

Progress Report 2018

# BEYOND DETENTION

A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019



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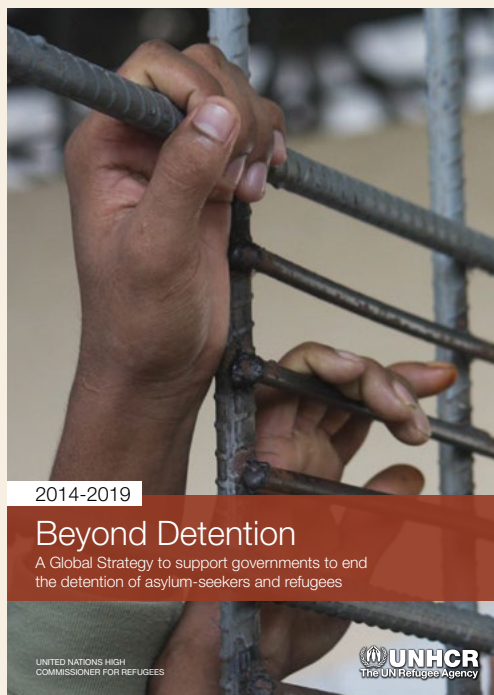
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# INTRODUCTION



This second *Progress Report* aims to provide an update of the implementation of the *Global Strategy – Beyond Detention 2014-2019*<sup>1</sup>, covering the period from mid-2016 to mid-2018. Launched in June 2014, the *Global Strategy* 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 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 and carrying out regular monitoring. This report should be read as a follow-up of the first update in June 2016.<sup>2</sup>

Based on the initial assessment of detention practices and challenges identified in the 12 focus countries<sup>3</sup> during the initial roll-out phase<sup>4</sup>, the second phase of the implementation of the *Global Strategy* focuses on 3 main areas:

- 1 strengthening national capacities and knowledge on immigration detention standards and alternatives to detention;
- 2 supporting developments of national laws, policies and practices or regulations aiming at making detention of asylum-seekers and refugees an exceptional practice; and
- 3 further developing national and international support and initiatives to end the immigration detention of children.

At the same time, UNHCR and partners continued to be actively engaged in immigration detention monitoring, encouraging the development of specific monitoring strategies at country level.

<sup>1</sup> *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees, 2014-2019*, 2014, available at: <http://www.refworld.org/docid/536b564d4.html>

<sup>2</sup> *UNHCR Progress Report mid-2016. Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees, 2014-2019*, August 2016, available at: <http://www.refworld.org/docid/57b850dba.html>

<sup>3</sup> Canada, Hungary, Indonesia, Israel, Lithuania, Malaysia, Malta, Mexico, Thailand, the United Kingdom, the United States and Zambia.

<sup>4</sup> *UNHCR Baseline Report – Detention situation as of end 2013. Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees, 2014-2019*, August 2016, available at: <http://www.refworld.org/docid/57b851874.html>.

Complementary to the work on the Global Strategy, in November 2016, UNHCR started working on an ambitious project, “Global technical assistance and capacity-building programme to prevent detention of children and to protect children and other asylum-seekers in detention,” funded by the European Union’s European Instrument for Democracy and Human Rights (EIDHR). The project, which will run through 2018 and the first two months of 2019, focuses on the development of three specific learning programmes on immigration detention for all UNHCR staff and partners and in supporting five UNHCR operations to develop projects, advocacy and other capacity-building initiatives related to ending the detention of children and providing for appropriate care arrangements at country level.<sup>5</sup>

In the context of the High Commissioner’s Dialogue on Protection Challenges of December 2016,<sup>6</sup> 8 additional countries (Belgium, Botswana, Bulgaria, the Czech Republic, the Former Yugoslav Republic of Macedonia, Japan, South Africa and Zimbabwe) committed to implement the Global Strategy, expanding the total number of countries participating to 20.<sup>7</sup> The set of indicators used in the first Progress Report have been continuously updated by UNHCR operations in order to measure progress in each country context (see section below for results by country).

Throughout this second roll-out phase, the Protection Policy and Legal Advice Section of UNHCR’s Division of International Protection (DIP PPLA) provided technical advice to UNHCR offices for the implementation of the Global Strategy including assistance with national and regional roundtables as well as support missions. As part of this support, a third and fourth annual workshop were organized for UNHCR detention focal points in September 2016 in Budapest and in April 2018 in Brussels. These workshops allowed for fruitful exchanges with experts specialising in alternatives to detention, child protection and detention monitoring as well as in specific advocacy interventions, such as strategic litigation and campaigning.

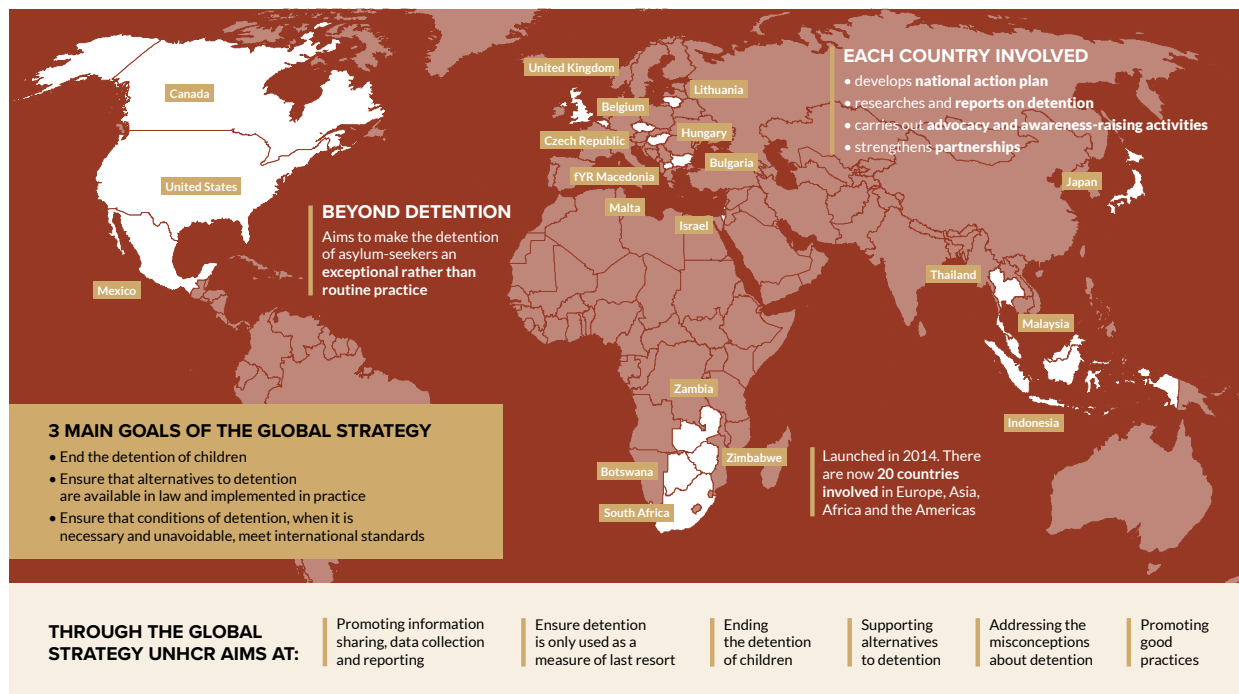
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<sup>5</sup> The five operations are the Former Yugoslav Republic of Macedonia, Malaysia, Mexico, Indonesia and Iraq.

<sup>6</sup> See: <http://www.unhcr.org/high-commissioners-dialogue-on-protection-challenges-2016.html>

<sup>7</sup> As the implementation process for these new countries was started early in 2017, no detailed country information is available by the time of this report.

# PROGRESS TOWARDS ACHIEVEMENT OF THE GOALS



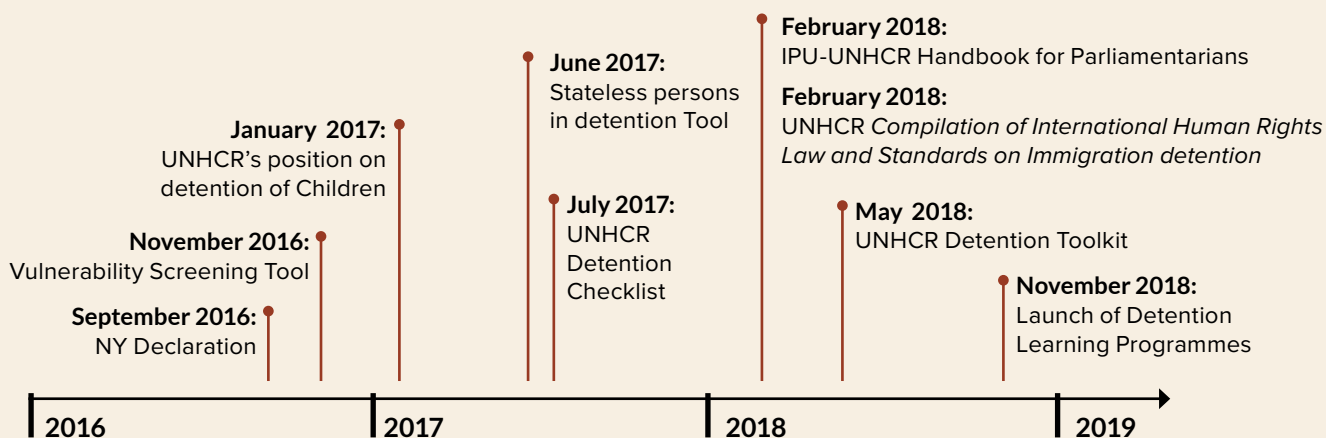
The sections below provide selected highlights of the progress made towards the achievement of the Global Strategy’s goals at both the global and national levels. At the global level, UNHCR further clarified its policies concerning immigration detention and developed training programmes to build capacity of relevant stakeholders including immigration officials, border guards, lawyers and judges. New tools were also created to enhance technical expertise in practical measures such as vulnerability screening and detention monitoring.

Strategy implementation at the national level in the focus countries was guided by the National Action Plans<sup>8</sup> jointly developed and agreed with governments and partners. Depending on the national situation analysis and priorities, UNHCR offices engaged in a variety of activities including: advocacy work, capacity-building, strategic litigation and detention monitoring as well as facilitated and supported pilot projects on alternatives to detention.

While reviewing progress made towards the achievement of each goal, the sections below also briefly summarise emerging trends and persistent challenges. Opportunities for further progress under each goal are also identified for the final phase of the Global Strategy implementation.

<sup>8</sup> Summaries of the National Action Plans are available at <http://www.unhcr.org/detention.html>

<sup>9</sup> *UNHCR’s position regarding the detention of refugee and migrant children in the migration context*, January 2017, available at: <http://www.refworld.org/docid/5885c2434.html>



## DEVELOPMENTS AT THE GLOBAL LEVEL

### UNHCR position regarding the detention of refugee and migrant children in the migration context<sup>9</sup>

In January 2017, UNHCR published an updated position regarding the detention of refugee and migrant children in the migration context. This policy position provides a much-needed clarification to the *UNHCR Detention Guidelines*<sup>10</sup> regarding the immigration detention of children, unaccompanied, separated or in families. The scope of the position includes refugee and asylum-seeking children as well as migrant children in general.

UNHCR's position is that children should not be detained for immigration-related purposes, irrespective of their legal/migratory status or that of their parents, and that detention is never in their best interests.<sup>11</sup> Appropriate care arrangements and community-based programmes need to be in place to ensure adequate reception of children and their families.

The position reaffirms that UNHCR will continue to advocate for the ending of child detention and to support governments in developing care arrangements and other non-custodial measures for children and families in the asylum and migration context.

### The Global Compacts

On 19 September 2016, the United Nations General Assembly unanimously adopted the New York Declaration for Refugees and Migrants,<sup>12</sup> a landmark political declaration that is directed at improving the way in which the international community responds to large movements of refugees and migrants, including protracted refugee situations. The New York Declaration contains commitments that apply to both refugees and migrants, commitments specific to refugees and commitments specific to migrants.

The Declaration gave UNHCR the task of building upon the Comprehensive Refugee Response Framework (CRRF), contained in Annex I of the New York Declaration, to develop a 'global compact on refugees'.<sup>13</sup> After 18 months of extensive consultations with UN Member States, experts, civil society and refugees, the UN High

<sup>10</sup> *UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>

<sup>11</sup> This position has been reinforced by Joint CRC-CMW General Comment on *State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, (CMW/C/GC/4-CRC/C/GC/23), of November 2017.

<sup>12</sup> See: <http://www.refworld.org/docid/57ceb74a4.html>

<sup>13</sup> See: <http://www.unhcr.org/towards-a-global-compact-on-refugees.html>

Commissioner for Refugees has presented the global compact on refugees as part of his 2018 annual report to the General Assembly. During the negotiation and drafting of the Global Compacts, UNHCR emphasised that immigration is a human rights issue and advocated that detention should only be used when it pursues a legitimate purpose and has been determined to be both necessary and proportionate in the individual case at hand.<sup>14</sup> Alternatives to detention should be pursued wherever possible.

As a result of targeted advocacy efforts,<sup>15</sup> *The Global Compact on Refugees*<sup>16</sup> now states that its programme of action is underpinned by ensuring the best interests of the child. Furthermore, in order to address special needs, the development of non-custodial and community-based alternatives to detention, particularly for children, will be supported as part of its implementation. Similarly, the *Global Compact for Migration*<sup>17</sup> recognises the best interests of the child as a guiding principle that should be taken as a primary consideration in all situations concerning children and calls for a child-sensitive approach.

With regards to immigration detention, Objective 13 of *The Global Compact for Migration* states a commitment to use migration detention only as a measure of last resort and to work towards alternatives. As concerns the treatment of children, States should:

*Protect and respect the rights and best interests of the child at all times, regardless of their migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements, that ensure access to education and healthcare, and respect their right to family life and family unity, and by working to end the practice of child detention in the context of international migration.*

UNHCR and its partners are ready to support States in implementing these commitments in line with international standards and good practice.

## Vulnerability Screening Tool<sup>18</sup>



In November 2016, with the support of the Oak Foundation, UNHCR and the International Detention Coalition (IDC) launched together the *Vulnerability Screening Tool*. The screening tool is intended to help guide frontline workers and decision-makers to identify situations of vulnerability so as to inform a range of decisions related to the most appropriate placement and support options in each individual case. It aims to reduce the presumption of detention and to encourage a consideration of placement options starting with the least restriction on liberty and freedom of movement. During the reporting period, several UNHCR Offices have reached out to the competent authorities at country level to promote the implementation of this tool; in some cases, the tool has been used as guidance for the development of specific screening and profiling tools. UNHCR and IDC will continue to work together to make this tool better known and seek opportunities for its continued implementation.

<sup>14</sup> UNHCR perspective on the global compact on safe, orderly and regular migration: Inputs to report of the UN Secretary-General, October 2017, [https://refugeesmigrants.un.org/sites/default/files/stocktaking\\_unhcr.pdf](https://refugeesmigrants.un.org/sites/default/files/stocktaking_unhcr.pdf)

<sup>15</sup> Such as those coordinated by the Initiative for Child Rights in the Global Compacts – <https://www.childrenonthemove.org> – in which UNHCR was an active Steering Committee member.

<sup>16</sup> *The Global Compact on Refugees*, Final Draft, 26 June 2018 <https://www.unhcr.org/5b3295167.pdf>

<sup>17</sup> *The Global Compact for Safe, Orderly and Regular Migration inter-governmentally negotiated and agreed outcome*, July 2018, <https://bit.ly/2KwsyMT>

<sup>18</sup> UNHCR and IDC, *Vulnerability Screening Tool – Identifying and addressing vulnerability: a tool for asylum and migration systems*, 2016, available at: <http://www.refworld.org/docid/57f21f6b4.html>



## Launch of the new Immigration Detention Learning Programmes

As mentioned in the introduction, under the framework of the EIDHR's project, UNHCR has developed three specific learning programmes focused on different aspects of immigration detention. These courses aim at facilitating learning, tools and training -both for UNHCR staff as well as for partners and other interested stakeholders- that contribute to the prevention of the detention of children and other asylum-seekers and refugees, that support the improvement of transparent and independent oversight of immigration detention, and to promote and strengthen alternatives to detention and other non-custodial measures, including appropriate care arrangements for unaccompanied and separated children, children and their families, and persons in situation of vulnerability/risk.

The courses are composed of an *e-learning* programme on the Fundamentals of Immigration Detention (FIDL) covers the prerequisite knowledge and concepts related to the topic of detention and two blended learning programmes on Immigration Detention Monitoring (IDMLP) and Alternatives to Detention (ATDLP). The learning programme on Immigration Detention Monitoring is designed to equip UNHCR and partners with knowledge and skills for developing an immigration detention monitoring strategy and for carrying out monitoring in their national context. Due to its supervisory role, UNHCR should be given prompt and unhindered access to all detention facilities, and be able to carry out monitoring visits. The learning programme on Alternatives to Detention aims to increase learners' knowledge and skills in order to better advocate for, develop and implement alternatives to immigration detention in a national context.

As part of the pilot-phase of these courses during 2017-2018, a number of workshops at regional level have been carried out with the support of the Global Learning Centre for selected operations. These workshops facilitated the identification of 20 staff and partners who have attended a Facilitation of Protection Learning course, enabling them to become trainers in this field, multiplying the capacity of the organisation to reach-out and provide training and advocacy to other operations around the world.

These courses are now available, in several languages, through UNHCR's learning website *Learn & Connect*<sup>19</sup> and in the Detention Special Features page in Refworld.<sup>20</sup>

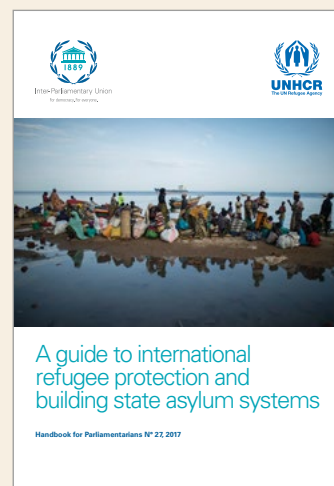


<sup>19</sup> <https://unhcr.unelearn.org/catalogue/index.php/login>

<sup>20</sup> <http://www.refworld.org/detention.html>

## UNHCR-Inter-Parliamentary Union Handbook No. 27

UNHCR and the Inter-Parliamentary Union published a new Handbook together in February 2018 entitled *A Guide to international refugee protection and building state asylum systems: Handbook for Parliamentarians No. 27*.<sup>21</sup> The Handbook has two aims: to inform parliamentarians about the founding principles and obligations of international refugee law, and to mobilize their support for establishing and maintaining fair and effective national asylum systems, in line with international standards. The Handbook has a comprehensive section on freedom of movement, detention and alternatives to detention including guidelines on detention and a checklist for parliamentarians, who have a key role to play in ensuring respect for international law and human right standards in this field.

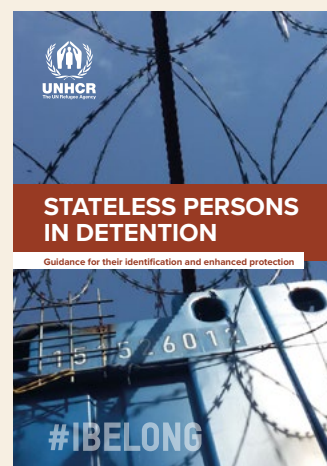


## UNHCR Beyond Detention Toolkit: Guiding Questions for the Assessment of Alternatives to Detention<sup>22</sup>

This tool provides guidance to UNHCR and partners on how to define, describe and assess a number of alternatives to detention and other non-custodial measures that apply at country level, whether implemented in law, policy or practice. It also aims to provide an information framework to support the future design and implementation of alternatives by building upon existing models. The guiding questions can be used to provide a first assessment of national practices in order to establish a baseline as well as to assess practical and policy developments regarding their implementation over time.

