

NATIONAL ACTION PLAN

Mexico

What is the UNHCR Global Strategy - Beyond Detention?

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

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

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

The process of developing the National Action Plan

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

The actions foreseen

Goal 1. End the detention of children

The increasing number of children from Northern Central America reaching Mexican territory, whether accompanied or unaccompanied, and which may have international protection needs, has greatly challenged the capacity of the Mexican authorities' to determine that their best interest in all actions that concern them. Under these difficult circumstances, UNHCR is reinforcing activities to support national authorities, with a focus on the situation of asylum seeking children, and is expanding its case follow-up system in order to gain a better panorama of the scope and challenges faced in particular by the authorities responsible for enforcement of the Mexican child protection law (*Ley General de los Derechos de Niñas, Niños y Adolescentes*). Similarly, in coordination with UNICEF, UNHCR plans to pursue capacity-building and awareness activities with INM, COMAR and DIF officials, in order to enhance institutional screening capacities and the ability to conduct best interest assessments and determinations, contributing to the implementation of Mexico's child protection law. UNHCR is advocating for care arrangements for unaccompanied and separated children through technical assistance to child protection authorities. UNHCR is particularly supporting an initiative in the state of Tabasco where child protection authorities inaugurated an open-door shelter for asylum-seeking and refugee teenagers. The Office advocates for the adoption of this model in other states. UNHCR is also supporting community-based alternatives to detention for asylum-seeking families, through technical assistance to authorities and civil society actors, particularly shelters for migrants and refugees.

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

One of the key challenges faced by Mexico is to ensure that ATDs implemented in practice are institutionalized. Since 2015 there has been an effort to address migration detention of children, and gradually it has been widened to include other demographic groups. Since July 2016, national authorities, with support and advice of UNHCR, began a comprehensive effort of expanding the release of asylum-seekers beyond the unaccompanied children profile from Migration Detention Centres. An important number of asylum-seekers have been released from detention

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since mid-July 2016 to alternative reception spaces, mostly run by faith-based organizations supported by UNHCR. UNHCR advocates for the expansion of this program and sponsors consultations with relevant civil society stakeholders regarding ongoing challenges for the practical implementation of it. UNHCR is also promoting the implementation of the Vulnerability Screening Tool to prioritize vulnerable persons of concern, as well as the development of case management and in general, the improvement of the protection perspective of the ATD program implemented. As included under Goal 1, UNHCR is supporting a DIF-run shelter for asylum-seeking and refugee teenagers and advocates for the development of new care arrangements and community-based alternatives to detention for children and families, through technical and financial assistance to national authorities and civil society actors. UNHCR is also focused on disseminating information on the right to asylum and the refugee status determination procedure in Mexico in order to ensure that asylum-seekers are identified before a detention decision is taken in order to be referred to an ATD. UNHCR also supports legal aid activities by Mexican civil society partners - in particular the *Comisión Mexicana para la Defensa y Protección de los Derechos Humanos* (CMDPDH) – which includes the provision of legal representation and orientation to asylum seekers in detention.

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

Conditions in immigration detention centres (and in close-door shelters run by DIF) are generally suitable for short-term stays of no longer than one or two weeks. However, some detained asylum-seekers face periods of detention of at least three months, and in some complex cases involving administrative or judicial remedies, up to six or seven months. Immigration detention undermines significantly the access to the asylum system and procedures, in particular in view to the inadequacy of the conditions in detention centres. Accordingly, UNHCR prioritises visits to persons of concern in immigration detention and pay specific attention to enhancing cooperation with INM management and staff stationed in *Estaciones Migratorias*, as well as with DIF staff from shelters for children, based on the confidential sharing of appropriate recommendations and observations. Achieving full access to persons of concern in detention centres and DIF-run shelters in all parts of the country is therefore the foremost priority. It is also fundamental to reinforce the cooperation with other actors monitoring detention centres, such as the CNDH. The Fifth Investigative Unit (Quinta Visitaduría) of the CNDH has ten offices around the country; their observers visit regularly migratory detention centres (several of these centres are not visited by UNHCR) and can monitor international protection related issues. Therefore, UNHCR will continue training and reinforcing its partnership with CNDH. Based on UNHCR's Detention Guidelines, the office in Mexico developed a monitoring tool and is undertaking participatory assessments on detention conditions. This gathering of a greater level of information should support the identification of the main needs related to detention conditions and serve as a basis for further technical assistance and support to INM and child protection authorities. At the invitation of the authorities, trainings have been conducted since 2015 and will continue under this strategy with INM officials, focusing in particular on the special protection needs of special groups, such as LGBTI, survivors of sexual or gender-based violence, elderly people, unaccompanied children, women at risk. Enhanced legal assistance and representation to detained asylum-seekers will also be pursued, through the organisation of trainings with lawyers and the public defender's office (*Instituto Federal de la Defensoría Pública*).

