairs with support from IOM, to accommodate 130 male unaccompanied and separated children. This comes in addition to an existing government-run shelter for 44 UASC established in 2014 in Medan and two similar shelters for 80 UASC in Jakarta, maintained by UNHCR with support from IOM.³⁸ The Coordinating Ministry of Political, Legal and Security Affairs sees this new facility as a pilot project and is planning to replicate the model in different locations and to expand the project to the establishment of shelters for female unaccompanied children through a joint process involving UNHCR, IOM, and various Government agencies.

UNITED STATES – THE “FAMILY CASE MANAGEMENT PROGRAM”

In 2015, the U.S. Immigration and Customs Enforcement (ICE) and GEO Care, a private prison contractor, launched a pilot ATD project, the "Family Case Management Program". This project aims to release 800 vulnerable asylum-seeking families out of custody into community care in five U.S. cities (Washington, New York, Chicago, Los Angeles and Houston) with the presence of at least one ICE manager as well as social workers and administrators from Geo Care. The program involves case management for access to services and legal aid, as well as assistance with compliance in immigration hearings. In each location Geo Care partners with an NGO to provide additional social and case management support to participants and to identify services and legal assistance. The Family Case Management Program itself does not fund any services such as health care or shelter. Instead, participants are expected to identify sources of support in the community, through NGOs. The first 180 participants entered the program in January 2016. From November 2015 onward, UNHCR provided technical support and shared good practices on alternatives to detention with the ICE and Geo Care, in the preparatory phase of this program. UNHCR also participates as an observer in the advisory committee set up by the authorities for the project.

³⁸ UNHCR's partner, Church World Service (CWS), has been granted funding by the US Government to open two additional UASC shelters in Jakarta; this project will be managed as a separate but very much linked activity together with the two shelters CWS manages with UNHCR funding. This will provide an additional 80 places for UASC currently in detention.

PROGRESS TOWARDS ACHIEVEMENT OF THE GOALS

This section provides an overview of the progress made towards achieving each of the three goals of the Global Strategy in the first two years of its implementation. The detention checklist³⁹ established in the *Baseline Report*, based on UNHCR *Detention Guidelines*, is used to measure progress over time. Although it is too early to assess the medium and long-term impact of the roll-out of the Global Strategy, this first impact assessment⁴⁰ of the Global Strategy in the 12 focus countries indicates some emerging trends which potentially signal significant changes in coming years in immigration detention policies and practices, and in increased protection for persons of concern to UNHCR.

GOAL 1:

END THE DETENTION OF CHILDREN

Increased forced displacement around the world has seen larger numbers of children finding themselves at risk of detention after fleeing their countries of origin. There is strong evidence that detention has a profound and negative impact on child health and development, regardless of the conditions in which children are held, and even when detained for short periods of time. Children, in particular unaccompanied or separated children, should, in principle, not be detained at all.⁴¹

Aware of the harm caused by detention, focus countries have made significant progress towards the first goal of the Global Strategy. Positive steps include the adoption of protective laws and practices against the detention of children, improved implementation of the best interests of the child principle through best interests assessments and/or determination,⁴² access to family tracing and reunification procedures, prioritized processing of asylum claims, access to age-appropriate information in a child-friendly format, increased attention on the process of appointing qualified guardians and legal representatives, as well as various initiatives and commitments to implement new ATD pilot projects. These improvements resulted in an overall decrease in the total number of children detained in the focus countries.

³⁹ See annex 2. Information related to sources and collection of data is presented under the section dedicated to the methodology of the report.

⁴⁰ UNHCR *Programme Manual (Chapter 4)*, defines the impact as “the higher level effect achieved through implementation of activities to meet goals and objectives. [...] impact refers to the quality and intended change produced by a programme.” (Glossary, xviii). See also Roche, C., *Impact Assessment for Development Agencies, learning to value change*, Oxfam, 1999: “The impact assessment of a strategy is generally defined as the systematic analysis of the lasting or significant changes – positive or negative, intended or not – in people’s lives brought about by a given action or series of actions”.

⁴¹ UNHCR *Detention Guidelines*, Guideline 9.2, pp. 34-36.

⁴² Best interests assessment (BIA) and best interests determination (BID) are key child protection tools providing procedural safeguards and protection measures for children, in accordance with the *Convention on the Rights of the Child* (CRC). They are part of a process which starts in principal as soon as a UASC is identified, and ends when the child has obtained a durable solution to his/her situation of separation and displacement. The BIA is an assessment tool and a part of ongoing case management that guides professionals in making decisions in collaboration with children and in their best interests. A BIA can take place at various points, including in detention, whenever an action that is planned or taken may affect the child. It involves interviews or consultations with the child, as well as additional information gathering as needed, by professionals with the required expertise, knowledge and skills in child protection and, as appropriate, the weighing of elements of the child’s circumstances. For more information on BID and BIA, see UN High Commissioner for Refugees (UNHCR), *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/docid/5423da264.html>, UN High Commissioner for Refugees (UNHCR), *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008, available at: <http://www.refworld.org/docid/48480c342.html> and UN High Commissioner for Refugees (UNHCR), *Field Handbook for the Implementation of UNHCR BID Guidelines*, November 2011, available at: <http://www.refworld.org/docid/4e4a57d02.html>.

Protective laws and policies against the detention of children

Six focus countries (Israel, Lithuania, Malta, Mexico, the United States and Zambia) improved their legal and policy frameworks related to the detention of children. Mexico introduced strong safeguards in its national legislation, including an absolute ban on the detention of children, both accompanied and unaccompanied, in the Administrative Provisions of the *Law on the Rights of Children*,⁴³ which provides that, “At no time migrant girls, boys or adolescents, whether or not traveling in the company of an adult person, shall be deprived of their liberty in *estaciones migratorias*, nor in any other immigration detention facility”.⁴⁴ The related regulations do not present exceptions to this rule, which increased the protection standard for non-national children on the move. However, as detention of children practices continue, the upcoming challenge will be to implement these provisions in practice and policy. In July 2016, a United States federal Court of Appeals ruled that the presumption in favor of releasing minors under an existing settlement agreement applies to all minors whether unaccompanied or accompanied by their parents. Thus, the prevailing legal framework in the United States requires the release of all children from immigration detention without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody. However, if a suitable placement is not immediately available, the U.S. authorities are obliged to place children in the “least restrictive” setting appropriate to their age and any special needs, and must implement standards relating to the care and treatment of children in custody.

In two focus countries in the European Union, the transposition of the EU regional framework⁴⁵ was instrumental in ensuring better protection for children. In Malta, *Act No. XXXVI of 2015 of the Immigration Act (Amendment)*, adopted in December 2015, provides that applicants identified as under the age of 18 shall not be detained, except as a measure of last resort. This enshrines in law government policy in effect since 2015 which aims to avoid the detention of children. However, the same piece of legislation still permits the detention of children for the purposes of medical checks and clearance at an Initial Reception Centre (IRC), for a maximum of seven days. UNHCR monitoring of the IRC in 2015 revealed that children accompanied by their parents were released within 72 hours following the completion of a medical check. This practice remains an area of concern with regards to the best interests of these children. In Lithuania, the *Law on the Legal Status of Aliens* introduced access to community-based arrangements for persons in situations of vulnerability and their families, as well as the requirement that the length of detention be as short as possible and no longer than necessary (also applicable to children). Moreover, based on a series of precedent-setting judgments from the Lithuanian Supreme Administrative Court, children are now generally not detained.

Other important legislative changes passed in the focus countries during the reporting period include the exemption of children from mandatory residency in Holot, a detention-like semi-open facility in the Negev desert in Israel, following adoption by the Knesset of Amendment No. 5 to the *Anti-Infiltration law*.⁴⁶ This amendment is a continuation of the practice established since 2013 of non-detention of asylum-seeking children. In Zambia, the adoption and implementation by immigration authorities of the *Protection Assistance to Vulnerable Migrants*⁴⁷ policy framework, resulted in a reduction in the number of children detained.

⁴³ *Ley general de los derechos de niñas, niños y adolescentes*, December 2014, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA_041214.pdf; *Regulations for the Law on the Rights of Children*, December 2015, available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5418303&fecha=02/12/2015

⁴⁴ Article 111, Administrative Provisions of the *Law on the Rights of Children*, adopted on 2 December 2015.

⁴⁵ Common European Asylum System, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm.

⁴⁶ However, migrant children are still being detained with their mothers while awaiting deportation.

⁴⁷ Joint Programme implemented by the International Organization for Migration (IOM), United Nations High Commission for Refugees (UNHCR) and the United Nations Children’s Fund (UNICEF), supporting the Government of the Republic of Zambia to build the capacity of national actors in responding to mixed migration. See *Guidelines for Protection Assistance to Vulnerable Migrants in Zambia*, available at: <https://goo.gl/bx0FVZ>

Best interests of the child prevails

In accordance with Article 3 of the *Convention on the Rights of the Child*, the best interests principle should be taken into consideration in all actions concerning children, including the decision to detain, whether or not the child is an asylum-seeker, refugee, internally displaced or stateless. The *Baseline Report* revealed that this was a major challenge for all focus countries, with none carrying out a ‘best interests assessment’ or determination (BIA, BID) in a systematic manner when making a decision to detain. During the reporting period, some improvements were noted in Lithuania where, following a series of judgments of the Supreme Administrative Court,⁴⁸ a BIA is now part of the necessity, proportionality and reasonableness test, leading to referrals to appropriate care arrangements and ATDs for families. In Malta, in accordance with new provisions in Regulation 14 of the *Revised Reception Regulations*,⁴⁹ the best interests of the child must be considered. UNHCR nevertheless remains concerned about the lack of clear provisions in this new legal framework prescribing *when* a BIA or BID is to be carried out and the procedures for vulnerability and age assessment and *when* these are required. UNHCR recommends that such procedures be prescribed by law.⁵⁰

To ensure that the best interests of the child is a primary consideration in all actions concerning children, all efforts should be made to prioritize the asylum processing of children, as well as family tracing and reunification, to provide access to age-appropriate information on asylum procedures, including how to contact UNHCR in child-friendly formats (e.g. picture books) and to appoint a qualified guardian and legal representation for UASC.

Prioritized processing of asylum claims

Priority processing of asylum claims of children remains an important protection tool as it acknowledges the seriousness of the length of time spent in detention in light of the relatively short trajectory of a child’s development. However, it should not entail accelerating case processing at the expense of respecting the child’s rights or need for adequate time to gain trust in the environment, express his/her views and receive proper support and information on the options available.⁵¹

Steps were also undertaken in four focus countries to prioritize asylum claims of children, in order to reduce periods in detention. In Canada, in order to ensure the early release of children, an instruction was given by the Immigration and Refugee Board to prioritize all refugee claims and detention review hearings involving UASC. In Malaysia⁵² and Malta, similar steps were undertaken to prioritize children in detention for registration and treatment of their asylum claim. In the United States, in case of a negative decision in the initial “credible fear” screening, the processing of cases of detained children before immigration courts is prioritized. However, the increased number of persons detained since 2013, including children in families, suggests that the prioritization process may not be as effective as it could be.

⁴⁸ Lithuania’s Supreme Administrative Court’s judgments, case A-1798-624/2015, available at: <http://goo.gl/4XkvIB>, case A-2621-662/2015, available at: <https://goo.gl/h04DV8>, and case A-3714-662/2015, available at: <http://goo.gl/GI8c6E>.

⁴⁹ *Legal Notice 417 of 2015, the Reception of Asylum Seekers (Minimum Standards) (Amendment) Regulations*, December 2015, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=27220&l=1>

⁵⁰ UNHCR Malta, *Observations on Malta’s Revised Legislative and Policy Framework for the Reception of Asylum-Seekers*, available at: <http://www.refworld.org/docid/56e963824.html>.

⁵¹ UN High Commissioner for Refugees (UNHCR), *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, p.21, available at: <http://www.refworld.org/docid/5423da264.html>; UN High Commissioner for Refugees (UNHCR), *Field Handbook for the Implementation of UNHCR BID Guidelines*, November 2011, available at: <http://www.refworld.org/docid/4e4a57d02.html> and UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>.

⁵² In Malaysia, this prioritisation is organised by UNHCR who conducts refugee status determination under its mandate.

Access to information on asylum procedures

Children have the right to access information that enables them to express their views and which explains how their views are given weight. Hence, available information must be imparted in such a manner and under such circumstances that the child is able to have full appreciation of the situation, in accordance with her/his age and maturity level.⁵³ The more children know, have experienced and understand, the more responsibility they should have in shaping matters that affect them. Where possible, giving the views of children due weight means seeking informed consent of children.⁵⁴

During the reporting period, good cooperation between immigration authorities and UNHCR's partners increased access to age-appropriate information for children in detention in three focus countries (Indonesia, Malta and Mexico), allowing children a better understanding of the implications of proceedings, the options available, and their rights and obligations. In Mexico for example, UNHCR continued to disseminate age-appropriate and child-sensitive information materials on the asylum procedure (a video⁵⁵ and info-boards), developed end 2013 in partnership with the Mexican Refugee Commission (COMAR) and the National Human Rights Commission, and monitored the availability of this information and its accessibility in detention centres.

Appointment of a qualified guardian and legal representative

Studies show that, in countries where the practice of guardianship is well established,⁵⁶ children prize the presence of their guardian⁵⁷ and that, along with providing secure accommodation and improving family reunification procedures, the appointment of a guardian has a potential role to play in reducing the risk of disappearing from care.⁵⁸ During the reporting period, progress was reported on this issue in three focus countries (Hungary, Indonesia and the United States). In Indonesia, the Social Affairs Office introduced a new system of guardianship employing social workers through their implementing partner, Quantum. A shelter in Makassar was chosen to run the pilot project and the Government agreed to extend the project to different places, if it proved successful. In Hungary, a maximum period of time for the Guardianship Agency to appoint a legal guardian for UASC (eight days following the request by the asylum authority) was introduced in the *Asylum Act*.⁵⁹ Effective since 1 August 2015, this amendment contributed to the hastening of the appointment process, although in practice it has remained long (approximately five weeks). In the United States, a larger proportion of children are represented in immigration court as a result of additional government funding to the Child Advocate Program. This program was expanded from two sites in 2013 to eight sites in 2016 for particularly vulnerable UASC, such as victims of trafficking. The role of child advocates is to identify and

⁵³ See *Supra*, footnote 51.

⁵⁴ See *Convention on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard*, paras. 84, 85, available at: <http://goo.gl/RJ7MCy> and Save the Children and UN Children's Fund (UNICEF), *Every Child's Right to be heard, A resource guide on the UN Committee on the Rights of the Child General Comment no.12*, 2011 available at: <http://goo.gl/B11vX6>.

⁵⁵ The video *Información sobre la protección de los niños que solicitan la condición de refugiado en México* is available at: <https://youtu.be/93OgdoQBMnE>.

⁵⁶ E.g. Sweden and the Netherlands. CONNECT project report, *Identification, reception and protection of unaccompanied children*, 2014, p. 29 and p. 35, available at <http://www.connectproject.eu/>.

⁵⁷ See for example European Union: European Agency for Fundamental Rights, *Separated, asylum-seeking children in European Union Member States: comparative report*, December 2010, pp. 51-52, available at: <http://www.refworld.org/docid/4ecf71aeb.html>.

⁵⁸ CONNECT project report, *Identification, reception and protection of unaccompanied children*, 2014, p. 65, available at <http://www.connectproject.eu/>.

⁵⁹ Hungary: Act LXXX of 2007 on *Asylum* (2016) [Hungary], January 2008, available at: <http://www.refworld.org/docid/4979cc072.html>. See para. 35 (6) of the *Asylum Act*: "(6) If the person seeking recognition is an unaccompanied minor, the refugee authority shall, without delay, initiate the temporary placement of the child and request the guardianship authority to appoint a child protection guardian, who serves to represent the minor. The child protection guardian shall be appointed within eight days of the arrival of the refugee authority's request."

advocate for the best interests, the safety and well-being of the child before an immigration attorney. Child advocates are bilingual and often bicultural volunteers who are trained and supervised by attorneys with experience in children's rights and immigration law. In every case assigned to a child advocate, the Young Center, the NGO coordinating this program, provides the child's attorney and the decision-maker with a report on the best interests of each individual child. Child advocates also make recommendations about conditions of detention, release, custody, placement and issues of safe repatriation.

Alternative reception/care arrangements (including for families) are available and appropriate

The Global Strategy encourages countries to set up alternative reception and care arrangements for UASC and families that fulfil the best interests of the child, along with rights to liberty and family life in the case of accompanied children. These alternatives should be non-custodial, and respect the principle of minimum intervention. For UASC, family-based care arrangements should be prioritised, and residential or institutional care always be a last resort. Alternative care arrangements for children are most effective when designed and approved by competent child protection authorities, in close coordination with asylum or migration authorities, and when they are integrated into existing national child protection systems. Moreover, ATDs need to be developed and implemented in a way that is context specific, taking into account the particularities of each situation and country context.

Three focus countries (Indonesia, Mexico and the United States) initiated pilot projects on alternative care arrangements for children or families during the reporting period, demonstrating their willingness to test new ATDs or expand existing models. In all cases, ATDs were implemented in partnership with NGOs.⁶⁰ One focus country (Malaysia) has taken steps with civil society partners to establish a similar pilot project for UASC in the near future. These pilots are described earlier in the report,⁶¹ and will be closely monitored in the next phase of the implementation of the Global Strategy.

The implementation of these initiatives, in certain focus countries on a very limited scale, illustrates that care arrangements are implemented for UASC⁶² in all focus countries as at mid-2016, although they are not always readily and/or available for all children. Ensuring the provision of an ATD to families remains a challenge in most focus countries: with the exception of Lithuania, families are still detained in all of the other focus countries.

Child-sensitive screening and referral procedures are in place

Child-sensitive screening and referral procedures are important mechanisms in order to minimize detention, to ensure that children are released without delay, and to provide necessary services and assistance for children. During the reporting period, positive steps were taken towards the establishment of child-sensitive screening and referral procedures in five focus countries (Canada, Hungary, Malaysia, Malta and Thailand). These developments are reported under this sub-goal; the mechanisms set up for adults are reported under Goal 2, sub-goal 3.

⁶⁰ Partnerships between the Government and civil society are indeed critical for successful ATDs, as they contribute to empowering and building the trust of migrants and asylum-seekers in immigration and asylum proceedings. See UN High Commissioner for Refugees (UNHCR), *Second Global Roundtable on Reception and Alternatives to Detention: Summary of deliberations*, August 2015, available at: <http://www.refworld.org/docid/55e8079f4.html>.

⁶¹ All descriptions of these ATD pilot projects are available in the section *Facilitating and supporting pilot projects on alternatives to detention*, p. 24 and in the respective country pages.

⁶² In Malaysia, Mexico, Thailand and Zambia, the majority of UASC do not benefit from such care arrangements, which may in certain cases be available only to a certain group (for example, boys below 15 and girls of Rohingya origin).

In Canada, UNHCR is collaborating with the Government and working group members to develop a draft protocol on child-sensitive screening. UNHCR is also working with the Canada Border Services Agency (CBSA) to develop and update screening tools for vulnerable persons, including those with mental health concerns. In Hungary, UNHCR and its implementing partners initiated activities related to the identification and referral to authorities of detained asylum-seekers with specific needs, in order to facilitate their access to medical services, legal aid, psychological support and family reunification. UNHCR identified 65 age-disputed children during monitoring visits conducted between 19 October 2015 and 31 December 2015 and referred them to relevant government authorities for release and/or necessary age assessment procedures in detention.

In Malaysia, UNHCR implemented an internal referral system ('PRS180 System') which enables detention focal points to refer UASC cases identified in immigration detention to the Child Protection and Community Liaison Units for tracing of the child's family members and/or for care arrangements to be made ahead of his/her release from detention. This system is widely used by detention focal points and resulted in reduced periods of detention of children. In Malta, an agreement was reached with authorities concerning UNHCR's presence at Initial Reception Centres (IRC) for children, and its provision of information and referrals where appropriate. The *Strategy for the Reception of Asylum Seekers and Irregular Migrants*⁶³ also provides for the prioritization of children upon arrival at the examination area and referral: for those who claim to be underage and are unaccompanied, the Agency for the Welfare of Asylum-Seekers (AWAS) is immediately informed in order to accommodate them in open centres suited to their specific circumstances. Children with communicable diseases requiring a specialist intervention are referred to a pediatric specialist. In Thailand, as part of an informal government temporary protection practice, women, girls, and boys under 15 who are persons of concern of Rohingya origin and victims of trafficking are referred to alternative care arrangements. Progress was also noted in Zambia, where child-friendly screening rooms have been refurbished in several key immigration border posts.

Immediate release of children from detention and their placement in other forms of appropriate accommodation is coordinated amongst national agencies and, as appropriate, with UNHCR

A rapid and coordinated response amongst national agencies, child protection actors and, as appropriate, UNHCR, is necessary to ensure the immediate release of children from detention and their placement in other forms of appropriate care arrangements. In 2013, Indonesia,⁶⁴ Malta, the United Kingdom and the United States had already established such a coordination mechanism. During the reporting period, six additional focus countries (Canada, Lithuania, Malaysia, Mexico, Thailand and Zambia) undertook actions to increase early release of detained children. In Canada, CBSA developed child-sensitive tools in the National Risk Assessment for Detention, which indicates that minors are to be considered low risk, thereby taking steps towards reducing detention and promoting the early release of children. In Lithuania, in the absence of a specific coordination mechanism to ensure the release of children, the enhanced presence of legal advisors in detention places ensures that judicial review proceedings are systematically initiated on their behalf within seven to ten days. In Malaysia and Thailand, UNHCR's direct engagement with, and sensitization of, enforcement and judicial authorities allowed for an observation of a drop in arrests and increase in the release of persons of concern, especially children. In Mexico, the ATD pilot project by the member of the International Detention Coalition (IDC) revealed good coordination between authorities – COMAR, the National Migration Institute (INM), the National System for Integral Family Development (DIF) – civil society

⁶³ Minister for Home Affairs and National Security, *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, December 2015, available at <https://goo.gl/mAkkY3>.

⁶⁴ While the coordination mechanism is in place in Indonesia, it is not always successful and often takes many months to secure release.

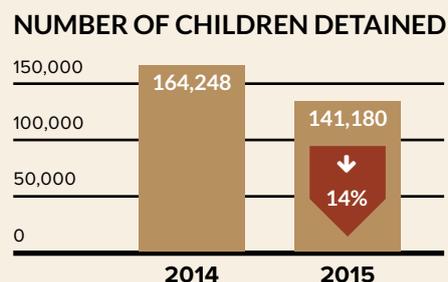
and UNHCR, to support identification, referral and reception of detained asylum-seeking and migrant UASC, which led to the announcement by the INM of the plan to expand the project in 2016. Progress was also noted in Zambia where the implementation of a pilot database of persons in detention for immigration-related purposes rolled-out by IOM in three major detention facilities in the country allows for a better information flow and faster interventions by IOM or UNHCR, as appropriate.