## Stateless Persons in Detention: A Tool for their Identification and Enhanced Protection<sup>23</sup>

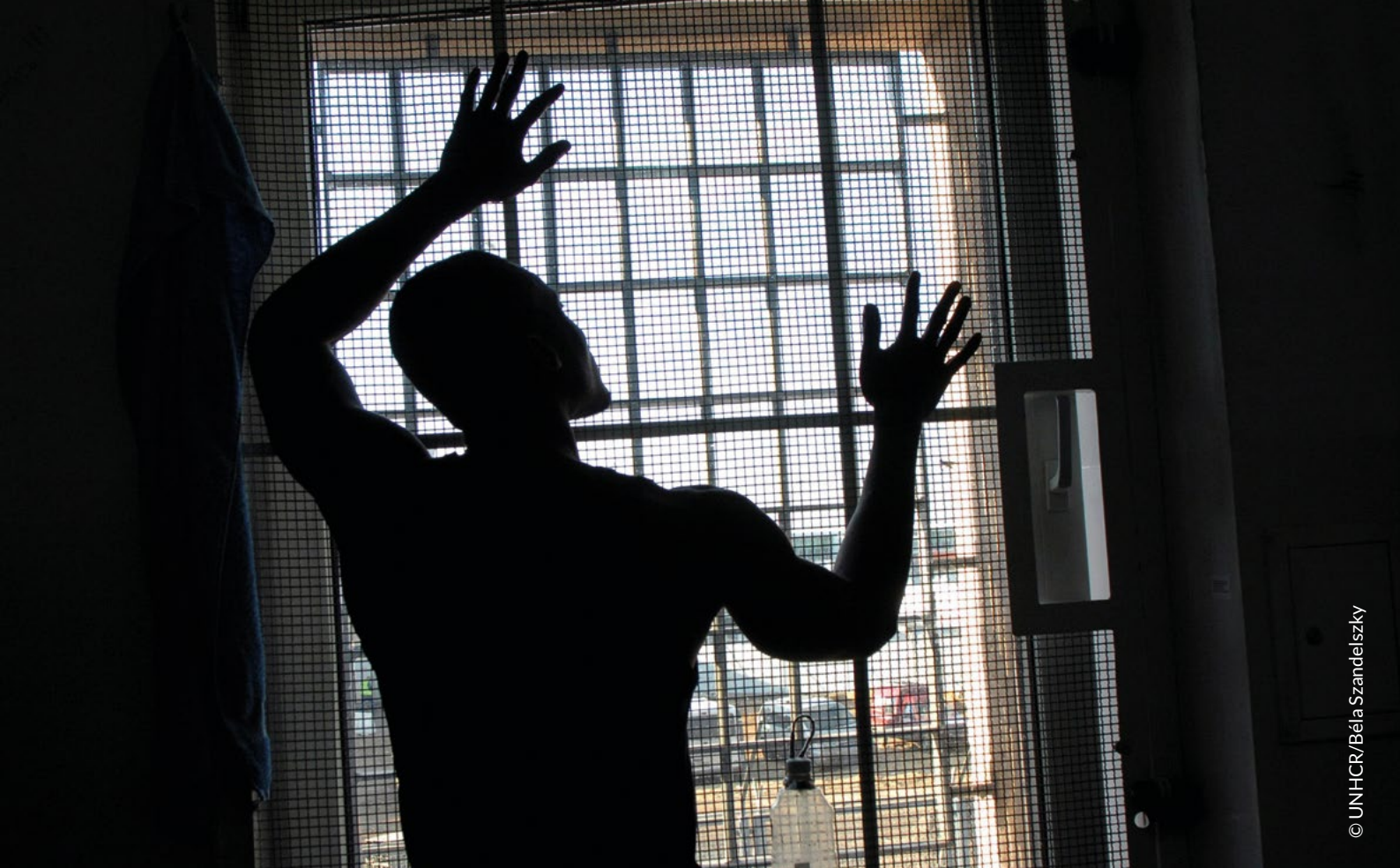
In mid-2017, in coordination with UNHCR's #IBelong Campaign, UNHCR launched *Stateless Persons in Detention, A Tool for their Identification and Enhanced Protection*. It aims to prevent instances of arbitrary or prolonged detention of stateless persons. This tool may be used to identify stateless persons at different stages such as: before the decision to detain is made; when release in the community or referral to an alternative to detention are being considered; or after the decision to detain has been made. It is intended for legal practitioners, decision makers and case workers who may be visiting detention places or are otherwise engaged in the asylum and migration process. The tool benefitted from the expertise and advice of UNHCR operations conducting regular monitoring visits to immigration detention as well as feedback from selected experts of the European Network on Statelessness.



<sup>21</sup> IPU and UNHCR, *A Guide to international refugee protection and building state asylum systems: Handbook for Parliamentarians No. 27*, <https://bit.ly/2OZq7sk>

<sup>22</sup> *UNHCR Beyond Detention Toolkit: Guiding Questions for the Assessment of Alternatives to Detention*, May 2018, available on-line at <http://www.unhcr.org/detention.html>

<sup>23</sup> UNHCR, *Stateless Persons in Detention: A tool for their identification and enhanced protection*, June 2017, available at: <http://www.refworld.org/docid/598adacd4.html>



## UNHCR Detention Checklist<sup>24</sup>

The UNHCR “Detention Checklist” is a tool that supports staff and partners to assess the implementation at country level of the international standards related to immigration detention. This tool has been developed following the standards set out in the *UNHCR Detention Guidelines*, which reflect the state of international law relating to the immigration detention persons of concern to UNHCR, and it aims at assisting UNHCR and partners to measure progress towards the implementation of the three goals of the Global Strategy.

## Compilation of International Human Rights Law and Standards on Immigration Detention<sup>25</sup>

As part of the new Learning Programme on Immigration Detention Monitoring, UNHCR produced a compilation of International Human Rights Law and standards relating to immigration detention, which can be used as a stand-alone resource. The compilation follows the principled approach of the *UNHCR Detention Guidelines*. Each guideline is broken down into themes, which are accompanied by the relevant international human rights treaty obligations and the key interpretative human rights instruments such as UN principles and guidelines. In this way, the compilation serves as an awareness raising and advocacy tool for UNHCR and partners engaged in assisting persons of concern in detention and monitoring the conditions where deprivation of liberty occurs.

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<sup>24</sup> UNHCR *Detention Checklist*, July 2017, available at: <http://www.refworld.org/docid/59a4111e4.html>

<sup>25</sup> UNHCR, *Compilation of International Human Rights Law and Standards on Immigration detention*, February 2018, available at: <http://www.refworld.org/docid/5afc25c24.html>

## GOAL 1: END THE DETENTION OF CHILDREN

The Global Strategy outlines a variety of actions that may be taken to end the immigration detention of children. During the reporting period, UNHCR offices developed National Action Plans together with national governments and partners. Significant efforts have been focused on advocacy interventions aiming to reform legal and policy frameworks as well as on providing technical knowledge and capacity-building for key stakeholders with the objective of facilitating and supporting pilot projects on care arrangements and other non-custodial measures for the reception of children and families.

In several operations, UNHCR was able to increase its resources including by the recruitment of dedicated expert staff. This was the case in Hungary where child protection remained a priority and where UNHCR deployed a child protection specialist to assist the country operation in assessing the situation and in formulating recommendations to share with the authorities and partners. In the five countries implementing the EIDHR project, dedicated staff were also recruited in order to carry out targeted activities.

### Awareness raising and advocacy interventions

UNHCR engaged in a range of roundtables and conferences in order to raise awareness and to advocate for an end to the immigration detention of children. At the European level, UNHCR participated in the two-day conference entitled *Immigration Detention of Children: Coming to a Close?*, which was hosted by Czech Chairmanship of the Committee of Ministers of the Council of Europe.<sup>26</sup> The Council of Europe was also a partner at the national level, for example in Malta, where UNHCR co-organised a roundtable in July 2017, which led to recommendations later implemented by the Maltese authorities including the transition of the Initial Reception Centre into an open reception centre.



At the national level, UNHCR and partners also continued to advocate with parliamentarians to take measures to prohibit the detention of children. In Canada, UNHCR partnered in April 2017 with two Senators in organizing an event on Parliament Hill calling for an end to the detention of children, which garnered a great deal of media attention.<sup>27</sup>

### Providing technical knowledge and capacity-building for all stakeholders

The majority of focus countries, including **Canada, Hungary, Lithuania, Malaysia, Mexico and Zambia**, carried out multiple trainings on child protection issues during the reporting period. Another impactful area of UNHCR's work to end the immigration detention of children has been the creation, translation and adaption of tools for vulnerability assessment and referral. In some countries, such tools have assisted to raise awareness about the special rights and needs of children as well as to practically assess their best interests in a migration context.

<sup>26</sup> The conference agenda and report are on-line at <http://dmcprague2017.justice.cz>

<sup>27</sup> Senate of Canada, *Senators call for end to detention of children in immigration cases*, 21 April 2017, available at: <https://bit.ly/2oYc8oV>

In **Lithuania** in November 2016, UNHCR launched the *Safe and Sound*<sup>28</sup> tool in Lithuanian. In December 2017, they organised a follow-up event titled “Strengthening policies and practices for unaccompanied and separated children in the Baltic states” with a view to supporting the development of national referral and support arrangements for children in the Baltic states based on *The Way Forward* roadmap.<sup>29</sup> These guidance tools could be translated and applied in other countries as well to explore how national asylum and child protection systems might best develop further to ensure respect for children’s rights including through the provision of alternative care arrangements and alternatives to detention.



Another positive development has been the drafting by UNHCR **Canada** of a Best Interests of the Child (BIOC) Assessment Template and Standard Operation Procedures (SOPs), which they provided to the Canadian Border Service Agency (CBSA) after external consultations and input from child protection experts across Canada. CBSA indicated that it has adapted the BIOC Assessment Template and will be implementing it as a pilot project in Toronto in 2018.

In **Mexico**, the Mexican Refugee Commission (COMAR), the National Migration Institute (INM) and UNHCR developed an identification protocol to enhance access to asylum procedures for unaccompanied or separated children. Child Protection Officers of the INM are trained to improve the identification of children who are potential refugees, and to refer them to COMAR, Mexico’s asylum adjudication body. They use a video produced by UNHCR to inform children of their right to seek asylum in Mexico. The video, which uses animation and child-appropriate language, is also available in other languages than Spanish.

### **Facilitating and supporting pilot projects on care arrangements for children and alternatives to detention for families**

In Indonesia, Church World Service,<sup>30</sup> a local NGO and UNHCR implementing partner, runs shelters for unaccompanied or separated children, in cooperation with local authorities. With fully equipped rooms, each shelter accommodates between four to six children. Children can cook for themselves in a common kitchen. Residents are provided a weekly stipend to cover the cost of basic necessities and food (USD 20). Educational programmes, basic necessities, psychosocial counselling, medical care, language and computer classes and recreational activities are provided. Case management is implemented with a consultative approach with the unaccompanied or separated children and with refugee community support.

UNHCR Malaysia and its partners worked to strengthen existing care arrangements and to support new care arrangements for children. This included the drafting of a *shelter toolkit* by the local NGO Women’s Aid Organization,<sup>31</sup> to improve shelter standards, as well as the drafting of foster care manuals and related standard operating procedures (SOPs) by SUKA Society.<sup>32</sup> *The Manual on Foster Care for Unaccompanied and Separated Children* sets out the minimum standards and policies for protection and care within a foster care

<sup>28</sup> UNHCR and UNICEF, *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/docid/5423da264.html>

<sup>29</sup> UNHCR, UNICEF and the International Rescue Committee, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, July 2017, available at: <http://www.refworld.org/docid/59633afc4.html>.

<sup>30</sup> See <https://cws-asia.org/where-we-work/indonesia/>

<sup>31</sup> See <https://wao.org.my/>

<sup>32</sup> See <http://www.sukasociety.org/>

arrangement. The manual follows the principles and requirements of the *Convention on the Rights of the Child* and the *UN Guidelines for the Alternative Care of Children*<sup>33</sup> and, therefore, may be adapted for use outside Malaysia. The Handbook for foster care agencies provides a list of requirements that should be in place to implement a foster care programme. For example, it emphasises the need for training of foster parents, creation and management of foster parents support groups, and assistance.

## Ending Immigration Detention of Children – Trends and Challenges

The majority of the focus countries have passed laws or introduced high level policy decisions ending the immigration detention of asylum-seeking and refugee children. Such a prohibition is enshrined in law in **Canada, Malta, Mexico** and the **United Kingdom**. Furthermore, at the time of reporting, non-detention of asylum-seeking and refugee children is also the practice in **Israel, Lithuania** and **Zambia**.

Where children are still detained in the immigration context in focus countries, UNHCR has verified that the numbers have significantly and progressively decreased since the launch of the Global Strategy in 2014. In some countries, for example in the **Former Yugoslav Republic of Macedonia** and the United Kingdom, the number has dramatically decreased in recent years. However, unfortunately, increasingly restrictive immigration policies and changes in law and practice in some countries have led to a worsening of the situation for children and their families, most notably in **Hungary** and the **United States**.

### Ending Immigration Detention of Children – Opportunities for Further Progress

In the last two years of implementation of the Global Strategy, UNHCR will continue to work with national governments and civil society partners to:

- Advocate for legislative and policy reforms to prohibit the immigration detention of children and to ensure that the best interests of the child is a primary consideration in all actions affecting children;
- Monitor detention settings and ensure referral to legal aid in order to secure immediate release of children from detention and their placement in suitable care arrangements;
- Compile and disseminate the latest research concerning the detrimental impact of immigration detention on children's health and well-being in order to strengthen the evidence base;
- Identify and facilitate exchange of good practices including by facilitating study visits and updating its *Options Paper #1 on care arrangements and alternatives to detention for children and families*;
- Provide technical advice in order to enhance child sensitive screening and referral procedures in the best interests of the child;
- Continue to support the development of care arrangements for children as well as the piloting of community based alternatives to detention for families.

<sup>33</sup> See [https://www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf)

## GOAL 2: ENSURE THAT ALTERNATIVES TO DETENTION ARE AVAILABLE IN LAW AND IMPLEMENTED IN PRACTICE

In order to ensure that Alternatives to Detention are available in law and implemented in practice, UNHCR focus countries carried out strategic advocacy and awareness raising campaigns and, in some cases, facilitated and supported pilot projects on alternatives and non-custodial measures in practice.

### Awareness raising and campaigning

UNHCR focus countries, including **Hungary**, **Israel** and **Malta**, issued statements to denounce a deterioration in the protection space in those countries, including in the immigration detention context, and to encourage respect for the rights for asylum seekers and refugees.<sup>34</sup> Other awareness raising campaigns include a media campaign in Indonesia, which was based on interviews with children and which resulted in a film highlighting the improvement of children's lives once they are released from detention. UNHCR also engaged in social media campaigning in various countries, like in the **United Kingdom** with the Twitter campaigns #Time4aTimeLimit and #unlockingdetention.



### Providing/strengthening technical knowledge and capacity-building for all stakeholders

During the reporting period, several UNHCR offices carried out trainings and capacity-building activities with relevant stakeholders on the need to have better screening mechanisms in place, for example by using the *Vulnerability Screening Tool*. In February 2018, in the **United Kingdom**, UNHCR presented the tool to key members of staff in Immigration Enforcement, Asylum/Detention Policy and Operations at the Home Office and also presented the tool to partners in the UK Detention Monitoring Group. In **Israel** in November 2016, UNHCR organized six workshops for the government and NGOs on vulnerability screening, each on a different theme from the tool exploring how it could best be adapted to the Israeli context.

Such efforts strengthened dialogue with the authorities and created opportunities for the development of other tools and policies as well as meaningful changes in practice. For example, following trainings and further advocacy efforts, in mid-November 2017, the Israeli State submitted an updated notice to the Court in the petition for exempting victims of torture from Holot, which made specific reference to the *Vulnerability Screening Tool*. It also included a revised questionnaire to be used by the Ministry in their pre-Holot hearings to improve the identification of vulnerable individuals. While in **Indonesia**, the coordinating Ministry suggested that UNHCR assists in developing standard operating procedures (SOPs) concerning the implementation of the a Presidential Regulation, particularly on the role of each stakeholder in handling refugees and how best to coordinate among partners.

<sup>34</sup> UNHCR related news, stories and statements are available at <http://www.unhcr.org/detention.html>.

## Promoting information sharing, data collection and reporting

In the **United Kingdom**, open debate on detention is taking place, in particular in the Parliament, thanks to the second review into the welfare of vulnerable persons held in detention conducted by Mr Stephen Shaw.<sup>35</sup> The purpose of the second review started in September 2017 is to assess the Government's response to the recommendations arising from the first review. UNHCR met with Mr Shaw in 2017 to discuss the position on alternatives to detention and the use of detention in the UK.

## Advocacy interventions

UNHCR and partners advocated for alternatives to detention in law and practice in many country contexts. In some cases, *inter-agency working groups* were created that regularly convene to discuss plans and progress such as the technical working group on immigration detention set up under the Joint Task Force formed by the Government of **Malaysia** with UNHCR to address the management and processing of refugees and asylum-seekers.

In other countries, UNHCR had the opportunity to collaborate closely with parliamentarians by carrying out briefings, making submissions on legislative amendments and organising high-level visits. For example, Missions to the **United Kingdom** by the High Commissioner and the Assistant High Commissioner for Protection in 2017 included advocacy for a reduced use of immigration detention and improved usage of alternatives.

## Facilitating and supporting pilot projects on alternatives to detention

UNHCR offices continued to be engaged in a variety of activities which facilitate alternatives, from advocating for necessary policy changes to supporting selected pilot projects. For example, in **Lithuania**, UNHCR worked together with civil society partners and the Ministry of the Interior on the community-based accommodation and support scheme for asylum-seekers, which was adopted by Government Decree in March 2017. In February 2018, the Ministry of the Interior approved an NGO proposal that should allow for the scheme to be piloted in the course of 2018 and in 2019.

In some focus countries, UNHCR supported governments and partners to strengthen reception arrangements, by increasing the provision of services available at reception facilities. UNHCR **Indonesia** supported a number of semi-independent living schemes in which unaccompanied teenage children live together in a rented room under the supervision of Church World Service. In **Zambia**, the government was able to establish five semi-permanent reception facilities for asylum-seekers at border areas, as a result of lobbying with traditional authorities for the identification of land to accommodate new arrivals.

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<sup>35</sup> See <https://bit.ly/2JQVvmb>



Other practical measures and the use of new technologies have assisted to reduce detention such as is the case in **Malaysia** where UNHCR launched *UNHCR-VerifyMY*, a new ID card and biometric data collection system for asylum-seekers and refugees accompanied by a smartphone application which allows law enforcement officers to immediately verify whether an individual is registered with UNHCR. This followed the issuance of an instruction in June 2016 from the Attorney General to the Heads of the Prosecution Unit stating that verified UNHCR cardholders should enjoy a degree of immunity from criminal prosecution for illegal entry or stay under the Immigration Act.



In **Canada**, the new CBSA's National Immigration Detention Framework (NIDF)<sup>36</sup> also proposes to deploy technological solutions by expand alternatives to detention through a community supervision model, a national voice reporting system and expanded electronic supervision tools.

## Alternatives to Detention – Trends and Challenges

Despite important progress made since 2014, in many countries, alternatives to detention continue to be used even when there are no legitimate grounds for detention, conforming situations where they are applied in practice as *alternatives to release*. UNHCR operations have faced significant challenges in advocating for open community-based arrangements (and release where applicable) as a starting point for the reception of asylum-seekers in practice. Increased security and/or politically-motivated considerations in some regions have affected UNHCR's capacity to engage meaningfully in the promotion of alternatives to detention. Progress made in the past in countries such as the **United States** and **Hungary** is now being challenged by a more restrictive approach by governments to the management of asylum and migration procedures and by a shrinking of the protection space UNHCR promotes.

In this context, UNHCR and partners have used recent regional and international processes to build momentum for new political commitments in this field. For example, during the Leader Summit on Refugees in 2016, several of the focus countries made progressive declarations towards their approach to migration management. **Mexico** committed to strengthen and expand its asylum system including by ensuring alternatives to detention for asylum-seekers, with a special effort to ensure that by December 2016, all children under 11 years old leave migratory stations. **Thailand** pledged to adhere to the non-detention of children in the Immigration Detention Centers, in consideration of the best interests principle. **Zambia** committed to convert Mayukwayukwa camp and the majority of Maheba camp to an open settlement area as detailed in Zambia's local integration plan.

There has also been significant progress at country level regarding the achievement of the goals of the Global Strategy. Some focus countries have promoted reforms or reviews of the immigration detention system which are at the time of reporting under way, including in **Canada**<sup>37</sup>, **Malaysia**<sup>38</sup>, the **United**

<sup>36</sup> See <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html>

<sup>37</sup> Canadian National Immigration Detention Framework, <https://bit.ly/2Trfei2>

<sup>38</sup> National Human Rights Action, 2018, <https://bit.ly/2RG93VT>

**Kingdom**<sup>39</sup> and **Zambia**<sup>40</sup>. Also, in **Canada**<sup>41</sup>, **Indonesia**<sup>42</sup>, **Lithuania**<sup>43</sup> and **Zambia**<sup>44</sup>, new legislation or policies have been adopted during the reporting period, including specific provisions regarding the use of alternatives to detention. In Canada<sup>45</sup>, Lithuania, Malaysia and Zambia, case management is provided in some of these emerging ATD practices.

