

Zambia

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

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*¹ 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*² 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.

¹ *Zambia: Refugee (Control) Act, 1970*, 4 September 1970, available at: <http://goo.gl/UqwDxN>

² *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,³ 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

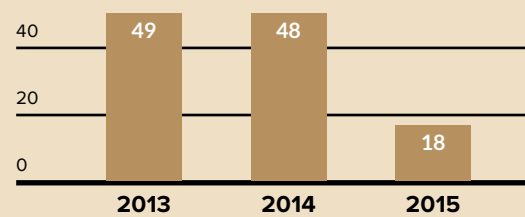
In May 2015, UNHCR organized a Sub Regional Conference for the Protection of Children on the Move in Lusaka, jointly with the Government of Zambia, UNICEF, and IOM. The Governments of Angola, the Democratic Republic of Congo, Malawi, Mozambique, Namibia, South Africa, the United Republic of Tanzania, 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 of a private law firm to represent on a

³ IOM, UNICEF, UNODC and UNDP.

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED

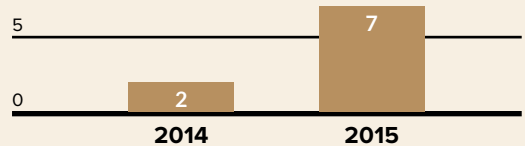


Source: UNHCR's monitoring and reports from detaining authorities

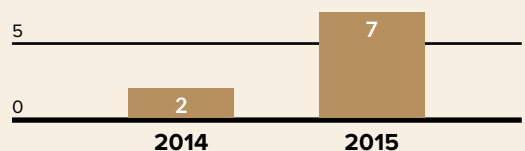
⊘ Legal framework does not ensure that children are not detained.

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

NUMBER OF FACILITIES AVAILABLE FOR CARE ARRANGEMENTS FOR UASC



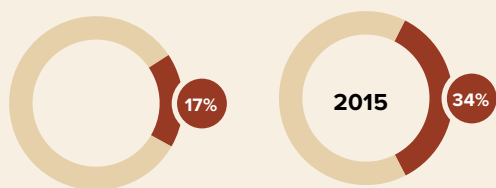
NUMBER OF FACILITIES AVAILABLE AS ATDs FOR FAMILIES



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

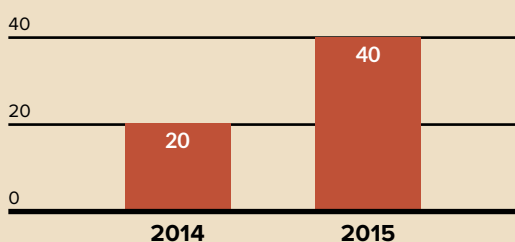
PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



- ✔ 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.

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 Act⁴ and the Immigration and Deportation Act.⁵

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, 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

⁴ *Idem*.

⁵ *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

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.

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