A young Syrian mother with her son and daughter hope to be admitted to the Hungarian transit zone at the Tompa border crossing in May, 2016. The family had been waiting for several days before they were admitted, shortly after this photograph was taken. © UNHCR/Zsolt Balla/May 2016.



A decrease in the number of children detained

At the end of 2015, UNHCR was aware of a total of 141,180 children detained for immigration-related purposes across the focus countries.⁶⁵ Compared to 2013, where *all* focus countries detained children for immigration purposes, two focus countries (Israel and Lithuania) have ceased to detain asylum-seeking children.⁶⁶ From 2014 to 2015, a 14% reduction in the number of children detained was observed across the 12 focus countries.⁶⁷



With the exception of Mexico and the United Kingdom, all focus countries recorded a decrease in the number of children detained during the reporting period. In the United Kingdom, the number of children detained did not change between 2014 and 2015, while in Mexico official statistics indicated an increase of nearly 50% in detentions of children in 2015, compared to 2014. No trends could be drawn for Thailand for 2014 and 2015, as statistics on detained children across the whole territory were unavailable at the time of this report. However, UNHCR observed in this focus country a decrease in the number of arrests of children, as well as a higher release rate in the early stage of the criminal proceedings. For focus countries where children are still detained, challenges for the coming period will be to measure whether time spent by children in detention is reduced and their immediate release into appropriate care arrangements is organized in the shortest possible time.

⁶⁵ If available publicly, detailed figures and their limitations are given under the respective country pages.

⁶⁶ Israel adopted a policy of non-detention of asylum-seeking children mid-2013.

⁶⁷ Percentage calculated based on information available to UNHCR at the time of writing. This diminution does not include the number of children detained in all immigration detention centres in Thailand, as they were not available at the time of writing.

ENSURE THAT ALTERNATIVES TO DETENTION ARE AVAILABLE IN LAW AND IMPLEMENTED IN PRACTICE

UNHCR promotes ATDs that respect the principle of minimum intervention, comply with human rights standards, and pay close attention to the situation of particularly vulnerable groups. As liberty and freedom of movement for asylum-seekers are always the first option, living independently in the community should be the preferred approach, to allow asylum-seekers and others to resume normal lives as far as possible. When residing in the community, asylum-seekers should have access to basic services (accommodation, medical and psychological assistance, education, legal assistance). Positively, in eight focus countries, one or more mechanisms exist allowing asylum-seekers to legally stay in the community with variable access to basic services.⁶⁸

Legal and policy frameworks include alternatives to immigration detention; ATDs are now implemented in all focus countries

The *Baseline Report* showed positive trends end 2013 with all the focus countries' national legislation providing ATDs for UASC, children in families and adults and by the end of the reporting period, all focus countries⁶⁹ had had some experience in the implementation of ATDs. An analysis of the implementation of the ATDs for the same three groups as at mid-2016, shows that in seven focus countries (Canada, Hungary, Malaysia, Thailand, Mexico, the United States and Zambia), adults and children in families face challenges accessing ATDs.⁷⁰ In the United States, for example where various ATD programs are implemented for large numbers of asylum-seekers in families or single adults, a relatively small number of people are able to access the least restrictive programs (family case management; ISAP; release on bond; release on recognizance).

While governments of four focus countries (Indonesia, Malaysia, Mexico and the United States) have declared their commitment to identifying ATDs for children and families, and set up pilot projects for these groups, the expansion and exploration of new ATDs for adults has been more limited. One focus country (the United Kingdom) piloted a new ATD project⁷¹ for ex-offender men aged 18-30 at risk of long-term immigration detention, which showed promising results in terms of reducing rates of absconding and recidivism. In Canada, the ATD *Toronto Bail Program* was expanded to include a pilot for rejected refugee claimants who are waiting for a pre-removal risk assessment, and in May 2016, the Canada Border Services Agency published a call for expression of interest to organizations to develop a national community supervision program for ATDs.

As at mid-2016, Governments from all focus countries continue to play an important role in implementing ATDs, and in eight focus countries, this is done in partnership with NGOs (Canada, Indonesia, the United Kingdom, Malaysia, Thailand, Mexico, the United States and Zambia).

⁶⁸ See country pages.

⁶⁹ In Canada however, ATDs are not uniformly nor consistently available.

⁷⁰ A description of these challenges is given in the respective country pages.

⁷¹ This pilot project, launched by the NGO Detention Action, commenced in the UK shortly before the launch of the Global Strategy in June 2014.

Challenges to the implementation of ATDs

Case management

The diversity of reception options and alternatives to detention are recorded in the country pages for each of the focus countries and in the coming years, a detailed assessment of each of these ATDs should be organised. A first analysis of the existing ATDs and new pilot projects already reveals that case management is only provided in ATDs in eight focus countries (Canada, Indonesia, Lithuania, Malaysia, Mexico, the United Kingdom, the United States and Zambia). As a strategy for supporting and managing individuals and their asylum and migration claims and other needs, case management can help orient and support individuals to navigate asylum and immigration systems, while also responding to their individual needs to allow them to engage fully with those processes. Ensuring qualitative case management is available for children and families in existing and planned ATDs will be one of the major challenges for the upcoming period.

Assessment and review of the necessity, reasonableness and proportionality of detention in each individual case before resorting to detention and screening and referral mechanisms exist to ensure that asylum-seekers are referred to ATDs.

Key safeguards to ensure that detention is only resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose,⁷² include the implementation of (i) procedures to assess the necessity, reasonableness and proportionality of detention in each individual case before resorting to detention and (ii) screening and referral mechanisms (e.g. at the border, upon disembarkation, prior to or while in detention) to ensure that asylum-seekers are referred to ATDs. Screening is a key component of successful asylum and immigration systems as it allows for better case by case determination of the necessity and proportionality considerations in any decision to detain. Screening involves identity, security and health checks, as well as the detection of specific vulnerabilities. It helps minimise reliance on detention, by supporting the early identification of persons with protection needs and, if applicable, choosing the most appropriate ATD for each individual case.⁷³

The implementation of these procedures to assess and review the necessity, reasonableness and proportionality of detention in each individual case, and appropriate screening and referral mechanisms to ensure asylum-seekers are referred to ATDs, are still a challenge in the focus countries. Similar to the situation as at end 2013, and despite positive steps undertaken in half of the focus countries,⁷⁴ assessment procedures rarely exist and, where they do, are seldom implemented. As at mid-2016, they are only available in four focus countries (Canada, the United Kingdom, the United States and Zambia). In nine focus countries (all except Canada, the United Kingdom, and Israel), authorities rarely or never consider ATDs in each individual case before resorting to detention.

Screening and referral mechanisms are in place in only five focus countries (Canada, Indonesia, Lithuania, Malta and Zambia). Two focus countries (Israel and Thailand) are showing some encouraging progress in the implementation of such mechanisms.⁷⁵ To support governments in the implementation of these critical mechanisms, and as a direct follow-up action to the Second Roundtable on Reception and ATDs held in Toronto in March 2015, UNHCR and the IDC developed vulnerability screening tools, that will be available in the second half of 2016.

⁷² UNHCR *Detention Guidelines*, Guideline 4.2.

⁷³ For further information on screening, see UNHCR, *Second Global Roundtable on Reception and Alternatives to Detention: Summary of deliberations*, August 2015, available at: <http://www.refworld.org/docic/55e8079f4.html>

⁷⁴ Canada, Indonesia, Israel, Malaysia Thailand and Zambia.

⁷⁵ In Israel, since 2015, a pre-Holot screening hearing is conducted to determine whether to issue a summons to Holot in the individual case and, since the beginning of 2016, to determine the length of mandatory residence (up to a maximum of 12 months). Screening is implemented in Thailand in accordance with the *Anti-Trafficking in Person Act B.E. 2551 (2008)*, available at <http://www.thaigov.go.th/pcb/data/group1/g1n09.pdf>.

Number of persons of concern in ATDs

The paucity and limited availability of information on the number of persons of concern in ATD proves challenging in most of the focus countries. In half of the focus countries, this information was not available to UNHCR at the time of writing. When available, in some cases, figures relate to all persons in ATDs (including migrants detained for immigration-related purposes) and in others, to UNHCR persons of concern in ATDs. Ensuring greater transparency in quantitative reporting will be addressed in the next phase of the Global Strategy's implementation. Whether ATDs appropriately take into consideration the needs of persons with special needs or vulnerabilities and meet human rights standards, will also require further assessment.

GOAL 3:

ENSURE THAT CONDITIONS OF DETENTION, WHERE DETENTION IS NECESSARY AND UNAVOIDABLE, MEET INTERNATIONAL STANDARDS

Compared to the first two goals of the Global Strategy, progress recorded under the third goal has been moderate. Where progress was observed, this was largely linked to the adoption of new legal frameworks or amendments in existing national legislation,⁷⁶ as well as to strategic litigation. These national developments have contributed significantly to support a better implementation of international standards concerning detention and improved detention conditions.⁷⁷

Increased compliance with detention-related standards

Compared to end-2013, the situation remains unchanged with regards to the criminalisation of irregular entry and stay in the focus countries: in contravention of the *1951 Refugee Convention*, in nine focus countries (all⁷⁸ except Canada, Malta and Mexico), asylum-seekers are penalised for their irregular entry and in seven (all except Canada⁷⁹, Indonesia, Malta, Mexico and the United States) for their irregular stay. Minor progress is noted in three focus countries in the European Union⁸⁰ in relation to compliance with UNHCR *Detention Guidelines* as regards consistency of grounds for detention. In the United Kingdom, the successful court challenge by the NGO Detention Action and the Court of Appeal's consequent suspension by the Immigration Minister, in June 2015, of the Detained Fast Track (DFT) procedure, is also recorded as a progress.

⁷⁶ See in particular country pages of Israel, Lithuania, Malta and Mexico.

⁷⁷ See in particular country pages of Canada and Israel.

⁷⁸ In Lithuania, the Lithuanian legislation is in line with Art. 31 of the *1951 Refugee Convention*, but the implementation still needs further improvement.

⁷⁹ In Canada, depending on the facts, an individual can be detained for irregular entry if other criteria for inadmissibility and grounds for detention are present and if there is a breach of the compliance of the law ss. 20(1) and 41. There is no criminal penalization unless those factors for criminality are present.

⁸⁰ Following the transposition of the European Asylum Acquis in the national legislations of Hungary, Lithuania and Malta. In Lithuania, the legislative package aimed at transposing the EU asylum directives into domestic law approved in November 2015 contains a revised list of detention grounds and a provision requiring that detention be as short as possible and no longer than necessary. In Malta, the revised legislation transposing the European Asylum Acquis in Malta no longer supports the automatic and mandatory detention of asylum seekers who have entered Malta in an irregular manner, but sets a limited list of grounds for detention.

National legislation in eight focus countries (Hungary, Indonesia, Israel, Lithuania, Malta, Mexico,⁸¹ the United States and Zambia) now provides for a maximum period of immigration detention. In Israel, the High Court of Justice ruled on the constitutionality of Amendment No. 5 and deemed the twenty-month period of residency in Holot to be disproportionate and therefore unconstitutional. The Knesset later formulated new provisions stipulating this shorter residency period. Provisional arrangements have been made, according to which the residency period must not exceed twelve months. As a result, the Ministry of Interior ordered the release of 1,700 Eritrean and Sudanese asylum-seekers in August of last year.

In contravention of international standards, and in a *status quo* to the situation as at end-2013, most focus countries continue to detain persons of concern to UNHCR with persons suspected or convicted of a crime. Signs of improvement were observed, however, in Hungary, where persons of concern held in penitentiary institutions are now detained separately from the general prison population (although still in the same facility), and in Lithuania, where resort to pre-trial investigations and related detention for irregular border crossings has been significantly reduced.

Rights, such as access to asylum procedures, access to legal advice and access to information on the right to access legal advice, were either not provided in practice or were inadequate in many of the focus countries

As at end-2013, UNHCR observed that access to asylum procedures was ensured for persons detained for immigration-related purposes in only six focus countries (Canada, Hungary, Indonesia, Malta, the United Kingdom, and the United States). In others, access was partial or non-existent. As at mid-2016, progress on this sub-goal has been noted in Lithuania and Zambia, due to increased cooperation with immigration authorities, legal aid service providers and appropriate referral and screening of asylum-seekers.

The right to access legal advice is critical to ensure access to asylum procedures. While national legislation in ten focus countries (Canada, Hungary, Lithuania, Malaysia, Malta, Mexico, Thailand, the United Kingdom, the United States and Zambia) enshrine the right to access legal advice while in detention, UNHCR observes with concern that access is not guaranteed in practice in the majority of focus countries. During the reporting period, Lithuania and Malta improved access to legal advice in detention. In Malta, a specific provision to guarantee free legal assistance and representation during the review of the lawfulness of detention was introduced in the *Reception of Asylum Seekers (Minimum Standards) (Amendment) Regulations, 2015*.⁸² In Lithuania, counselling is now offered to detained asylum-seekers on a weekly basis in the Foreigners Registration Centre, and access to State-guaranteed legal aid has also improved with relevant provisions now clearly stipulated in applicable by-laws.⁸³ Finally, most persons in detention are also not informed of their right to access legal advice in half of the focus countries (Hungary, Indonesia, Israel, Malaysia, Mexico and Thailand).

⁸¹ In Mexico, a maximum time limit in immigration detention of 15 working days is set in law, and can be extended up to 60 working days in exceptional cases (i.e. nationality confirmation delayed by consular officials). Yet Article 111 (V) of the *Migration Law* does not specify a time limit for detention for those who initiate an administrative procedure or judicial remedy with the consequence that in practice, there is no maximum period for immigration detention for asylum-seekers who initiate a legal remedy. In the United States, the Supreme Court has established reviews for detention for certain limited classes of detainees after a period of months.

⁸² Regulation 6(5) of the *Refugee Act (CAP. 420), Reception of Asylum Seekers (Minimum Standards) (Amendment) Regulations, 2015*, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662>. states that "An applicant shall be provided with free legal assistance and representation during the review of the lawfulness of his detention in accordance with sub-regulation (3). Free legal assistance and representation entails preparation of procedural documents and participation in any hearing before the Immigration Appeals Board". UNHCR nevertheless regrets that this important procedural guarantee does not extend to proceedings before the First Hall Civil Court (in its constitutional jurisdiction), the Constitutional Court, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU).

⁸³ See *Order on the Procedure for Granting and Withdrawing Asylum in the Republic of Lithuania*, approved by the Minister of Interior on 24 February 2016, available at: <https://goo.gl/7w6zqm>.

Procedural challenges identified in relation to detention decisions and reviews

Procedural challenges were identified in relation to detention decisions and reviews. According to international standards, decisions to detain or to extend detention must be subject to minimum procedural safeguards. Asylum-seekers are entitled to be brought promptly before a judicial or other independent authority to have their detention decision reviewed. This initial review of the detention decision should ideally be automatic, and take place in the first instance within 24-48 hours of the initial decision to hold the asylum-seeker. The reviewing body must be independent of the initial detaining authority, and possess the power to order release or to vary any condition of release.⁸⁴ In only seven focus countries (Canada, Hungary, Israel, Lithuania, Malta,⁸⁵ Thailand and Zambia) legislation foresees this important safeguard (though not always within this very short period of time). In the five other focus countries, in the absence of such requirement in law, in practice, persons in detention do not have their initial detention decision reviewed.

To comply with international standards, national legislation should also foresee a provision for regular periodic reviews of the necessity for the continuation of detention before a court or an independent body, which the asylum-seeker and his/her representative have the right to attend. Again, national legislation in only seven focus countries (Canada, Hungary, Israel, Lithuania, Malta, Thailand, the United Kingdom and Zambia) complies with this critical safeguard.

Finally, and irrespective of the review of the initial detention decision and the periodic review of the necessity for the continuation of detention, the right to challenge the lawfulness of detention before a court of law at any time, either personally or through a representative, must be respected. The burden of proof to establish the lawfulness of the detention rests on the authorities in question. They need to establish that there is a legal basis for the detention in question, that the detention is justified according to the principles of necessity, reasonableness and proportionality, and that other, less intrusive means of achieving the same objectives have been considered in the individual case. National legislation in eight focus countries includes this habeas corpus provision, but in practice, its implementation remains problematic, partly because of the lack of legal advice in detention, discussed above.

Access by UNHCR to places of detention for the purpose of regular monitoring

Similar to the situation as at end 2013, in nine focus countries (Canada, Hungary, Indonesia, Lithuania, Malaysia,⁸⁶ Malta, Mexico,⁸⁷ the United Kingdom, and the United States) UNHCR has access to all detention places on the territory. Exceptions include Israel, Thailand and Zambia, where monitoring of transit zones at airports requires specific authorization which may not always be provided.

To support the improvement of detention conditions and ensure the dignified treatment of detainees in accordance with international standards, UNHCR trained 2,791 persons across the focus countries,

⁸⁴ UNHCR *Detention Guidelines*, Guideline 7.

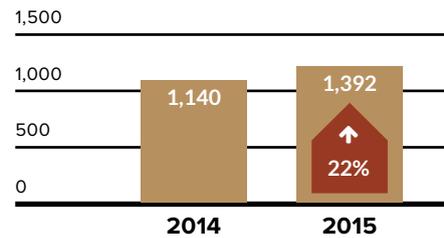
⁸⁵ In Malta, an administrative review to take place after seven working days was introduced in 2015 in the *Reception of Asylum Seekers (Minimum Standards) (Amendment) Regulations, 2015*. The new provisions also foresee that if the detention is continued, a review of the lawfulness of detention shall be held after periods of two months thereafter.

⁸⁶ In Malaysia, UNHCR routinely visited those detention places located in Peninsula Malaysia, but access to detention places in other parts of the territory (Sabah and Sarawak) had not been sought during the reporting period. Of those detention centres visited, UNHCR does not have access to all parts of the centres or to all persons of concern.

⁸⁷ In Mexico, UNHCR has access to all detention centres but faces difficulties in accessing all parts of certain detention facilities, resulting in difficulties to ensure appropriate monitoring of detention conditions.

including on the methodology to monitor detention conditions and detention conditions standards.⁸⁸ The UNHCR, APT and IDC *Monitoring Manual* was also largely disseminated in all focus countries, and translated into the national language in some of them. In some countries, such as Indonesia and Zambia, participatory assessments were conducted with immigration authorities to obtain a better understanding of the practical challenges they face. Findings show that in many circumstances, lack of compliance with international standards in detention facilities correlates with poor conditions, overcrowding or insufficient resources.

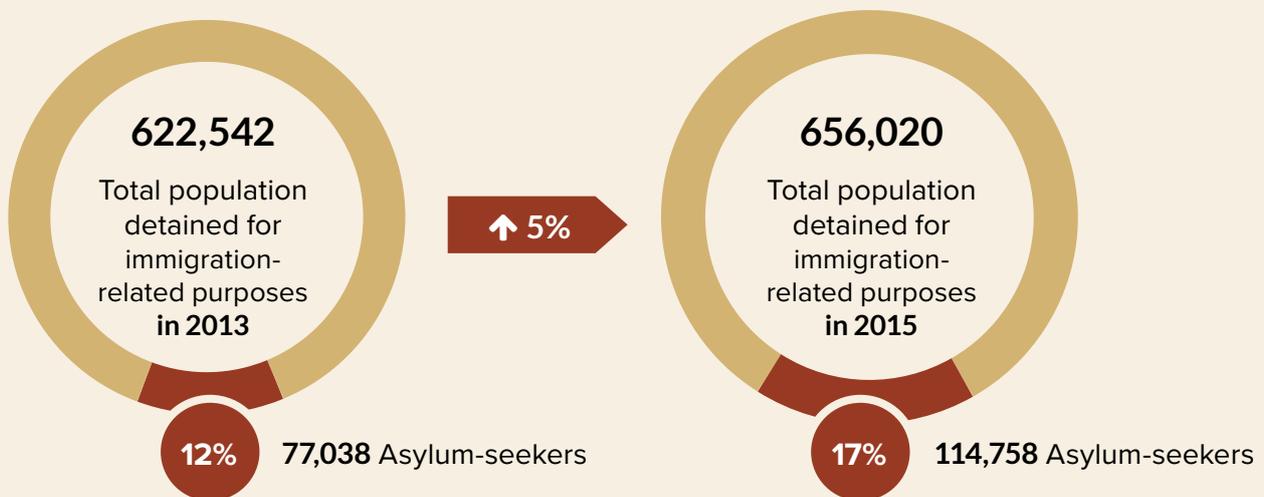
NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



An increase in the number of asylum-seekers detained

For the year 2015, UNHCR is aware of a total of 656,020 persons detained for immigration-related purposes across the 12 focus countries, compared to 622,542 persons in 2013 (representing a 5% increase).⁸⁹ This number includes 114,758 asylum-seekers (representing 17% of the total number of persons detained for immigration-related purposes), compared to 77,038 (representing 12% of the total number of persons detained for immigration-related purposes) in 2013.⁹⁰

NUMBER OF ASYLUM-SEEKERS DETAINED OUT OF TOTAL POPULATION DETAINED



⁸⁸ Detailed information on capacity-building activities conducted under the Global Strategy is available p. 19 of this report.

⁸⁹ These figures of 2013 and 2015 do not include the total number of persons detained for immigration-related purposes in Thailand, as they were unavailable at the time writing. The figures related to the United States cover fiscal year 2013 and 2015.

⁹⁰ At the time of writing, the numbers of asylum-seekers detained in Canada were unavailable for 2015.

RESULTS BY COUNTRY

The focus countries' national contexts are critical for achieving progress under the Global Strategy. These contexts are widely different across the 12 focus countries and have to be taken into account both when implementing the Global Strategy, and when reporting on the progress achieved.

This last section presents the state of play of detention for each country engaged in the Global Strategy. Each country page introduces the major in-country trends related to asylum and detention. A specific section then highlights the most important detention-related developments which may impact persons of concern to UNHCR. A short description of the main activities undertaken by UNHCR is also provided, followed by the gaps and challenges faced during this first implementation phase and the necessary next steps to work towards the achievement of the goals.

These country-specific pages also include the Global Strategy indicators which reflect the situation and progress achieved under the three main goals. Some of these indicators are based on UNHCR's Results Framework, which outlines protection objectives and outputs. This is the case for example for the indicator "Number of children detained". For each goal, indicators of the detention checklist established based on UNHCR *Detention Guidelines* have also been included.

Except where otherwise specified, the sources of the data for the assessment of all indicators are either UNHCR or UNHCR's partners' direct monitoring, or the regular detention data reports shared by immigration authorities and recorded by UNHCR offices. These differences in the collection of data relate to the different operating contexts and may affect the comparability of the data. UNHCR operations were encouraged to report on all indicators; where data were not available, or unknown at the time of writing, this was also reported.