Regrettably though, as noted above, there have been setbacks in other countries. Changes in border and detention practices have led to worrying trends in **Hungary** and the **United States**. While some of the negative trends are being addressed through strategic litigation, continued work with partners to raise awareness of human rights standards and alternative approaches will be crucial in the coming years.

### Alternatives to Detention – Opportunities for Further Progress

In order to prevent instances of arbitrary detention and to promote viable alternatives to detention in line with international human rights standards, UNHCR will continue to:

- Work with governments and parliamentarians to reform the legal and policy frameworks so that they include alternatives to immigration detention;
- Advocate, where relevant, for the removal of reservations to the 1951 Refugee Convention, in particular Articles 26 and 31(1) and (2);
- Roll-out UNHCR's *Learning Programme on Alternatives to Detention*;
- Develop training targeted to judges and other decision makers as well as encourage robust procedures to assess and review the necessity, reasonableness and proportionality of detention in each individual case before resorting to detention;
- Provide tools to strengthen screening and referral mechanisms, which ensure that asylum-seekers are referred to alternatives to detention where appropriate;
- Continue to support the development and implementation of a variety of alternatives to detention;
- Document and showcase good practice in this field and support study visits and exchange of experiences by practitioners;
- Translate and adapt to specific country context, the Vulnerability Screening Tool and provide technical advice regarding specific measures to address the needs of persons in situations of vulnerability or at risk in detention.

<sup>39</sup> Welfare in detention of vulnerable persons review: progress report, Follow-up report by Stephen Shaw assessing government progress in implementing the report on the welfare in detention of vulnerable persons. <https://bit.ly/2JQVvmb>

<sup>40</sup> Comprehensive Refugee Response Framework in Zambia – [http://www.globalcrrf.org/crrf\\_country/zambia/](http://www.globalcrrf.org/crrf_country/zambia/)

<sup>41</sup> National Directive for the Detention or Housing of Minors, <https://bit.ly/2J1xrRr>

<sup>42</sup> Regulation of the President of the Republic of Indonesia No. 125 Year 2016 Concerning the Handling of Foreign Refugees, 31 December 2016, available at: <http://www.refworld.org/docid/58aeec374.html>

<sup>43</sup> Government Decree of March 2017 on the community-based accommodation and support scheme for asylum-seekers.

<sup>44</sup> The Refugees Act, 2017, <https://bit.ly/2HMmS5c>

<sup>45</sup> At time of reporting, in the ATD in Toronto; National case management is proposed to be rolled out in 2018.

### **GOAL 3: ENSURE THAT CONDITIONS OF DETENTION, WHERE DETENTION IS NECESSARY AND UNAVOIDABLE, MEET INTERNATIONAL STANDARDS**

Monitoring immigration detention is a core component of the protection work-plans in most focus countries, and it is carried-out in many cases jointly with local partners and National Human Rights Institutions. As stated UNHCR's *Policy on Detention Monitoring*,<sup>46</sup> such efforts encompass a periodic examination of all aspects of immigration detention, from the legal and administrative frameworks applicable to detainees' standards of treatment and care, as well as their access to safeguards against arbitrary detention (access to a lawyer, access to asylum and UNHCR, detention reviews, etc.) UNHCR's monitoring methodology has been further elaborated in the *Immigration Detention Monitoring: Practical Manual*<sup>47</sup> issued by UNHCR jointly with the International Detention Coalition (IDC) and the Association for the Prevention of Torture (APT) as well as in UNHCR's *Learning Programme on Immigration Detention Monitoring*.

#### **Monitoring immigration detention**

In many of the focus countries, UNHCR partners with local institutions and non-governmental organisations to carry-out immigration detention monitoring. UNHCR and its partners often take on complementary roles in monitoring. For example, in **Malta** an agreement was set up with Jesuit Refugee Services in 2017 to further strengthen monitoring capacities and services provided to persons in detention. This agreement includes a legal support component, whereby JRS provides individual counselling and legal advice to detainees, whilst UNHCR continues monitoring the material conditions and undertakes advocacy with the authorities.

In some contexts, UNHCR is still lobbying for access to detention facilities, particularly at border entry points and airports, such as is the case at the airport detention facility in **Israel**. In other country contexts, such as in **Lithuania**, a Tripartite Memorandum of Understanding was signed between UNHCR, the Lithuanian Red Cross and the State Border Guard Service, allowing access to and documenting the situation of asylum-seekers at airport transit zones and other border points. These initiatives, and others being developed in other focus countries, aim at ensuring that monitoring activities at the border also inform UNHCR's advocacy efforts to improve reception arrangements. This includes, information and campaigning to provide persons in situation of vulnerability or risk, including families, with better information and access to regular open reception opportunities in the community.

#### **Improving detention conditions**

As a consequence to regular and systematic monitoring of places of detention, UNHCR and its partners often prepare specific recommendations on conditions of treatment and care in detention, highlighting opportunities for improvements at a systemic level. These recommendations, together with other internal or external reports, form the basis for engaging in a meaningful and constructive dialogue with the authorities regarding the situation of persons of concern in detention. For example, UNHCR's monitoring work in **Indonesia** throughout 2017 resulted in recommendations addressed to the authorities, which led to improvements in immigration detention conditions. Strategic litigation, based on findings from the monitoring process have also been used as tools of change. In **Israel**, for example, a number of changes in

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<sup>46</sup> UNHCR, *Policy on Detention Monitoring*, 3 December 2015, UNHCR/HCP/2015/7, available at: <http://www.refworld.org/docid/564199b54.html>

<sup>47</sup> UNHCR, APT and IDC, *Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>

relation to conditions in detention where introduced for the Holot immigration centre after a number of High Court rulings in 2017. These include, among others, the possibility for residents to bring their own sanitary and personal hygiene materials and the opening, in September 2017, of a computer classroom with wired internet to facilitate residents to access the outside world and contact family and legal providers easily. In **Malta**, UNHCR systematically shares recommendations with the authorities after every monitoring visit, in particular on the quality of the detention facilities, the provision of suitable food and drinkable water, the provision of information, the possibility to communicate with lawyer and family members and the availability of on-site doctors. As a result, there were substantial improvements in the last two years with regards to the material conditions in Safi detention centre.

## **Access to quality legal assistance / judicial engagement and strategic litigation efforts**

UNHCR continue to be also actively building the capacity of legal practitioners, ensuring access to legal aid and supporting strategic litigation. For example, in **Indonesia**, following UNHCR's advocacy efforts, the National Law Development Agency clarified that refugees are entitled to access state-funded legal aid programs. UNHCR also provided training to legal practitioners in **Hungary, Indonesia, Israel and Malaysia** and worked to strengthen networks of asylum and immigration lawyers in countries such as Indonesia and **Lithuania**. At the regional level, for example, UNHCR Malaysia continued to collaborate with the Asia Pacific Refugee Rights Network (APRRN) and the International Detention Coalition (IDC), and in December 2017 co-hosted a Regional Judicial Engagement Workshop in Kuala Lumpur, where participants expressed the commitment to launch strategic litigation on detention-related issues by the end of 2018. Training efforts also targeted the judiciary, such as in Israel, where UNHCR is training the Appeal and Detention Review Tribunal judges. In **Zambia**, UNHCR also continued to collaborate with the judiciary via mobile courts in refugee settlements, resulting in the establishment in 2016 of a permanent court structure in Meheba.

Strategic litigation has proven to be, in many cases, a successful tool in advocating and creating the conditions for improving protection of asylum-seekers and refugees and securing their release from detention. In **Hungary**, UNHCR supported third party court interventions and legal representation for detainees, facilitating that cases were brought to the attention of the European Court of Human Rights. In **Israel**, where requested, UNHCR provided support letters and legal opinions to the legal representatives of petitioners in several strategic cases. In **Malaysia** UNHCR's partners, the Kuala Lumpur Legal Aid Centre and SUHAKAM, undertook strategic litigation in 2017 to challenge the immigration detention of asylum-seeking children. This led to a landmark decision<sup>48</sup> by the High Court to permit the use of bail for an asylum-seeking child, as a non-custodial alternative measure that was previously not available in Malaysia.

## **Immigration Detention Monitoring – Trends and Challenges**

A number of challenges with regards to monitoring and improving the conditions of immigration detention have been identified by the focus countries. These include, difficulties in securing access to facilities and detainees, obtaining reliable data on persons in detention (including where detention of children occurs), ensuring adequate capacity among key stakeholders (both for monitoring purposes and to provide services), commingling of immigration detainees with criminal offenders, or lack of sufficient resources by different stakeholders to contribute to sustainable improvements of detention conditions, among others.

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<sup>48</sup> High Court of Malaysia, *Shah Alam Jiramat bin Mohd Rashid versus Pendakwa Raya – Criminal Application No. 44-51-03/2017*, Selangor Darul Ehsan, May 15 2017.

UNHCR continues to engage closely with different National Human Rights Institutions (NHRIs) at country level in several focus countries. Additionally, when States have ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (OPCAT), the National Preventive Mechanism (NPM) may play a crucial role in monitoring immigration detention. In 2014, only four focus countries (Hungary, Malta, Mexico and the United Kingdom) were a Party to the OPCAT and only one (Zambia) was a signatory. With the inclusion of new focus countries in 2017, now also Bulgaria, Czech Republic, the Former Yugoslav Republic of Macedonia and Lithuania have ratified OPCAT and, Belgium and South Africa have become signatory States. This critical mass of countries, represents a good opportunity for UNHCR and partners to provide support and capacity-building to the emerging NPMs as well as to exchange good practices about their role in immigration detention monitoring.

#### Ensuring that conditions meet International Standards – Opportunities for Further Progress<sup>49</sup>

With the aim of achieving the third goal of the Global Strategy, UNHCR will continue to:

- Advocate for accession to relevant international instruments including the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (UNCAT) and its Optional Protocol;
- Promote the establishment and functioning of NPMs in line with international standards and collaborate with these independent monitoring mechanisms to ensure access to immigration detention facilities and to produce internal and external reports with appropriate recommendations to relevant authorities for improving detention conditions;
- Raise awareness of relevant international standards regarding conditions of detention and treatment of detainees and build UNHCR's staff and partners capacity by rolling out the *Learning Programme on Monitoring Immigration Detention*;
- Strengthen collaboration with national actors by developing and implementing joint detention monitoring strategies;
- Lobby at the highest levels to secure access for UNHCR and other independent monitoring mechanisms to all immigration detention settings, including border points and airports, for the purpose of regular monitoring;
- Allocate resources, as appropriate, to carry out monitoring whether directly or through implementing partners;
- Fully implement UNHCR's monitoring methodology by establishing a constructive dialogue with the authorities to discuss and to track progress on concrete recommendations;
- Support, where relevant, the authorities through the provision of technical advice on the improvement of conditions and detention systems and the sharing of good practices on alternatives to detention;
- Ensure transparency by lobbying for the improvement of data collection and analysis as well as the publication of reliable disaggregated statistics;
- Document and share best practices examples and lessons learned to be compiled in an *Options Paper on Immigration Detention Monitoring*.

<sup>49</sup> In line with both assessments as well as the main activities foreseen under UNHCR's *Policy on Detention Monitoring – Policy on Detention Monitoring*, 3 December 2015, UNHCR/HCP/2015/7, available at: <http://www.refworld.org/docid/564199b54.html>

# RESULTS BY COUNTRY

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The following country chapters summarize the main achievements and challenges around the implementation of the Global Strategy at national level, between mid-2016 to mid-2018. Chapters on Thailand and the United States are not included in this section at the request of the concerned country offices. Nonetheless, information on the work done in these two countries is available at [www.unhcr.org/detention.html](http://www.unhcr.org/detention.html).

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# CANADA

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IN AUGUST 2016, the Government of CANADA announced a National Immigration Detention Framework (NIDF)<sup>50</sup> with an aim to improve the infrastructure of immigration holding centres, avoid commingling between asylum-seekers and criminals, provide greater access to mental and medical services and enhance alternatives to detention. To implement the NIDF, Canada Border Services Agency (CBSA) engaged in numerous consultations across Canada with civil society and produced a summary report of recommendations<sup>51</sup> that would inform a revised national policy on detention.

## KEY DEVELOPMENTS

- Set up of a national ATD Project Framework designed to support the NIDF by expanding alternatives to detention through a Community Supervision model, a national voice reporting system and expanded electronic supervision tools – the expected date of implementation is summer 2018.
- Announcement by the Government of a Ministerial Directive to CBSA to keep children, unaccompanied and accompanied by their families, out of detention to the greatest extent possible and to keep families together. It also indicated its intention to end detention of children. Key objectives are to consider the best interests of the child and to actively seek alternatives to detention on an ongoing basis.
- CBSA Directive on the *Detention and Housing of Children* to limit or stop detaining or housing minors, and to respect the principle of family unity, except in extremely limited circumstances, was finalized in 2017.
- The Federal Court<sup>52</sup> stated in August 2016 that the best interests of the child is relevant to the assessment of whether the detained parents will be motivated to comply with terms and conditions and is also relevant to considering whether other factors warrant release despite establishment of a legal ground for detention.
- The Ontario Court of Appeal in the case of *Ogiamien v. Ontario*<sup>53</sup> overturned an earlier positive decision from the lower Court which had granted damages as remedy and determined that the Charter rights of detainees had been violated as a result of the conditions of their incarceration.

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<sup>50</sup> Canada Border Service Agency, *National Immigration Detention Framework*, January 2017, available at: <https://bit.ly/2IlaSBY>

<sup>51</sup> *BB and Justice for Children and Youth v. The Ministry of Citizenship and Immigration* (Aug. 24, 2016, IMM-5754-15), available at: <https://bit.ly/2x8Lb87>

<sup>52</sup> *Ogiamien v. Ontario*, 2017 ONCA 667, available at: <https://bit.ly/2J7oZ3f>

<sup>53</sup> *Brown v. Canada*, 2017 FC 710, available at: <https://bit.ly/2KONmzB>

- The Federal Court in *Brown v. Canada*<sup>54</sup> upheld a lower court decision that the statutory scheme for immigration detention was not unconstitutional, despite lengthy detention. The case is being appealed to the Federal Court of Appeal) on the certified question of whether the Charter requires a maximum amount of time that an individual can be detained for immigration purposes. Brown is the first constitutional challenge to the practice of indefinite immigration detention.

- Age of majority raised to 18 in the Ontario Child, Youth and Family Services Act resulting in enhanced protection for children over 16.

- Drop by 5,2% from the previous year in the total number of persons detained in fiscal year 2016-2017. Over the past five years, the total number of persons detained dropped 28.5% despite a 23.6% increase in the number of entries by foreign nationals to Canada.

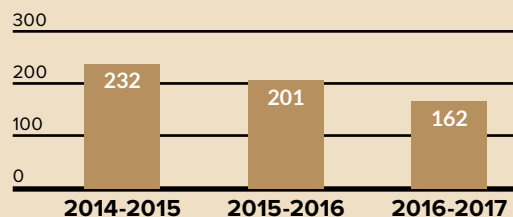
- Important reduction in the number of children detained (both unaccompanied or housed with parents or guardians) with a decrease of 19.4% in comparison to 2015-2016 and of 30.2% in comparison to 2014-2015. The average length of time of detention of children also fell by 7% in the last year and by 18.1% since 2014-2015.

In October 2017, a draft of the National Alternatives to Detention (ATD) Project Framework was shared with UNHCR and the Canadian Council for Refugees. It is designed to support the NIDF by expanding alternatives to detention through a community supervision model, a national voice reporting system and expanded electronic supervision tools, which are expected

<sup>54</sup> Canada Border Service Agency, CBSA's *New National Immigration Detention Framework, A Summary Report of the Framework and Stakeholder Roundtable Discussions (August - December 2016)*, January 2017, available at: <https://bit.ly/2IIaSBY> and <https://bit.ly/2IIaSBY>.

## GOAL 1 End the detention of children

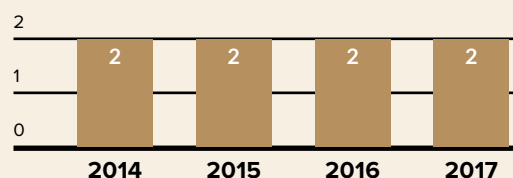
### NUMBER OF CHILDREN DETAINED



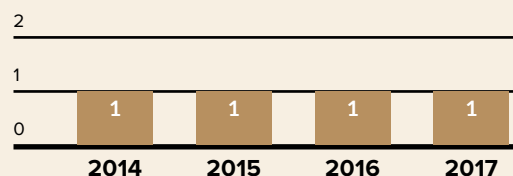
Source: Canadian Border Service Agency (CBSA), <https://bit.ly/2s6Yr8n>.

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

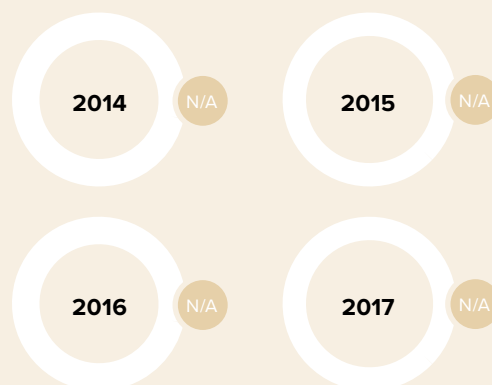
### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



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





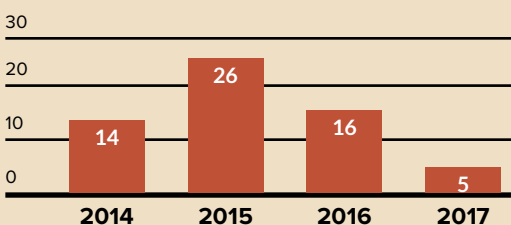
TYPES OF ATDs:	2015	2016	2017
Deposit or surrender of documentation	☑	☑	☑
Reporting conditions	☑	☑	☑
Directed residence	☑	☑	☑
Residence at open/semi-open reception/asylum centres*	☑	☑	☑
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety	☑	☑	☑
Community supervision arrangements	☑	☑	☑

☑ available in legislation    ☑ used in practice

- ☑ *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)?*
- ☑ *Is there case management provided in ATDs?*  
Yes, the TBP (Toronto only). A national case management program is envisaged and proposed to be rollout in summer 2018.

### GOAL 3 Ensure that conditions of detention meet international standards

#### NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



LEGEND: ☑ Yes    ☒ No    ⦿ Partially  
N/A Not available    U Unknown

SOURCE: Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

to be rolled out on 30 June 2018.<sup>55</sup> Throughout 2017, CBSA released several directives advising officers to avoid detention, to ensure that it is used as a measure of last resort and to conduct risk assessments using the National Risk Assessment Detention tool.<sup>56</sup> As a results of these different measures, the average length of detention over the last three years decreased by 20.4%<sup>57</sup>, with 6,251 persons detained for immigration purpose for fiscal year 2016-2017. Canada's detention rates at official ports of entry also decreased in number from previous years and remained low, including in regions like Quebec, where there was an influx of irregular arrivals in 2017.<sup>58</sup> The national monitoring presence of the Canadian Red Cross was expanded to include access to Correctional facilities as well as CBSA detention holding centres through a Memorandum of Understanding with CBSA.

Important progress was also made in the area of child protection. In November 2017, the Government announced a Ministerial Directive to CBSA to "keep children, both unaccompanied and accompanied by their families, out of detention to the greatest extent possible and to maintain family unity".<sup>59</sup> This Directive supplements the CBSA directive on the *Detention and Housing of Children in detention facilities*<sup>60</sup> which was finalized in the first part of 2017.

<sup>55</sup> Canada Border Service Agency, *National Immigration Detention Framework, January 2017*, available at: <https://bit.ly/2IIaSBY>

<sup>56</sup> Immigration refugees and Citizenship Canada, ENF 20, section 9.1, 12 February 2018, available at: <https://bit.ly/2LqABwr>.

<sup>57</sup> Canada Border Service Agency, *Annual Detention Statistics – 2012-2017*, available at: <https://bit.ly/2s6Yr8n>.

