

UNHCR Global Strategy Beyond Detention 2014-2019

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



NATIONAL ACTION PLAN

Zambia

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, where 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>

The process of developing the National Action Plan

The roll-out of the Global Strategy started in Zambia with its dissemination to the Office of the Commissioner for Refugees under the Ministry of Home Affairs. A tripartite meeting was held between the Office of the Commissioner for Refugees, the Director General of the Immigration Department and UNHCR aimed at sharing the Global Strategy as part of the launch and implementation. 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, with the purposes of pooling both financial and human resources by tackling detention together. This approach was aimed at having a broad-based approach to the development of the NAP. UN agencies brought on board their different stakeholders and partners including Government, civil society organisations, national non-governmental organisations, international non-governmental organisations and national human rights institutions. In April 2015, two Government representatives participated in the Global Roundtable on reception and alternatives to detention organised by UNHCR, the IDC and the Oak foundation, held in Toronto, Canada.

The actions foreseen

Goal 1. End the detention of children

In May 2015, during the Sub Regional Conference for the Protection of Children on the Move jointly organised by Government of Zambia, UNICEF, UNHCR and IOM in Lusaka, 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 that deal with unaccompanied and separated children (UASC). They recognised the need for improved research and data collection on children on the move and agreed to explore regional and national measures and alternatives to the detention of children (i.e. community placement, foster care, etc.). UNHCR through the One UN approach and the Office of the Commissioner for Refugees will support this commitment and engage Parliamentarians and Ministers through roundtables to support the set-up of adequate care arrangements through the Social Welfare Department, the leading governmental child protection agency. From 2015 onwards, UNHCR with UNICEF will provide technical support for the harmonisation of the national child protection mechanisms with international standards and develop standardised best interests determination procedures. UNHCR will also submit comments to the review process of the national child framework under the Ministry of Gender and Child Development as part of the One UN. Further efforts aimed at strengthening Government agencies will be undertaken building on the works of the European Union funded joint mixed migration project implemented by the Government of Zambia and UN Agencies including UNICEF, IOM, and UNHCR, particularly the Immigration and Police, to screen and identify children who are asylum-seekers, victims of trafficking or vulnerable migrant children will be strengthened to ensure children receive timely and appropriate services, including referrals, and that they are not detained. UNHCR together with the other UN agencies will contribute to other national legislative review processes relevant to detention and ATDs in order to harmonise them with international standards. Support towards legal reform will focus on the promotion of child sensitive procedures including child friendly courts, access to legal aid, case management, periodic detention reviews and the separation of persons detained for immigration-related purposes with criminals. It is envisaged that a roundtable will be organised with the UN Detention Working Group in 2016, looking at rights deprivations in detention facilities in Zambia in collaboration with Government actors and civil society, to identify some of the challenges and solutions pertaining to the detention of children as well as to facilitate the joint development of an implementation plan.

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

In June 2014, the Government launched the *Protection Assistance to Vulnerable Migrants Policy Guidelines*, 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 aim to assist first line officials to screen vulnerable migrants and asylum-seekers for various specific needs and assistance and to refer them to relevant Government ministries, civil society and UN Agencies. In 2015 and 2016, a wider implementation of the developed profiling tool and the national referral mechanism will be organised with the relevant authorities. UNHCR also welcomed in June 2015 the approval by the Cabinet to introduce a new Refugee Bill in Parliament to repeal and replace the Refugees Control Act of 1970. This new legislation, if passed, will also provide first line officials with a framework to implement ATDs for asylum-seekers and refugees. ATDs are currently provided in the Immigration and Deportation Act 2010 through an asylum-seeker permit issued on gratis or via a report order. In particular, working under the One UN umbrella possibilities to provide assistance to non-national children in the form of open reception facilities will be explored with the Ministry of Community Development and the Department of Social Welfare, through existing temporary shelters usually open to stranded or destitute persons or persons in difficult situations. Additionally, local communities such as faith-based organisations willing to open their facilities to asylum-seekers and others will be engaged. Following the Regional Action Plan adopted in July 2015 at the Ministerial level Migration Dialogue for Southern Africa to address mixed and irregular migration, each country will develop a national action plan, giving first priority to the protection of UASC and to the establishment of ATDs. A first draft of Zambia's national plan is being finalised by the Government in collaboration with UN Agencies. A regional roadmap outlining agreed measures, with clear timelines and identified responsible parties, is being developed.

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

The One UN Working Group on Detention also aims to help streamline support to Government departments that are responsible for detention, by improving the conditions of detention ensuring they meet international standards. For its part, UNHCR will focus on the rights of asylum-seekers and refugees and set-up a monitoring programme of the detention centres taking advantage of other UN Agencies' partners with a detention mandate adopting a multifunctional approach. Further advocacy will be undertaken with the Government for improved conditions of detention facilitated through putting in place a Memorandum of Understanding for enhanced access and monitoring. Through the One UN Working Group on Detention, UNHCR will work towards enhanced coordination on detention monitoring, such as the Zambian Human Rights Commission, the Department of Social Welfare and in particular, will lobby for the periodic review of detention decisions with detention used only as a last resort. In 2015 onwards, an area of focus for One UN Working Group on Detention with the Office of the Commissioner for Refugees will be to advocate for the harmonisation of the official curricula for first line officials relating to immigration and detention with international standards. In this regard, advocacy efforts will focus on amending legislation to lift the criminalisation of illegal stay or entry, and to ensure periodic detention reviews, the right to challenge detention before a court of law and segregation and non-comingling of migrants detained for immigration related purposes with criminals.

Detention overview

Zambia maintains reservations to Article 26 of the 1951 Convention restricting refugees' right to exercise freedom of movement and residence. In 2013, a total of 48 children were detained individually or with families for immigration-related offences, mainly due to the provisions of the Refugee Control Act of 1970. In 2015, the Cabinet approved in principle the introduction of a Refugee Bill in Parliament to repeal and replace this legislation so as to provide for the effective administration and management of refugee affairs as well as to facilitate the incorporation of the standards contained in international and regional conventions to which Zambia is a party. It is hoped that Zambia will remove its reservations to Article 26 of the 1951 Convention. The Bill in its current form still however retains provisions restricting freedom of movement. While existing legal provisions related to ATDs are provided in law, they are not implemented in practice. Efforts will be undertaken to address various Government concerns including through the sharing of good State practices being applied elsewhere.

Good practices and alternatives to detention

The new guidelines *Protection assistance for vulnerable migrants in Zambia* guide "first contact" personnel – such as immigration officials, police officers, social welfare, health and prison officers and civil society personnel – to identify vulnerable migrants and asylum-seekers. A "migrant profiling form", used during the initial interview helps identify whether the individual falls within one of the category/categories: asylum-seeker, victim of trafficking (including presumed trafficked person and potential trafficked person), UASC, stranded migrant, stateless person or other vulnerable migrant. Referrals to actors providing protection services as well as to various legal processes are implemented on a case-by-case basis. Regular capacity-building activities are conducted to support the implementation of these protection-sensitive processes and procedures. In Nakonde, UNHCR is supporting through non-food items a faith-based organisation to receive some asylum-seekers in the community and outside detention. UNHCR has otherwise prepositioned material assistance in the form of tents, cooking utensils, blankets etc. to reduce the detention of asylum-seekers in border and some inland areas that do not yet have alternative reception options.

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