In each country page, under Goal 1, *End the detention of children*, focus countries reported on the total number of children, asylum-seekers and migrants, traveling with their families and unaccompanied or separated, detained for immigration purposes.

Under Goal 2, *Ensure that alternatives to detention are available in law and implemented in practice*, focus countries analysed whether freedom of movement and liberty, as well as the possibility of living in the community are guaranteed for asylum-seekers. Offices also reported on the type of ATDs available in law and used in practice, the number of places (or facilities) available in care arrangements for UASC and in ATDs for families and the percentage of persons in ATDs out of the total number of persons detained. With regard to the latter, depending on the data available, the results either include only asylum-seekers, or in other cases, all persons in ATDs for immigration-related purposes. Focus countries also confirmed whether or not, there is case management provided in the ATDs.

In the alternatives to detention context, case management is a strategy for supporting and managing individuals and their asylum claims whilst their status is being resolved, with a focus on informed decision-making, timely and fair status resolution and improved coping mechanisms and well-being on the part of individuals.⁹¹

Under Goal 3, *Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards*, the number of monitoring visits conducted by UNHCR or its partner(s) is recorded. These numbers do not include visits conducted for registration and/or RSD purposes, but only those visits which led to dialogue and sharing of recommendations with the authorities.

Finally, each country page states the trainings organized during the reporting period on detention-related issues, including the themes of the trainings and number of participants.

⁹¹ UNHCR *Detention Guideline*, p. 44.

Canada

CANADA'S immigration detention regime is built on the principle that detention should be used as a last resort, when necessary and proportionate, taking alternatives to detention (ATDs) into consideration. Procedural safeguards are in place to avoid and limit prolonged or arbitrary detention, including regular detention reviews before the Immigration and Refugee Board (IRB) and judicial review at the Federal Court. However, following the death of a detainee in the British Columbia Immigration Holding Centre (IHC) in 2014, strong media attention has been given to the detention of asylum-seekers and migrants and to the Government's National Immigration Detention Framework. This incident, along with similar ones across the country, sparked community mobilization: over 140 medical professionals signed a letter requesting the end of the detention of migrants with mental health issues and the legal community requested the provincial government of Ontario to cancel an agreement allowing the Canada Border Services Agency (CBSA) to transfer immigration detainees to provincial jails. Recent Canadian jurisprudence also signalled the judiciary's approach to considering ATDs and the release of long-term detainees. Federal and provincial governments demonstrated their interest in reforming the detention system and in May 2016, the Government announced a review of CBSA's National Immigration Detention Framework, including ending the practice of detaining children, looking at ATDs and making some system changes such as review mechanisms for CBSA.

KEY DEVELOPMENTS

- Expansion of the ATD *Toronto Bail Program* to include a pilot for rejected refugee claimants who are waiting for a pre-removal risk assessment (PRRA).
- Prioritization by the Immigration Division members in the IRB of all refugee claims and detention reviews hearings involving unaccompanied and separated asylum-seeking children (UASC).
- Incorporation of a mental health screening tool in CBSA's medical screening form to be used by front line officers.
- Publication in May 2015 by the International Human Rights Program, University of Toronto, of the report "*We have no rights*"⁹² which highlights the routine detention of migrants with mental health issues, and recommends the creation of an independent oversight body, the set-up of a screening tool for CBSA front-line officers to assist with identification of vulnerable persons, the use of ATDs, and to ensure availability of *habeas corpus* for long-term immigration detainees to challenge the length of detention and detention conditions.
- National implementation by CBSA of an initial risk assessment and reassessment after 60 days, to determine, based on the individual circumstances of the person, whether an ATD is applicable and, if not, the consideration of the most appropriate detention facility.⁹³



⁹² *We have no rights*, International Human Rights Program at the University of Toronto, Faculty of Law, 2015, available at: <http://goo.gl/hRrXEj>

⁹³ CBSA's national risk assessment for detention is a tool used by their officers to identify different levels of risk (low-high) that will allow them to assess detention and ATDs. After 60 days, a detention reassessment is undertaken. See ENF 20, *Detention, Immigration, Refugees and Citizenship Canada*, 22/12/2015, available at: <http://goo.gl/9tJzxN>.

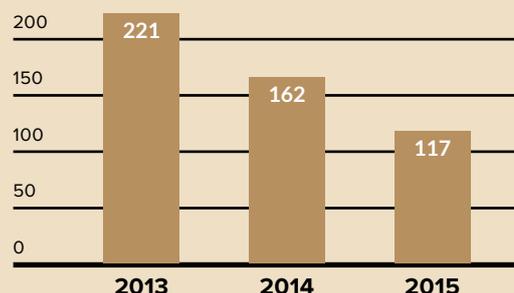
- Decision from the Ontario Court of Appeal⁹⁴ requesting provincial courts to hear *habeas corpus* applications for people held for lengthy periods of time in immigration detention.
- Pronouncement by the Federal Court on the unreasonableness of lengthy detention and the need to assess ATDs prior to resorting to detention.⁹⁵
- Establishment in March 2016, by Ontario's government, of a taskforce to develop an action plan to address overcrowding and improve conditions at the Ottawa-Carleton Detention Centre.⁹⁶
- Publication by CBSA in May 2016 of a call for expression of interest⁹⁷ to organizations to develop a national community supervision program for ATDs.

The Global Strategy was launched on 11 December 2014 in Montreal in the presence of about 30 government and NGO representatives. Following this event, UNHCR Canada drafted its National Action Plan (NAP) in broad consultation with the Government – CBSA, Immigration, Refugees and Citizenship Canada (IRCC), the IRB and Correctional Service of Canada (CSC) – the legal and advocacy community and NGOs across the country. Regional working groups to support the implementation of the Global Strategy were established in Toronto, Montreal and Vancouver with NGOs, provincial government authorities, correctional authorities, advocacy organizations and mental health institutions as well as CBSA, IRCC and IRB's detention focal points. A first national working group meeting with government focal points was held in December 2015, in Ottawa, to review NAP activities undertaken in 2015.

⁹⁴ *Ogiamien v. Ontario*, 2016 ONSC 3080, available at <http://goo.gl/zqAviF>
⁹⁵ *Warssama v. Canada* (Citizenship and Immigration), 2015 FC 1311, available at: <http://goo.gl/1Uicis> and *Ali v. Canada* (Citizenship and Immigration), 2015 FC 1012, available at: <http://goo.gl/nXAQTd>
⁹⁶ <https://goo.gl/SEJ7rc>
⁹⁷ <https://goo.gl/Av3Vtp>

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED

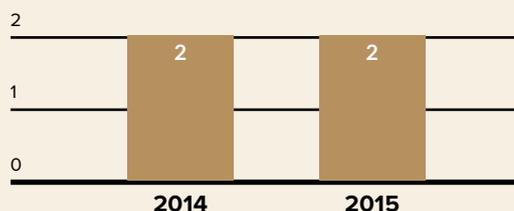


Source: Canada Border Service Agency (CBSA).

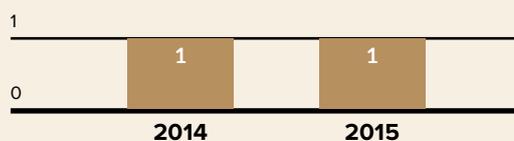
- ✔ The legal framework ensures that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF FACILITIES AVAILABLE FOR CARE ARRANGEMENTS FOR UASC



NUMBER OF FACILITIES AVAILABLE AS ATDs FOR FAMILIES



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation	✔	✔	✔
Reporting conditions	✔	✔	✔
Directed residence	✔	✔	✔
Residence at open/semi-open reception/asylum centres	✔	✔	✔
Release on bail/bond	✔	✔	✔
Provision of a guarantor/surety	✔	✔	✔
Community supervision arrangements	✔	✔	✔

✔ available in legislation ✔ used in practice

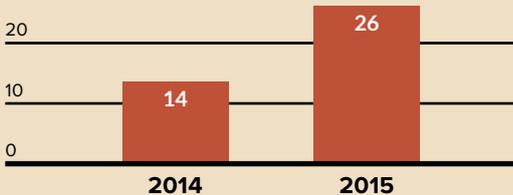
**PERCENTAGE OF PERSONS IN ATDs
(out of total number of persons detained)**



- ✔ Mechanism allowing asylum-seekers to stay legally in the community.
- ✔ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance).
- ✔ Case management is provided in ATDs (the *Toronto Bail Program*).

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ✘ Canada is not a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ✔ Yes ✘ No ⦿ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR’s partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

During the initial roll-out period, the office advocated with the authorities to receive particular categories of **statistical information** related to immigration detention of UNHCR persons of concern. Most of these categories, i.e., length of detention, grounds for detention, reasons for release, have been agreed on, demonstrating the authorities’ willingness towards more transparency, and as of September 2015, CBSA already started providing monthly statistics on the detention of children.

UNHCR Canada also supported the **expansion of ATDs** by coordinating with the *Toronto Bail Program*, NGO initiatives and shelters interested in acting as ATDs. The office compiled and shared with CBSA detention focal points a list of non-governmental organizations that could be engaged in ATDs and provide services to released detainees. UNHCR also supported the Multi Agency Partnership (MAP), a coalition of NGOs in Vancouver, in its submission to CBSA of a pilot ATD project in Vancouver region.

UNHCR’s full access to and regular monitoring of all detention centres where persons of concern are detained enabled the office to identify some important concerns related to detention throughout the country, such as instances of commingling and prolonged detention. This activity led to **reports and recommendations** to CBSA, Provincial Correctional Services, and the IRB for the development of policies and good practices to address protection gaps.

CBSA also has a MoU with the Canadian Red Cross to monitor detention holding centres and some correctional facilities where immigration detainees are held, and to report and provide recommendations on allegations of ill-treatment and access to complaint mechanisms. With a view of **expanding its detention monitoring activities** across Canada, UNHCR signed in June 2015 an agreement with the Vancouver based NGO Kinbrace to conduct detention monitoring in the Vancouver region. Renewed in 2016 for another year, it includes observing detention hearings at the Immigration Division of the IRB. The office



TRAININGS ORGANIZED IN CANADA DURING THE REPORTING PERIOD

2 on Detention
monitoring methodology

1 on Detention
conditions standards

NUMBER OF PERSONS TRAINED IN CANADA DURING THE REPORTING PERIOD

11 on Detention
monitoring methodology

11 on Detention
conditions standards

also developed **monitoring forms** in line with the UNHCR, APT and IDC *Monitoring Manual* and delivered **trainings** to the Canadian Red Cross monitors and to Kinbrace staff during the summer 2015 in order to ensure the use of the same comprehensive detention monitoring form by detention monitors across the country.

Gaps and challenges

Advancing on NAP activities has proved to be challenging due to limited financial and human resources. Moreover, the Canadian Federal election led to implementation delays of certain NAP activities in the first half of 2015, such as the Government finalizing the drafting of the national ATD policy.

Outstanding issues of concern continue to include instances of commingling of immigration detainees with the individuals convicted of criminal offenses, the prolonged detention and absence of legal provisions that limit the length of detention, the absence of a policy on the detention of minors⁹⁸ and lack of a consistent policy on transfers from immigration holding centres to provincial detention facilities. Furthermore, regular and reliable statistics of adults in detention have not been available since September 2014 due to technical problems and the restructuring of internal data collection processes.

Next steps

In 2016, UNHCR will continue to meet with the federal government focal points to discuss implementation of several initiatives considered since the launch of the NAP in 2014, such as the systematic appointment of an individual to represent the interests of a minor or a person who is unable to appreciate the nature of the proceedings, the establishment of an official ATD process in Canada to assist the most vulnerable population (e.g. women, children and individuals with mental health conditions), the development of joint trainings for corrections staff, the provision of regular detention statistics and the development and implementation of a transfer policy for detainees that are moved to provincial detention centres. UNHCR will also continue to monitor and analyze jurisprudence trends on detention to understand the impact of detention and how ATDs have been used pre and post refugee reform and will seek to intervene in the courts as appropriate. UNHCR gratefully acknowledges that CBSA will continue to work towards implementing elements of its National Immigration Detention Framework, including revising and introducing new immigration detention standards addressing commingling of asylum-seekers with suspected or convicted criminals in detention, treatment of vulnerable groups in detention, development of a minors policy and conceptual framework for a national ATD program which will ensure greater consistency in the application of immigration detention practices across Canada.

⁹⁸ In Canada, the definition of a minor child varies depending on the province. More information available at: <http://goo.gl/zJacBJ>

Hungary

IN HUNGARY, the increasing number of arrivals in 2015 led to the adoption of a number of severely restrictive measures, including criminalization of irregular entry and the erection of fences along Hungary's borders with Serbia and Croatia; which, in UNHCR's view, had the combined effect of restricting and deterring access to asylum in the country, and shrinking the protection space for people fleeing conflict and persecution. As of 15 September 2015, all those entering Hungary without authorization through the border control fence are considered to have committed a criminal offence, which is punishable by an actual or suspended term of imprisonment of up to three years and mandatory expulsion. Asylum-seekers are not exempted from criminal procedure. The law further criminalizes "damaging of the border fence" and "hampering of the construction work of the border fence". The closing down of the biggest reception centre in the country has had the effect of further reducing access to proper accommodation with protection-sensitive arrangements. In 2015, 8,562 persons were detained for immigration-related purposes, including 2,393 asylum-seekers.

KEY DEVELOPMENTS

- Introduction of a maximum period of time for the Guardianship Agency to appoint a legal guardian for UASC in the *Asylum Law*,⁹⁹ which contributed to shortening the appointment process in practice.
- Decision not to detain families in the Debrecen asylum detention centre following a report by the Parliamentary Commissioner for Human Rights revealing systemic issues in the detention practice.
- Increasing concerns in relation to detention of children practices, in particular regarding the age assessment process¹⁰⁰ and poor detention conditions.
- Continued concerns over the detention decision process, with less coercive means (ATDs) rarely considered prior to resort to detention and individualised assessments lacking consideration for vulnerability factors or other specific needs.

⁹⁹ *Hungary: Act LXXX of 2007 on Asylum (2016)* [Hungary], January 2008, available at: <http://www.refworld.org/docid/4979cc072.html>. Para. 35 (6) of the *Asylum Act*: "(6) If the person seeking recognition is an unaccompanied minor, the refugee authority shall, without delay, initiate the temporary placement of the child and request the guardianship authority to appoint a child protection guardian, who serves to represent the minor. The child protection guardian shall be appointed within eight days of the arrival of the refugee authority's request."

¹⁰⁰ Age assessment is only initiated by the Office of Immigration and Nationality (OIN) if it has any doubts concerning the minor status of the applicant. Age assessment is confined in law to medical examination (physical inspection) generally conducted by a GP, no multi-disciplinary approach is applied, thus there is no investigation into the psychological maturity of the applicant and the relevant ethnic and cultural facts/components in accordance with *General Comment No. 6* of the Committee on the Rights of the Child. A shift in practice is observed by UNHCR whereby applicants disputing the age registered in the asylum procedure are regularly required by the OIN to advance the costs of the medical age assessment procedure. Due to lack of sufficient financial resources many applicants are unable to advance such costs. Determination of age is all the more important in the context of applicants facing detention and with the termination of the State integration support as child-specific support and entitlement to after-care service is dependent on the age assessed by the OIN administrative authority.

The National Action Plan (NAP) for Hungary was developed by UNHCR in consultation with various stakeholders, including the Parliamentary Commissioner for Fundamental Rights acting as a National Preventive Mechanism (NPM) under the *Optional Protocol to the Convention Against Torture* (OPCAT) and NGOs working on human rights and refugees. UNHCR has briefed the Ministry of Interior, the Office of Immigration and Nationality (OIN) as well as the Hungarian Police on the Global Strategy and on the envisaged activities within the NAP.

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

During the initial roll-out phase of the Global Strategy, UNHCR Hungary engaged in awareness-raising activities on international standards regarding detention conditions and the detention situation in Hungary. In February 2015, the office, together with the Council of Europe organised a seminar and training on detention and alternatives to detention (ATDs), where a hundred legal practitioners, including members of the judiciary, developed their knowledge on EU law and relevant international standards, including European Court of Human Rights case law related to detention. UNHCR also contributed to the trainings held by the Hungarian Helsinki Committee within their EU funded project 'Made Real' on the legislative framework and implementation of ATDs, and participated in a thematic conference organised by the Debrecen Administrative and Labour Law Court concerning adjudication in asylum cases, with special emphasis on detention cases.

UNHCR launched a **billboard campaign** in the Budapest underground on World Refugee Day 2015, portraying four refugees living in Hungary, and organised three very popular media events with them. The media coverage was outstanding with an outreach of about 4 million people.

With regard to detention monitoring, UNHCR Hungary and its partner, the Hungarian Helsinki Committee, conducted **regular monitoring visits** to detention centres, open reception centres and shelters specialised in the reception of UASC. In cooperation with the Hungarian Helsinki

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



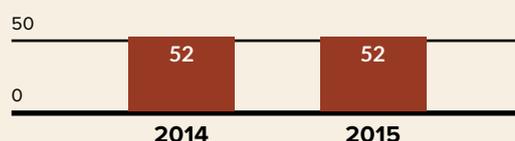
In 2014, government authorities only provided UNHCR with the number of families with children in detention without disaggregated data on the number of children detained out of total 1,230 families. In 2015, 190 children were detained with families (official data provided by the Office of Immigration and Nationality), in addition to this, UNHCR identified 65 age-disputed children in detention in the period of October-December 2015.

Source: In the absence of systematic data gathering and publication on the number of children detained in Hungary, figures are based on UNHCR regular monitoring of detention and *ad hoc* exchanges of information with the authorities.

- ✔ The legal framework ensures that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



Source: Unaccompanied Children's Home in Fót, Hungary.

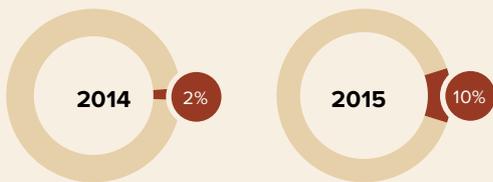
NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES (families released on bail)



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions	✔	✔	✔
Directed residence	✔	✔	✔
Residence at open/semi-open reception/asylum centres	✔	✔	✔
Release on bail/bond	✔	✔	✔
Provision of a guarantor/surety			
Community supervision arrangements			

✔ available in legislation ✔ used in practice

**PERCENTAGE OF PERSONS IN ATDs
(out of total number of persons detained)**

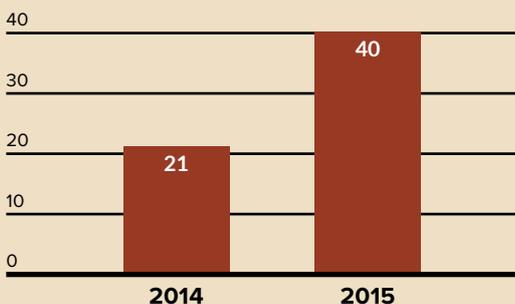


Source: Office of Immigration and Nationality.

- ✔ Mechanism allowing asylum-seekers to stay legally in the community.
- ✔ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical assistance, education). Psychological assistance and legal assistance are provided by UNHCR partners.
- ✘ No case management* provided in ATDs.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ✔ Hungary is a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ✔ Yes ✘ No ⦿ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

Committee, UNHCR provided training for human rights monitors and volunteers on the use of the *Monitoring Immigration Detention: Practical Manual*.¹⁰¹ A **Field Unit** was established in Szeged (in Southern Hungary) to increase UNHCR's monitoring capacity of the border areas and transit zones. Persons of concern had also better access to protection information via group counselling organised by UNHCR and individual counselling organised by the partners Hungarian Helsinki Committee and *Menedék* - Hungarian Association for Migrants. In addition, UNHCR enhanced coordination with refugee organizations and new interlocutors (volunteers, faith-based organizations, schools, international organizations) with a view to regularly exchanging information on current practices and developments, including in relation to detention of asylum-seekers.

UNHCR and its partners also initiated activities related to the identification of asylum-seekers with specific needs in detention and their referral to the authorities, in order to facilitate their access to medical services, legal aid, psychological support and family reunification. UNHCR identified 65 age-disputed children during the regular monitoring visits conducted between 19 October 2015 and 31 December 2015 and referred them to the relevant government authorities in order to release them from detention and/or to initiate the necessary age assessment procedure in detention. As a result, in 2015, 352 persons benefitted from psycho-social assistance by *Menedék* Association, and 988 persons identified as particularly vulnerable were provided with psychotherapy, medication and somatic rehabilitation by the Cordelia Foundation, which also challenged the detention orders of 65 asylum-seekers with specific needs and supported their refugee status determination procedure, with the provision of medico-legal reports. Access to legal assistance also increased by 34% in 2015 with 1,893 asylum-seekers who benefitted of free legal assistance and 331 of free legal representation. 68 clients represented by the Hungarian Helsinki Committee were granted international protection.

¹⁰¹ UN High Commissioner for Refugees (UNHCR), *Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>.



TRAININGS ORGANIZED IN HUNGARY DURING THE REPORTING PERIOD

3 on Asylum Law, including
UNHCR *Detention Guidelines*

1 on Detention monitoring
methodology

NUMBER OF PERSONS TRAINED IN HUNGARY DURING THE REPORTING PERIOD

265 on Asylum Law, including
UNHCR *Detention Guidelines*

15 on Detention monitoring
methodology

Finally, UNHCR Hungary successfully advocated with OIN to **share more detailed statistical information** on the application of ATDs. The office also developed standardized monitoring and reporting tools, including an electronic database compiling data gathered during monitoring visits.

Gaps and challenges

The unfolding refugee crisis in Hungary resulted in an increasingly hostile protection environment and shrinking protection space. Detention became a key element in the Government's policy of deterrence. The situation of detention of children deteriorated over the reporting period: although the law provides for non-detention of children, in 2014 and 2015 age-disputed children were, in practice, systematically detained and their asylum applications were not prioritized. The age-assessment procedures were often delayed, leaving age-disputed children at risk of longer detention.

A lack of improvement is observed, as well, in the implementation of ATDs. Examination of ATDs by the authorities prior to resorting to detention, though being conducted in most cases, remains superficial. In practice, bail is almost exclusively applied. This ATD is increasingly seen by detained asylum-seekers as a form of bribe due to inadequate information provision by the authorities.

Concerns are also raised in relation to deteriorating detention conditions. Persons of concern who are under aliens' procedures or facing criminal charges related to the border fence are now also held in penitentiaries. Specific needs are not taken into due account in detention, abuses by guards have been reported and the lack of meaningful social work and communication with the outside world have remained issues of concern.