<sup>58</sup> Canada Border Service Agency, *Annual Detention Statistics – 2012-2017*, available at: <https://bit.ly/2s6Yr8n>.

<sup>59</sup> Canada Border Service Agency, *Ministerial Direction to the Canada Border Services Agency: Minors in Canada's Immigration Detention System*, Ottawa, Canada, 6 November 2017, available at: <https://bit.ly/2KM9OcP>; and <https://bit.ly/2J4IYPP>.

<sup>60</sup> Canada Border Services Agency, *National Directive for the Detention or Housing of Minors*, Ottawa, Canada, available at <https://bit.ly/2J1xrRr>



#### TRAININGS ORGANIZED IN CANADA DURING THE REPORTING PERIOD

- 1 on Detention conditions standards
- 1 on Child Protection
- 1 on Alternatives to detention

#### NUMBER OF PERSONS TRAINED IN CANADA DURING THE REPORTING PERIOD

- 13 on Detention conditions standards
- 24 on Child Protection
- 12 on Alternatives to detention

In Ontario, there was a significant change to the *Child, Youth and Family Services Act*<sup>61</sup> when the Provincial Government raised the age of majority from 16 to 18 years of age, bringing it in line with the UN Convention on the Rights of the Child. This change narrows an important protection gap for vulnerable youth between these ages at all levels of the asylum process, from issues of trafficking to detention (and enabling 16-17 year-olds to benefit from the best interests of the child principle).

In 2017, the Immigration and Refugee Board (IRB) initiated an audit of its practice regarding long-term detention. It also began the process of revising its detention guidelines as the Immigration Division of the IRB takes jurisdiction over detention and release after 48 hours, or as soon as reasonably practicable after the initial detention. The results of the audit are expected in June 2018, and a second round on consultations on the revised detention guidelines is expected to take place around the summer of 2018.

Aside from these important policy and legislative developments, important pronouncements have also been made recently by Canadian Courts which we provide detail on in the next section.

### Activities undertaken by UNHCR and implementing partners during the roll-out period of the Global Strategy

The office focussed its efforts on Goal 1 of the Global Strategy, ending the detention of children, and partnered in April 2017 with two Senators in organizing an event on Parliament Hill calling for an end to the detention of children.<sup>62</sup>

UNHCR provided comprehensive comments on the draft CBSA Directive on the Detention and Housing of Children, and the comments were largely incorporated into the final policy document. Eventually, the Directive kept a law-enforcement approach while recognising that the best interest of children should ensure that detention be resorted only as a measure of last resort – thus, indicating that the Agency had not entirely shifted its views on the detention of children as part of immigration processes. UNHCR also advocated with CBSA to review the continuing practice of detaining children in the province of Quebec and noted a decline in the number of children detained in the Quebec region by end of 2017.

<sup>61</sup> *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14, Sched. 1, s. 2 (1), available at: <https://www.ontario.ca/laws/statute/17c14#BK35>

<sup>62</sup> Senate of Canada, Senators call for end to detention of children in immigration cases, 21 April 2017, available at: <https://bit.ly/2oYc8oV>

In support of the design phase of the ATD National Framework, particularly with respect to the Community Supervision model, UNHCR convened a workshop to engage the three Service Providers (Salvation Army, John Howard Society and the Toronto Bail Program). Service Providers and Non-Governmental Organizations (NGOs) shared best practices on how to develop individualized community supervision plans.

In addition to the ATD workshop, UNHCR held in 2017, a workshop to develop a Best Interests of the Child (BIOC) Assessment Tool with the participation of government, Immigration and Refugee Board, NGOs, academics and child experts. Based on UNHCR and child protection partners' best practice and tools, the BIOC identifies the main elements that need to be taken into consideration in assessing in particular whether children must be kept with their parents held under criminal charges, noting that this is never in the best interest of children to be detained. This workshop was organized to persuade CBSA to conduct BIOC assessments prior to a decision to detain minors in Canada. To support the Government in implementing this process, UNHCR drafted a BIOC assessment template and Standard Operation Procedures and provided these to CBSA after external consultations and input from child protection experts across Canada. CBSA indicated that it has adapted the BIOC template and will be implementing it as a pilot project in Toronto in 2018, although no confirmation has been received UNHCR also commissioned a report on *Key Considerations and Factors for Assessing Best Interests of the Child in the Canadian Detention Context* (not yet published).

UNHCR facilitated a workshop on the Immigration and Refugee Board's *Detention Guideline No. 2* to promote the finalization of the Immigration Review Board's (IRB) revised Detention guidelines. In support of this workshop, UNHCR commissioned a report entitled *Domestic and International Standards and the Immigration and Refugee Board's Guideline on Detention*<sup>63</sup>. Overall, UNHCR recommended that the detention guidelines better reflect Canadian and international human rights standards, with emphasis on the fundamental principles of necessity, reasonableness and proportionality.

## Gaps and challenges

Despite the recent positive developments, UNHCR has some key concerns regarding the ATD Framework, including whether identity cases will be generally included, the absence of clear and objective criteria for determining cooperation, and the absence of a review mechanism for release conditions outside of the Immigration Division's supervisory jurisdiction. UNHCR has communicated these concerns to CBSA and plans to work with the Agency to address these gaps in the ATD Framework.

Although over the last year a slight decrease in the average length of detention has been recorded by the authorities, it should be noted that Canadian law does not currently set a maximum length of detention, which is another area where there is a real need for improvement. Additionally, Persons of Concern (PoCs) on immigration hold can be detained in correctional facilities and not CBSA purpose-built facilities for reasons including criminality (current or previous), lack of identity, flight risk and lack of co-operation. For example, there are cases where PoCs may be transferred from CBSA Holding Centres to correctional facilities for behavioral concerns, mental health issues or lack of cooperation in applying for travel documents for removal purposes in the case of rejected applicants. UNHCR has advocated against commingling of asylum seekers with criminal populations, as that practice contravenes international standards. The use of prisons, jails, and facilities designed or operated as prisons or jails, should be avoided. If asylum-seekers are held in such facilities, they should be separated from the general prison population. Criminal standards (such as wearing prisoner uniforms or shackling) are not appropriate."

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<sup>63</sup> Jared Will, *Domestic and International Standards and the Immigration and Refugee Board's Guideline on Detention*, February 2018, available at: <https://bit.ly/2Lt9Ze7>

To improve detention conditions and ensure compliance with international standards, UNHCR invites Canada to provide full and accurate statistics on detention of PoCs (in particular the length of detention, the number of asylum-seekers, the grounds for detention and any ATD decisions).

## **Next Steps**

In 2018, UNHCR will work with CBSA to address gaps noted in the ATD Project Framework, in particular, as noted, with regard to ensuring that PoCs who lack identity documents have access to alternatives to detention under the Framework, and limiting the extent to which perceived non-cooperation bars participation in the ATD programming. UNHCR will work with all main stakeholders, including CBSA, IRB, civil society, lawyers and academics in order to facilitate a six-month review of the ATD Framework once it is implemented. The review will assess whether the ATD Framework has reduced immigration-related detention in Canada, whether the ATD program has not become an Alternative to Release, whether the least restrictive conditions are imposed, and whether all PoCs are eligible for ATDs. UNHCR will also review the implementation of the BIOC Assessment template in Ontario, review the detention and housing of children, including UASC. UNHCR will continue to encourage CBSA to provide full and accurate and comprehensive statistics on the detention of persons under the mandate of UNHCR.

# HUNGARY

**IN HUNGARY**, 2016 and 2017 were marked by the adoption of a series of policy and legislative measures limiting access of asylum-seekers to the territory and to the asylum procedures. As a result of legislative amendments entered into force in March 2017, people intercepted anywhere in the country for irregular stay are subject to automatic removal without the possibility of applying for asylum. This is in contravention of the universal human right to seek asylum and the non-refoulement principle. There have been numerous credible allegations of violence against asylum-seekers during interception and forced removals. Further legislative amendments to the Act Lof 2007 on Asylum introduced automatic and indefinite detention for all asylum-seekers as an ‘emergency measure’, including for unaccompanied children of 14 years and older, as well as families with children and people with specific needs. Emergency legislation was further extended, currently in force until 7 September 2018. As a result, asylum-seekers were detained during the entire asylum procedure, without adequate conditions as measured against international law and European standards. In 2016, a total of 2,621, in 2017, a total of 2,374 asylum-seekers were detained.

## KEY DEVELOPMENTS

- Establishment of mandatory detention policy for asylum-seekers as a special emergency measure under the Asylum Act as of end March 2017.
- Denial of access to territory and procedure with the introduction of automatic forced removals, without the possibility of applying for asylum, of people intercepted anywhere in the country for irregular stay. In 2016-2017, more than 43,600 people were prevented from crossing the border or were intercepted and forcibly returned across the border fence.
- UNHCR and its partner organisations received numerous reports of alleged violence and abuse in relation to interceptions and forced removals. In 2016-2017, 119 such alleged incidents were recorded involving 1,560 individuals.
- Reduction of Hungary’s open reception capacity for asylum-seekers by 65%.
- Temporary suspension of transfers to Hungary from several other EU Member States under the Dublin III Regulation.
- Call from the UN High Commissioner for Refugees for greater access to asylum, end to detention and more solidarity with refugees.
- In February 2018, the government submitted a draft legislative package to the Parliament under the label “Stop Soros” aiming to introduce restrictive measures specifically targeting organisations that support the arrival or stay of asylum-seekers and refugees.<sup>64</sup>
- Some improvements in the state capacity to provide psycho-social care and support activities for children in the transit zones.

<sup>64</sup> UNHCR, “Hungary: UNHCR dismayed over further border restrictions and draft law targeting NGOs working with asylum-seekers and refugees”, Budapest, 16 February 2018, available at: <https://bit.ly/2s63gid>.

Public attitudes became even more negative, as Government campaigns continued to link terrorism with migration while promoting a white, Christian society in Hungary. The Government further fuelled xenophobia through two so-called “national consultations” that used refugees and migrants as scapegoats. At the same time the government terminated integration support for refugees. Irregular onward movements continued as very few refugees remained with the intention to stay in Hungary for the longer term. UNHCR raised its concerns about lack of access for asylum-seekers and the use of mandatory detention through press statements and public information activities, including in the context of a visit by High Commissioner Filippo Grandi in September 2017.

### Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

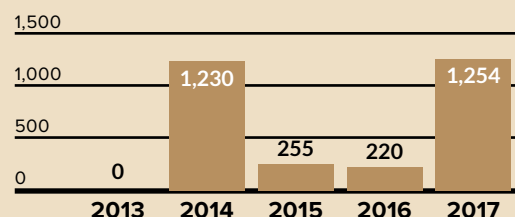
In view of the deteriorating protection environment, UNHCR’s strategy has been to advocate for improvements to the asylum system and better conditions in reception and detention facilities. UNHCR raised its concerns over the detention regime, as detention is automatic and arbitrary, alternatives to detention are not considered and there is no systematic consideration of vulnerability or specific needs.

UNHCR also challenged the Government’s practice of arbitrary detention and denial of access to territory and asylum procedures through **strategic litigation**, both through direct third party court interventions and indirectly through support for legal representation, in line with the objectives set under the Global Strategy Beyond Detention National Action Plan. In 2017, seven cases concerning detention in the transit zones were pending before the European Court of Human Rights (ECtHR). UNHCR submitted court interventions as a third party in three of these cases which are at the time of writing pending before the ECtHR.

As part of its advocacy strategy, UNHCR **shared relevant information with international human rights treaty bodies** regarding the situation of asylum seekers (UN Subcommittee on the Prevention of Torture, UNHCR UN Human Rights

## GOAL 1 End the detention of children

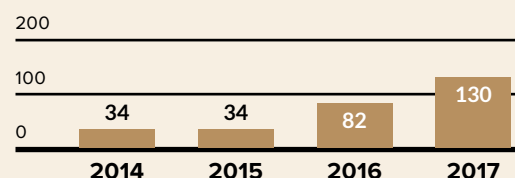
### NUMBER OF CHILDREN DETAINED



Source: primarily monitoring visits by UNHCR and partner organizations and partially data provided by the Government.

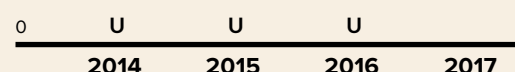
## GOAL 2 Ensure that alternatives to detention (ATDs) are available

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC

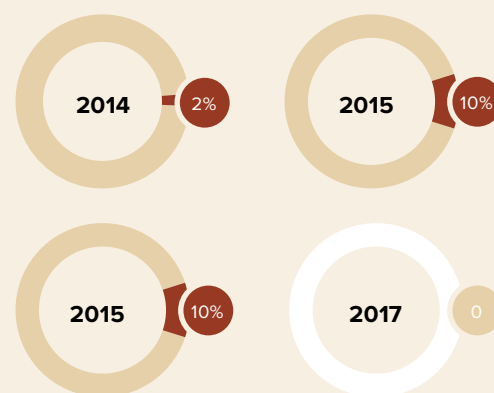


Source: Government

### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES (families released on bail)



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



Source: Government

TYPES OF ATDs:	2015	2016	2017
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

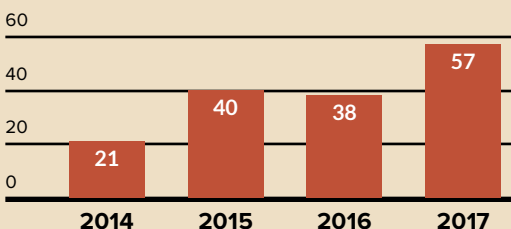
☒ *Is there a mechanism allowing asylum-seekers to stay legally in the community?*  
No (as of 28 March 2017)

☉ *When residing in the community, do asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance)?*  
Partially (psychological assistance and legal assistance are exclusively provided by UNHCR implementing partners).

☒ *Is there case management provided in ATDs?*

### GOAL 3 Ensure that conditions of detention meet international standards

#### NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



LEGEND: ☑ Yes    ☒ No    ☉ Partially  
N/A Not available    U Unknown

SOURCE: Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

Committee, Committee of the Rights of the Child), the Council of Europe and various EU entities (the CoE Lanzarote Committee, the CoE GRETA Committee, the European Commission DG Home Affairs, FRONTEX, EU FRA, EASO). To this end, UNHCR prepared a note on the impact of the new asylum legislation and related restrictive measures.

To enhance technical knowledge of legal practitioners, UNHCR and the London-based AIRE Centre (Advice on Individuals Rights in Europe) organized a workshop on preliminary ruling references to the Court of Justice of the EU, targeting 25 legal practitioners, focusing on strategic litigation in relation to detention. UNHCR also provided a training on the practical manual for monitoring immigration detention for 15 human rights practitioners.

UNHCR maintained its capacity to conduct monitoring along the Hungarian-Serbian border and conducted 545 monitoring visits to the transit zones and 57 to asylum and aliens detention facilities. While UNHCR's impact on the general reception framework was limited, individual support interventions provided by UNHCR improved the situation of individual asylum-seekers (1,906 individual counselling, referral and follow-up actions). UNHCR also worked closely with NGO partners to strengthen availability of psycho-social care in both open centres and detention facilities and legal assistance. In total, 844 individuals were provided with psycho-social support and 876 with legal assistance.

Child protection remained a priority for UNHCR, in particular taking into account legislative changes in March 2017 which resulted in all children arriving in families and unaccompanied children of 14 years and above being systematically detained in the two transit zones. UNHCR deployed a child-protection specialist to assist the country operation in assessing the situation and formulate recommendations to share with authorities and partners. Sharing of recommendations strengthened technical level cooperation with the authorities. In 2017, the International Organization for Migration (IOM) organized a series of training events on child protection targeting primarily the staff of asylum and alien policing authority, UNHCR



#### TRAININGS ORGANIZED IN HUNGARY DURING THE REPORTING PERIOD

- 2 on Detention Monitoring Methodology
- 6 on Child Protection
- 2 on Asylum Law, including UNHCR Detention Guidelines

#### NUMBER OF PERSONS TRAINED IN HUNGARY DURING THE REPORTING PERIOD

- 16 on Detention Monitoring Methodology
- 171 on Child Protection
- 50 on Asylum Law, including UNHCR Detention Guidelines

contributed to 4 training sessions on children's rights in general, focussing on child-friendly procedures and best interests determination.

UNHCR organised several participatory assessments which confirmed that people of concern to UNHCR are affected by xenophobic and negative public attitudes that are widespread in the country. UNHCR raised its concerns through press statements and various public information activities. On 12 April 2017, UNHCR issued a press release<sup>65</sup> calling for a temporary suspension of all transfers of asylum-seekers under the Dublin Regulation. On 12 September 2017, following the visit by the High Commissioner, UNHCR issued another press release<sup>66</sup> expressing concerns over the detention of asylum-seekers, including children and calling on Hungary to refrain from detaining asylum-seekers, in particular children. UNHCR also supported activities aimed at combating xenophobia. UNHCR sponsored an outdoor billboard poster campaign of the successful Hungarian movie 'The Citizen' on the plight of a refugee who seeks to integrate into Hungarian society. It also produced two Public Service Announcement videos for World Refugee Day with two Hungarian bishops and two well-known gastro bloggers and TV personalities. As part of the World Refugee Day campaign an exclusive photo exhibition of refugee children was organised and UNHCR was present with stands in the stores of the biggest Hungarian book store chain "Libri". UNHCR sponsored the refugee film section of the popular Human Rights Documentary Film Festival "Verzio" and participated in a series of panel discussions.

## Gaps and challenges

Detention is not applied as a last resort measure, nor for the shortest possible time, as confinement in the transit zones is not regarded as detention by the Government authorities. It is UNHCR's position that confinement in the transit zones amounts to deprivation of liberty as asylum-seekers can leave the transit zones only in the direction of Serbia, without the chance to have their asylum application examined. Further, in the absence of any formal decision on detention, asylum-seekers have no possibility to seek effective legal remedy.

<sup>65</sup> UNHCR, "UNHCR urges suspension of transfers of asylum-seekers to Hungary under Dublin", Budapest, 10 April 2017, available at: <https://bit.ly/2oYF3Y0>.

<sup>66</sup> UNHCR, "UNHCR Chief visits Hungary, calls for greater access to asylum, end to detention and more solidarity with refugees", Budapest, 12 September 2017, available at: <https://bit.ly/2y2BnsC>.



There is no systematic mechanism in place to identify specific needs and vulnerabilities, presenting a major obstacle for asylum-seekers to access specialized services, including specialized medical or psycho-social care. The authorities do not provide detailed statistical data is provided to UNHCR on the number of people detained, disaggregated by sex, age groups and specific needs. UNHCR has offered its technical support in introducing standard operating procedures for the identification and adequate referral of asylum-seekers with specific needs, including victims of trafficking and SGBV.

The Parliamentary Commissioner for Human Rights and the Public Prosecutor's Office are entitled to conduct unannounced monitoring visits to detention facilities, however in practice these entities have so far not conducted any visits to the transit zones.

## **Next Steps**

UNHCR will continue to offer its technical support for the Government to address gaps in the asylum policy framework. The office will continue conducting regular monitoring visits to detention facilities in order to assess conditions as measured against international standards. UNHCR will also continue providing individual counselling and support to asylum-seekers to mitigate the negative impact of detention. UNHCR will further pursue its litigation strategy both before national and regional courts to challenge current arbitrary detention policy and practices.

Particular emphasis will be put on ensuring that alternatives to detention are available in law and implemented in practice, giving priority to children, women at risk and other vulnerable individuals and ensuring that children are not detained for administrative purposes.

# INDONESIA

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**IN 2017**, UNHCR welcomed the implementation of Presidential Regulation No. 125/2016 concerning the Handling of Foreign Refugees<sup>67</sup> – the first regulation governing the handling of refugees in Indonesia – which was enacted in late December 2016. The Regulation no longer distinguishes between refugees and asylum-seekers, which means that both categories are now entitled to protection until proven otherwise – or being rejected by UNHCR. However, despite acknowledging that refugees do not belong in detention and that they should be placed in shelters designated by the local government, the Regulation still requires the use of Immigration Detention Centres (IDCs) as a place to register new arrivals, which amounts to mandatory detention upon arrival.

## KEY DEVELOPMENTS

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- Opening of a new shelter for refugees with a capacity of 500 persons in the city of Bintan, near Tanjung Pinang, facilitated by IOM, which leads to a reduce of the number of refugees in detention. This type of accommodation is permanent and formally regarded as ATD by the Government. Residents can move freely in and out of the facility during the day, but are required to remain in the facility at night. They are also provided with a modest stipend to cover food and incidental expenses. The release of detainees from IDCs across Indonesia to the new shelter began in January 2018 and is expected to be completed by early March.

