

# DETENTION CHECKLIST



The detention of asylum-seekers and refugees has become commonplace in a number of countries and has serious lasting effects on individuals and families. Concerned about the growing use of immigration detention, particularly of children, UNHCR launched in June 2014 its Global Strategy – Beyond Detention 2014-2019, which aims to support governments to end the detention of asylum-seekers and refugees.



The Global Strategy Beyond Detention 2014-2019 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 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 in order that they can carry out regular monitoring.



This “Detention Checklist” was developed based on *UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012)* 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. The assessment and the measure of the implementation of the international standards are made through this checklist which also corresponds to the sub-goals of the Global Strategy.

Since 2014, the detention checklist has been used by UNHCR operations in their regular dialogues with immigration departments and other relevant government counterparts such as enforcement, welfare or child protection agencies as well as UNHCR’s NGO partners to measure progress with the Global Strategy and compliance of the detention situation with international standards. This checklist may also be useful for other stakeholders such as legal practitioners, Parliamentarians and civil society organisations with an interest in assessing the state of play of detention in their national context with a view to formulate recommendations.

**SUB GOAL 1:** Legal and policy framework ensure that children are not detained.

Does the legal framework ensure that children are not detained?

Does the policy framework ensure that children are not detained?

In practice, are unaccompanied or separated children not detained?

In practice, 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 in 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 children 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?

## 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
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National legislation provides for alternatives to detention for:

UASC	Children in families	Adults
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The policy framework provides for ATDs for:

UASC	Children in families	Adults
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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
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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

What types of alternatives to detention are implemented in practice?

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	

Who is involved in implementing the ATDs:

Government	NGO/Civil Society	International Governmental Organization
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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?

## 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 *Detention Guidelines*?

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 country a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*?

Has the 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?