Next steps

UNHCR is advocating with relevant government authorities for the re-establishment of the consultative forum for NGOs on the protection of unaccompanied or separated children (UASC) in Hungary. In this context, UNHCR continues to conduct structured consultations with NGOs specialized in the field of child protection and child protection agencies with the objective to prepare consultations with government authorities on putting in place a national BIA and BID assessment system for UASC. Further, UNHCR and its partners will be working on facilitating information provision to detained persons of concern on their rights via distributing user-friendly information leaflets. UNHCR in coordination with Cordelia Foundation plans to conduct a training on the PROTECT tool,¹⁰² a tool to identify asylum-seekers who have suffered traumatic experience, which has been developed by six European NGOs coordinated by the NGO *Parcours d'Exil*. Lastly, UNHCR continues to advocate with the asylum and the immigration authority to collect and share detailed statistical information on detained persons of concern, including disaggregated data on age and length of detention.

¹⁰² *Protect – Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment*, BZFO, Germany; ACET, Bulgaria; Cordelia Foundation, Hungary; FTDA, France; IRCT, Denmark; *Parcours d'Exil*, France; PHAROS, The Netherlands, (revised version), September 2011, available at: http://cordelia.hu/documents/PROTECT%20Document-v1_Oct%202011.pdf

Indonesia

IN INDONESIA, UNHCR welcomes the implementation of alternatives to detention (ATDs) by the Government, though immigration detention continues to be used as a tool to manage irregular movements in the region. ATDs are provided by the Government for children, pregnant women, those with specific medical conditions, and those who have obtained refugee status from UNHCR. In 2015, over 4,400 persons were detained for immigration-related purposes, including more than 3,000 asylum-seekers and 830 children.

The National Action Plan (NAP) for Indonesia was developed through a process that involved consultation with a range of stakeholders, including the Coordinating Ministry for Political, Legal, and Security Affairs and national and international NGOs. Based on reports of detention monitoring conducted by the National Human Rights Commission (*Komnas HAM*), a detention working group was formed in 2015 involving UNHCR, immigration authorities, *Komnas HAM*, and relevant NGOs, to facilitate implementation of the NAP in line with the Global Strategy.

KEY DEVELOPMENTS

- Increase in the number of shelters specialised in the reception of UASC in 2015, expanding to more than 250 the number of children who benefit from this ATD.
- Introduction by the Department of Social Affairs of a new system of guardianship managed together with IOM, employing social workers through Quantum, an organization specializing in childcare. This arrangement provides for a more focused approach than the previous system, which was organized directly by the Department's staff. Quantum assisted the Government in providing experienced social workers and guardianship as well as in providing education for the UASC using the method of home schooling.
- Initiation by the Coordinating Ministry for Political, Legal and Security Affairs in November 2015 of efforts to advocate with local authorities to further expand shelters for unaccompanied or separated children (UASC) managed by the Department of Social Affairs with support from IOM.
- Signature by *Komnas HAM* and UNHCR in July 2015 of an MoU on strengthening cooperation in promoting and monitoring the implementation of measures to ensure the human rights of refugees and asylum-seekers in Indonesia, which includes an agreement to conduct formal joint monitoring of detention facilities and two-way referral mechanisms involving the two parties.

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

UNHCR's unhindered access to detention facilities allowed **regular monitoring visits** in all detention centres and interception sites, with the frequency of the visits ranging from weekly visits in detention centres where UNHCR also provides daily services, such as access to counselling and protection interventions, to between 1 to 3 monthly visits in other detention centres where UNHCR has no regular presence. Monitoring is also routinely conducted by other UNHCR staff who visit detention facilities for registration purposes, RSD, and resettlement interviews. Discussions with detaining authorities are part of all monitoring visits, and advocacy and protection interventions are conducted as necessary based on the recommendations that come out of these visits. A UNHCR-led **participatory assessment** conducted with immigration staff and detainees in three detention centres revealed a high degree of awareness of detention-related international standards on the part of immigration officials. It also highlighted difficulties in complying with these standards due to insufficient resources, leading to overcrowding and poor living conditions.

Through identification of vulnerable persons and protection intervention, UNHCR supported the Government with the implementation of an informal **child-sensitive screening and referral mechanism to ATDs and care arrangements** organised with IOM and detention authorities, involving discussions to assess the needs of persons of concern. UNHCR has also advocated for the expansion of ATDs, including by engaging the Government to develop SOPs for a systematic referral mechanism and vulnerability screening tool.

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



Source: UNHCR registration database

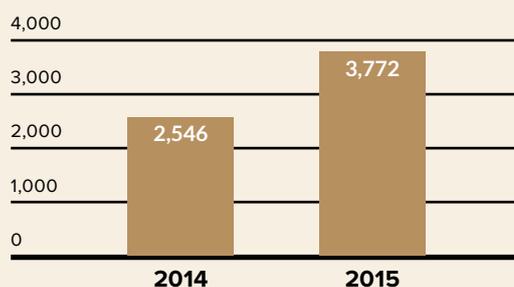
⊘ Legal framework does not ensure that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



Source: UNHCR and IOM records

PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



Source: UNHCR registration database

TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions			
Directed residence	☑	☑	☑
Residence at open/semi-open reception/asylum centres ¹	☑	☑	☑
Release on bail/bond			
Provision of a guarantor/surety			
Community supervision arrangements			

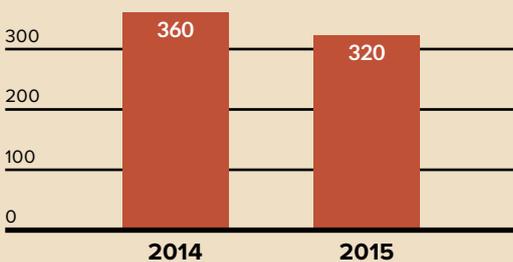
☑ available in legislation ☑ used in practice

¹ Semi-open temporary shelters.

- ⊘ No mechanism allowing asylum-seekers to stay legally in the community.
- ☑ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance).
- ☑ Case management* is provided in ATDs.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ⊘ Indonesia is not a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ☑ Yes ⊘ No ⊙ Partially

N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

UNHCR also developed **age-appropriate pamphlets** for children and others released from detention, including guidance around integration into the local community. The pamphlets are distributed and explained during the registration process and during other awareness raising activities, and are available in English, Bahasa Indonesia, Farsi, Arabic, Somali, and Urdu; an animated version of the pamphlet specifically designed for children and persons who are illiterate is also available. UNHCR is currently developing a child-friendly animated video outlining UNHCR procedures, local cultural norms, and Indonesian laws and regulations.

Gaps and challenges

Opposition in some localities continues to hinder the establishment of new community-based accommodation centres, though the authorities plan to replicate in different locations the ATD model for UASC tested in Medan, Makassar, and Jakarta, including establishing such facilities for female UASC, through a joint process involving UNHCR, IOM, and various government agencies. Overcrowding is a recurring problem in all detention facilities and has been exacerbated over the past years due to an increasing number of refugees and asylum-seekers who have self-reported to immigration authorities because of their inability to financially support themselves. Unpredictability in the transfer of detainees between detention centres worsens overcrowding and makes it difficult for UNHCR to maintain accurate records of those detained, and the distances required to travel to detention centres in locations where UNHCR is not present create a significant financial burden for UNHCR. Finally, limited detention safeguards in national legislation, such as the absence of detention reviews and the right to challenge detention before a court of law, as well as the lack of implementation of such safeguards in practice, remain key challenges to support the improvement of the detention situation in Indonesia.



TRAININGS ORGANIZED IN INDONESIA DURING THE REPORTING PERIOD

1 on Asylum Law, including UNHCR *Detention Guidelines*

3 on Child protection

NUMBER OF PERSONS TRAINED IN INDONESIA DURING THE REPORTING PERIOD

60 on Asylum Law, including UNHCR *Detention Guidelines*

79 on Child protection

Next steps

UNHCR has developed a proposal outlining options for care arrangements for children, including foster care, which is to be discussed with the Ministry of Social Affairs and other government partners, as well as IOM, in 2016. A comprehensive discussion with partners and government counterparts to develop a national policy that promotes ending the detention of children, identifying ATDs, and improving conditions in detention will be conducted, to advocate for appropriate amendments to the 2011 *Immigration Law*¹⁰³ and enactment of the draft Presidential Regulation that will hopefully end the detention of refugees and asylum-seekers. Finally, UNHCR will engage with relevant authorities to develop screening mechanisms and SOPs for reception points to avoid the detention of children and other vulnerable persons.

¹⁰³ Law of the Republic of Indonesia No. 6 of 2011 Concerning Immigration, available at: <http://goo.gl/tpuVBC>

Israel

IN ISRAEL, administrative detention went through important legislative changes during the initial roll-out period of the Global Strategy. Amendment No.4 to the *Anti-Infiltration Law*, which called for a minimum of one year detention for newly arriving persons through an unauthorized border,¹⁰⁴ followed by indefinite residency in Holot, a semi-open facility in the Negev desert, was struck down by the High Court of Justice on 22 September 2014. The Amendment No. 5¹⁰⁵ which replaced it on 17 December 2014 was found to be constitutional by the High Court, save for the 20-month maximum period of mandatory residency in Holot. The High Court recommended the Parliament to reduce the maximum period to 12 months, which was finally done with the adoption of Amendment No. 6 in February 2016. Currently, newly arriving individuals, including asylum-seekers, are detained in an immigration detention facility for a three-month period upon arrival (unless one of the release grounds applies, such as health grounds, special humanitarian reasons, or if the detainee is an unaccompanied or separated child). Single Eritrean and Sudanese men under the age of 60 are then automatically transferred to the semi-open Holot facility, for a period of up to 12 months mandatory residence. In 2015, 4,600 persons reported for mandatory residence in Holot. 1,700 Holot residents were released at the end of August 2015 pursuant to the High Court decision limiting stay in Holot to 12 months.

KEY DEVELOPMENTS

- Compliance by the Ministry of Interior not to detain asylum-seeker children since April 2013, following an Administrative Court decision that held that children in detention¹⁰⁶ shall be released according to the humanitarian release ground in Amendment No. 3 to the *Anti-Infiltration Law*. As of 2014, all unaccompanied children and children with families were released, apart from migrants awaiting deportation.
- Exemptions from detention introduced in Amendments No. 4 and 5 for humanitarian cases, including for individuals for whom damage would be caused – due to their age or medical situation – to their health, including their mental health.
- Exemptions from Holot residency introduced in Amendment No. 5 of the *Anti-Infiltration Law* in December 2014 for women, children, men over the age of 60, parents of dependent children and victims of trafficking and slavery, and exemptions from both detention and Holot residency for UASC.
- Reduction of the *detention* period of newly arriving asylum-seekers from 1 year to 3 months (and a further reduction for detainees who submit an asylum application and do not receive a decision within 60 days) and of the *mandatory residence* period in Holot from 20 months to a maximum of 12 months.

¹⁰⁴ The Government of Israel refers to such persons as illegal migrants, whereas UNHCR uses the term asylum-seekers.

¹⁰⁵ *Law for the Prevention of Infiltration (Offenses and Jurisdictions) (Amendment No. 5 and Temporary Order)*, 2014, available at: <https://goo.gl/UVJ9hg>.

¹⁰⁶ Administrative Appeal 44920-03-13 *Tedesa and others v. Minister of Interior*, Beer Sheva District Court of Administrative Affairs, decision rendered on 30 April 2013.

- Improvement of conditions in Holot with the installation of heaters and air-conditioners in every room, after judicial intervention.

- Asylum-seekers better assisted and represented in various legal proceedings including release from detention by pro bono lawyers.

- Introduction of a 'pre-Holot' screening hearing, after judicial intervention, to decide both whether the individual will be placed in Holot and the duration of mandatory residence.

A National Action Plan (NAP) was drafted following consultations with representatives of various Government ministries and civil society actors. On 20 October 2014, UNHCR held a stakeholder consultation bringing together representatives from NGOs, municipal authorities, academics, activists, and leaders of asylum-seeker communities present in Israel, who were asked to make concrete suggestions for further actions to be incorporated into the NAP.

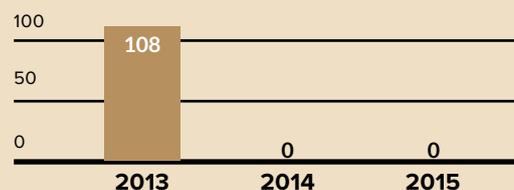
Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

In November 2014 and December 2015, UNHCR Israel **provided comments** on draft Amendment No. 5 and No. 6 respectively to the Government and to the *Knesset* (Parliament) recommending an exemption from detention for all children and other vulnerable groups, including victims of torture. Amendment No. 5, which entered into force on 17 December 2014, exempts children, parents of dependent children, women, men over the age of 60 and victims of trafficking and slavery from being summoned to Holot. UASC are also exempted from detention. Although in practice no accompanied children have arrived in Israel since June 2012,¹⁰⁷ they are not exempt in law from the three-month period of automatic detention upon arrival. Despite UNHCR's recommendations, victims of

¹⁰⁷ The Egyptian border with Israel has been closed since June 2012.

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



No asylum-seeking or refugee children were detained in 2014 and 2015. Figures relating to the number of detained migrant children are unavailable.

- Legal framework partially ensures that children are not detained. Amendments 4 and 5 to the *Anti-infiltration Law* introduced exemptions from detention and mandatory residence in Holot for UASC, from mandatory residence in Holot for all children, and from detention for accompanied children (humanitarian clause).

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation	☑	☑	☑
Reporting conditions	☑	☑	☑
Directed residence ¹	☑	☑	☑
Residence at open/semi-open reception/asylum centres			
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety	☑	☑	☑
Community supervision arrangements	☑	☑	☑ ²

☑ available in legislation ☑ used in practice

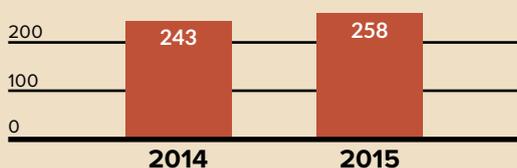
¹ Release to a government shelter for recognized victims of trafficking.

² Not used in 2015 because no new UASC arrived in Israel and recognized victims of trafficking are released to government shelters.

- ☑ Mechanism allowing asylum-seekers to stay legally in the community.
- ⊖ When residing in the community, asylum-seekers have limited access to basic rights (access to primary education, emergency medical care and mental health clinic only).
- ⊖ No case management* provided in ATDs.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ⊖ Israel is not a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ☑ Yes ⊖ No ⊖ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

torture are neither categorically exempted from detention nor from Holot (although the law does allow for appropriate cases of victims of torture to be exempt from detention/Holot residency if they demonstrate that their health, including their mental health, would be damaged from detention/residency). UNHCR has therefore been advocating for the Ministry of Interior to develop a screening tool to identify victims of torture and to then exempt them from Holot mandatory residency.

Legal petitions regarding detention conditions in Holot resulted in the installation of heaters and air-conditioners in every room, while a petition regarding the right of residents to bring in and cook their own food is still pending. Further judicial engagement also resulted in a decision from the Ministry of Interior to implement a pre-Holot screening hearing to decide both whether the individual will be placed in Holot and for how long, rather than summoning all individuals for the maximum period permitted by law. This gives the individual an opportunity to raise any objection (e.g. health problems, humanitarian basis) to the mandatory residence in Holot. UNHCR further recommends for such screening to be expanded and improved in other detention facilities, in line with best practices from other countries.

To ensure the well-being of persons of concern in the **detention facilities and in Holot**, there were weekly monitoring missions to Saharonim and Holot, as well as monthly visits to the Givon detention facility in Ramle. In addition, two reports on Holot and one on all detention facilities were published.

UNHCR Israel launched a national **campaign 'Takiru'** (Hebrew meaning 'Get to know' or 'Learn about') on World Refugee Day 2015, consisting of large posters, video testimonies and a Facebook site depicting the reality of asylum-seekers to sensitise the Israeli public opinion to the challenges they face. The launch event was attended by 80 guests and the exhibition was shown for two weeks, during which thousands of visitors saw the posters and videos. Other NGO campaigns included 'The money is buried in Holot' and 'Voices from Holot', as well as an online newspaper and a blog on refugee issues.



TRAININGS ORGANIZED IN ISRAEL DURING THE REPORTING PERIOD

5 on Asylum Law, including
UNHCR *Detention Guidelines*

5 on Attention to
vulnerable groups

NUMBER OF PERSONS TRAINED IN ISRAEL DURING THE REPORTING PERIOD

160 on Asylum Law, including
UNHCR *Detention Guidelines*

133 on Attention to
vulnerable groups

There was increased engagement in the identification and **training of pro bono lawyers**. As a result, 94 pro bono lawyers have been trained on asylum issues, including detention, and 35 of them have already assisted asylum-seekers in various proceedings, including release from detention.

Gaps and challenges

As a result of the dissolution of the Government in December 2014 and the establishment of the new Government in May 2015, there were delays in the implementation of the NAP.

With regard to the detention context, some gaps remain. Although the authorities state that information sheets regarding the asylum procedure are posted in all detention facilities, in practice detainees claim that they are not sufficiently informed of their right to seek asylum; they must specifically request the RSD form from the Ministry of Interior's officials and do not receive the necessary assistance to fill out these forms. While there is increased monitoring of Saharonim and Holot, access to the airport detention facility for the purpose of monitoring in light of its mandate is still denied to UNHCR.

Next steps

In 2016, UNHCR will advocate for the development and use of screening and referral mechanisms (based on existing models as appropriate) to ensure that asylum-seekers, especially vulnerable individuals, are referred to ATDs. If funding can be secured, research will be conducted towards development of a screening tool applicable in the Israeli context. Moreover, several outstanding issues will be addressed, including exempting vulnerable individuals (including victims of torture) from Holot residence and improving Holot conditions (such as provision of mental health services, additional educational and vocational training, a computer lab, criteria for the granting of exit permits, to allow visitors inside of the facility, etc.). UNHCR will further try to expand the pool of pro bono and private lawyers that assist asylum-seekers in detention proceedings.

Lithuania

IN LITHUANIA, as a result of the transposition of the EU recast asylum instruments in 2015, the legislative framework encompasses relevant safeguards against unlawful or arbitrary detention of asylum-seekers. Compared to 2013 and 2014, resort to detention has been significantly reduced. Currently, families with children are not detained as a matter of established judicial practice, while other asylum-seekers with special needs (e.g. pregnant women) falling under relevant detention grounds, are increasingly referred to the alternative to detention (ATD) scheme.

The National Action Plan (NAP) was developed through bilateral consultations with various stakeholders including detention authorities, the Child Rights Ombudsperson Office, the Parliamentary Ombudsperson Office and NGOs assisting refugees. Information received during these consultations informed the analysis of the current detention situation in the country and provided the basis for specific actions to be carried out within the roll-out of the Global Strategy. The Ministry of the Interior was briefed on the envisaged activities.

KEY DEVELOPMENTS

- Inclusion of a revised list of detention grounds, a provision requiring that detention be as short as possible and no longer than necessary, as well as provisions on community based arrangements for persons in situation of vulnerability or at risk and their family members in the Law on the Amendment of the Law on the Legal Status of Aliens transposing the EU common European asylum system into domestic law.
- Approval of a project involving child-specific social activities by the Asylum, Migration and Integration Fund (AMIF), offering children, including those subject to the ATD scheme (designated residence at a reception facility), the possibility to spend day-time outside the institutional environment of the centre.
- Pronouncement of several precedent setting principles and safeguards by the Supreme Administrative Court of Lithuania,¹⁰⁸ underlining that a mere risk of absconding is not sufficient to detain families with children and that necessity and proportionality considerations are key principles governing the detention of asylum-seekers.
- Release of the last children detained in November 2015. By 31 December 2015, no children were detained in Lithuania.
- Systematic access to detention facilities granted to UNHCR's partner, the Lithuanian Red Cross Society (LRCS), for the purpose of system-wide monitoring.

¹⁰⁸ Lithuania's Supreme Administrative Court's judgments, case A-1798-624/2015, available at: <http://goo.gl/4XkvIB>, case A-2621-662/2015, available at: <https://goo.gl/h04DV8>, and case A-3714-662/2015, available at: <http://goo.gl/Gl8c6E>.

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

The Global Strategy was launched and the NAP was presented at a **conference at the Lithuanian Parliament** in March 2015, **jointly organized by UNHCR, the Parliamentary Human Rights Committee and the Parliamentary Ombudsman Office**. Live broadcast and video records were made available on the Lithuanian Parliament's website¹⁰⁹ and several radio stations, including the national radio, reported on the conference. There were two press releases, including a joint UNHCR – Parliamentary Ombudsman Office press release.

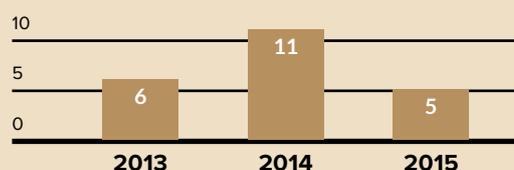
In September 2015, UNHCR, in collaboration with the Council of Europe, organized a **seminar on international and EU detention-related standards**, attended by 70 legal practitioners and members of the judiciary. UNHCR also provided **training on detention related standards**, including on UNHCR *Detention Guidelines*, to legal practitioners involved in the National Network of Asylum Lawyers. This network is used for the dissemination of case law and other legal information among asylum and immigration legal practitioners and was instrumental in providing training to lawyers (via an e-platform and annual meeting) and coordinating country level strategic litigation efforts of different legal service providers. In December 2015, it was expanded to include legal practitioners involved in providing detention related legal aid to third country nationals in irregular presence and return procedures.

With regard to **strategic litigation**, the LRCS legal team provided counselling in the Foreigners Registration Centre (FRC) once a week and systematically initiated judicial review proceedings on behalf of concerned children within 7 to 10 days, when not done by the FRC or the State-funded legal aid providers. These efforts resulted in several precedent setting judgements by the Supreme Administrative Court of Lithuania, who *inter alia* underlined that a mere risk of absconding is not sufficient to detain families with children and that the necessity and proportionality

¹⁰⁹ <http://goo.gl/KY5HBW>

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED

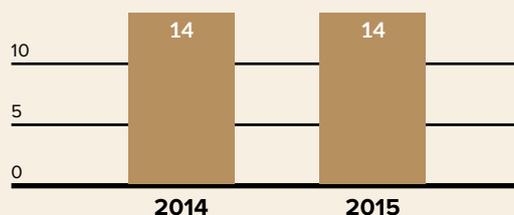


Source: Detention facility

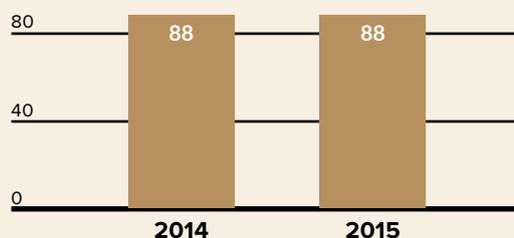
- Legal framework partially ensures that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



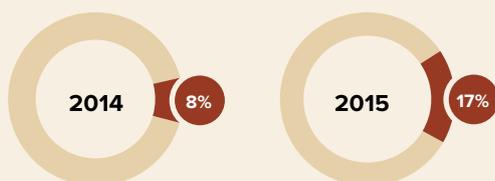
NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions	☑	☑	☑
Directed residence	☑	☑	☑
Residence at open/semi-open reception/asylum centres	☑	☑	☑
Release on bail/bond			
Provision of a guarantor/surety	☑	☑	
Community supervision arrangements			

☑ available in legislation ☑ used in practice

**PERCENTAGE OF PERSONS IN ATDs
(out of total number of persons detained)**



Source: Migracijos Departamentas, *Migration Yearbook 2014*, available at: <http://goo.gl/gRFhAR>; *Migration yearbook 2015*, p. 77, available at: <http://goo.gl/Fo5CaZ>.