- Clarification from the National Law Development Agency (*Badan Pembinaan Hukum Nasional (BPHN)*) that refugees are entitled to access state-funded legal aid programs, enhancing their access to lawyers in challenging their detention, among others. Law no. 16/2011 concerning Legal Aid<sup>68</sup> does not specifically set

out whether or not refugees can be beneficiaries of such schemes, which created challenges for legal aid organisations in assisting refugees. To resolve this, BPHN would, in collaboration with UNHCR, conduct information sessions to ensure that both refugees and legal aid organizations are aware of this development. Efforts towards the signing of a Letter of Understanding (LoU) between BPHN and UNHCR on further cooperation on this matter are underway.

- Decrease of detention instances from 2016. The number of new detention instances throughout 2016 over persons of concern was 1,607 and it dropped to 957 in 2017. The total number of persons of concern who experienced detention at any point in 2016, including those who were released or already in detention from the previous year, stood at 5,609, which decreased to 5,106 in 2017.

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<sup>67</sup> *Presidential Regulation No. 125/2016 concerning the Handling of Foreign Refugees*, available at: <http://www.refworld.org/docid/58ae374.html>

<sup>68</sup> *Law No. 16/2011 concerning Legal Aid*, available in the Indonesian language at: <http://bphn.go.id/data/documents/11uu016.pdf>

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- Establishment of a network of lawyers who have expressed their commitment towards assisting refugees. Through trainings conducted by the office, lawyers were equipped with the basic knowledge on refugee issues in Indonesia. In the Regional Workshop on strategic litigation conducted by the Global Learning Centre in Kuala Lumpur, lawyers also expressed their commitment to launch strategic litigation on detention-related issues in Indonesia by the end of 2018. As a follow-up to the Regional Workshop, since February 2018, the office has facilitated a number of Focus Group Discussions (FGDs) in which all the relevant partners met and discussed the potential strategies towards launching a strategic litigation. The theme has been agreed to be “ending the detention of children”.

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- Sudden and rapid increase in self-reporting by refugees to IDC Jakarta since the end of 2017. Based on the current system, only refugees in detention can be released to IOM-run shelters, thereby making detention somewhat of a precondition. Consequently, refugees who previously lived independently chose to self-report in the hope to be placed in the shelters upon release, where they are provided with access to basic assistance. Due to the unavailability of space and to avoid creating a pull-factor, however, the IDC decided in February not to admit anyone. Consequently, at the time of reporting, there were over 330 refugees camping outside the IDC waiting to be admitted inside, and the upward trend showed no sign of abating.

## Activities undertaken by UNHCR and implementing partners during the roll-out period of the Global Strategy

Throughout 2017 the office conducted monthly coordination meetings with the Coordinating Ministry for Political, Legal, and Security Affairs, IOM, the Ministry of Foreign Affairs and the Directorate General of Immigration. The Coordinating Ministry has suggested that UNHCR assists in developing SOPs concerning the implementation of the Presidential Regulation, particularly on the role of each stakeholder in handling refugees and how best to coordinate among one another. At the time of reporting, the office was still in the process of studying relevant materials (including those from the Regional Office) before starting to develop the SOPs. Moreover, in October and November 2017, the office conducted meetings with local governments in Medan and Bali. Under the Presidential Regulation, the local government is mandated to designate places that can serve as shelters for refugees. The local governments in both areas accept their new role under the Regulation but face challenges in implementing it. To date, there has not been any clear guidance on how to translate the rule into practice, particularly with regard to budgeting and coordination issues. Additionally, the office conducted meetings with the Indonesian Bar Association, the National Human Rights Commission and local NGOs to build and strengthen partnerships.

Judicial engagement and strategic litigation were also among the priorities of the office. From June to November 2017, the Office conducted awareness-raising sessions for lawyers from the Legal Aid Institute in Pekanbaru, Justika.com in Jakarta and the Indonesian Bar Association in Medan. In December, the office also invited a number of potential key players to be involved in pursuing strategic litigation to the Regional Roundtable on Strategic Litigation in Kuala Lumpur, where participants expressed commitment to launch strategic litigation on detention-related issues by the end of 2018.

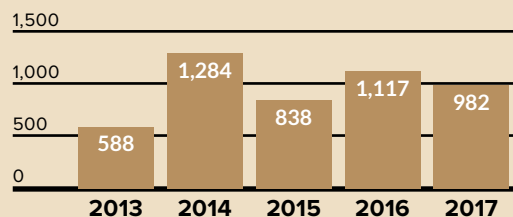
Throughout 2017, the office conducted a total of 386 detention monitoring visits, which comprise of the regular monitoring conducted solely by the office as well as joint detention monitoring conducted with the National Human Rights Commission at IDC Belawan in Medan and IDC Denpasar in Bali. The visits resulted in recommendations addressed to the authorities as well as other relevant stakeholders, which led to improvements in the conditions inside the IDCs. For instance, following recommendations from the joint monitoring, IDC Belawan dismantled most of the plastic tents that had been set up inside the IDC to accommodate detainees in hallways and other public spaces, which had posed a potential fire hazard.

The office also supported and facilitated pilot projects on alternatives to detention. In addition to the five existing shelters for unaccompanied and separated children and women at risk, in 2017, the office supported a number of semi-independent living schemes in which unaccompanied teenage children live together in a rented room under regular supervision of Church World Service, UNHCR implementing partner. Moreover, mindful of the importance of a family setting for the development of children, the office made efforts to the best of its ability to identify foster parents for unaccompanied children, providing a modest lodging allowance to foster parents willing to take care of such children. Additionally, the variation (and diminution) in the number of places available in ATDs for UASC and for families between 2016 and 2017 may be explained by a change in the counting method used. More specifically, in 2016 both figures reflected the number of places dedicated to specific groups at a certain point in time. In 2017, the figures were generated based on the number of persons actually placed in the different ATDs available.

Over the course of 2017, with the aim to strengthen technical knowledge, cooperation and capacity-building for all stakeholders, the office conducted a total of 14 activities with various themes, such as asylum law, detention monitoring methodology and child protection. In total, 312 persons including UNHCR staff, lawyers, paralegals, detaining authorities, IOM, civil society organisations, Directorate General of Human Rights staff, junior

## GOAL 1 End the detention of children

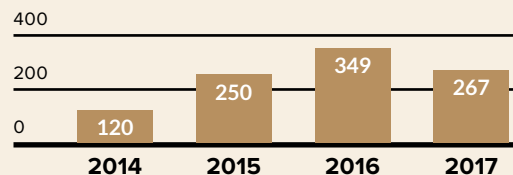
### NUMBER OF CHILDREN DETAINED



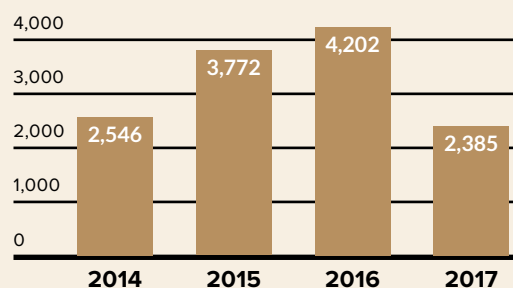
Source: UNHCR registration database

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

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC

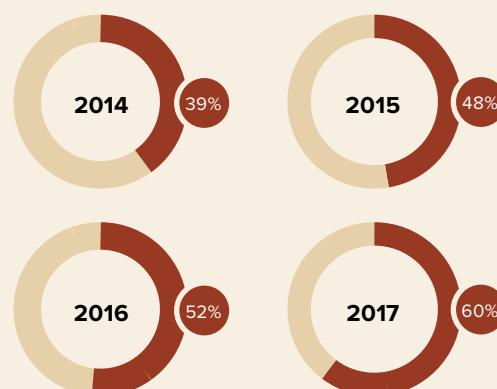


### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



Source: UNHCR and IOM records

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



Source: UNHCR registration database

TYPES OF ATDs:	2015	2016	2017
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			

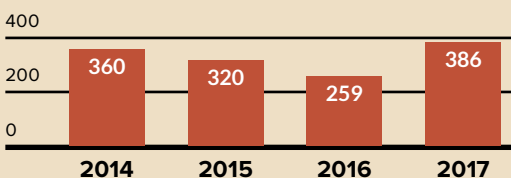
☑ available in legislation    ☑ used in practice

\* Semi-open temporary shelters.

- ☑ *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)?*
- ☑ *Is there case management provided in ATDs?*

### GOAL 3 Ensure that conditions of detention meet international standards

#### NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



LEGEND: ☑ Yes    ☒ No    ⦿ Partially  
N/A Not available    U Unknown

SOURCE: Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

diplomats, university students, Immigration officials, National Human Rights Commission staff, National Commission for Violence against Women staff, Indonesian Child Protection Commission staff, Ombudsman staff, Witness and Victim Protection Agency staff, Social Affairs Office staff, Women Empowerment Office staff, and social workers, were trained. For these trainings, the office translated and printed a number of advocacy tools, such as [UNHCR Detention Checklist](#), [UNHCR Options Paper 1](#) and [2](#), [UNHCR Detention Guidelines](#), the [Recommended Principles for Children on the Move](#), a Detention Flowchart and Alternatives to Detention handouts, all of which were disseminated to various stakeholders.

Finally, the office also initiated a media campaign on “Ending the Detention of Children”, the objective of which was to highlight the improvement of children’s lives once they are released from detention. Filming for a video highlighting refugees who have been released from detention throughout the region took place in January 2018, and the film is expected to be released in the coming months. As part of the campaign, the office has conducted interviews with a number of children who have been subjected to detention, which will inform upcoming activities and advocacy interventions.

A lot of the aforementioned activities were conducted with the support from the Global Technical Assistance and Capacity Building Programme to Prevent Detention of Children and to Protect Children and Other Asylum-Seekers in Detention (EIDHR Project) as funded by the European Union.

### Gaps and challenges

One year on from the enactment of the Presidential Regulation, only one local government has initiated the opening of a new shelter for refugees. Throughout 2017, the Directorate General of Immigration conducted sensitizations in the provinces, targeting local governments that will assume new responsibilities under the Presidential Regulation. Despite this, however, many local officials with whom UNHCR has met have either claimed that they were unaware of their new mandate or stated that they cannot implement the



#### TRAININGS ORGANIZED IN INDONESIA DURING THE REPORTING PERIOD

8 on Asylum Law, including UNHCR Detention Guidelines

3 on Detention Condition Standards

2 on Detention Monitoring Methodology

1 on Reception and Alternatives to Detention

#### NUMBER OF PERSONS TRAINED IN INDONESIA DURING THE REPORTING PERIOD

180 on Asylum Law, including UNHCR Detention Guidelines

89 on Detention Condition Standards

23 on Detention Monitoring Methodology

20 on Reception and Alternatives to Detention

Regulation without clear guidance – or implementing rules – particularly with regard to budget allocation and coordination with other stakeholders.

Also a recurring theme among government officials is the negative impact of refugees' presence on Indonesian society. This may in large part be due to the media, which tends to highlight alleged criminals' refugee status, sending the wrong message to the larger public that all refugees are 'bad people'. Government officials also often cite 'resistance from the local community' when asked about progress toward expanding ATDs.

Finally, being prohibited from working means many refugees lack options for self-reliance to live independently. Once they run out of money, many have no choice but to self-report to detention facilities and exchange their freedom for basic needs, such as food and shelter – which presents a clear irony as the office continues to advocate against the detention of refugees, while at the same time so many of them voluntarily ask to be detained. As a proposed solution, the office is currently advocating for access to self-reliance opportunities to the Government of Indonesia. Thus far, the Government has been resistant to the idea of granting refugees the right to work, arguing that it may exacerbate the already-high number of unemployment in the country. Taking this sentiment into account, the office is advocating for livelihood projects for refugees through which they may generate income while at the same time expanding labor market, thereby benefitting both refugees and local Indonesians.

### Next steps

In 2018, UNHCR will continue conducting joint detention monitoring with the National Human Rights Commission in IDCs in other areas across the country, during which the office will also establish a dialogue with the respective local governments on the progress of the Presidential Regulation's implementation. Moreover, the office will put more focus on launching strategic litigation on detention-related issues and will therefore conduct more activities to that end. The office will also strengthen refugees' access to justice by establishing further cooperation with the National Law Development Agency (*Badan Pembinaan Hukum Nasional (BPHN)*). Finally, the office will continue and strengthen its advocacy for self-reliance opportunities for refugees to the Government of Indonesia.

# ISRAEL

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**IN ISRAEL**, following the adoption of Amendment No.5 to the Anti-Infiltration Law in December 2014, newly arriving individuals, including asylum-seekers, are detained for a three-month period upon arrival (unless one of the release grounds applies, such as health grounds, special humanitarian reasons, or if the detainee is an unaccompanied minor). Single Eritrean and Sudanese men under the age of 60 are then automatically transferred to Holot, a semi-closed detention facility, for a period of up to 12-months mandatory residence (Amendment No. 6).

## KEY DEVELOPMENTS

- Although Israeli law does not prohibit the detention of children, in practice, the government has not detained children of asylum-seekers since April 2013, following an Administrative Court decision that held that children in detention shall be released according to the humanitarian release ground in the Anti-Infiltration Law. By the end of 2013, all unaccompanied minors and all children with families were released, except for non-asylum-seeker migrant children who remained in detention with their mothers while awaiting deportation.
- In August 2016, in response to court litigation, the Ministry of Interior issued a New Procedure for Issuing a [Holot] Residence Order and Intake Interview. However, this procedure did not contain clear criteria as to the duration of the stay or the relevant considerations for exemptions on humanitarian grounds and does not expand the list of vulnerable individuals to be exempt from Holot.
- At the end of October 2016, the Ministry of Interior announced<sup>69</sup> – in response to court litigation – that it will cease summoning Darfuris to Holot (regardless of whether they applied for asylum or not).
- Training of 140 pro bono lawyers, and in 2017 alone, these lawyers successfully prevented 48 clients from enforced residency in Holot.
- Improvements were made in various conditions in Holot, after several judicial interventions.<sup>70</sup> Following High Court rulings in June 2017, the Government no longer prohibits residents from bringing in “cleaning materials” (including soap and shampoo) to Holot, and a pilot project began in September 2017 in which a computer classroom with 14 computers and wired internet was opened in Holot for 8-day introductory computer courses. The High Court petition demanding an exemption for victims of torture from Holot is still pending.

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<sup>69</sup> *Asylum Seekers From Darfur No Longer Being Sent to Israeli Detention Facility*, Haaretz newspaper, 30 October 2016, available at: <https://bit.ly/2kmZjSc>.

<sup>70</sup> HCJ 4602/16 *Halofom Hagos v. Israeli Prison Services*, available at: <https://bit.ly/2IG4J9a>. For more information on the different judicial interventions, please consult the website of the Association for Civil Rights in Israel (ACRI) at: <https://www.acri.org.il/en/2016/06/13/10130/>

- Closure of Holot, following the non-renewal of its operational framework. Although the closure of Holot is welcome, those who refuse to relocate to a third African country are to remain in a closed detention facility for an undefined period of time.

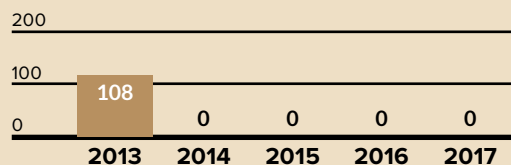
- Reduction in the number of persons detained: according to UNHCR monitoring, the number of asylum-seekers detained reduced by 42%, passing from approximately 2,400 asylum detained on 31.12.16 to 1,397 as of 31.12.17. The number persons detained for immigration-purposes followed a similar trends with approximately 2,900 persons detained as of 31.12.16 and approximately 1,900 as of 31.12.17.

On 28 August 2017, the Supreme Court issued its judgment in the appeal challenging the Government's announced policy of forced relocation of Eritrean and Sudanese nationals to so-called safe countries in Africa<sup>71</sup>, publicly known to be Rwanda and Uganda. The Court upheld the policy in principle but held that detention cannot be used as an enforcement measure because the agreement itself stipulates that relocations must be "voluntary". As a result, the Government announced that it amended the agreement with the third country to allow for forcible relocation, thereby rendering Holot unnecessary. On 11 December 2017, the provisions of the Anti-Infiltration Law relating to the operation of Holot were only extended until mid-March 2018, resulting in the closure of Holot in mid-March 2018. On 1 January 2018, the Government published the *Procedure for Relocation to Third Countries*, according to which Eritrean and Sudanese single men who have not applied for asylum, whose asylum claim has been rejected, or who apply for asylum after 1 January 2018 will be given 60 days (30 days for those residing in Holot) to agree to relocate to one of the two third countries (reported in the media to be Rwanda and Uganda); those who do not agree

<sup>71</sup> A certificate of privilege prohibits the State from publicizing the name of the country and the details of the agreement.

## GOAL 1 End the detention of children

### NUMBER OF CHILDREN DETAINED

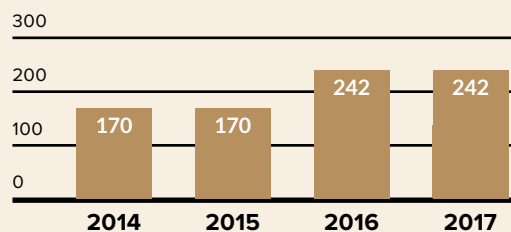


No asylum-seeking or refugee children were detained in 2016 and 2017. Figures relating to the number of detained migrant children are unavailable.

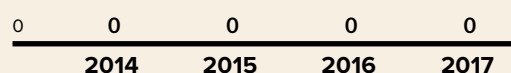
Source: UNHCR monitoring

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

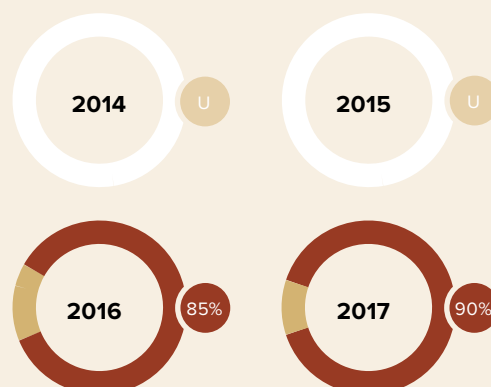
### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



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





TYPES OF ATDs:	2015	2016	2017
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	✔ <sup>1</sup>		

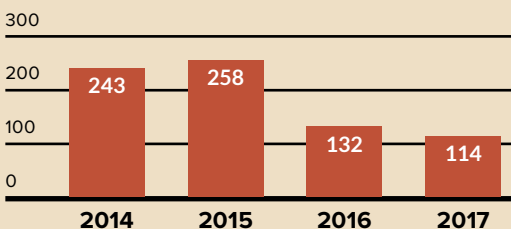
✔ available in legislation    ✔ used in practice

<sup>1</sup> Not used in 2015 because no new UASC arrived in Israel and recognized victims of trafficking are released to government shelters.

- ✔ *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?*  
Partial (access to primary education, emergency medical care and mental health clinic only).
- *Is there case management provided in ATDs?*

### GOAL 3 Ensure that conditions of detention meet international standards

#### NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



LEGEND: ✔ Yes    ○ No    ○ Partially  
N/A Not available    U Unknown

SOURCE: Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

will be transferred to detention in Saharonim for refusing to cooperate with their removal and will continue to be held in detention until they agree to relocate. Implementation of this policy has already begun (with over 270 detained for not cooperating with their removal), and enforcement against those who live in the territory and do not leave the country is set to begin in April 2018.

### Activities undertaken by UNHCR and implementing partners during the roll-out period of the Global Strategy (mid 2016-March 2018)

In 2016, UNHCR worked on improving media coverage on the protection needs of the population of concern in an effort to change public attitudes toward asylum-seekers and, in turn, to influence government policy to consider ATDs for this population. A UNHCR PI Officer (from UNHCR Vienna) assisted the office in organizing a training for journalists, as well as a workshop for refugee activists and NGO representatives. This event led to the design of the Turnaround Strategy and its implementation in the second half of 2017, resulting in a "Refugee Voice" Facebook page initiative managed by four asylum-seekers. They received basic media training in December 2017 and have published several posts relating to their social activities within their communities.

In addition, when UNHCR published a press release<sup>72</sup> in November 2017 raising its concerns with the forced relocation policy that may lead to the detention of asylum-seekers, the office was contacted by a large number of local and international media persons/sources, providing approximately 20 one-on-one briefs on the situation of Eritreans and Sudanese asylum-seekers in Israel.

