

Canada

PROGRESS UNDER THE GLOBAL STRATEGY BEYOND DETENTION 2014-2019, MID-2016

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*"¹ 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.²

¹ *We have no rights*, International Human Rights Program at the University of Toronto, Faculty of Law, 2015, available at: <http://goo.gl/hRrXEI>

² 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>.

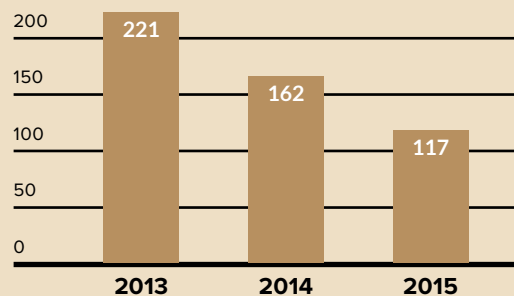
- Decision from the Ontario Court of Appeal³ requesting provincial courts to hear *habeas corpus* applications for people held for lengthy periods of time in immigration detention.
- Pronouncement by the Federal Court on the unreasonableness of lengthy detention and the need to assess ATDs prior to resorting to detention.⁴
- 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.⁵
- Publication by CBSA in May 2016 of a call for expression of interest⁶ 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.

³ *Ogiamien v. Ontario*, 2016 ONSC 3080, available at <http://goo.gl/zqAviF>
⁴ *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/nXAQId>
⁵ <https://goo.gl/SEJ7rc>
⁶ <https://goo.gl/Av3Vtp>

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED

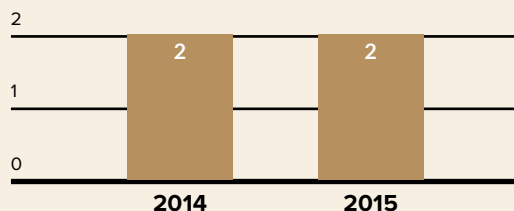


Source: Canada Border Service Agency (CBSA).

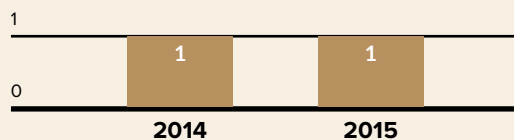
- ☑ The legal framework ensures that children are not detained.

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

NUMBER OF FACILITIES AVAILABLE FOR CARE ARRANGEMENTS FOR UASC



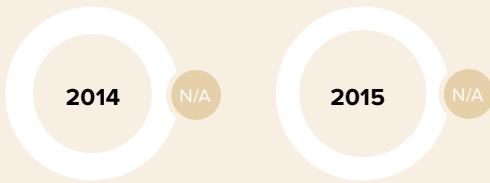
NUMBER OF FACILITIES AVAILABLE AS ATDs FOR FAMILIES



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

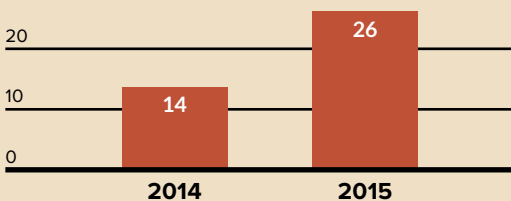
**PERCENTAGE OF PERSONS IN ATDs
(out of total number of persons detained)**



- ✔ 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 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.



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

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 minors⁷ 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.

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⁷ In Canada, the definition of a minor child varies depending on the province. More information available at: <http://goo.gl/zJacBJ>