- ✔ Mechanism allowing asylum-seekers to stay legally in the community.
- ✔ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance).
- ✔ Case management* is provided in ATDs.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ✔ Lithuania is a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ✔ Yes ✘ No ◐ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

considerations are key principles governing the detention of asylum-seekers. In the case of two Afghan asylum-seekers,¹¹⁰ the Supreme Court ruled that the applicants, as persons in situation of vulnerability or at risk, had to be provided with reception support and referred to the asylum procedure in line with international and EU standards.¹¹¹ This clearly contributed to a fewer resorts to detention in 2015 with the release of the last detained children in November 2015.

UNHCR conducted consultations with the FRC and the Lithuania State Border Guard Service (SBGS) to **secure LRCS' access to the detention unit**. Two monitoring visits were conducted following the grant of systematic access in August 2015. In total, in 2015, LRCS conducted 24 **monitoring visits** to border crossing points and territorial border guard units. The findings and related recommendations are provided in an Annual Border Monitoring Report to be submitted to the authorities by UNHCR in the course of 2016. In Lithuania, the Parliamentary Ombudsman's Office also monitors places of detention, including places of immigration detention and produces relevant reports within the preventive mechanism program under the *Optional Protocol to the Convention against Torture (OPCAT)*.¹¹²

Finally, UNHCR participated in **debates on the legislative package** aimed at transposing the EU directives into domestic law. The package was approved in November 2015 and provides for **more flexible community based accommodation arrangements for asylum-seekers**, including NGO-run reception facilities for asylum-seekers in situation of vulnerability or at risk and their family members and provision of accommodation places

¹¹⁰ With reference to *inter alia* Lithuania's Supreme Administrative Court's judgments in case A-1823-822/2015, available at <http://goo.gl/BE0N13>, case A-3714-662/2015, available at <http://goo.gl/GI8c6E>, case A-1798-624/2015, available at <http://goo.gl/4Xkv1B>, and case A-2621-662/2015, available at <https://goo.gl/h04DV8>.

¹¹¹ With reference to the Supreme Court's judgment of 14 June 2015, case No E3K-3-412-690/2015, available at <http://goo.gl/U7C63G>.

¹¹² See annual report of the Parliamentary Ombudsman's Office, available at: <http://goo.gl/PPiQ1b>



TRAININGS ORGANIZED IN LITHUANIA DURING THE REPORTING PERIOD

2 on Asylum Law, including UNHCR *Detention Guidelines*

NUMBER OF PERSONS TRAINED IN LITHUANIA DURING THE REPORTING PERIOD

85 on Asylum Law, including UNHCR *Detention Guidelines*

in local communities pursuant to a procedure to be approved by the Government. However, the law extends the possibility for resorting to a border procedure, hence potentially leading to broader use of detention at border-crossing points.

Gaps and challenges

X-ray-based age-assessment methods are widely in use despite doubts expressed by various experts regarding the reliability of these techniques. Second, the absconding rate remains high. In 2015, a significant share of the asylum decisions taken by the Migration Department were discontinuation decisions, predominantly based on the implicit withdrawal of the asylum claim, as a result of onward movements. Finally, despite important precedent-setting judgements referred to above, prolonged detention periods (6 and more months) have been observed in some cases. The quality of detention-related statistics also requires improvement, since relevant data is either unavailable or incomplete, which has implications for measuring the GDS' impact.

Next steps

In the coming months, UNHCR's Regional Representation for Northern Europe will work closely with the authorities and other relevant stakeholders to address the identified challenges and consolidate good practices developed in the initial period of the roll-out. The envisaged community-based accommodation arrangements (relevant for both reception and ATD schemes) complemented by case management models should contribute to addressing absconding related concerns. To that end, capacity-building activities to assist NGOs and other relevant actors to run community-based ATDs and reception arrangements effectively will be organized in early 2017. Finally, in 2016, follow-up actions will be undertaken to safeguard the achieved results with regard to detention related decision-making and detention monitoring and to expand monitoring arrangements for other detention facilities, notably through engaging in discussion with relevant authorities.

Malaysia

IN MALAYSIA, in the absence of domestic law granting protection or legal stay, asylum-seekers and refugees remain at risk of arrest, detention, prosecution, imprisonment, deportation and *refoulement*. In 2014 and 2015, the record number of refugees and migrants who arrived by boat in the Bay of Bengal and Andaman Sea and the discovery of mass graves along the northern border, resulted in enhanced scrutiny being placed on traditional departure and arrival points. Law enforcement operations undertaken against 'illegal migrants' and smugglers across the country led to the arrest and detention of large numbers of persons of concern, particularly those not yet registered with UNHCR. During these operations, UNHCR was often requested to identify registered persons of concern and upon verification of their status, many of these individuals were released without being prosecuted.¹¹³ However, in 2015, 5,648 asylum-seekers and 2,282 refugees were detained and faced prosecution for immigration-related purposes.

The National Action Plan (NAP) was drafted in consultation with a number of stakeholders including the Malaysian Bar Council, the Human Rights Commission of Malaysia (*SUHAKAM*, the National Human Rights Commission of Malaysia), the Prime Minister's Department for Human Rights, and several NGO partners including *Persatuan Kebajikan Suara Kanak-kanak Malaysia* (*SUKA Society*, a national child protection NGO) and other interlocutors. In October 2014, UNHCR established a joint UNHCR-NGO working group on arrest and detention to improve information sharing, partnership-building and coordination between organisations involved in detention monitoring, service provision or other activities related to immigration detention. The working group meets on a bi-monthly basis and includes *SUHAKAM*, the International Detention Coalition (IDC), the Malaysian Bar Council and the International Committee of the Red Cross (ICRC).

KEY DEVELOPMENTS

- Establishment of a formal working group on alternatives to detention (ATDs) for unaccompanied children (UASC) by the Immigration Department with *SUHAKAM*, (National Human Rights Commission of Malaysia) and relevant government and non-governmental organisations. A technical sub-committee of the working group has been tasked with exploring and addressing legal and technical barriers to the implementation of a proposed ATD model for UASC.
- Release of 13,829 persons of concern from detention during the reporting period following UNHCR interventions. Of these, 1,491 children were prioritised for registration and released from detention.
- Decrease in the number of children detained in immigration detention centres as observed by UNHCR detention monitoring.

¹¹³ A Circular issued in 2005 by the Attorney General's Chambers provides some degree of immunity to asylum-seekers and refugees registered with UNHCR from prosecution for immigration charges.

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

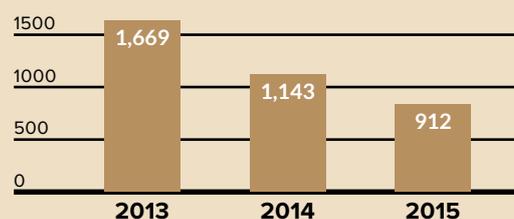
During the implementation phase of the Global Strategy, the office established an **internal protection referral system** which facilitates inter-unit referrals, including for detained individuals. UNHCR detention focal points were trained in the system and used it regularly to refer cases to the Child Protection and Community Liaison Units (CLU) to request shelter placements or the tracing of family members for unaccompanied or separated children (UASC) upon release from immigration detention. In 2015, UNHCR also developed a **partner-referral system** which raised awareness amongst the NGO partners about the office's protection activities and how to identify and refer vulnerable individuals to UNHCR for these services. All working group members were trained on the new system, including to facilitate the identification and referral of detained asylum-seekers and refugees, as well as those at heightened risk of arrest and detention.

UNHCR Malaysia developed a new ID card and biometric data collection system for asylum-seekers and refugees which will be accompanied by a smartphone application to allow police and immigration enforcement officers to immediately verify whether an individual is registered with UNHCR. This will support the implementation of ATDs for such individuals, including by contributing towards the avoidance of their criminal prosecution for illegal entry under the *Immigration Act*,¹¹⁴ in accordance with an Attorney General's Circular issued in 2005. Following positive discussions with the authorities, UNHCR will undertake nationwide training for enforcement authorities on this status verification mechanism.

¹¹⁴ *Malaysia: Immigration Act, 1959-1963*, 1 May 1959, available at: <http://www.refworld.org/docid/3ae6b54c0.html>

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



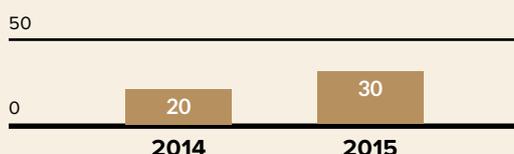
This figure refers to asylum-seeking and refugee children detained, who were registered with UNHCR prior to or during immigration detention.

Source: UNHCR registration database.

⊘ Legal framework does not ensure that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



This is an approximate figure of the existing places available in the NGO shelters for UASC released from detention.

NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



TYPES OF ATDs: ¹	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions	☑	☑	☑
Directed residence			
Residence at open/semi-open reception/asylum centres ²	☑	☑	☑
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety	☑	☑	☑
Community supervision arrangements			

☑ available in legislation ☑ used in practice

¹ While available in law, these ATDs are seldom applied in practice to the benefit of asylum-seekers and refugees.

² Upon registration by UNHCR in detention, UASC under the age of 16 are generally released into NGO-run shelters.

PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



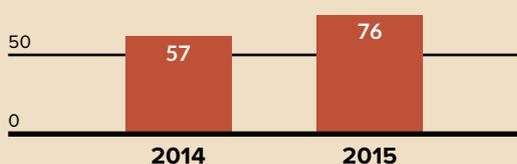
This figure refers to UASC who were released into temporary care arrangements (generally NGO shelters) following a period of detention, extracted from the number of registered asylum-seekers and refugees detained for immigration-related purposes during the period.

Source: UNHCR registration database

- ⊘ No mechanism allowing asylum-seekers to stay legally in the community.
- ⊘ When residing in the community, asylum-seekers do not have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance).
- ⊙ Case management* is partially provided in ATDs: the shelters to which UASC are released following UNHCR's intervention are developing case management, supported by the NGO *Suka Society*.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ⊘ Malaysia is not a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ⊙ Yes ⊘ No ⊙ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

Children in detention were **prioritised for registration by UNHCR in order to ensure their early release** into the care of the community (for UASC aged 16 years and over) or into shelters (for those under the age of 16). From June 2014 to December 2015, 1491 children in detention were prioritised for registration and 150 children were released into shelters. UNHCR also conducted relationship verification for separated children and family tracing in order to facilitate family reunification upon release.

UNHCR ran a call-centre (during office hours) and a hotline (outside office hours). These services enabled persons of concern and the broader public to report arrests and supported enforcement authorities to request UNHCR to verify the status of arrested individuals in order to facilitate their release from detention. Through these mechanisms, when notified of the arrest of asylum-seeking children, UNHCR was able to provide verification of the children's status and request their release into UNHCR's care. Successful **advocacy interventions** led to the release of 143 children from custody, prior to being sent to detention centres. Where such children faced prosecution under Malaysian law, with the assistance of legal counsel, UNHCR also intervened on the children's behalf to secure their release through the court system.

Although UNHCR Malaysia is not part of the formal working group on ATDs for children led by the Immigration Department, the office supported the pilot ATD shelter project through **capacity-building initiatives for potential ATD shelter providers**, including linking them with child protection specialists and existing child shelter providers. UNHCR also supported the development of a case-management system, led by *SUKA Society*, designed to strengthen the ATD pilot project. This system aims to improve the existing Child Protection network and referral system to improve coordination of the case management of UASC upon their release from detention and for those at risk of arrest and detention. UNHCR engaged with a number of relevant Child Protection actors from within the network, including funding a partner organisation, the Good Shepherd Welfare Organisation (PKGS) to identify and coordinate shelter arrangements for persons of concern.



TRAININGS ORGANIZED IN MALAYSIA DURING THE REPORTING PERIOD

3 on Child
protection

2 on Attention to
vulnerable groups

NUMBER OF PERSONS TRAINED IN MALAYSIA DURING THE REPORTING PERIOD

116 on Child
protection

120 on Attention to
vulnerable groups

Gaps and challenges

Asylum-seekers, refugees and other persons of concern are frequently detained in immigration detention centres in Malaysia, where they endure challenging physical conditions, including overcrowding. In this environment, detainees are unable to access the psycho-social support they need, which has a particularly negative impact on vulnerable detainees, including UASC and victims of sexual and gender based violence. Without a maximum period of detention or formal administrative or judicial channels to challenge their detention, detainees face the risk of long-term or even indefinite detention. A major gap is the absence of an independent and effective regulatory body to monitor the conditions and basis for immigration detention, where asylum-seekers and refugees are frequently held.

In the absence of a legal framework to regulate the status of refugees and asylum-seekers in Malaysia, UNHCR relies on well-understood, albeit *ad hoc*, arrangements with the detention facilities and respective Ministries to undertake regular visits, registration, refugee status determination and detention monitoring. In practice, UNHCR enjoys good cooperation from authorities during its visits to many of the detention centres but in the absence of formalized agreements, access is not always granted to all areas of the facilities nor to all individuals. This limits UNHCR's capacity to monitor conditions of detention and the well-being of persons of concern and to formulate recommendations accordingly. NGOs also face difficulties in regularly accessing detention centres.

Next steps

In the next phase of the implementation of the Global Strategy, UNHCR Malaysia will continue to undertake identification and registration activities in immigration detention centres, as well as status verification with enforcement authorities to facilitate the release of asylum-seekers and refugees. The office will conduct training on UNHCR's role and the new UNHCR identity cards with national enforcement authorities, in order to raise awareness on asylum issues. It will also undertake training around existing ATDs for the judiciary and prosecuting authorities, including the Attorney General's Circular which provides a degree of protection to asylum-seekers and refugees from prosecution. Finally, UNHCR Malaysia will continue its dialogue with the Government on the possibility of conducting joint registration of asylum-seekers and refugees, establishing ATDs for children and other persons of concern to UNHCR, improving detention conditions and developing a legal and policy framework that better protects asylum-seekers and refugees, including from immigration detention.

Malta

IN MALTA, the reporting period was characterized by a near-total decline in the arrival of asylum-seekers by sea and an increase in the number of asylum-seekers arriving by other regular and irregular means. Due to this trend, the number of persons detained decreased. Nevertheless, the legislation and policy governing the detention system have undergone several important changes. The passing of revisions to the *Immigration Act* and the *Refugees Act* (Reception Regulations) in December 2015 prohibited the detention of children except as a measure of last resort and removed a requirement to detain persons arriving to Malta irregularly, while also providing for administrative review of detention. Meanwhile, a new policy framework also issued in December 2015 outlined the creation of an Initial Reception Centre (IRC), where asylum-seekers would be confined, screened medically, and assessed for release to the community or issuance of a detention order. Although UNHCR welcomed the improvements that these changes heralded, UNHCR publicly observed that several aspects of the changes remained unclear, or had not generated full compliance with key legal principles governing detention.¹¹⁵ Furthermore, although UNHCR's monitoring of detention and the IRC in early 2016 confirms that some notable improvements to the reception system have occurred, UNHCR considers that the IRC is a place of detention¹¹⁶ and, thus, has questioned its legality under Maltese law, especially when it comes to children.

KEY DEVELOPMENTS

- Adoption of a revised legal¹¹⁷ and policy framework¹¹⁸ for the reception of asylum-seekers which puts an end to the automatic and mandatory detention of asylum-seekers who have entered in Malta in an irregular manner, provides for legal grounds for detention, ensures free legal assistance, the possibility to challenge detention orders, and establishes the automatic review of detention orders. It also stipulates that minors and families with children should only be detained as a measure of last resort and for the shortest possible period. Nevertheless, the authorities may detain unaccompanied and separated asylum-seeking children (UASC) and children with families for the sole purpose of completing medical checks, and for a period that should not be longer than 7 days, at the IRC, a closed facility.
- Creation of two Initial Reception Centres – one for children and families and one for adults – where the authorities hold persons arriving by boat until the completion of medical and identity checks. The IRC for adults went into operation on February 23, 2016 to hold 15 persons of concern relocated from Italy under the EU relocation scheme. Another group was relocated and held at the IRC on March 1, 2016. On May 10, 2016, the IRC for children and families (Hal-Far) went into operation with the arrival of a Syrian family with two children through the EU relocation scheme. They were detained for medical clearance upon arrival for 70 hours and then released to an open reception centre.

¹¹⁵ UNHCR Malta, *Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers*, available at: <http://www.refworld.org/docid/56e963824.html>.

¹¹⁶ See UNHCR *Detention Guidelines*, p. 9, which defines detention as the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities. The place of detention may be administered either by public authorities or private contractors; the confinement may be authorized by an administrative or judicial procedure, or the person may have been confined with or without "lawful" authority.

The National Action Plan (NAP) was put together collaboratively through bilateral consultations with the Ministry for Home Affairs and National Security (MHAS) and other relevant agencies operating under its remit (e.g. the Agency for the Welfare of Asylum Seekers (AWAS) and the Detention Services). Consultations were also organised with local NGOs that are members of the International Detention Coalition (IDC) and/or that conduct activities in detention centres. The actions set out in the NAP are based on a comprehensive analysis of the past and current detention situation in the country, as well as the need to address the specific law, policy and practice issues that are articulated in UNHCR's *Position on the Detention of Asylum Seekers in Malta*¹¹⁹ (Position Paper), published in September 2013. UNHCR and the asylum community in Malta had already been active on the issue of detention for a number of years and UNHCR had been coordinating with Jesuit Refugee Service (JRS) and the Malta Red Cross for several years. With the Global Strategy as a strong platform for coordination, they are currently meeting bi-monthly to discuss detention issues and the roll-out of the NAP. UNHCR also meets regularly with the Board of Visitors for Detained Persons, the National Preventive Mechanism (NPM) under the *Optional Protocol to the Convention against Torture (OPCAT)*, to engage in similar discussions, and meets separately with authorities responsible for detention, at least bi-monthly, during visits to detention centres.

¹¹⁷ Act No. XXXVI of 2015, the *Immigration (Amendment) Act*, 30 December 2015), available at: <http://goo.gl/q1bqJx>; L.N. 417 of 2015, *REFUGEES ACT (CAP. 420), Reception of Asylum Seekers (Minimum Standards) (Amendment) Regulations*, 2015, available at: <http://goo.gl/DovWiD>.

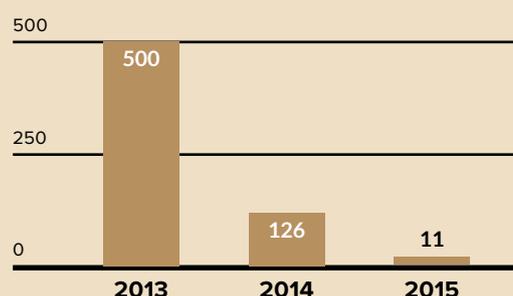
Consolidated legislation, including Amendments, is not yet available online.

¹¹⁸ Minister for Home Affairs and National Security, *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, December 2015, available at: <https://goo.gl/mAkkY3>.

¹¹⁹ UN High Commissioner for Refugees (UNHCR), *UNHCR's Position on the Detention of Asylum-seekers in Malta*, 18 September 2013, available at: <http://www.refworld.org/docid/52498c424.html>

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED

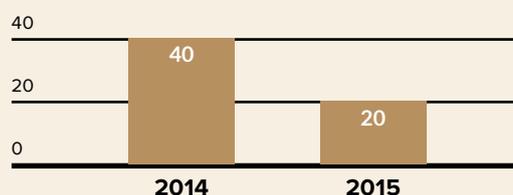


In 2014, out of the 126 children, 64 were children in families and 62 were unaccompanied. UASC were detained for 27 days on average and released after result of age assessment; families were detained for 19 days on average. In 2015, out of the 11 children, 11 were detained upon arrival and released after completion of age assessment.

- Legal framework partially ensures that children are not detained.

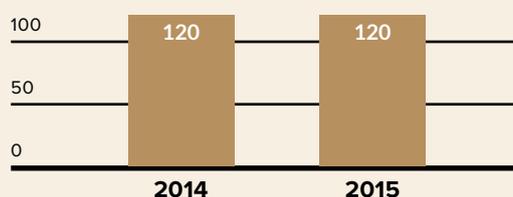
GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



Source: Agency for the Welfare of Asylum Seekers (AWAS).

NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



Source: AWAS.

PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions			
Directed residence			
Residence at open/semi-open reception/asylum centres ¹			
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety			
Community supervision arrangements			

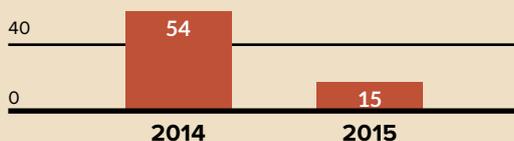
☑ available in legislation ☑ used in practice

1 Residence at open/semi-open reception/asylum centres is used as a reception option.

- ☑ Mechanism allowing asylum-seekers to stay legally in the community.
- ☑ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education. Legal assistance is available at the stage of the appeal of a negative decision at first instance).
- ⊖ No case management* provided in ATDs.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



NB: The reduction of monitoring visits directly relates to the diminution of persons in detention.

- ☑ Malta is a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ☑ Yes ⊖ No ⊕ Partially

N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

During the initial roll-out period of the Global Strategy, UNHCR Malta submitted observations on the delegated legislation transposing the EU Reception Conditions Directive,¹²⁰ which contributed to the introduction of new safeguards and procedures relating to the application of less coercive measures or alternatives to detention (ATDs), safeguards on the detention of children, access to free legal assistance, access to detainees for families and NGOs (although with restrictions) and to the removal of restrictions on UNHCR's access to detainees. However, the legislation passed still lacks provisions on necessity, proportionality, and reasonableness, despite UNHCR's comments to this end.