In 2017, UNHCR held one session with the Heads of Control and Labour and Welfare Knesset Committees as well as with two other active Parliament members to brief them and encourage

<sup>72</sup> UNHCR concerned over Israel's refugee relocation proposals, Tel Aviv, 17 November 2017, available at: <https://bit.ly/2zf62qT>.



#### TRAININGS ORGANIZED IN ISRAEL DURING THE REPORTING PERIOD

- 5 on Asylum Law, including UNHCR Detention Guidelines
- 2 on Reception and Alternatives to Detention
- 2 on Screening and Referral
- 4 on Attention to Vulnerable Groups

#### NUMBER OF PERSONS TRAINED IN ISRAEL DURING THE REPORTING PERIOD

- 160 on Asylum Law, including UNHCR Detention Guidelines
- 78 on Reception and Alternatives to Detention
- 78 on Screening and Referral
- 143 on Attention to Vulnerable Groups

them to improve the protection environment for asylum-seekers in Israel (including consideration of alternatives to detention). In addition UNHCR participated in several Parliamentary Committee Sessions, in particular Interior and State Control Committees. Further, during May and June 2017, the missions of the Director of the International Detention Coalition (IDC) and UNHCR Head of the Legal and Policy Unit, Africa Bureau, HQs were used to highlight Israel's responsibilities and the protection needs of asylum-seekers (e.g. victims of torture from Sinai).

In May-June 2016 UNHCR shared a Solutions Strategy with the Government, followed by a visit of the Assistant High Commissioner for Protection (AHC-Protection) to support dialogue to cancel the forced relocation policy and consider ATDs for asylum-seekers who remain in Israel. A third version of the Strategy was shared with relevant Government Ministries in February 2018 and a second visit of the AHC-Protection took place, leading to accelerated negotiations over a "Framework of Common Understandings" to be signed by both parties.

In 2017, several strategic, principled cases were litigated with a wider impact on asylum-seekers. These include the appeal against forced relocation to a so-called safe third country and the petition demanding an exemption from Holot for victims of torture. Where requested, UNHCR provided supporting letters and opinions to the legal representatives of the petitioners.

UNHCR has continued to monitor Holot and immigration detention facilities on a weekly basis throughout the reporting period and held meetings with Israeli Prison Service Officers during these missions where various issues related to detention conditions were raised and recommendations were discussed to bring about improvements in conditions and greater freedom of movement. UNHCR has also continued to request access to the airport detention facility (so far this has not materialized). If approved, this would allow UNHCR to monitor the implementation of the forced relocation policy.

In November 2016, UNHCR organized six workshops for GOI and NGOs on vulnerability screening, each on a different domain from the vulnerability screening tool (VST) produced by UNHCR and the IDC to determine how to adapt it to the Israeli context. Relatedly, advocacy for a pilot project began in 2016 to provide rehabilitation support, health care and housing support to the 100 most vulnerable victims of torture. UNHCR also advocated for this pilot, as part of the roundtable and individual follow-up meetings held in June 2017 with government representatives and the Director of IDC on screening, identification and referral of vulnerable asylum-seekers to appropriate ATDs and in the follow-up mission in November 2017 by the IDC Director and a clinical psychologist specializing in identification, assessment and treatment of victims of torture. Four separate trainings were held during the November 2017 mission (for a total of 116 individuals),

for members of the Inter-Ministerial Working Group on victims of torture; medical professionals; judges and staff of the Appeal and Detention Review Tribunal; and for NGOs and UNHCR employees. In mid-November 2017, the State submitted an updated notice to the Court in the petition for exempting victims of torture from Holot which made reference to the UNHCR/IDC training on vulnerability screening. It also included a revised questionnaire to be used by the MOI in their pre-Holot hearings to identify vulnerable individuals.

UNHCR also conducted numerous trainings in 2016 and 2017 for various government representations, Appeal and Detention Review Tribunal judges, as well as NGO and UNHCR staff on refugee status determination (RSD), detention of vulnerable individuals, and other protection-related issues.

## Gaps and challenges

With regard to the detention context, important gaps remain. Alternatives to detention for asylum-seekers are lacking in legislation; there are insufficient screening mechanisms to identify vulnerable individuals in detention/Holot; there is no state-provided or funded legal representation or other assistance to asylum-seekers prior to and during detention/Holot residency; although some groups are exempt from detention and enforced residency in Holot, other vulnerable groups are not, notably victims of torture. Moreover, and despite increased monitoring activities in the detention centre of Saharonim and in Holot, UNHCR access to the airport detention facility for the purpose of monitoring is still pending government approval. Finally, the biggest challenge currently facing asylum-seekers is the new forced relocation policy, according to which those who refuse to relocate are detained for an undefined period of time until they cooperate with their removal. It is expected that the majority of these individuals will refuse to relocate and will therefore remain in detention.

## Next Steps

In 2018, UNHCR will continue to engage the Government in negotiations for a joint agreement. The office will also pursue its advocacy for the development and use of screening and referral mechanisms (based on existing models as appropriate) to ensure that asylum-seekers, especially vulnerable individuals, are exempt from forced relocation and detention and referred to ATDs. Where necessary, vulnerable individuals (including victims of torture, LGBTI, medical cases, etc.) will be legally represented to ensure an exemption from forced relocation and detention. UNHCR will also continue to engage in advocacy and training of government officials and Appeal and Detention Review Tribunal judges to encourage the release of vulnerable individuals who refuse to relocate. UNHCR will further its relationship with HIAS (Hebrew Immigrant Aid Society) to expand the pool of pro/low bono and private asylum lawyers that assist asylum-seekers in detention proceedings. Assuming that the forced relocation policy is in fact implemented and many Eritreans refuse to relocate, monitoring of detention facilities will be increased to ensure adequate conditions and proper treatment of detained asylum-seekers, as well as to identify vulnerable persons to advocate for their release.

# LITHUANIA

LITHUANIA'S participation in the EU relocation process has had a major impact on its national asylum system, bringing both challenges and opportunities. The country's priority focus on processing cases of relocated persons has led to delays in status determinations for spontaneously arrived asylum-seekers. As a result, the national reception and ATD systems have experienced continuous pressure. At the same time, debates surrounding the relocation process provided room for a policy-level discussion with regards to accommodation and other support schemes available for asylum-seekers in the country. Consequently, the relevant legislative framework has been amended to include additional accommodation arrangements, including a community-based placement component. Resort to detention with respect to asylum-seekers has remained limited, and the prevailing judicial and administrative practices have, to a large extent, been in line with the *UNHCR Detention Guidelines*.<sup>73</sup> In this respect, in 2016, out of 232 newly detained persons there were 14 asylum-seekers, while in 2017, out of 183 newly detained persons there were 12 asylum-seekers.<sup>74</sup>

## KEY DEVELOPMENTS

- Adoption of a series of by-laws aimed at implementing the EU asylum acquis based legislative framework. It included ministerial instructions providing for a vulnerability assessment tool/guidance and imposing a duty on border guard and police officers when deciding whether to initiate detention or ATD-related procedures to account for the results of the vulnerability (special needs) assessment and last resort requirements;
- Judgements of the Supreme Administrative Court of Lithuania have further developed the previously established jurisprudence precluding vulnerable asylum-seekers from being detained, such as children, pregnant women or persons suffering from PTSD and their family members.<sup>75</sup>
- Consolidation of a country-level practice whereby asylum-seekers are increasingly referred to either the open reception scheme or ATD arrangements, in line with the case-law of the Supreme Administrative Court of Lithuania, followed by district courts and, subsequently, implemented by border guard authorities.
- Launch of the the Asylum, Migration and Integration Fund (AMIF) co-funded project providing for the construction of a new accommodation unit for vulnerable asylum-seekers and families with children at the Foreigners Registration Centre (FRC) as part of the reception / ATD system.
- Adoption of the Government Decree of 8 March 2017 introducing a community-based accommodation and support scheme for asylum-seekers.<sup>76</sup>

<sup>73</sup> UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at <http://www.refworld.org/docid/503489533b8.html>.

<sup>74</sup> ee Migration Yearbook for the figures 2016, available at: <http://www.migracija.lt/index.php?421386414>. Other sources of information are Lithuania's Migration Department and the Foreign Reception Center.

<sup>75</sup> See inter alia Supreme Administrative Court judgements in case A-3855-822/2016, available at: <http://goo.gl/4oHVDx>; case A-3856-662/2016, available at: <http://goo.gl/sPDpZx>; case A-3855-822/2016, available at: <http://eteismai.lt/byla/81080668893999/A-3855-822/2016>.

<sup>76</sup> Lietuvos Respublikos Vyriausybės 2017 m. kovo 8 d. nutarimas Nr. 171 "Dėl Prieglobsčio prašytojų apgyvendinimo tvarkos aprašo patvirtinimo", TAR, 2017-03-13, Nr. 4227, available at: <https://bit.ly/2LpDCgg>.

## Activities undertaken by UNHCR and implementing partners during the roll-out period of the Global Strategy

The provision of **regular legal counselling to detainees and follow-up legal interventions** by UNHCR NGO partner and lawyers involved in the National Network of Asylum and Immigration Lawyers continued to be instrumental in consolidating country-level judicial and administrative practices leading to a reduced reliance on detention. Legal interventions were undertaken on behalf of asylum-seekers who were subject to pre-trial investigations in connection with irregular border crossing specifically in cases having a strategic value with regards to the application of the principle of non-penalisation as set out in Article 31 of the Refugee Convention.

The above efforts were supported by UNHCR's capacity building activities, including a **seminar on detention and non-penalisation** for legal practitioners organised in cooperation with the Lithuanian Bar in October 2016 (over 70 participants) and a meeting of the National Network of Asylum and Immigration Lawyers held in December 2016 (20 participants). In January 2017, UNHCR likewise provided training on detention and non-penalization for 57 judges, assistant judges and public prosecutors **as part of the regular judicial training curriculum**.

With a view to making **community reception arrangements** available for asylum-seekers, notably families with children, UNHCR, along with civil society partners, worked bilaterally with the Ministry of the Interior on the community-based placement scheme. These efforts contributed to the adoption of the above-mentioned Government Decree on the Community-based Accommodation and Support for Asylum-Seekers. In February 2018, the Ministry of the Interior approved an NGO proposal that should allow for the scheme to be piloted with respect to the first group of asylum-seekers in the course of 2018.

In December 2017, UNHCR organized a **seminar on community-based placement and case management**, attended by 25 Governmental officials, NGO personnel, lawyers and social workers. At the seminar, the case management concept was introduced, and Swedish and Dutch experts shared their experiences in their respective countries running community placement and case management models. The initiative *inter alia* aimed at promoting case management as a key element of reception and ATD schemes and supporting the implementation of the newly-introduced, community-based accommodation and support scheme for asylum-seekers.

In November 2016, UNHCR launched **the Safe and Sound tool in Lithuanian**. The event included training and was attended by over 20 participants representing migration authorities, border guards, police, the Child Rights Ombudsperson Office, Child Welfare authorities, NGOs and legal service providers. In December 2017, UNHCR organised a follow up event titled "**Strengthening policies and practices for unaccompanied and separated children in the Baltic states**" in Riga, Latvia with a view to supporting the development of national referral and support arrangements for children in the Baltic states, including Lithuania, based on **the Way Forward roadmap**.<sup>77</sup> The workshop was attended by representatives of the Lithuanian Child Welfare, migration and border guard authorities, the Child Rights Ombudsperson Office as well as social and legal practitioners. As a next step, UNHCR has started working on mapping applicable arrangements and practices in Lithuania, Estonia and Latvia with regards to the identification, registration, referral and reception of unaccompanied or separated children with a view to supporting national authorities in developing further child-sensitive screening and referral systems.

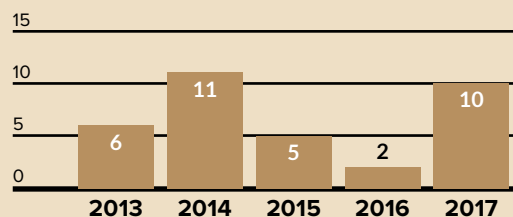
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<sup>77</sup> UN High Commissioner for Refugees (UNHCR), UNICEF, International Rescue Committee, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, July 2017, available at: <http://www.refworld.org/docid/59633afc4.html>.

**Detention monitoring activities** were primarily conducted by the Lithuanian Red Cross (LRC) as part of the partnership agreement with UNHCR and a wider monitoring project based on the Tripartite Memorandum of Understanding, signed on 2 June 2010 between UNHCR, LRC and the State Border Guard Service, and focused on (i) access to territory and asylum procedures and (ii) reception and detention conditions at border crossing points (BCPs) and territorial border guard units, and the Foreigners Registration Centre (FRC), including its detention unit. In 2016–2017, the LRC conducted 44 monitoring visits to BCPs and territorial border guard units, 13 monitoring visits to the detention unit of the FRC and 9 monitoring visits to the FRC’s reception/ATD unit. The monitoring activities in particular allowed the LRC to document the situation of asylum-seekers at airport transit zones and other BCPs, including those who were subject to the border procedure, and informed UNHCR’s advocacy efforts aimed at improving reception conditions at the border and providing families with children and vulnerable asylum-seekers access to regular reception and ATD systems.

**GOAL 1** End the detention of children

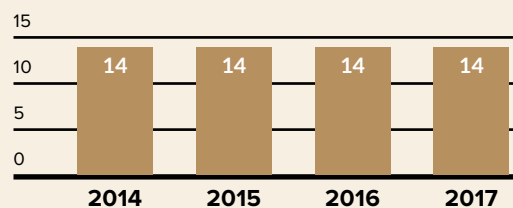
**NUMBER OF CHILDREN DETAINED**



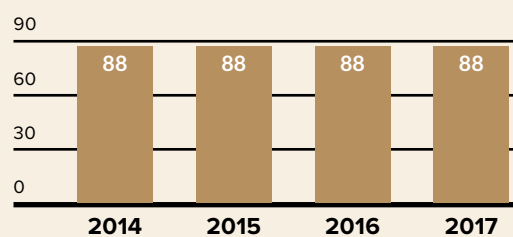
The figures refer to children in families who did not apply for asylum before the detention orders were issued, and were detained in connection with their irregular stay.

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

**NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC**



**NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES**

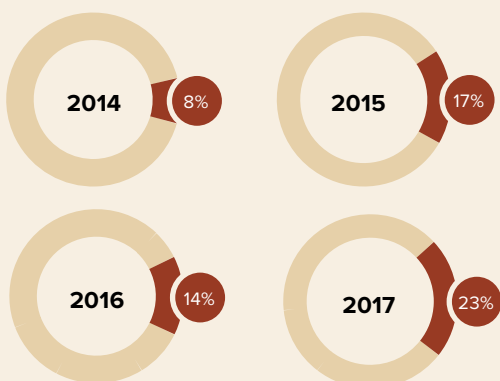


Source: UNHCR and IOM records

TYPES OF ATDs:	2015	2016	2017
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)**

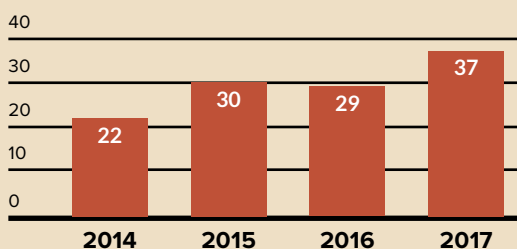


Source: UNHCR registration database

- ✔ *Is there a mechanism allowing asylum-seekers to stay legally in the community?*  
Pursuant to applicable legislation, asylum-seekers have a right to stay in the country pending the outcomes of the asylum procedure.
- ✔ *When residing in the community, do asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance)?*
- ✔ *Is there case management provided in ATDs?*  
Designated social workers assess special needs and provide information and guidance to asylum-seekers staying at the ATD section of the FRC.

**GOAL 3** Ensure that conditions of detention meet international standards

**NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)**



**LEGEND:** ✔ Yes   ✘ No   ◉ Partially  
N/A Not available   U Unknown

**SOURCE:** Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

**Gaps and challenges**

The applicable border procedure may fall short of international and regional standards, since it does not encompass requisite safeguards against unlawful or arbitrary detention. Additionally, there are no adequate reception conditions, notably with regards to families with children and asylum-seekers with special needs. A multidisciplinary and holistic approach has not yet been used in age assessment procedures applicable with respect to unaccompanied or separated children. Instead, applicable regulations continue to provide for X-ray-based age assessments, a practice that can only estimate age and may have an important margin of error.<sup>78</sup> While asylum-seeking families with children are not detained as a matter of established judicial and administrative practice, there have been instances of child detention in the context of returns. This is mostly due to the fact that Lithuania lacks accommodation and support arrangements for irregularly-staying families with children.

<sup>78</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR observations on the use of age assessments in the identification of separated or unaccompanied children seeking asylum*, 1 June 2015, available at: <http://www.refworld.org/docid/55759d2d4.html>.



#### TRAININGS ORGANIZED IN LITHUANIA DURING THE REPORTING PERIOD

- 3 on Asylum Law, including UNHCR Detention Guidelines
- 2 on Child Protection Training
- 1 on Reception and Alternatives to Detention

#### NUMBER OF PERSONS TRAINED IN LITHUANIA DURING THE REPORTING PERIOD

- 147 on Asylum Law, including UNHCR Detention Guidelines
- 29 on Child Protection Training
- 25 on Reception and Alternatives to Detention

### Next Steps

In 2018 and 2019, UNHCR will work closely with the authorities and other relevant stakeholders to address current challenges and consolidate already-achieved results. Particular attention will be paid to the community-based accommodation and support scheme as an important element of the reception and ATD systems. To that end, it will be of crucial importance to secure support for NGOs currently running the community-based placement pilot with a view to identifying possible gaps and adjusting the scheme so that it can be further expanded and strengthened. The mapping of legal and institutional frameworks, the referral and care practices for unaccompanied and separated children and relevant follow-up activities should contribute to the introduction of child-sensitive procedures based on *The Way Forward* roadmap. Finally, monitoring activities will be further carried out, placing an emphasis on conditions at the FRC detention unit and BCPs, and regular legal counselling and representation will be offered to all detained asylum-seekers with a view to ensuring that detention-related decision-making and procedures are fully in line with international and regional standards.



# MALAYSIA

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**IN MALAYSIA**, the years 2016 and 2017 were marked by the continued diminution of the number of registered asylum-seekers and refugees, especially children, detained on immigration grounds. UNHCR recorded 3,975 persons of concern who experienced detention in 2017 compared to 4,961 persons in 2016, marking a 20% reduction in the total number of persons experiencing detention year-on-year. Meanwhile there was a 64% reduction in the number of children in detention at the end of 2017 (31) compared to the same time in 2016 (87), and a 74% reduction in children experiencing detention in 2017 compared to 2016, according to UNHCR records.

## KEY DEVELOPMENTS

- Continued downward trend in the number of both adults and children detained, including a 20% reduction overall in persons experiencing detention and a 74% reduction in the number of children experiencing detention in 2017, compared to 2016.
- Landmark ruling by the High Court<sup>79</sup> permitting the bail of an asylum-seeking child led to this ATD model being made available to asylum-seeking children in Malaysia. The case saw the High Court departing from the common practice of viewing immigration offences as non-bailable, where the welfare of the minor was viewed as a primary consideration in the granting of bail.
- Joint Task Force formed by the Government of Malaysia with UNHCR in December 2016, inter alia, to address the management and processing of refugees and asylum-seekers in the country, with a proposal to develop subsidiary technical working groups, including in the areas of policy, work, health, education, and immigration detention.
- Pilot of three protection schemes for asylum-seekers and refugees by the Government, namely: (i) the registration of asylum-seekers and refugees in a Tracking Refugees Information System (TRIS), linked to the issuance of a proposed 'My Refugee Card-“MY-RC’; (ii) the establishment of a pilot work rights scheme targeting 300 Rohingya refugees; and (iii) the engagement in a temporary relocation programme for Syrian nationals.
- Launch of the National Human Rights Action Plan (NHRAP) in March 2018 which recognises refugees as a vulnerable group in Malaysia and specifies that Malaysia provides consideration and attention to refugees on humanitarian grounds. At that occasion, the Prime Minister, echoed the need to strengthen the management and administration of refugees in Malaysia through better access to health and education sectors.
- In 2016 and 2017, UNHCR successfully intervened to secure the release of 6,567 persons of concern to UNHCR from immigration detention.