Detention overview

Mexican legislation foresees detention in *Estaciones Migratorias* as an *a priori* measure applicable to every adult person found to be in an irregular migratory situation in the country, including asylum-seekers who generally remain under immigration detention for the entire duration of the asylum procedure, which contributes to claims being withdrawn. As has been widely documented by NGOs and the CNDH, migrants and asylum-seekers endure harsh detention conditions in *Estaciones Migratorias*- more similar to criminal detention than to any sort of humanitarian housing model. It is worth noting that in May 2017 a Mexican Federal Court ruled that, as a general rule, indiscriminate detention of asylum seekers in migration detention centres while they await their cases to be resolved by COMAR is arbitrary detention in conformity with standards established by the Inter American Court of Human Rights. This is a landmark legal decision by the judicial branch of the Mexican state for it can be employed as precedent by lawyers and legal representatives of asylum-seekers to pursue release of persons of concern detained in migration detention centres. Although the legal framework establishes the prohibition of child immigration detention, most children –migrants and asylum-seekers- 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 for children: mainly DIF-run shelters are close-door and there are only a few open-door civil society-run shelters and one open-door DIF-run shelter for 28 teenagers in Tabasco state. Therefore, very few unaccompanied children benefit from alternative care arrangements or alternatives to detention. The effective identification of international protection needs, in particular among unaccompanied children, by migration and other authorities remains a challenge, as well as the development and sustainability of alternative care arrangements. Ongoing efforts to enhance protection screening and the effective identification of international protection needs among unaccompanied children are being enforced in particular through the implementation of an identification protocol by both COMAR and INM. The absence of systematic best interests determination and assessment procedures for unaccompanied children, in particular those from Northern Central America, continues to lead to their return and deportation without adequate assessment of international protection needs. This situation is expected to improve: the recently established Child Protection Authority (*Procuradora de Protección*) is in charge of developing *individual protection plans*, the Mexican legal equivalent to best interest determinations.

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Good practices and alternatives to detention

According to Mexico's Migration Law and the Law for Refugees, Complementary Protection and Political Asylum, only those who have been intercepted by INM and who decide to apply for asylum while in detention are detained until the completion of the refugee status determination procedure. In contrast, those individuals who manage to file an asylum claim directly with an office of COMAR (in Mexico City, Tapachula, in Chiapas State, or Acayucan, in Veracruz State), or a regularization office of INM are not detained. Regarding ATDs, Mexico's government did various commitments in 2016; Mexican President highlighted amongst the seven actions Mexico is undertaking to respond to the protection of refugees from NCA to push for alternatives to avoid administrative detention for asylum-seekers, especially for children, so that no child under the age of 11 is held at a migration centre. This statement further cements recent commitments under which almost all asylum-seekers in detention have been released from detention since mid-July 2016. Mexican legislation establishes that migratory detention centres must have separated places for men and women. However, there may be an exception to this safeguard directed to protect the principle of family unity. According to the Migration law, children in detention must be supported by child protection officers (*Oficiales de Protección a la Infancia* or *OPIs*) from INM. These officers are required to conduct age-appropriate interviews with unaccompanied or separated children in order to gather data on their identity, nationality, immigration status and whereabouts of their family, as well as to screen for protection, medical or psychological needs, including for access to asylum procedures. The information gathered by *OPIs* should also contribute to best interest procedures undertaken by the Child Protection Authority (*Procuraduría de Protección*)...

For more information, please contact Jose Sieber Luz (Sieber@unhcr.org).

UNHCR Mexico, August 2017.