With regard to the Initial Reception Centres, UNHCR reached an agreement with the authorities securing UNHCR's presence at the centres, with the specific role of providing information and making referrals where appropriate. UNHCR conducted its first visit at the IRC for adults to monitor conditions on 25 February 2016 and a second visit was conducted on 2 March 2016 after another group was relocated and held at the IRC on 1 March 2016. A first visit to the IRC for children and families was conducted on 11 May 2016. In both centres UNHCR provided information and counselling to persons of concern, including the two children held with their parents at the IRC for children.

¹²⁰ United Nations High Commissioner for Refugees (UNHCR), *UNHCR's Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers*, 25 February 2016, available at: <http://www.refworld.org/pdfid/56e963824.pdf>.



TRAININGS ORGANIZED IN MALTA DURING THE REPORTING PERIOD

1 on Reception and
alternatives to detention

3 on Child
protection

NUMBER OF PERSONS TRAINED IN MALTA DURING THE REPORTING PERIOD

30 on Reception and
alternatives to detention

36 on Child
protection

UNHCR also conducted **regular monitoring visits to detention centres** (54 between June and December 2014, and 15 in 2015), updating a detailed mapping of issues after every visit and producing a comprehensive report of findings and recommendations, structured around the UNHCR, APT and IDC *Monitoring Manual*.¹²¹

Gaps and challenges

The change in migration trends to Malta has impacted and will continue to impact the roll-out of the Global Strategy. Since 2014, boat arrivals to Malta have stopped, leading to the detention of few persons. Although persons arriving by regular means – in greater numbers than before – are still being detained, and although UNHCR Malta therefore continues to conduct regular monitoring visits, it can be difficult to reach the sample size needed to properly speak of “trends” and “developments” in the detention regime.

While the revised legislation no longer supports the automatic and mandatory detention of asylum-seekers who have entered Malta in an irregular manner, UNHCR remains concerned with the interpretation of the legal grounds for detention, lack of clarity on the applicability of ATDs, and the need to establish safeguards to ensure that detention is always used in proportionality to a legitimate purpose. Some of the guidelines for immigration authorities contained in the new policy document are not fully in line with well-established international human rights and refugee law standards, and could potentially lead to situations of arbitrary and unlawful detention.

Next steps

UNHCR Malta’s next steps under the Global Strategy will be to monitor the implementation of the new legal and policy developments to Malta’s detention framework, including the implementation of detention review mechanisms and the newly-established IRC. In order to do so, UNHCR will further enhance its relationship with NGO partners and Malta’s NPM through regular coordination meetings. Findings from the initial visits to the IRC will be discussed with the authorities and they will also be encouraged to take measures addressing the situation in detention, in light of the European Court of Human Rights’ decision *Abdi Mahamud v. Malta*¹²² from 3 May, 2016. Finally, UNHCR will also pursue ongoing detention monitoring activities, including counselling and referral of persons of concern to ATDs, as well as regular meeting and contacts with detention staff and the Ministry of Home Affairs and National Security concerning the findings of monitoring activities.

¹²¹ UN High Commissioner for Refugees (UNHCR), Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), *Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>

¹²² *European Court of Human Rights, Abdi Mahamud v. Malta (application no. 56796/1)*.

Mexico

IN MEXICO, the number of asylum claims has increased in 2015 and 2016, as Guatemalans, Hondurans and Salvadorans continue to flee high rates of homicides and criminal violence. 3,423 asylum-seekers were registered in 2015, a 162% increase compared to 2013. Mexican legislation foresees mandatory detention in *estaciones migratorias* as a measure applicable to every adult person found to be in an irregular migratory situation in the country. In 2015, more than 190,000 persons were detained for immigration-related purposes, including at least 818 asylum-seekers and over 35,700 children. Alternatives to detention (ATDs) are provided in the law but only in a very limited set of circumstances, and are rarely used, in part due to practical and operational challenges; very few unaccompanied or separated children (UASC) – both migrants and asylum-seekers – benefit from alternative care arrangements.

The National Action Plan for Mexico was developed in consultation with partners such as the *Comisión Nacional de Derechos Humanos* (CNDH), the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos* (CMDPDH), the International Detention Coalition (IDC). UNHCR and its partners have also reached 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 Ministry for Foreign Affairs, for designing and implementing actions in line with the Global Strategy.

KEY DEVELOPMENTS

- The *Regulations (Reglamento) for the Law on the Rights of Children*¹²³ came into force on December 3, 2015. The Regulations prohibit the immigration detention of children, both accompanied and unaccompanied,¹²⁴ establish the family welfare agency (DIF)'s responsibility to identify children in need of international protection and create a Child Protection Authority (*Procuraduría*), tasked, among others, with conducting Best Interest Determination procedures.
- Development and launch in June 2016 of a Protocol (standard operating procedures) by the Mexican Refugee Commission (COMAR), UNHCR and UNICEF for the identification of UASC in need of international protection by governmental authorities, particularly DIF and INM officials in the context of detention. UNHCR, COMAR and UNICEF have undertaken training of INM and DIF officials, including the *Procuraduría* for the implementation of the Protocol.

¹²³ *Ley general de los derechos de niñas, niños y adolescentes*, December 2014, available at: <http://goo.gl/al3VSD>; *Regulations for the Law on the Rights of Children*, December 2015, available at: <http://goo.gl/zt66O9>

¹²⁴ Art. 111 of the *Regulations for the Law on the Rights of Children* provides that migrant girls, boys or adolescents, whether or not traveling in the company of an adult person, shall at no time be deprived of their liberty in detention centres, nor in any other immigration detention facility.

- Launch in August 2015 of a pilot ATD project by the IDC and its national partners *Casa Alianza* and *Aldeas Infantiles*. This project proposed by the IDC to the Advisory Committee of the INM aimed to develop mechanisms of identification, referral and reception of detained asylum-seeking and migrant UASC. The initiative was adopted by INM and fits into the Mexican legal framework which foresees the possibility for the INM to resort to private accommodation when the transfer of a UASC to a lodging provided by the DIF is not possible.¹²⁵ As planned and projected, this pilot project benefited 20 UASC in their release from detention, into specialized community-based care arrangements.

- Release of approximately 80 asylum-seekers by COMAR and INM in a separate pilot project, implemented from February to May 2016 in Mexico City. This group included mostly families with children headed by women. Results are yet to be published, but INM has publicly announced the plan to expand the project in 2016. UNHCR reiterated its willingness to support INM and has insisted on the immediate availability of alternatives for 200 asylum-seekers outside detention (mostly in community-based shelters).

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

With the adoption of the new *Law on the Rights of Children* in November 2014, which establishes the national family welfare agency (DIF)'s responsibility to identify children in need of international protection, and creates a Child Protection Authority tasked, among others, with conducting best interests determination procedures, UNHCR Mexico's efforts have focused on **strengthening the capacities** of these authorities to undertake their role. A **four-month capacity-building program** for 48 DIF staff members was developed

¹²⁵ Art. 176 of the *Migration Law Regulations* establishes that INM can refer children to private or public shelters other than DIF-run shelters on an exceptional basis. *Migration Law Regulations* available at: <http://goo.gl/faoeC>

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



These figures include the total number of children detained and not only asylum-seekers and refugees.

Source: *Secretaría de Gobernación, Unidad de Política Migratoria, Boletín estadístico anual 2013, 2014, 2015*, available at: <http://goo.gl/ffsd4a>, see in particular section III. *Extranjeros presentados y devueltos*.

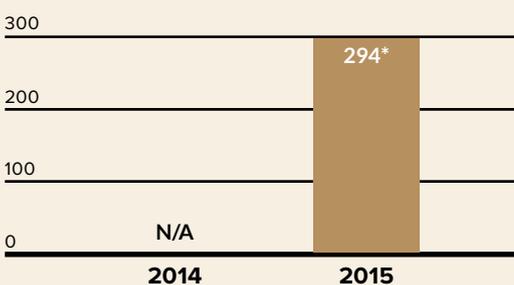
- ✓ Legal framework ensures that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



* Some of the shelters are for migrants, asylum-seekers and refugees.

PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions			
Directed residence	☑	☑	☑
Residence at open/semi-open reception/asylum centres			
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety	☑	☑	☑
Community supervision arrangements			

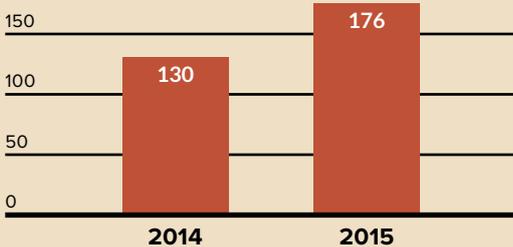
☑ available in legislation ☑ used in practice¹

¹ Rarely used.

- ☑ Mechanism allowing asylum-seekers to stay legally in the community.
- ☑ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance).
- ⊖ Partial Case management* tested in the ATD pilot project.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ☑ Mexico is a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ☑ Yes ☒ No ⊖ Partially

N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

jointly by UNHCR, DIF, CNDH, the IDC and World Vision. UNHCR provided **technical guidance for the implementation of BIA/BID** and formulated **recommendations on the conduct of child-sensitive interviews**. UNHCR also continued the **dissemination of age-appropriate and child-sensitive information materials on the asylum procedure** (a video¹²⁶ and info-boards), developed at the end of 2013 in partnership with COMAR and the CNDH, and monitored the availability of this information and its accessibility in detention centres.

As part of its **detention monitoring program** and with a view to support **new open and protection-oriented care arrangements for children**, UNHCR conducted assessments of care conditions for UASC held in shelters in Southern Mexico. This led to the **improvement of reception conditions in shelters** in Oaxaca and Tabasco, in particular with regard to the right to education and recreational time, as well as improvements of material conditions. The office also **expanded the number of detention centres monitored** in the country, with the detention centres in Palenque, Tenosique, Tapachula and Villahermosa being monitored on a weekly basis. UNHCR's observations were shared with INM in December 2015. Finally, UNHCR also provided training on the UNHCR, APT and IDC *Monitoring Manual* to the CNDH who regularly visits detention centres, including on an unannounced basis.

In 2015-2016, UNHCR established **partnerships with organizations providing legal aid to detained asylum-seekers**, particularly in Mexico City. UNHCR also strengthened its partnership with the *Instituto Federal de Defensoría Pública* (IFDP) to expand the offer of professional and free legal aid to asylum-seekers in detention and with the CNDH, to ensure detained foreigners receive proper and timely information on how to access the asylum procedure, to facilitate access to legal advice and prevent and respond to instances of *refoulement*.

¹²⁶ <https://goo.gl/CfAF11>



TRAININGS ORGANIZED IN MEXICO DURING THE REPORTING PERIOD

27 on Child
protection

6 on Detention
conditions standards

NUMBER OF PERSONS TRAINED IN MEXICO DURING THE REPORTING PERIOD

987 on Child
protection

89 on Detention
conditions standards

Gaps and challenges

Asylum-seekers generally remain under immigration detention for the entire duration of the asylum procedure, which contributes to claims being withdrawn. A national ATD plan, accompanied by a more robust capacity among civil society actors to absorb and ensure shelter and material assistance to those being eventually released, remain an enduring protection gap in Mexico, in particular to vulnerable groups of asylum-seekers such as families with children, LGBTI, survivors of violence, women at risk and UASC.

Although the legal framework establishes the prohibition of child immigration detention, most children remain in that situation and there is an absence of BID procedures on the ground. There is a lack of proper temporary reception options other than detention (mainly DIF-run shelters and only a few open-door civil society-run shelters for children), as well as the lack of legal representation for UASC.

Next steps

UNHCR will continue working closely with governmental authorities (i.e. COMAR, INM, DIF, and the Child Protection Authority), the IDC and other civil society partners in order to expand the pilot ATD projects conducted in 2015-2016 for UASC and families. UNHCR, together with the IDC, will promote coordination mechanisms for the development of a national ATD plan, particularly for vulnerable groups of asylum-seekers such as families with children, LGBTI, survivors of violence, women at risk and UASC.

UNHCR continues to call on migration authorities to take full advantage of existing available places among faith-based shelters that could serve as ATDs and will continue strengthening the capacity among civil society actors to ensure shelters and material assistance are available to those released from detention. UNHCR is also working with several community-based shelters in Chiapas, Tabasco and Mexico City to strengthen reception conditions for 217 asylum-seekers that have been jointly identified by INM and COMAR and are being, gradually and individually, considered by authorities for an alternative to detention. UNHCR will also continue engaging the CNDH, in particular to ensure access to asylum-seekers as well as to prevent and respond to potential instances of *refoulement*.

UNHCR is taking steps towards the establishment of further agreements with legal partners in order to ensure that an increasing number of asylum-seekers in detention have access to legal advice. This includes coordination with the IFDP and its network of regional offices providing free professional legal advice to asylum-seekers in detention.

Thailand

THAILAND is not a party to the *1951 Refugee Convention* and has no specific domestic legal framework for protection of urban refugees and asylum seekers. As such, urban refugees and asylum seekers may be treated as illegal aliens unless they have a valid visa issued pursuant to the Thai Immigration Act. Absent a valid visa, they may be subject to arrest, prosecution and detention on immigration charges, irrespective of their status with UNHCR. In this context, UNHCR Thailand supports the progressive introduction of alternatives to detention (ATDs) as part of its advocacy for an overall domestic legal protection framework for persons of concern to UNHCR.

The inter-agency Task Force on Detention (DTF) established in 2011 meets regularly and is an important forum for the roll-out of the National Action Plan (NAP). UNHCR is also an active member of the IDC Coordination Committee (IDCCC) which includes NGOs and community-based organizations advocating at the operational level for better conditions in the immigration detention centres, and the ATD working group composed of several NGOs, which was created in 2015 and meets on an *ad hoc* basis. The NAP was drafted based on the practical issues and priorities identified through these coordination mechanisms and through consultation with civil society and the Government.

KEY DEVELOPMENTS

- Set up of an informal ‘temporary protection’ regime for persons of concern of Rohingya origin and victims of trafficking in 2014: although technically detained, women, girls, and boys under 15 are permitted to reside in semi-open shelters run by the Ministry of Social Development and Human Security, responsible for the provision of basic services (health care, education, etc.). Persons determined to be victims of trafficking also have access to semi-open residential Protection and Occupational Development Centres as opposed to Immigration Detention.
- Admission of children of concern to UNHCR in shelters for children operated by the Ministry of Justice and the Ministry of Social Development and Human Security in the urban setting. Community-based and individual support arrangements for unaccompanied and separated asylum-seeking children (UASC) and other children at risk have been developed by the Jesuit Refugee Service (JRS) with support from UNHCR, but children for whom support is provided still face the risk of arrest and detention and, hence, this mechanism is not considered as a full alternative to detention.
- Revocation of the bail payment for children under the age of 15 given the absence of criminal liability under Thai law. They are only subject to reporting requirements upon release. An amount equivalent to half the usual surety should be paid and “confiscated” in case of absconding. 111 children have been released through this arrangement during the reporting period.
- Release of some persons of concern based on UNHCR systematic reporting of individual specific needs (e.g., medical) to Immigration Detention Centre officials

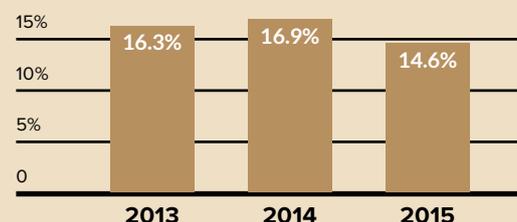
Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

In October 2014, UNHCR presented to the Royal Thai Government a **discussion paper** entitled, “A Framework for Alternatives to Detention”, highlighting existing provisions in Thai law which provide for non-detention, including non-detention of children, and discussed potential models of alternatives at an internal roundtable attended by key government agencies. A companion paper was also presented highlighting state responsibilities pursuant to treaties Thailand is a party to (ICCPR, CRC, CAT), as well as a paper, specifically highlighting elements of existing Thai law in regards to a Temporary Protection Framework for Rohingya persons, which could be adapted to the wider population of concern.

In September 2015, as a follow-up to the foregoing, the Royal Thai Government sent an inter-Ministerial team to a country in the region to assess different aspects of possible protection from *refoulement* and detention in a non-1951 *Refugee Convention*, non-refugee law context. The visit underscores UNHCR’s advocacy with respect to leveraging existing Thai law to create a framework that balances national security concerns with international protection needs, whereby deportation orders are suspended pending determination of status and solutions and, in the meantime, detained individuals are released on personal recognizance with a regular reporting requirement.

GOAL 1 End the detention of children

PERCENTAGE OF ASYLUM-SEEKING AND REFUGEE CHILDREN AMONG TOTAL ASYLUM-SEEKERS AND REFUGEES POPULATION DETAINED IN 2 DETENTION CENTRES



⊘ Legal framework does not ensure that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



For 2013, 2014 and 2015, the percentages relate to the number of persons bailed out of the immigration detention centre in Bangkok.

TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions	☑	☑	☑
Directed residence ¹	☑	☑	☑
Residence at open/semi-open reception/asylum centres			
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety	☑	☑	☑
Community supervision arrangements			

☑ available in legislation ☑ used in practice

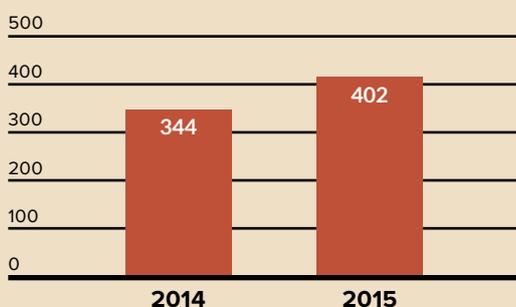
¹ Release to a government shelter for recognized victims of trafficking.

- ⊘ No mechanism allowing asylum-seekers to stay legally in the community. However, there is access to bail and, in the *Immigration Act*, the possibility of release with reporting conditions or directed residence as opposed to detention.
- ⊘ When residing in the community, asylum-seekers do not have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance), except for access to basic education as part of Thailand's education for all policy, as well as birth registration and emergency access to life-saving medical care.

N/A Case management* provided in ATDs.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ⊘ Thailand is not a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ☑ Yes ⊘ No ⊙ Partially

N/A Not available **U** Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

As part of the NAP, UNHCR **increased outreach and direct engagement with and sensitization of authorities** such as police, Army and Immigration officials. UNHCR also considerably increased its **interventions in arrest situations**, mostly through physical presence at the arrest sites. Starting in April 2015, the office also issued interventions letters to the local police stations who conducted the arrest of persons of concern, providing legal opinions as to why asylum-seekers and refugees should not be charged with immigration related charges. The individual specific needs of persons who are ultimately be detained are documented and presented to immigration officials. These different interventions resulted in enhanced understanding between UNHCR and officials, as well as enhanced protection space for persons of concern.

UNHCR Thailand also **engaged in awareness-raising activities**, and in cooperation with UNHCR Regional Office in Bangkok, launched a 'Stop Child Detention' media campaign, featuring digital billboards throughout the South-East Asian region.



TRAININGS ORGANIZED IN THAILAND DURING THE REPORTING PERIOD

1 on Screening
and referral

8 on Asylum Law,
including UNHCR
Detention Guidelines

NUMBER OF PERSONS TRAINED IN THAILAND DURING THE REPORTING PERIOD

80 on Screening
and referral

100 on Asylum Law,
including UNHCR
Detention Guidelines

Gaps and challenges

The overall absence of a national domestic legal framework for the protection of refugees and asylum-seekers remains the main gap and key challenge. Further, in the absence of a maximum time limit for immigration detention, those who are not resettled nor released on bail are facing risk of indefinite detention. Establishing procedures to ensure that the best interests of the child is taken into consideration prior to resort to detention, is another key challenge that the office stands ready to support.

Next steps

In 2016, UNHCR Thailand will, inter alia, continue: (1) its overall advocacy with respect to ATDs and the establishment of a government policy framework related to protection of persons of concern to UNHCR, as well as sensitization sessions for officials; (2) to intervene formally and informally in individual cases of arrest and detention, enhance engagement with law enforcement and the judiciary and continue analysis of the application of Thai law (such as the Anti-Trafficking in Persons Act) to improve the protection environment for persons of concern; and (3) to further support the improvement of conditions of detention through, inter alia, systematic outreach to detainees and documentation of their current and new specific needs while in detention, as well as an analysis of the legal framework, regime and conditions applicable in the shelters devoted to the group of Rohingyas.

United Kingdom

THE UNITED KINGDOM (UK) relies on and utilises detention in asylum procedures more frequently than most other countries in the EU. In 2015, of the 33,000 individuals who were detained in immigration detention, almost 15,000 were asylum-seekers. UNHCR had observed an increased reliance on the Detained Fast Track procedure (DFT) for asylum processing with approximately 15% (4,000) of the UK asylum caseload going through the procedure in 2014 and early 2015, before it was suspended by the Government in July 2015. The UK is also one of a handful of countries without a maximum time limit on immigration detention and 2015 saw an increase in long-term detention with over 100 detainees detained for over a year.

In the UK, the National Action Plan (NAP) was drafted in consultations with external counterparts involved in detention work in the UK. Meetings were held with the UK Home Office and Her Majesty's Inspector of Prisons (HMIP). Additionally, a consultative meeting was held with NGOs working in the fields of immigration, asylum, detention and medical care in detention in the UK, who gave their valuable feedback on what goals and sub-goals they considered UNHCR should focus on. UNHCR continues to update stakeholders on the progress of the roll-out through briefings at stakeholder meetings and *ad hoc* meetings with key partners.

KEY DEVELOPMENTS

- Detained Fast Track (DFT) successfully challenged in court by Detention Action¹²⁷ and individual claimants and subsequently suspended in June 2015 until measures are taken in line with the court rulings. The Home Office reviewed all cases which had been in DFT and released those whose detention could no longer be justified in light of the court rulings. For cases where the Home Office decided to maintain detention, a new Detained Asylum Casework (DAC) procedure was introduced in July 2015 to process the remaining detained asylum cases. Legal challenges against the legality of DAC have so far been unsuccessful.
- Launch by the NGO Detention Action in April 2014 of a new pilot alternative to detention (ATD) project for ex-offender men aged 18-30 at risk of long-term immigration detention, a project which promotes compliance with conditions of release and minimises risk of re-offending through assisting reintegration through one-to-one case management and community participation. The project shows that ex-offender migrants rarely abscond or reoffend, and therefore that the long-term detention of ex-offenders with barriers to removal is often unnecessary.

¹²⁷ See i.e. *Detention Action, R (On the Application Of) v. Secretary of State for the Home Department*, [2014] EWCA Civ 1634, [2015] INLR 372, [2014] WLR(D) 537, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2014/1634.html>; *Detention Action v Secretary of State for the Home Department*, [2014] EWHC 2245 (Admin), available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2014/2245.html>; *Detention Action v First-Tier Tribunal (Immigration and Asylum Chamber) and Ors*, [2015] EWHC 1689 (Admin), [2015] WLR(D) 267, available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2015/1689.html>; *Detention Action, R (on the Application of) v. Secretary of State for the Home Department*, [2014] WLR(D) 426, [2014] EWCA Civ 1270 (09 October 2014), available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2014/1270.html>.