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<sup>79</sup> High Court of Malaysia, *Shah Alam Jiramat bin Mohd Rashid versus Pendakwa Raya – Criminal Application No. 44-51-03/2017*, Selangor Darul Ehsan, May 15 2017.

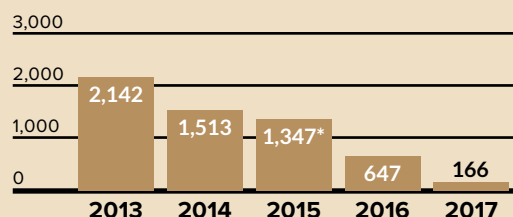
The Government of Malaysia and the Malaysian public have expressed concerns for the worsening situation of the Rohingya ethnic group in Myanmar and their mass displacement to Bangladesh. This empathy translated into fewer arrests and the implementation of an accelerated release process for this group. In early 2018, there were also positive indications from the Government of policy shifts around access for UNHCR to interview and to counsel non-Rohingya persons of concern in detention.

Despite these positive trends, the absence of domestic law granting protection or legal stay for asylum-seekers and refugees continued to place them at risk of arrest, detention, prosecution, imprisonment, deportation and *refoulement*. Law enforcement operations undertaken against ‘illegal migrants’ also continued across the country, which resulted in persons of concern, particularly those not yet registered with UNHCR, being arrested and detained. The authorities readily welcomed regular dialogue and cooperation with UNHCR and widely used the new UNHCR identity card with enhanced security features. In the context of lower number (in comparison to previous years) of new asylum-seekers entering Malaysia, the implementation of a merged registration/Refugee Status Determination (RSD) process also decreased the number of unregistered asylum-seekers. Law enforcement operations undertaken against ‘illegal migrants’ continued across the country, which resulted in persons of concern, particularly those not yet registered with UNHCR, being arrested and detained. UNHCR verified registered persons of concern, generally leading to their release.<sup>80</sup>

<sup>80</sup> Verified UNHCR cardholders enjoy a degree of immunity from criminal prosecution for illegal entry or stay under the Immigration Act in accordance with an Attorney General's Circular issued in 2005. Malaysia: *Immigration Act, 1959-1963*, 1 May 1959, available at: <http://www.refworld.org/docid/3ae6b54c0.html>.

## GOAL 1 End the detention of children

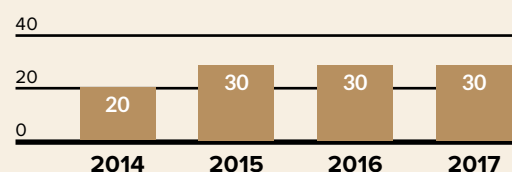
### NUMBER OF CHILDREN DETAINED



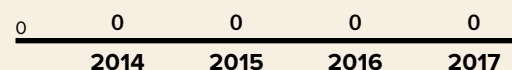
\* 2015 figure is corrected from previous progress report  
Source: UNHCR registration database

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

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



### NUMBER OF PLACES AVAILABLE IN ATDS FOR FAMILIES



Source: UNHCR and IOM records

⊗ 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)?

Partially, however, they face restrictions on their ability to access public services such as education, medical and legal aid services. These services are often provided by NGOs instead.

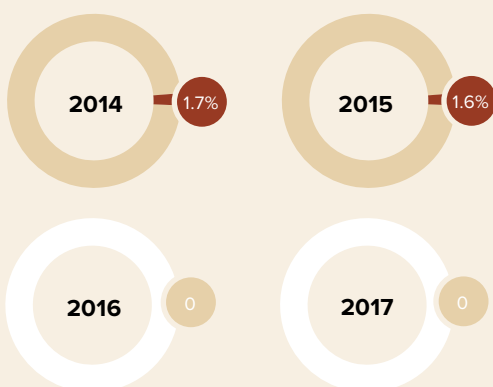
⊙ Is there case management provided in ATDs?

Partially provided by shelter homes UASC are released to and in the community, by NGOs.

TYPES OF ATDs:	2015	2016	2017
Deposit or surrender of documentation			
Reporting conditions			
Directed residence	☑	☑	☑
Residence at open/semi-open reception/asylum centres (NGO-run shelters)	☑	☑	☑
Release on bail/bond			☑
Provision of a guarantor/surety			
Community supervision arrangements			

☑ available in legislation ☑ used in practice

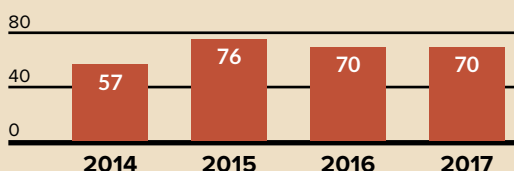
### PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



Source: UNHCR registration database

### GOAL 3 Ensure that conditions of detention meet international standards

#### NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



LEGEND: ☑ Yes ☒ No ☉ Partially

N/A Not available U Unknown

SOURCE: Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

UNHCR continued to strengthen its partnerships with a range of key stakeholders, including the International Committee for the Red Cross (ICRC), UNICEF and the Human Rights Commission of Malaysia (SUHAKAM) for the implementation of its National Action Plan (NAP). This included the conclusion of a Memorandum of Understanding with SUHAKAM and development of a joint work-plan focused on immigration detention aligned with the NAP. The membership of the Detention Working Group was expanded and the group met quarterly to coordinate engagement around detention issues, including the roll out of activities under the NAP.

### Activities undertaken by UNHCR and implementing partners during the roll-out period of the Global Strategy

In June 2016, UNHCR Malaysia launched a new ID card and biometric data collection system for asylum-seekers and refugees accompanied by a smartphone application (*UNHCR-Verify MY*) allowing law enforcement officers to immediately verify whether an individual is registered with UNHCR.<sup>81</sup> This was accompanied by nationwide dialogue and training sessions with the police, immigration and public prosecutor's office focused on raising awareness on the usage of the *UNHCR Verify-MY* as well as broader refugee protection issues. In 2017, UNHCR continued these dialogue sessions in targeted locations throughout the country in order to encourage law enforcement officers to self-verify persons of concern to UNHCR and further reduce the number of arrests of UNHCR cardholders. Some 2,340 officials were trained between 2016 and 2017.

<sup>81</sup> Verified UNHCR cardholders enjoy a degree of immunity from criminal prosecution for illegal entry or stay under the Immigration Act in accordance with an Attorney General's Circular issued in 2005. Malaysia: *Immigration Act, 1959-1963*, 1 May 1959, available at: <http://www.refworld.org/docid/3ae6b54c0.html>.



#### TRAININGS ORGANIZED IN MALAYSIA DURING THE REPORTING PERIOD

**47** on Asylum Law, including  
UNHCR Detention  
Guidelines

**3** on Child Protection  
Training

#### NUMBER OF PERSONS TRAINED IN MALAYSIA DURING THE REPORTING PERIOD

**2,407** on Asylum Law, including  
UNHCR Detention  
Guidelines

**90** on Child Protection  
Training

Funding received from the European Instrument for Democracy & Human Rights (EIDHR) for the project “Global Technical Assistance and Capacity Building Programme to Prevent Detention of Children and to Protect Children and other Asylum-Seekers in Detention” allowed UNHCR to carry out awareness-raising and dialogue sessions with some 400 immigration officers from eleven Immigration Detention Centres in Peninsular Malaysia, as well as various State and District Police Offices from October to December 2017. These sessions focused on **raising awareness on refugee protection and human rights principles** and also aimed to prevent detention and facilitate release. The evaluations of these sessions showed they were well received, with almost all officers indicating that the training materials clearly assisted in their understanding of refugee issues and provided them with new information that was directly relevant to their work. In January 2018, within that project, UNHCR and SUHAKAM co-hosted **an expert session with senior officials from the Immigration Department** to expose UNHCR’s position on the exceptionality of detention of asylum-seekers and refugees and discuss existing alternatives to detention frameworks in other countries.

The office also pursued its **weekly monitoring of detention centres** for the purpose of facilitating the registration and release of persons of concern. Children and other vulnerable groups, including those referred to UNHCR by the ICRC, SUHAKAM and other partners, were identified and prioritised for registration and release during these visits. UNHCR also operated a call-centre and hotline to receive and respond to arrest-related calls from the refugee community and law enforcement officers, provided in-person verification during law enforcement operations and **supported regular court interventions by legal counsels**. Through these activities, UNHCR facilitated the release of 6,567 persons, including 504 children from July 2016 to January 2018.

In 2017, the Kuala Lumpur Legal Aid Centre, SUHAKAM and other UNHCR partners undertook strategic litigation to challenge the immigration detention of asylum-seeking children in Malaysia. The case led to a **landmark decision by the High Court<sup>82</sup> to permit the bail of an asylum-seeking child**, an ATD not previously available in Malaysia. UNHCR and its partners also engaged in a range of judicial engagement activities to improve access to justice and legal assistance in detention. Such events included awareness-raising events among the legal community on safeguards related to immigration detention. In October 2017, the Office participated and sponsored several participants to attend the 6<sup>th</sup> Asia Pacific Pro Bono Conference in Kuala Lumpur. Following this conference, organised together with the Malaysian Bar Council’s Migrant, the Refugee and Immigration Affairs Committee and the NGO Asylum Access, and supported by the Asian Network on Refugees and International Protection, the office **co-hosted a national-level workshop for lawyers on refugee law and practice** in Malaysia. In December 2017, the Asia Pacific Refugee Rights Network, the International Detention Coalition (IDC) and UNHCR co-hosted a Regional Judicial Engagement Workshop.

<sup>82</sup> Reference of this case in footnote 1.

UNHCR successfully engaged a range of new stakeholders on immigration detention in Malaysia and made progress towards more coordinated advocacy for non-detention of children and increased protection for refugees at the national, regional and international levels. This included coordinated and joint engagement between UNHCR and various UN bodies, SUHAKAM and international and national NGOs around Malaysia's development of a National Human Rights Action Plan as well as its review by the Committee on the Elimination of Discrimination against Women and through the Universal Periodic Review (UPR). To support further coordinated engagement, in February 2018, SUHAKAM, the Malaysian Representative to the ASEAN Intergovernmental Commission on Human Rights, the IDC and UNHCR co-hosted a **Civil Society Stakeholder Consultation on Immigration Detention and Forced Displacement**, bringing together refugees and a range of NGOs and stakeholders to agree on a set of recommendations related to improving immigration detention conditions and refugee rights in Malaysia.

UNHCR and its partners also worked to **strengthen existing care arrangements and to support new care arrangements for children** in Malaysia. This included the drafting of a shelter toolkit by the NGO Women's Aid Organization, to improve shelter standards and the drafting of foster care manuals and related standard operating procedures by an NGO, SUKA Society, to support the implementation of a pilot project on foster care later in 2018.

## Gaps and challenges

Little progress was made on the implementation of an ATD pilot project for unaccompanied or separated children (UASCs) agreed to by the Government in 2014. The model proposed would see UASCs released from detention and/or transferred at the point of identification to transitional shelters and into the community, instead of being detained. In 2018, UNHCR, alongside relevant ministries and NGOs, will work together to overcome legal and technical barriers to identify suitable alternative care arrangements in Malaysia for UASCs.

Despite a decrease in the overall numbers, thousands of asylum-seekers, refugees and other persons of concern continued to be detained throughout Malaysia and have endured challenging physical conditions, including overcrowding and exposure to infectious and sometimes fatal diseases. Without a maximum period of detention or formal administrative or judicial channels to challenge their detention, detainees continue to face the risk of long-term or even indefinite detention. The average period of detention for persons of concern to UNHCR exceeded a year.

In the absence of a legal framework to regulate the status of refugees and asylum-seekers in Malaysia, UNHCR relies on well-understood, albeit ad hoc, arrangements with the detention facilities and respective Ministries to perform regular visits, registration, RSD and detention monitoring. UNHCR continues to enjoy good cooperation from authorities during its visits to many of the detention centres, but practices do differ, which can impact on UNHCR's ability to access all individuals and areas of the facilities. This limits UNHCR's capacity to monitor detention conditions and the well-being of persons of concern. NGOs also face difficulties in regularly accessing detention centres, and SUHAKAM experiences both budgetary and access restrictions, impacting its ability to perform regular preventative immigration detention monitoring.

## Next steps

UNHCR will continue to advocate for the implementation of the ATD pilot project for UASCs and to strengthen existing and support new community-based care arrangements for children. This includes undertaking a Child Protection Shelter Capacity Assessment across peninsular Malaysia to identify more shelter spaces while also supporting community-based care initiatives such as a foster care pilot project. UNHCR will also work with new partners to expand and strengthen the number of NGOs involved in child protection case management and monitoring care arrangements.

Together with SUHAKAM, UNHCR will hold a National-level Workshop on Detention Standards with senior members of the Immigration Department as well as awareness-raising sessions on detention standards in detention centres. UNHCR and its partners will continue to support strengthened judicial engagement around immigration detention, including through outreach to senior judges, magistrates and prosecutors, as well as the broader legal community.

UNHCR will undertake regular detention monitoring visits, collect testimonies of those who are detained and prioritise the registration of unregistered asylum-seekers. It will also pursue coordinated engagement with its partners and the Government to support improvements to the overall immigration detention situation in Malaysia.

# MALTA

**IN MALTA**, the reporting period continued to be characterized by a near-total decline in the arrival of asylum-seekers by sea and an increase in the number of asylum-seekers arriving by other regular and irregular means. In December 2015, the Maltese government adopted the *Revised Legislative and Policy Framework for the Reception of Asylum-Seekers*<sup>83</sup> which put an end to the automatic detention upon arrival and introduced safeguards for those most vulnerable.

Despite these positive legislative progress, UNHCR remains concerned that several aspects of the *Revised Legislative and Policy Framework for the Reception of Asylum-Seekers* are unclear, and have not generated full compliance with key legal principles governing detention.<sup>84</sup> While there has been always a reference to alternatives to detention in the 2015 reception legislation – which allows the immigration police the opportunity to systematically consider and apply alternatives to detention (ATDs) – the use of these ATDs is still quite limited.

## KEY DEVELOPMENTS

- Conversion at the end of September 2017 of the Initial Reception Centre at Marsa – where the authorities held persons for medical and identity checks – into an open centre.
- Some improvements witnessed in the last two years with regards to the material conditions in Safi detention centre, now the only detention facility in use. Material conditions, safety, medical checks, activities, treatment and safeguards in detention, still sometimes remain inadequate.
- Publication on 1 February by the Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, of a letter addressed to the Minister for Home Affairs and National Security of Malta following his visit to Malta from 7 to 10 November 2017 where he expressed appreciation for Malta's policy changes to end the automatic detention of migrants. He expressed appreciation for Malta's policy changes to end the automatic detention of migrants.

<sup>83</sup> *Strategy for the reception of asylum seekers and irregular migrants*, Home Affairs and National Security, 30 December 2015 available at: <https://bit.ly/2LsBsw0>. See also *New migration strategy draws a balance between human rights and security*, Press release issued by the Ministry for Home Affairs and National Security, PR152933eng, 30 December 2015, available at: <https://bit.ly/2xkHMu3>.

<sup>84</sup> United Nations High Commissioner for Refugees (UNHCR), *UNHCR's Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers*, 26 February 2016, available at: <https://bit.ly/2J5P7ve>.

After the 2015 reform, while the Government of Malta continued to maintain a general policy of non-detention of children and other vulnerable individuals, in practice, children and other vulnerable persons were still detained at the Initial Reception Centre (IRC) for the purpose of medical checks, even if for a short period of maximum 7 days (including the relocated individuals under the hotspot approach). UNHCR had denounced this situation and welcomed the decision taken at the end of September 2017 to transform this detention centre into an open centre. This put an end to the practice of systematic detention under medical grounds of all new arrivals – including children. After an important decrease in the years 2013 to 2015 at the Safi detention centre, their detention (this time for medical screening purpose at the new IRC) increased in 2016 and 2017. A small increase in the number of adults detained was also noted, with 146 adults detained for immigration-related purposes in 2016 and 169 in 2017 at the Safi detention centre. The number of asylum-seekers detained at Safi followed a similar trend with 14 asylum-seekers detained in 2016 and 57 in 2017.<sup>85</sup>

To address these challenges, UNHCR continues working constructively in cooperation with the national authorities, in particular those competent for the administration of the detention facilities. UNHCR has been granted unlimited access to these facilities and, together with its partner organisation Jesuit Refugee Service (JRS), continues to raise and address the problems to improve the quality of the material conditions of the detention facility and ensure international standards are applied.

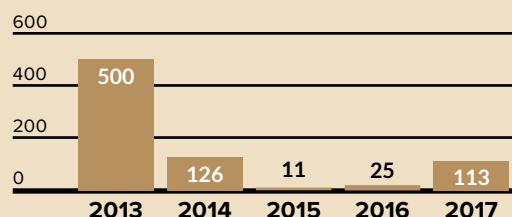
### Activities undertaken by UNHCR and implementing partners during the roll-out period of the Global Strategy

During the initial roll-out period of the Global Strategy, UNHCR Malta submitted observations on the delegated legislation transposing the

<sup>85</sup> Source: Immigration Police. These number do not include those detained for medical clearance purpose at the IRC (number not available).

### GOAL 1 End the detention of children

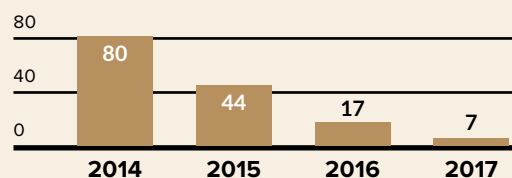
#### NUMBER OF CHILDREN DETAINED



Source: UNHCR registration database

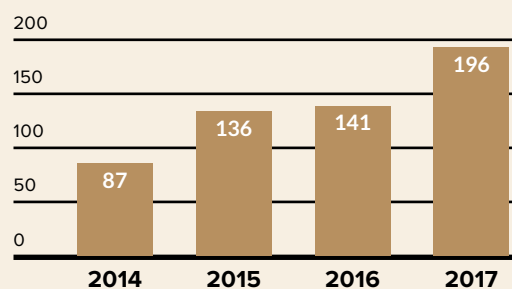
### GOAL 2 Ensure that alternatives to detention (ATDs) are available

#### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



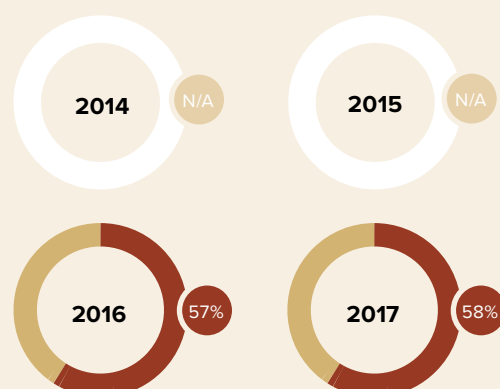
Source: AWAS

#### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



Source: AWAS

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



Source: Immigration Police



TYPES OF ATDs:	2015	2016*	2017*
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

\* The *Reception Regulations*\*\* includes the possibility for the Principal Immigration Officer, when detention is not necessary, proportional and reasonable, to order to report at a police station; to reside at an assigned place; to deposit or surrender documents; to place a one-time guarantee or surety.

\*\* *Subsidiary legislation 420.06 Amended by: L.N. 417 of 2015. Reception of Asylum Seekers*, available at: <https://bit.ly/2IMNQpx>.

Source: Immigration Police

- ☑ *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)?*  
Yes, asylum-seekers have access to accommodation in governmental open centres upon demand, (one NGO also offers accommodation in the form of private houses/flats through funds received from the Government) and to emergency medical care. Minor children have the right to enrol in education and adults have the right to access the labour market after nine months. Legal assistance is not available to asylum-seekers until the appeal stage. Free legal assistance is available to challenge asylum decisions before the Refugee Appeals Board (not for accelerated procedure) and the decisions made by the Immigration Appeals Board (IAB) regarding detention (only first review).
- ⊘ *Is there a case management system in place for alternatives to detention?*

**EU Reception Conditions Directive.**<sup>86</sup> The observations contributed to the introduction of new safeguards and procedures relating to the application of less coercive measures or alternatives to detention, safeguards on the protection of children, access to free legal assistance, access to detainees for families and NGOs (although with restrictions) and to the removal of restrictions on UNHCR's access to detainees. However, despite UNHCR's comments to this end, the legislation passed in December 2015 still raises concerns in particular regarding the interpretation and application in practice of the grounds for detention, the lack of clarity on the applicability of ATDs (less coercive measures other than detention) and the absence of provisions regarding individual assessment based on the necessity to detain and its proportionality to a legitimate purpose.