- Parliamentary inquiry into the use of immigration detention generated Parliamentary debates in both the House of Commons and the House of Lords, calling on the UK Government to implement a time limit for detention and to explore the use of alternatives. However, so far, the UK Government has not implemented the key recommendations from the report.¹²⁸

- Publication of the *Shaw Review*¹²⁹ commissioned by the Home Office to review the welfare of detainees, which reveals the damage of immigration detention on mental health and calls for a reduction in its use. Key recommendations include a ban on the detention of women and a presumption against detention for a wide range of persons with vulnerabilities as well as wider consideration of ATDs.

- Introduction by the *Immigration Act 2016*¹³⁰ of automatic judicial oversight after 4 months in detention as well as a 72-hour time limit on the detention of pregnant women.

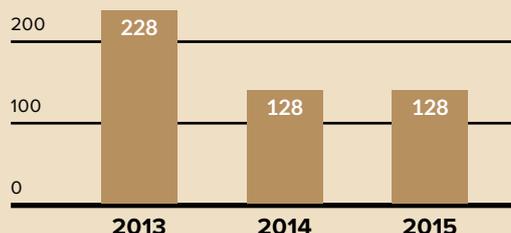
¹²⁸ *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom, A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration*, published on 3 March 2015, available at: <https://goo.gl/T73SDX>.

¹²⁹ *Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office by Stephen Shaw*, January 2016, available at: <https://goo.gl/BQy8RP>

¹³⁰ *Immigration Act 2016*, available at: <http://goo.gl/VoqfR3>.

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



Source: National Statistics Home Office, available at: <https://goo.gl/dTikZz>

- ✓ Legal framework ensures that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



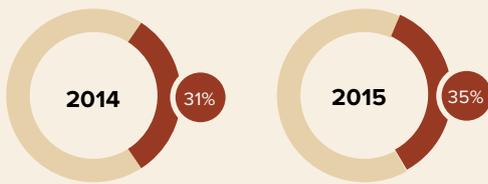
NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions	✓	✓	✓
Directed residence	✓	✓	✓
Residence at open/semi-open reception/asylum centres			
Release on bail/bond	✓	✓	✓
Provision of a guarantor/surety	✓	✓	✓
Community supervision arrangements			

✓ available in legislation ✓ used in practice

**PERCENTAGE OF PERSONS IN ATDs
(out of total number of persons detained)**

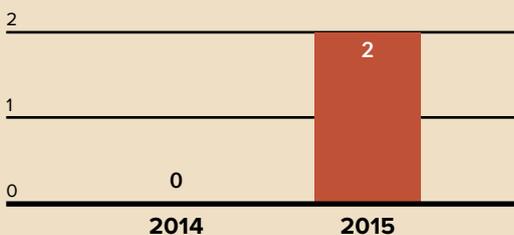


Source: National Statistics Home Office, available at: <https://goo.gl/dTikZz>

- ✔ Mechanism allowing asylum-seekers to stay legally in the community.
- ✔ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance).
- ✔ Case management* is provided in the ATD implemented by Detention Action.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ✔ The United Kingdom is a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ✔ Yes ✘ No ◉ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

In November 2014, UNHCR submitted written evidence to, and participated in an oral hearing of the **Parliamentary Inquiry into the Use of Immigration Detention**.¹³¹ A global perspective on maximum time limits for detention was provided, together with successful factors for ATDs and best practice examples that the UK could follow. UNHCR also submitted written evidence to the *Shaw Review*, highlighting that vulnerable persons are unsuitable for detention under DFT, the impact of the lack of a time limit, and the limited scope of the review itself in the wider context of the use of detention in the UK. Published in January 2016, the *Shaw Review* considered the application and appropriateness of current policies and practices concerning the health and well-being of vulnerable people in immigration detention.

As a follow-up to UNHCR HQs mission to the UK, UNHCR also initiated end 2015 a dialogue with the UK Home Office on ATDs. A non-paper on ATDs was prepared to the authorities with recommendations and good practice examples of ATDs from other countries. In January 2016, this initiative was pursued at the first ever High Level Dialogue between the UK and UNHCR with a request to consolidate action.

Concerning **border monitoring activities**, UNHCR organised a visit to Heathrow Airport terminal 4 on 23 April, 2015, to observe detention-related practices and enhance its knowledge of operations at the border and the use of short-term facilities. As a result, UNHCR strengthened its relationship with the UK Border Force and disseminated training materials in relation to prevention and response to sexual and gender-based violence, vicarious trauma and child protection. A visit to Yarl's Wood Immigration Removals Centre resulted in an invitation to UNHCR to train private contractor staff members on refugee protection. With regards to the **DFT procedure**, UNHCR maintained contact with the Home Office regarding the introduction of a new version of DFT with consideration given to UNHCR auditing and monitoring the new version, should it be introduced.

¹³¹ *Ibid.*



TRAININGS ORGANIZED IN THE UNITED KINGDOM DURING THE REPORTING PERIOD

- 1 on Asylum Law, including UNHCR *Detention Guidelines*
- 4 on Attention to vulnerable groups

NUMBER OF PERSONS TRAINED IN THE UNITED KINGDOM DURING THE REPORTING PERIOD

- 65 on Asylum Law, including UNHCR *Detention Guidelines*
- 100 on Attention to vulnerable people

UNHCR also engaged in **awareness raising activities** and seized the momentum and heightened interest around the Parliamentary elections by publishing an op-ed by the Representative on the use of immigration detention in the UK in *The Independent*¹³² newspaper, which received wide circulation.

Gaps and challenges

Cuts in legal aid and further restrictions on both judicial reviews and bail applications have made it more difficult to bring cases challenging detention before the courts. The UK still does not have a time limit on detention and only minimal progress was achieved through the Immigration Act 2016, which introduced automatic judicial review after 4 months of detention and a time limit of not more than 72 hours for pregnant women.

Next steps

The changing landscape on detention with the DFT still suspended and detained asylum casework (DAC) being challenged means that UNHCR will need to adjust its strategy going forward. The introduction by law of automatic judicial oversight after 4 months in detention and the introduction of a 72 hour time limit on the detention of pregnant women is a sign of progress. UNHCR will continue to engage with the UK authorities and other stakeholders to promote the use of ATDs.

¹³² “The UK has a tradition of providing safety to those fleeing persecution – yet half of them will end up in detention”, Gonzalo Vargas Llosa in *The Independent*, 18 May 2015, available at: <http://goo.gl/eKrNyt>

United States of America

THE UNITED STATES has faced new protection challenges since the roll-out of the Global Strategy, with an increasing number of men, women and children seeking asylum at the Southern border. In the last two years, UNHCR has worked to promote the three goals of the Global Strategy with the United States' larger protection response. In particular, UNHCR has supported the expansion of alternatives to detention (ATDs) in the United States, challenged the increased detention of families and children and raised awareness about particularly vulnerable populations in detention, such as LGBTI asylum-seekers.

In developing a National Action Plan (NAP) for the United States, UNHCR engaged in broad and intensive consultations with affected populations during their detention, the Government, a wide range of civil society actors representing the full scope of advocacy organizations, legal service providers, community-based organizations, academia, faith groups and visitation volunteers who act in support of asylum-seekers. UNHCR hosted one consultative meeting with civil society stakeholders around each of the three goals, mapping existing efforts towards the realization of the Global Strategy's three goals. UNHCR regularly participates in relevant civil society forums, including the Detention Watch Network (DWN), and government-stakeholder forums, that allow for coordination and roll-out of the strategy. These interactions provide opportunities for information sharing, brainstorming, and updating among a wide variety of civil society actors working on immigration detention, including the progress under the NAP.

KEY DEVELOPMENTS

- Launch of a pilot project on ATDs, the new "Family Case Management Program" aiming to release 800 vulnerable asylum-seeking families out of DHS custody into community care in five US cities. The program involves case management for access to services and legal aid, as well as assistance with compliance in immigration hearings. The first 180 participants entered the program in January 2016.
- Expansion of the Child Advocate Program for particularly at risk UASC from 2 sites in 2013, to 8 sites in 2016.
- Allocation of \$9 million in grants over two years from the Government to various programs to provide direct legal representation to UASC. However, the programs are only expected to be able to represent approximately 2,600 children which is a fraction of the UASC arriving to the United States.
- Creation by the U.S Customs and Border Protection of a governmental interagency working group focused on UASC to revise and improve the screening process border officials use to identify UASC with international protection needs. The revised screening process will be implemented by the end of 2016.

Activities undertaken during the roll-out period of the Global Strategy

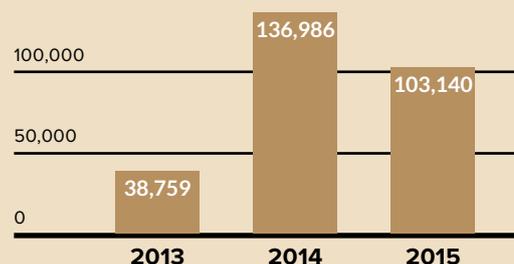
In 2015, UNHCR completed a review of ATD case management pilots run by two faith-based U.S. NGOs. That effort and review was disseminated to stakeholders, including the U.S. Government, and informed stakeholders' approach to the current "Family Case Management Program". From November 2015 onward, the office also provided technical support and shared good practices on ATDs with the U.S. Government and the implementing partner, Geocare, in the preparatory phase of this program. Moreover, UNHCR participates as an observer in the advisory committee set up by the authorities for the project.

UNHCR also has engaged in litigation to challenge the detention of children. The office submitted an amicus brief, reiterating UNHCR's position in the 2012 Detention Guidelines and in the Global Strategy, in the landmark case, *Flores v. Lynch*. In July 2016, the Court of Appeals for the Ninth Circuit ruled in this case, affirming that a national settlement agreement applies to all children whether accompanied or unaccompanied by their parents. Thus, the current state of U.S. law has a presumption in favor of releasing minors, and imposes the following obligations on the immigration authorities: 1. The government is required to release children from immigration detention without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody; 2. If a suitable placement is not immediately available, the government is obliged to place children in the "least restrictive" setting appropriate to their age and any special needs; 3. The government must implement standards relating to the care and treatment of children in custody.

During the reporting period, UNHCR in the United States focused more specifically on the situation of LGBTI asylum-seekers, particularly at risk in detention. In 2015, UNHCR started a new body of work pushing for greater protection of LGBTI asylum-seekers (and in particular, transgender people). On December 7, 2015, UNHCR held a roundtable with key actors in civil society working on LGBTI asylum issues in the United States with the aim to develop a white paper on ATDs

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



NB. The change in the number of children detained is linked to the increasing number of children arriving to the U.S. territory.

- ⊘ Legal framework does not ensure that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation	☑	U	U
Reporting conditions	☑	U	U
Directed residence	☑	U	U
Residence at open/semi-open reception/asylum centres	☑	U	U
Release on bail/bond	☑	U	U
Provision of a guarantor/surety	☑	U	U
Community supervision arrangements	☑	U	U

☑ available in legislation ☑ used in practice

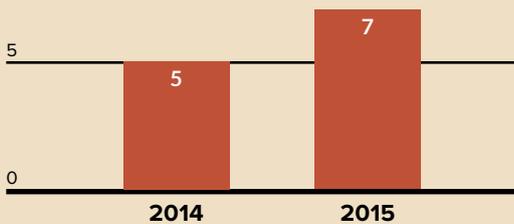
**PERCENTAGE OF PERSONS IN ATDs
(out of total number of persons detained)**



- ✔ Mechanism allowing asylum-seekers to stay legally in the community.
- ⊙ When residing in the community, asylum-seekers sometimes have access to basic rights in the U.S. (accommodation, medical and psychological assistance, education, legal assistance), but these rights are often limited.
- ✔ Case management* is provided in the "Family Case Management Program".

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ⊘ The United States are not a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ✔ Yes ⊘ No ⊙ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

for LGBTI asylum-seekers. This will be designed to formulate proposals for avenues for further dialogue between UNHCR and the Government. UNHCR has also been working with transgender activists around conditions in immigration detention, aiming to identify best practices in conditions of confinement. UNHCR has been providing information and referrals for detained LGBTI individuals through the asylum hotline, and has been intervening on individual cases with particular relevant issues.

In late 2015, UNHCR partnered with the Detention Watch Network to host a training on detention monitoring for over 60 participants from civil society across the United States. Drawing on existing expertise within UNHCR, its international partners, and civil society, the training sought to lay a strong foundation in detention monitoring practices for advocates newly interested in conducting monitoring activities and to increase the detention monitoring skills of those already engaged. Starting in 2015 and on-going in 2016, UNHCR participated as a technical advisor with ICE on the roll-out of the Family Case Management Program, providing trainings on case-management-based ATDs and serving on the "community reference committee" that meets quarterly.



TRAININGS ORGANIZED IN THE UNITED STATES DURING THE REPORTING PERIOD

- 1 on Detention monitoring methodology
- 1 on Child protection
- 4 on Attention to vulnerable groups

NUMBER OF PERSONS TRAINED IN THE UNITED STATES DURING THE REPORTING PERIOD

- 60 on Detention monitoring methodology
- 20 on Child protection
- 100 on Attention to vulnerable groups

Gaps and challenges

The detention of asylum-seekers, including vulnerable groups such as child asylum-seekers and families, continue to be a problem in the United States, with numbers of asylum-seekers from the Northern Triangle of Central America continuing to increase. ICE's new family case management program is a welcome initiative, but serves only a small fraction of asylum-seeking families and faces political opposition for expansion. In part due to responses to increased arrivals, efforts to improve screening and referral mechanisms at the U.S. border (thus shifting asylum-seekers away from detention) have been slow. Access to legal advice in detention is also still a challenge, despite increases in federal funding for the Legal Orientation Program (LOP) since 2013. Finally, ICE continues to contract with private prison companies and local jails and prisons resulting in occasions where asylum-seekers are confined in the same locations as persons suspected or convicted of a crime.

Next steps

UNHCR's next steps under the Global Strategy will be continue to support the development of screening tools to identify children (and others) with international protection needs and to review the U.S. Government's program for the care and custody of unaccompanied children based on international standards for child protection. This program is housed within the Office of Refugee Resettlement (ORR), which is tasked with the care of unaccompanied children pending their release to a family member or sponsor if one is available, or the resolution of their immigration case if one is not. During its monitoring, UNHCR will be visiting approximately 20 locations where children are in ORR custody (there are over 125 locations across the country), which range in level of restriction from foster care placements to shelters to secure detention facilities, and will be monitoring the conditions, ORR's intake, screening and referral processes (both for legal and social services), access to asylum and other forms of legal relief, and release to sponsors and other ATDs.

UNHCR will continue to support the U.S. Government efforts to improve the greater use of ATDs for families and transgender women held in detention and will also be executing a 'legal capacity' project to train U.S. lawyers on how to effectively use international law in their advocacy. The trainings and materials will include information on UNHCR's position related to detention of asylum-seekers and ATDs. UNHCR will also continue following U.S. litigation for developments in detention-related laws and policy. Finally, UNHCR will engage with the U.S. Government on legislation and policy surrounding immigration detention including the "Fair Day in Court for Kids" Act, which would improve due process for children including those in detention.

Zambia

IN ZAMBIA, in 2015, the instability in Burundi and in the Democratic Republic of Congo resulted in 2,965 persons (mainly from DRC, Burundi and Somalia) applying for asylum. Last year, UNHCR was informed through its regular visits to detention facilities and reports from detaining authorities of 147 persons of concern, including 24 asylum-seekers and 18 children, detained for immigration-related purposes, mainly due to the encampment policy contained in the *Refugee Control Act* of 1970 reflecting the country's reservations to Article 26 of the *1951 Refugee Convention*, restricting refugees' right to exercise freedom of movement and residence.

KEY DEVELOPMENTS

- Approval by the Cabinet of Ministers under the Vice President of the introduction in Parliament of a new Refugee Bill to repeal and replace the *Refugee Control Act*¹³³ of 1970, providing for the effective administration and management of refugee affairs and facilitating the incorporation in national law of the standards contained in international and regional conventions to which Zambia is a party. This new legislation, if passed, and other legislative initiatives such as the new Bill of Rights if passed, will provide first line officials with a framework to implement alternatives to detention (ATDs) for asylum-seekers and refugees.
- Launch of the *Protection Assistance to Vulnerable Migrants Policy Guidelines*¹³⁴ in June 2014, developed jointly with the Department of Immigration, the Ministry of Social Welfare, the police, the Office of the Commissioner for Refugees, UN Agencies, IOM and civil society. These guidelines, as well as the profiling and national referral mechanism therein contained, aim to assist first line officials to screen and refer vulnerable migrants and asylum-seekers to relevant government ministries, civil society and UN Agencies.
- Recommendation in July 2015 by the Ministerial Migration Dialogue meeting for Southern Africa (MIDSA) on the protection of unaccompanied and separated children (UASC) to SADC Member States to individually and collectively develop and implement regional and national policy frameworks, including identification and referral guidelines and case management systems, to provide protection to UASC, taking into consideration the best interests of the child.
- Organization in December 2015 of a national conference on detention and administration of justice with a focus on children, refugees, migrants, people with disabilities and other vulnerable groups in Zambia by the Human Rights Commission of Zambia in collaboration with UNICEF, with various stakeholders, including government departments.

¹³³ *Zambia: Refugee (Control) Act, 1970*, 4 September 1970, available at: <http://goo.gl/UqwDxN>

¹³⁴ *Protection Assistance to Vulnerable Migrants Policy*, June 2014, available at: <https://goo.gl/bx0FVZ>

A tripartite meeting was held between the Office of the Commissioner for Refugees, the Director General of the Immigration Department and UNHCR for the launch and implementation of the Global Strategy. In accordance with the One UN approach, a similar mechanism was adopted for the UN agencies where a working group on detention was formed, encompassing different UN agencies,¹³⁵ with the purpose of pooling both financial and human resources to tackle detention. UN agencies brought on board their different stakeholders and partners including for the implementation of the National Action Plan (NAP).

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

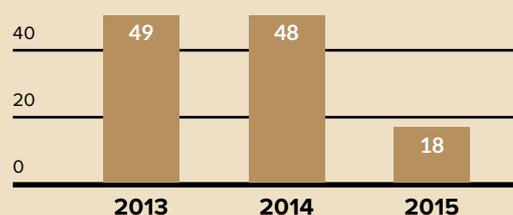
In May 2015, UNHCR organized a Sub Regional Conference for the Protection of Children on the Move in Lusaka, jointly with the Government of Zambia, UNICEF, and IOM. The Governments of Angola, the Democratic Republic of Congo, Malawi, Mozambique, Namibia, South Africa, the United Republic of Tanzania, Zambia and Zimbabwe committed to **upholding the fundamental principle of maintaining the best interests of the child at the core of activities** dealing with UASC. They recognized the need for improved research and data collection on children on the move and agreed to explore regional and national measures and ATDs for children. Cross border meetings were held with Tanzania, DRC, Malawi, Zimbabwe and Namibia to exchange assessment and referral procedures. These dialogues have been essential to promote ongoing exchange, enhance cross border collaboration and to jointly identify solutions to key cross border issues, including detention.

With regard to **judicial engagement**, UNHCR Zambia continued to collaborate with the judiciary through the mobile court in the refugee settlements, resulting in the establishment of a permanent court structure. This collaboration gives UNHCR an opportunity to hold information sessions on the rights and obligations of refugees in Zambia. UNHCR also assisted in the identification

¹³⁵ IOM, UNICEF, UNODC and UNDP.

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED

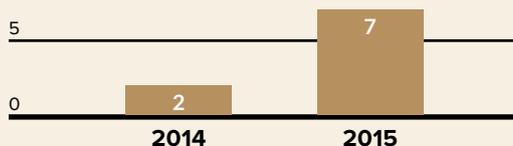


Source: UNHCR's monitoring and reports from detaining authorities

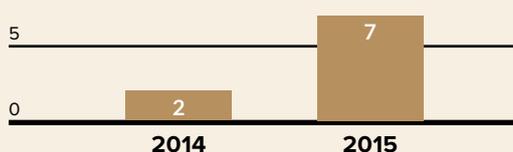
⊘ Legal framework does not ensure that children are not detained.

GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF FACILITIES AVAILABLE FOR CARE ARRANGEMENTS FOR UASC



NUMBER OF FACILITIES AVAILABLE AS ATDs FOR FAMILIES



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions	☑	☑	☑
Directed residence			
Residence at open/semi-open reception/asylum centres	☑	☑	☑
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety			
Community supervision arrangements			

☑ available in legislation ☑ used in practice

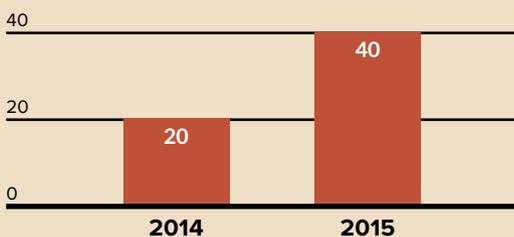
**PERCENTAGE OF PERSONS IN ATDs
(out of total number of persons detained)**



- ✔ Mechanism allowing asylum-seekers to stay legally in the community (the asylum-seekers permit).
- ✘ When residing in the community, asylum-seekers do not have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance). Only the most vulnerable persons have access to these rights, through a UNHCR partner.
- ✔ Case management* is provided in ATDs by UNHCR partners under Makeni and TC36 Africa Action Humanitarian International and Ministry of Community Development and Social Welfare; the District Joint Operations Committee provides case management in the border areas.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ⊙ Zambia is a signatory to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ✔ Yes ✘ No ⊙ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

of a private law firm to represent on a pro bono basis a refugee who was fined an exorbitant fee in lieu of 9 months of detention for an immigration-related offence. This served as an occasion for the court to clarify the application of the Refugee Control Act¹³⁶ and the Immigration and Deportation Act.¹³⁷

Finally, as authorities had indicated that the lack of shelters at border areas was the reason for resorting to detention of children and families, UNHCR Zambia conducted a **mapping and assessment of reception centres** in the northern border areas, which was shared with the Social Welfare and Immigration Departments, together with a set of recommendations regarding the implementation of ATDs. UNHCR also prepositioned tents and other non-food items in the northern border areas, to be used as temporary shelters while waiting for relocation of newly arrived asylum-seekers to refugee settlements.

In November 2015, with the objective to strengthen the knowledge of first line officials in refugee law and international standards related to detention, UNHCR organized a **joint Training of Trainers (ToT) on mixed migration and refugee protection** targeting trainers from four training institutes for first line officials. A total of 14 trainers participated in a 5 day training, aimed at enhancing the implementation of ATDs.

Gaps and challenges

The Government's reservation to Article 26 of the *1951 Refugee Convention* continues to pose a challenge with regards to the detention situation. In the absence of reception facilities at entry points, border officials place asylum-seekers and refugees (including children) in prison facilities, alongside convicted criminals and persons on remand, whilst they await the determination of their asylum applications and their subsequent relocation to the refugee settlements. Prolonged detention of asylum-seekers is principally compounded by the absence of national legislation imposing a time limit on immigration detention,

¹³⁶ *Idem*.

¹³⁷ *Zambia: Immigration and Deportation Act 2010, No. 18, 16 April 2010*, available at: <http://goo.gl/v1MkkV>



TRAININGS ORGANIZED IN ZAMBIA DURING THE REPORTING PERIOD

5 on Screening
and referral

NUMBER OF PERSONS TRAINED IN ZAMBIA DURING THE REPORTING PERIOD

67 on Screening
and referral

but also by the reluctance by the authorities to implement the ATDs provided by law (asylum-seeker permits and report orders), to release asylum-seekers until the RSD process is completed, or to provide an escort and transportation to the refugee settlements. The high degree of rotation of first line officials within the Immigration Department also led to some difficulties in implementing the Global Strategy, highlighting the need for continued trainings.

In contravention of Article 31 of the *1951 Refugee Convention*, illegal entry is an offence under the *Immigration and Deportation Act* (2010) and access to the asylum procedure in detention is problematic due to a strict application of the law which indicates that “all asylum-seekers should present themselves at the port of entry to be issued with an asylum-seekers permit”. Asylum-seekers detained in facilities not regularly monitored by UNHCR are not easily identified nor provided with information on the asylum procedure. Although persons in detention have a right to legal representation under national legislation and are informed of this right by arresting officials, legal advice is not readily available to all detainees as there are very few government lawyers employed by the Legal Aid Board who can provide free legal representation. Moreover, conditions of detention are substandard due to overcrowding, exposing detainees to diseases and unsanitary conditions.

Next steps

In the coming months, UNHCR Zambia will continue advocating for enhanced implementation of the existing ATDs enshrined in legislation and will work closely with the authorities to map available reception centres in border areas. In parallel, it will preposition additional items for temporary reception facilities and privately owned reception areas and will develop SOPs to streamline management of these reception facilities and the provision of assistance to them.

UNHCR will organize a roundtable on ATD for children with the Social Welfare Department to address its role in ensuring the best interests of the child and to discuss information and referral pathways to ensure that UNHCR is informed of detention of children of concern without delay. As a follow-up to the Sub Regional Conference for Children on the Move and MIDSA recommendations, funds will be raised for a regional screening tool, to ensure vulnerable groups are not detained but referred to community-based options and ATDs.

Finally, UNHCR will pursue its advocacy for the presentation of the revised *Refugee Bill* in Parliament and increased budgetary allocations to the justice system, develop a detention monitoring strategy that will include the identification and training of additional partners and engage the Legal Aid Board to strengthen strategic litigation.

ANNEX 1 – LIST OF ACTIONS UNDERTAKEN UNDER THE GLOBAL STRATEGY – BEYOND DETENTION

Strengthening dialogue with governments and NGO partners

Canada	December 2014	Regional working groups on detention with NGOs, provincial government authorities, correctional authorities, advocacy organizations and mental health institutions as well as CBSA, IRCC and IRB's detention focal points.
Hungary	October 2015	Coordination platform to ensure smooth information flow among relevant stakeholders during the emergency situation. It includes non-governmental, inter-governmental and international organizations.
Israel	Continued engagement	Monthly meetings with partners. Bi-monthly meetings with ICRC.
Indonesia	February 2015	Detention working group including the Directorate General of Immigration, the Ministry of Law and Human Rights, the IDC, SUAKA, Jesuit Refugee Service and UNHCR.
Malaysia	October 2014	Joint UNHCR-NGO working group on arrest and detention to improve information sharing and coordination between organizations involved in detention, including SUHAKAM, the International Detention Coalition, the Malaysian Bar Council and ICRC.
Malta	Continued engagement	Bi-monthly meetings with Jesuit Refugee Service and the Malta Red Cross. Regular meetings with the Board of Visitors for Detained Persons. Bi-monthly meetings with the detention authorities, during visits to detention centres.
Thailand	September 2011	Detention Taskforce (DTF), the primary coordinating and information sharing body related to detention issues, including national and international stakeholders, which is including, but not limited to, the NAP and NAP related activities.
	February 2015	ATD working group composed of several NGOs.
	Continued engagement	IDCCC (IDC Coordination Committee), including NGOs and community-based organizations advocating at the operational level for better conditions in the Immigration Detention Centres.
United Kingdom	Continued engagement	Participation in the Detention Forum and Detention Monitoring Group comprised of NGOs working on detention issues. Participation in the Citizens UK Working Group on indefinite detention.
United States	Continued engagement	Coordination with the US Government and civil society partners on detention through the Department of Homeland Security (DHS) working group in addition to a number of thematic smaller working groups on ATDs, UASC, family detention, use of solitary confinement, risk classification assessment, identification of vulnerable populations and detention conditions for LGBTI persons of concern. Extensive bilateral dialogue with DHS and ORR related to detention and reception issues for UASC. Under this framework, UNHCR led a dialogue to map existing efforts and to identify opportunities and priorities in defining UNHCR supportive actions to the Government.
Zambia	September 2014	Working group on detention within the One UN approach, including different UN agencies with a mandate on detention.

Providing comments on national legislation and policies

Canada	January 2016	Draft government policy on National Detention Standards Draft national ATD policy and implementation plan.
Hungary	January 2015	Draft amendment package to the <i>Asylum Act</i> and the <i>Aliens Act</i> .
	June 2015	Draft amendment to the <i>Asylum Act</i> .
Indonesia	January 2016	Draft amendment to the 2010 <i>Directory General of Immigration directive</i> Draft Presidential Regulation.
Israel	November 2013	Amendments No. 4 to the <i>Law for the Prevention of Infiltration</i> .
	November 2014	Amendments No. 5 to the <i>Law for the Prevention of Infiltration</i> .
	December 2015	Amendments No. 6 to the <i>Law for the Prevention of Infiltration</i> .
Lithuania	October 2015	Amendment of the <i>Law on the Legal Status of Aliens</i> .
	May 2015	
	September 2014	
Malta	May 2015	Confidential comments on the draft Amendment Bill to the <i>Immigration Act</i> and the draft delegated legislation transposing the EU <i>Reception Conditions Directive</i> .
	February 2016	Observations on Malta's <i>Revised Legislative and Policy Framework for the Reception of Asylum-Seekers</i> (published).
Thailand	September 2015	Draft Constitutional provisions covering statelessness/nationality and asylum provided to the UN Country Team in the context of the joint submission for the Constitutional drafting process.
United Kingdom	October 2015	<i>Immigration Bill 2015/16</i> .
United States	May 2016	Revisions to the <i>Refugee Protection Act</i> .
Zambia	August 2014	Review process of the national child framework. New Refugee Bill to be introduced in Parliament to repeal the <i>Refugee Control Act of 1970</i> .

Participating in parliamentary/government inquiries or commissions

Malta	November 2015	Comments on Government's draft <i>Strategy for the Reception of Asylum Seekers and Irregular Migrants</i> submitted as part of a public consultation.
United Kingdom	November 2014	Written and oral evidence to the <i>Parliamentary Inquiry into the Use of Immigration Detention</i> .
	December 2015	Written evidence to the Shaw review commissioned by the Home Office to look into the welfare in detention of vulnerable people.

Making submissions to international, regional or national human rights bodies

Hungary	September 2015	Submission to the Universal Periodic Review.
Thailand	September 2015	Submission to the Universal Periodic Review.
United States	October 2014	Submission to the Universal Periodic Review.
	June 2016	Submission to the UNCAT.

Judicial engagement

Canada	Continued engagement	Networking with The Canadian Association of Refugee Lawyers (CARL) and the refugee lawyer network to be informed of cases which might require UNHCR's intervention.
Hungary	June 2015	Seminar on international and EU detention-related standards for members of the judiciary, in collaboration with the Council of Europe.
	May 2015	Contribution to the trainings held by the Hungarian Helsinki Committee within their EU funded project 'Made Real' on the legislative framework and implementation of alternatives to detention.
	February 2015	Financial support of a thematic conference organised by the Debrecen Administrative and Labour Law Court concerning adjudication in asylum cases, with special emphasis on detention cases.
Israel	Continued engagement	Engagement in the identification, training and counselling of pro bono lawyers on asylum issues, including detention.
Lithuania	September 2015	Seminar on international and EU detention-related standards for members of the judiciary, in collaboration with the Council of Europe.
	December 2015	Training on detention related standards, including UNHCR <i>Detention Guidelines</i> , to legal practitioners involved in the National Network of Asylum Lawyers.
Malaysia	Continued engagement	UNHCR engaged a retainer counsel to appear in court to represent asylum and refugees charged with immigration offences, to advocate for their exemption from prosecution under the Attorney General's Circular.
Malta	September 2015	Bilateral contact with legal aid lawyers and organization of a briefing for the judiciary on the new reception framework.
Thailand	Continued engagement	Identification and referrals of test cases to local lawyers.
	September 2015	Support to a local lawyer representing two Syrian nationals charged with the use of fake passports, through the Lawyer Council of Thailand.
United States	February 2015	Submission of an amicus brief in the landmark case, <i>Flores v. Lynch</i> , which concerns the federal government's capacity to detain child asylum seekers (including children in families), before the Ninth Circuit court of appeals in California.
	June 2016	Launch of a campaign to provide education and resources on international law for US lawyers taking on asylum cases, by providing easy access to UNHCR's most relevant documents, including on legality of detention, and ability to have detention reviewed.
Zambia	Continued	Collaboration with the judiciary through the refugee settlement mobile court, resulting in the establishment of a permanent court structure and information sessions on the right and obligations of refugees in Zambia.

Awareness raising and campaigning

Hungary	June 2015	Billboard campaign in the Budapest underground on World Refugee Day, portraying four refugees living in Hungary and organization of three media events with these refugees.
Israel	June 2015	National "Takiru" Campaign launched on World Refugee Day, including large posters, video testimonies and a Facebook site.
Lithuania	March 2015	Joint conference "Is detention the only option? The issues and challenges of the detention of asylum-seekers and other foreigners in Lithuania" organized with the Parliamentary Human Rights Committee and the Parliamentary Ombudsman Office, and held at the Lithuanian Parliament.
Thailand	September 2014	'Stop Child Detention' media campaign throughout the region, featuring digital billboards in Bangkok.
United Kingdom	May 2015	Publication of an op-ed by the Representative on the use of immigration detention in the UK in The Independent online newspaper.

Providing/strengthening technical knowledge and capacity-building for all stakeholders (including training)

	Theme	Number of trainings	Number of people trained	Audience
Canada	Detention conditions standards	1	11	Canadian Red Cross Monitoring Team
	Detention monitoring methodology	2	11	NGO staff
Hungary	Asylum Law, including UNHCR <i>Detention Guidelines</i>	3	265	Legal practitioners Members of the judiciary Asylum authorities
	Detention monitoring methodology	1	15	NGO staff Volunteers Journalists
Indonesia	Asylum Law, including UNHCR <i>Detention Guidelines</i>	1	60	Legal practitioners
	Child protection	3	79	Detaining authorities Assessors
Israel	Asylum Law, including UNHCR <i>Detention Guidelines</i>	5	160	Legal practitioners Members of the judiciary
	Attention to vulnerable groups (Identifying, interviewing and working with victims of torture)	5	133	Government officials Members of the judiciary Legal practitioners Police staff Medical staff Shelters staff Social workers NGO staff
Lithuania	Asylum Law, including UNHCR <i>Detention Guidelines</i>	2	85	Legal practitioners Members of the judiciary
Malaysia	Child protection	3	116	UNHCR staff NGO staff
	Attention to vulnerable groups	2	120	UNHCR staff NGO staff
Malta	Reception and alternatives to detention	1	30	Members of the judiciary
	Child protection	3	36	Government officials UNHCR staff Legal guardians Social workers
Mexico	Child protection	27	987	Child protection authorities Child protection partners UNHCR staff Asylum authorities NHRI staff
	Detention conditions standards	6	89	NHRI staff
Thailand	Asylum Law, including UNHCR <i>Detention Guidelines</i>	8	100	Government officials
	Screening and referral	1	80	Academics Faith-based organizations
UK	Asylum Law, including UNHCR <i>Detention Guidelines</i>	1	65	Detaining authorities
	Attention to vulnerable groups	4	100	Screening officers
US	Detention monitoring methodology	1	60	Civil society
	Child protection	1	20	Civil society
	Attention to vulnerable groups	4	100	Border and asylum authorities
Zambia	Screening and referral	5	67	Trainers UNHCR IOM UNICEF Asylum authorities Government officials

Investing in, carrying out and disseminating research

Canada	May 2015	Provision of input to the report of the International Human Rights Program of the University of Toronto, "We have no rights".
Hungary	May 2016	Report "Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016".
Thailand	October 2014	Discussion paper "A Framework for Alternatives to Detention" highlighting existing provisions in Thai law which permit non-detention, including non-detention of children.
	February 2015	Discussion paper highlighting state responsibilities pursuant to treaties Thailand is a party to (ICCPR, CRC, CAT)
	February 2015	Discussion paper "A Framework for Temporary Protection of Rohingya Persons of Concern Consistent with Existing Thai Law, Policy and Practice" examining possibilities for non-detention of Rohingya persons of concern, including children.
United States	October 2015	Report "Women on the Run: First Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico".

Facilitating and supporting pilot projects on alternatives to detention

Canada	December 2015	Coordination with the <i>Toronto Bail Program</i> , NGO initiatives and shelters interested in acting as alternatives to detention.
	December 2015	Compilation of a list of non-governmental organizations interested in engaging into alternatives to detention and providing services to released detainees, shared with CBSA detention focal points.
	January 2015	Support to the Multi Agency Partnership (MAP), a coalition of NGOs in Vancouver, in its submission to CBSA of a pilot ATD project.
Indonesia	December 2015	Support to a new shelter for 130 male unaccompanied and separated children in Makassar managed by the Department of Social Affairs with support from IOM.
	December 2015	Development of a proposal for alternatives to detention for children, including foster care arrangements, as a follow-up of the Bangkok meeting on ATD for children held in November 2015.
Malaysia	2015	Funding of a partner organization, the Good Shepherd Welfare Organization (PKGS) to identify and coordinate shelter arrangements for persons of concern.
	December 2015	Identification of a potential shelter provider, including linking it with child protection specialists and existing child shelter providers.
Mexico	October 2014	Support to a community pilot project launched by the IDC and its national partners <i>Casa Alianza</i> and <i>Aldeas Infantiles</i> , to refer unaccompanied and separated asylum-seeking children to children's shelters with specialized care models.
United States	November 2015	Provision of technical support to the U.S. Immigration and Customs Enforcement (ICE) and GEO Care, a private prison contractor in the preparatory phase of a pilot ATD project, the "Family Case Management Program", aiming to release 800 vulnerable asylum-seeking families out of custody into community care in five U.S. cities.
	Continued engagement	Participation as an observer in the advisory committee set up by the authorities for the project.

ANNEX 2 LIST OF INDICATORS UNDER THE GLOBAL STRATEGY – BEYOND DETENTION

DETENTION CHECKLIST

GOAL 1: End the detention of children	
Sub Goal 1. Legal and policy framework ensure that children are not detained, except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period.	
Does the legal framework ensure that children are not detained, except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period?	
Does the policy framework ensure that children are not detained, except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period?	
In practice, are unaccompanied or separated children not detained?	
In practices, are children in families not detained?	
Sub Goal 2. Best interests of the child prevail: prioritisation of asylum processing and/or family tracing/reunification; access to age-appropriate information (e.g. picture books) on asylum procedures (including how to contact UNHCR); guardians and/or legal representatives for children are appointed, in particular when unaccompanied or separated.	
Does the decision to detain include a best interests assessment/determination of the child	
Do detained children have access to prioritization in asylum processing, in order to accelerate their release and placement other forms of appropriate accommodation?	
Do UASC have access to family tracing?	
Do UASC have access to family reunification?	
Do UASC have access to age-appropriate information (e.g. picture books) on asylum procedures, including how to contact UNHCR?	
Are UASC appointed a qualified guardian?	
Are UASC appointed a legal representative?	
Sub Goal 3. Alternative reception/care arrangements (including for families) are available and appropriate: examples include foster care, community supervision/support, age appropriate open reception centres with proper supervision, etc.	
Do UASC have access to temporary/alternative care arrangements (incl. accommodation) as available to national children or any other specific arrangements dedicated to (non-national) children?	
Do families with children have access to temporary/alternative care arrangements?	
Sub Goal 4. Child-sensitive screening and referral procedures are in place in order to refer them to relevant child protection institutions or organisations without delay and ensure they receive necessary services and assistance (e.g. through Best Interests Assessment or Determination Procedures and care arrangement).	
Are child-sensitive screening in place (inside immigration detention places and also outside detention, e.g. at the borders)?	
Are child-sensitive referral procedures in place (inside immigration detention places and also outside detention, e.g. at the borders)?	
Sub Goal 5. Immediate release of children from detention and their placement in other forms of appropriate accommodation is coordinated amongst national agencies and, as appropriate, with UNHCR.	
Is there a coordination mechanism amongst national agencies and/or as appropriate, with UNHCR for immediate release of children and placement in appropriate accommodation?	

GOAL 2: Ensure alternatives to detention are available in law and implemented in practice

Sub Goal 1. Legal and policy frameworks include alternatives to immigration detention

Is there a mechanism allowing asylum-seekers to stay legally in the community?

When residing in the community, do asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance)?

According to national legislation, policy, or in practice, the following categories of asylum-seekers are allowed to live in the community (without restriction or condition(s)): UASC/Children in families/Adults

National legislation provides for alternatives to detention for:

UASC Children in families Adults

The policy framework provide for ATDs for: UASC/Children in families/Adults

What types of alternatives to detention are provided in national legislation?

Deposit or surrender of documentation	Release on bail/bond
Reporting conditions	Provision of a guarantor/surety
Directed residence	Community supervision arrangements
Residence at open or semi-open reception or asylum centres	

Sub Goal 2. Procedures are in place to assess and review the necessity, reasonableness and proportionality of detention in each individual case before resorting to detention.

Are procedures in place to assess the necessity, reasonableness and proportionality of detention in each individual case before resorting to detention?

Do the authorities examine ATD in each individual case before resorting to detention?

Systematically In most cases Rarely Never

Does national legislation provide that the detention decision is subject to periodic review?

In practice is the detention decision subject to periodic review?

Sub Goal 3. Screening and referral mechanisms exist to ensure that asylum-seekers are referred to ATDs

Are there screening and referral mechanisms in place (e.g.at the border, upon disembarkation, prior or while in detention) to ensure that asylum-seekers are referred to ATDs?

Sub Goal 4. A variety of alternatives to detention are available (e.g. from reporting conditions to community placement)

Are there alternatives implemented in practice?

In practice, ATDs are implemented for: UASC/Children in families/Adults

Who is involved in implementing the ATDs:

Government NGO/Civil Society International Governmental Organization

Is there case management provided in ATDs?

Sub Goal 5. ATD take into consideration the needs of persons with special needs or vulnerabilities. Community reception arrangements, in particular for children and families, are prioritised.

Do the existing ATDs take into consideration the needs of persons with special needs or vulnerabilities?

GOAL 3: Ensure that conditions of detention where detention is necessary and unavoidable, meet international standards	
Sub Goal 1. Legal and policy frameworks related to detention are in accordance with international standards and in particular provide for access to places of immigration detention to UNHCR and other independent national or international monitoring bodies.	
Is irregular entry not criminalized under national legislation?	
Is irregular stay not criminalized under national legislation?	
Are the grounds for deprivation of liberty prescribed by law?	
Are these grounds consistent with UNHCR <i>Detention Guidelines</i> ?	
Do the authorities use appropriate screening or assessment tools to inform their decision to detain?	
According to national legislation, should there be access to legal advice while in detention?	
In practice, is there access to legal advice while in detention for all detainees?	
Are people detained informed of their right to legal advice?	
Does national legislation provide for the initial decision to detain to be systematically followed by a judicial or independent administrative authority decision to release or detain?	
In practice, is the initial detention to detain systematically followed by a judicial or independent administrative authority decision to release or detain?	
Does national legislation provide for individuals to have the right to challenge their detention before a court of law?	
In practice, do individuals have the right to challenge their detention before a court of law?	
Is there access given to asylum procedures to persons detained for immigration-related purposes?	
Is there a maximum period for immigration detention set in national legislation?	
Are UNHCR persons of concern not detained with persons suspected or convicted of a crime?	
Sub Goal 2. In practice, UNHCR and other independent national and international monitoring bodies are granted access to places of immigration detention for the purpose of regular monitoring.	
In practice, UNHCR is granted access to all places of immigration detention for the purpose of regular monitoring	
In practice, other independent national and international monitoring bodies are granted access to all places of immigration detention for the purposes of regular monitoring	
In practice, NGOs are granted access to all places of immigration detention for the purpose of regular monitoring	
Sub Goal 3. Authorities responsible for immigration detention are aware of and implement international standards regarding conditions of detention and treatment of detainees.	
Is the focus country a party to the <i>Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</i> ?	
Has the focus country designated the National Preventive Mechanism?	
Sub Goal 4. Detainees are treated in a humane and dignified manner, in accordance with these international standards.	
Detainees are treated in a humane and dignified manner	
Sub Goal 5. Specific measures are taken to address the needs of persons in situation of vulnerability or at risk.	
Are specific measures taken in detention to address the needs of persons in situation of vulnerability or at risk?	

ANNEX 3 LIST OF INDICATORS UNDER THE GLOBAL STRATEGY – BEYOND DETENTION

GLOBAL STRATEGY INDICATORS

GOAL 1: End the detention of children
Number of children detained (UNHCR's Results Framework)
Number of advocacy interventions made to facilitate access of children of concern to national child welfare and social services (UNHCR's Results Framework)
GOAL 2: Ensure alternatives to detention are available in law and implemented in practice
Number of places in alternatives to detention available
Number of places/facilities available in care arrangements for UASC
Number of places/facilities available in ATDs for families
Percentage of persons in ATDs (out of number of persons detained)
Number of advocacy interventions made to promote alternatives to detention or prevent arbitrary detention (UNHCR's Results Framework)
GOAL 3: Ensure that conditions of detention where detention is necessary and unavoidable, meet international standards
Extent detention conditions meet minimum standards (UNHCR's Results Framework)
Number of monitoring visits organized by UNHCR and/or partner(s), recorded and followed by recommendations to authorities (UNHCR's Results Framework)
Number of advocacy interventions made to promote appropriate detention conditions (UNHCR's Results Framework)



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