Since the last reporting period, UNHCR has **conducted weekly visits to the immigration reception centre (IRC)** for adults witnessing a substantial improvement in the conditions, as compared to the previous centres where person where detained automatically. No further visits to the centre for families have been conducted, due to the fact that the authorities stopped using it shortly after due to the stop to boat arrivals. UNHCR coordinates its monitoring visits with the JRS through an implementing partnership agreement to monitor detention and provide individual counselling and legal information to detainees. JRS is present at the Immigration Appeals Board (IAB) hearings and represent some detainees. UNHCR also regularly meets with the Head of Detention Services to discuss key developments and concerns and to discuss jointly solutions to improve both the quality of the conditions and the leisure activities available in the centres (e.g. library, football pitch, etc.).

In July 2017, UNHCR in Malta, together with UNHCR Strasbourg, co-organized a roundtable discussion with the Council of Europe for the Maltese authorities (Immigration police, Ministry for Home Affairs and National Security, the Agency for the Welfare of Asylum Seekers

<sup>86</sup> Idem.

and the Ministry of Health), as well as UNHCR implementing partner, JRS. In this roundtable, much of the discussion revolved around the medical screening justifications employed by the authorities in detaining refugees and asylum-seekers at the Initial Reception Centre for children in Marsa. The Government's argument in maintaining closed facilities was grounded in the prevention of communicable diseases in a small island. Following extensive discussions, there was an acknowledgement from the Government of Malta that detention on basis of medical screening without a detention order in accordance with law runs the risk of exposing Malta to legal liabilities. In August 2017, the **authorities took on board these UNHCR-CoE recommendations and the Initial Reception Centre became an open centre.**

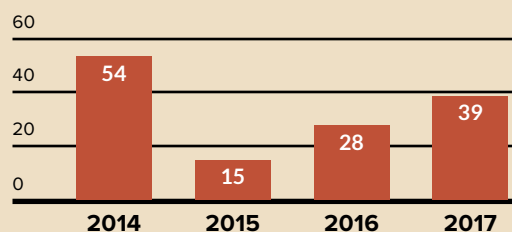
UNHCR also conducted **regular monitoring visits to detention centres** (monthly visits in 2017), sharing recommendations with the authorities after every visit, in particular on the quality of the detention facilities, the provision of suitable food and drinkable water, the provision of information, the possibility to communicate with lawyer and family members and the availability of on-site doctors. An implementing partnership agreement was set up with JRS in 2017 to further augment detention monitoring and services provided. This agreement consists of a legal support component, whereby JRS provides individual counselling and legal advice to individual detainees, whilst UNHCR continues monitoring the material conditions and undertakes advocacy with the authorities.

## Gaps and challenges

Following the transposition of the recast Reception Conditions Directive, concerns were expressed by UNHCR and local NGOs that ATDs could be imposed when no ground for detention is found to exist. The wording of the legislation and the Strategy Document seem to imply that ATDs may apply in all those cases where detention is not resorted to, including those cases where there are no grounds for the detention of the asylum-

### GOAL 3 Ensure that conditions of detention meet international standards

#### NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



NB: The increase of monitoring visits is due to the weekly regular visits to the IRC. Now that this centre is closed, this number will be reduced.

LEGEND: ☑ Yes ☒ No ☐ Partially

N/A Not available U Unknown

SOURCE: Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

seeker. This goes against the letter and the spirit of the EU Directive, where alternatives to detention should only be applied in those cases where there are grounds for detention. The placement of 35 persons<sup>87</sup> in August 2013 in ATDs, after their release from detention illustrates this misuse of ATDs. These persons, who already had applied for protection and provided all the required information, were placed under ATD without any ground for detention. They were requested to report regularly at the police station, to reside at an assigned place and to deposit some of their documents.<sup>88</sup> JRS also reported that in rare cases, when reviewing the lawfulness of the detention, the IAB considered it lawful, but ordered that an ATD be implemented. NGOs also reported that in 2017 some applicants rescued at sea and sent to the IRC did not go through a vulnerability assessment even

<sup>87</sup> Official figures provided by the Immigration Police.

<sup>88</sup> There are no available statistics on compliance rates.



#### TRAININGS ORGANIZED IN MALTA DURING THE REPORTING PERIOD

Training was not conducted in 2017. Additionally, due to the closure of the IRC and fewer arrivals, UNHCR decided to prioritise other activities in the reporting period.

#### NUMBER OF PERSONS TRAINED IN MALTA DURING THE REPORTING PERIOD

though their vulnerability was apparent. As a result, some of them were placed in detention, in contravention to national law and policy. These applicants were eventually released on vulnerability grounds following a review conducted by the IAB. In this regard, free legal assistance is available to challenge asylum decisions before the Refugee Appeals Board (not for accelerated procedure) and the decisions made by IAB regarding detention (but only first review).

Furthermore, the amended law foresees possibilities to review the lawfulness of the detention and this review must be automatically conducted by the IAB after 7 working days from the detention order, which may be extended by another 7 working days.<sup>89</sup> If the applicant is still detained, a new review must be conducted after regular periods of two months thereafter. When the IAB rules that detention is unlawful, the applicant should be released immediately. Free legal assistance must be provided for this review according to the Regulations. However, from the practice observed in 2016 and 2017, review of detention usually is not done after the first 7 days but only a few weeks later. Furthermore, due to the unclear wording of the law, the IAB, NGOs and legal practitioners failed to agree on the precise detention review schedule required by the Regulations. Parallel to this automatic review, the new Reception Regulations provide for the possibility to challenge the detention order before the IAB within 3 working days from the order. In practice, it is practically impossible to challenge the detention order itself as asylum-seekers are not in capacity to submit such an appeal on such short notice as there is not enough time to seek the assistance of a lawyer. These difficulties were also highlighted by the European Court of Human Rights (ECtHR) in the cases brought against Malta by detained asylum-seekers.<sup>90</sup>

Appeals to the Immigration Appeals Board are particularly problematic for asylum-seekers who are detained, as no information is provided on how to access the Board and its procedures. This was also highlighted by the ECtHR in its Article 5 ECHR cases against Malta.<sup>91</sup> JRS and Aditus foundation have noticed that people arriving irregularly by plane and apprehended at the airport were usually immediately detained without being taken to the IRC. This issue has persisted in 2017, and attempts to challenge this almost automatic detention before the IAB and the Criminal Courts have proved unsuccessful.

<sup>89</sup> Regulation 6(3) *Reception Regulations*.

<sup>90</sup> ECtHR, Louled Massoud v. Malta, Application No 24340/08, Judgment of 27 July 2010; Aden Ahmed v. Malta, Application No 55352/12, Judgment of 23 July 2013; Suso Musa v. Malta, Application No 42337/12, Judgment of 23 July 2013; ECtHR, Abdi Mahamud v. Malta Application no. 56796/1, judgement of 3 May 2016.

<sup>91</sup> *Ibid.*

To conclude, while the revised legislation no longer supports the automatic and mandatory detention of asylum-seekers who have entered Malta in an irregular manner, UNHCR remains concerned with the interpretation of the legal grounds for detention and its alternatives. There is still lack of clarity on the applicability of ATDs, and on the need to establish safeguards to ensure that both detention and its alternatives are always used in proportionality to a legitimate purpose. Some of the guidelines for immigration authorities contained in the new policy document, are not fully in line with well-established international human rights and refugee law standards – in particular Article 31(1) of the 1951 Refugee Convention – and could potentially lead to situations of arbitrary and unlawful detention. In practice the process of detaining individuals is often inconsistent and arbitrary, requiring continuous UNHCR monitoring.

## Next Steps

UNHCR Malta's next steps under the Global Strategy will be to monitor the implementation of the new legal and policy developments to Malta's detention framework, including the implementation of detention review mechanisms. In order to do so, the office will further enhance its relationship with NGO partners and Malta's National Preventive Mechanism through regular coordination meetings. Findings from the visits to detention will be discussed with the authorities and they will also be encouraged to take measures addressing the situation in detention, in light of the ECtHR's decisions in *Louled Massoud v. Malta*,<sup>92</sup> *Suso Musa v. Malta*<sup>93</sup>, *Aden Ahmed v. Malta*,<sup>94</sup> and most recently in *Abdi Mahamud v. Malta*.<sup>95</sup>

Additionally UNHCR will issue an updated position paper on how the *Revised Legislative and Policy Framework for the Reception of Asylum-Seekers* has been implemented in practice since its adoption in December 2015.

Finally, the office will also pursue ongoing detention monitoring activities, including counselling and referral of persons of concern to alternatives to detention, as well as regular meeting and contacts with detention staff and the Ministry of Home Affairs and National Security concerning the findings of monitoring activities.

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<sup>92</sup> European Court of Human Rights *Louled Massoud v. Malta* (Application No. 24340/08) 27 October 2010.

<sup>93</sup> European Court of Human Rights *Suso Musa v. Malta* (Application no. 42337/12) 9 December 2013.

<sup>94</sup> European Court of Human Rights *Aden Ahmed v. Malta* (Application no. 55352/12, 9 December 2013.

<sup>95</sup> European Court of Human Rights, *Abdi Mahamud v. Malta* (Application no. 56796/1) 3 May 2016.

# MEXICO

**DURING 2016**, Mexico's Government undertook various commitments in relation to refugee protection. In particular, during the San Jose Roundtable in July 2016, the Mexican Government committed to: facilitating alternatives to administrative detention for asylum-seekers in coordination with civil society organizations and UNHCR, following the issuance of temporary residence permits; continue sharing its experience and tools for the identification of protection needs of vulnerable populations, including girls, boys and adolescents; and continue strengthening the network of Special Protection Defenders in the entire country to assist girls, boys and adolescents in situations of heightened vulnerability, including migrants and asylum-seekers. During the 2016 September Leaders' Summit on Refugees, President Peña Nieto committed to ensuring alternatives to detention (ATDs) for asylum-seekers, with a special commitment to release all children under 11 years old from migratory stations by December 2016.

## KEY DEVELOPMENTS

- Launch in August 2015 of a pilot ATD project by the International Detention Coalition (IDC) and its national partners Casa Alianza and Aldeas Infantiles. This project proposed by the IDC to the Citizen's Council of the *Instituto Nacional de Migración* (INM) aimed to develop mechanisms of identification, referral and reception of detained asylum-seeking and migrant unaccompanied and separated children (UASC). This pilot project benefited 20 UASC through release from detention, into specialized community-based care arrangements.
- Release of approximately 80 asylum-seekers (mostly families with children headed by women) by the Mexican Commission for Refugees (COMAR) and INM in a separate pilot project, implemented from February to May 2016 in Mexico City.
- Establishment, in July 2016, of an INM and COMAR run programme (with technical support from UNHCR) releasing asylum-seekers from detention. In 2016, the programme led to the release of 663 individuals and in 2017, 1,292 individuals (including 333 children). Released asylum-seekers are referred to shelters supported by UNHCR. Once released, asylum seekers are expected to sign a record book at COMAR and INM on a weekly basis.
- Creation in October 2016 of an open-door shelter for unaccompanied asylum-seeking and refugee children in the state of Tabasco run by the Child Protection Authority (DIF) that focuses on promoting their integration into the local community, the first of this kind in Mexico. Other states (Chiapas and San Luis Potosí) have expressed interest in developing such shelters for UASC seeking asylum.
- Decision by a Mexican Federal Court in May 2017 underlining that indiscriminate detention of asylum-seekers in migration detention centers while they await resolution of their cases by COMAR is arbitrary, a decision in line with standards established by the Inter American Court of Human Rights.<sup>96</sup>

<sup>96</sup> *Juicio de Amparo en Revisión 311/2016*, available at: <https://bit.ly/2KSNG0p>

- Issuance in 2017 by the National Human Rights Commission (CNDH) of four non-binding recommendations documenting protection gaps within Mexico's asylum protection framework, including several related to detention. The CNDH found that the INM and COMAR have failed to comply with the principle of the best interests of the child and documented human rights violations of people held in migratory detention centers.<sup>97</sup>

- Publication in 2017 by the INM's Citizens Council<sup>98</sup> of an extensive and well-documented report on detention conditions in migratory detention centers. The report followed the methodology contained in the UNHCR-APT-IDC Practical Manual on Monitoring immigration detention<sup>99</sup> and included several recommendations for the INM and other authorities.<sup>100</sup>

In the context of the Comprehensive Regional Protection and Solutions Framework (MIRPS, for its acronym in Spanish), the Mexican Government committed to continue to increase the number of alternatives to administrative accommodation for asylum seekers, primarily for unaccompanied children and adolescents, families, persons in a vulnerable situation, the elderly and persons in need of medical and health care.

<sup>97</sup> See recommendations with references: 35/2017 (August 31<sup>st</sup>, 2017); 47/2017 (September 29, 2017); 51/2017 (October 24, 2017); and 59/2017 (November 22<sup>nd</sup>, 2017). All recommendations are available at: <http://cndh.org.mx/Recomendaciones>.

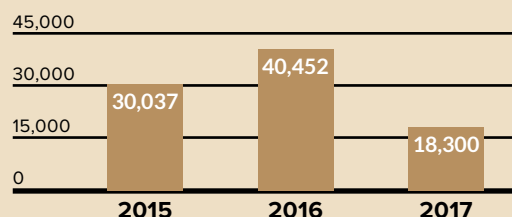
<sup>98</sup> INM's Citizen Council is composed of representatives of NGOs and holds regular advisory sessions with the INM Commissioner to advise on implementation of migration policy.

<sup>99</sup> UN High Commissioner for Refugees (UNHCR), UNHCR, Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), *Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>.

<sup>100</sup> "Personas en Detención Migratoria en México. Misión de Monitoreo a Estaciones Migratorias y Estancias Provisionales del Instituto Nacional de Migración", Consejo Ciudadano del Instituto Nacional de Migración, Mexico, July 2017, available at: <https://bit.ly/2lJyl5x>.

## GOAL 1 End the detention of children

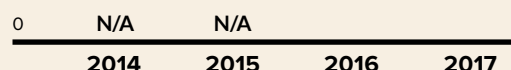
### NUMBER OF CHILDREN DETAINED



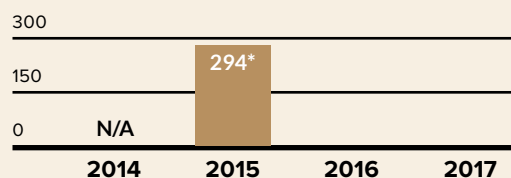
Source: Secretaría de Gobernación, Unidad de Política Migratoria, Boletín estadístico anual 2015, 2016, 2017, available at: <https://bit.ly/2s6LivT>.

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

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES

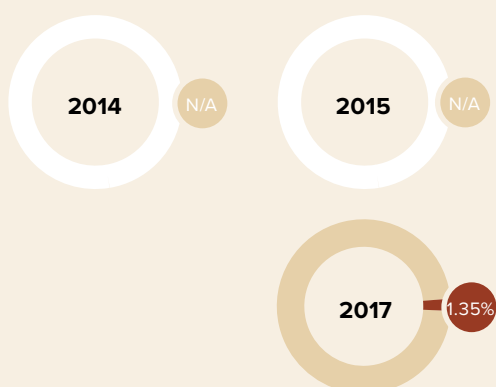


\* Some of the shelters are for migrants, asylum-seekers and refugees.

TYPES OF ATDs:	2015	2016	2017
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)**



- Is there a mechanism allowing asylum-seekers to stay legally in the community?*  
Formally, yes. The Government issues temporary stay document for humanitarian reasons to asylum-seekers who are granted an alternative care arrangement (a 1 year residence permit that allows POCs to work). However, these permits are not recognized by most employers and do not guarantee access to all services provided by the Government.
- When residing in the community, do asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance)?*  
Formally, yes. However, access to these rights can vary depending on regional practices throughout the country. Lack of access to CURP\* for asylum-seekers represents a major challenge because access to many services depends on this.
- Is there case management provided in ATDs?*

\* The CURP - Unique Population Registry Code - is and individualized identification code that allows individuals to access rights and services provided by the Government. Employers also require a CURP to register employees.

**LEGEND:**  Yes  No  Partially  
N/A Not available U Unknown

**SOURCE:** Indicators were compiled based on UNHCR and/or UNHCR’s implementing partner(s) monitoring visits and observations, except if otherwise stated

It is worth noting that Mexican legislation foresees mandatory detention in *estaciones migratorias* for every adult found to be in an irregular migratory situation in the country. In 2016, 186,216 persons were detained for immigration-related purposes, including 40,452 children. In 2017, the number decreased significantly: 95,497 persons were detained, including 18,300 children<sup>101</sup> (10,870 children in family and 7,480 unaccompanied).

**Activities undertaken by UNHCR and implementing partners during the roll-out period of the Global Strategy**

Since May 2016, a national consultant has been undertaking activities to implement **country-wide immigration detention monitoring and capacity building programs** focused on the protection of children and families and other persons at risk in detention, along with technical assistance and awareness-raising activities regarding international standards. These actions were part of the Global Technical Assistance and Capacity building programme funded by the European Union to prevent the detention of children and to protect children and other asylum-seekers in detention.

Throughout 2016 and 2017, UNHCR regularly conducted **visits to detention centers**. In 2017, UNHCR and legal aid partners conducted 657 visits, during which 3,500 detainees with international protection needs were identified and provided with information on asylum. Additionally, 19,902 persons in detention were informed of their right to seek asylum. In order to make these visits more effective, efforts were made to strengthen monitoring tools and capacities; 20 UNHCR staff members received training on UNHCR standards and guidelines related to detention (including ATDs, monitoring and child’s rights).

As part of UNHCR’s efforts to deepen its understanding of the national context and the

<sup>101</sup> This reduction in the number of detainees is a consequence of a reduced migration flow observed not only in detention centres but also in shelters, and has also been noted by other stakeholders.

work undertaken by stakeholders involved in the field of immigration detention and the protection of child's rights, a mapping and awareness-raising session was organized in coordination with the ICRC with NGOs monitoring detention centers. This has led to more coordination in the activities and the **setup of common advocacy goals at local level**, particularly in Tapachula, where the largest detention center is located, and in which several NGOs conduct regular monitoring.

Additionally, 16 participatory assessments have been conducted with asylum-seekers and refugees in several detention places and shelters (including 23 focal groups with children, adolescents and UASC), to **collect information on conditions** in detention centers, DIF and private shelters, as well as on the INM and COMAR program releasing asylum-seekers to the community. Results of these assessments will inform UNHCR's ongoing collaboration and technical assistance efforts with INM and COMAR throughout 2018 and 2019.

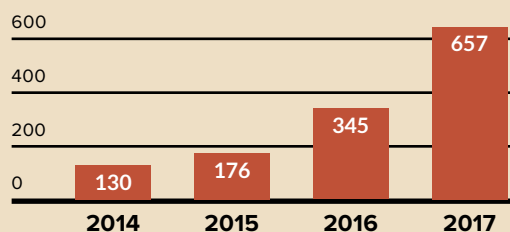
UNHCR also reinforced its coordination with authorities by holding regular meetings with the INM to discuss challenges relating to the INM and COMAR program releasing asylum-seekers from detention. Civil society handling shelters have also participated in these coordination efforts.

Similarly, in coordination with UNICEF, in 2017, UNHCR pursued capacity-building and awareness-raising activities with INM, COMAR and DIF officials in order to **enhance institutional screening capacities**. UNHCR has also collaborated with governmental authorities by offering support to Colibrí, an open-door shelter for asylum-seeking and refugee teenagers in the Southern state of Tabasco.<sup>102</sup> The Office advocated for the adoption of this model in other states; at the end of 2017, two states expressed their interest in developing the model. During 2018, supporting authorities in these two states will be a priority.

In order to reinforce coordination and identification of persons with international protection needs

**GOAL 3** Ensure that conditions of detention meet international standards

**NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)**



**LEGEND:** ☑ Yes ☐ No ⦿ Partially  
N/A Not available U Unknown

**SOURCE:** Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

in the field, the office also continued supporting REDODEM, a wide network of shelters hosting migrants and asylum-seekers. The office delivered trainings to members of this network who provide valuable information on **access to asylum** for those in need (individuals who make claims directly to a COMAR or INM Regularisation office can avoid detention). REDODEM shelters also host and provide assistance to asylum-seekers released from detention and assist in accessing rights and services.

Through collaboration with a range of shelters (regularly run by civil society or religious institutions), UNHCR has been able to ensure that families and individuals seeking asylum who are not detained have a place to stay for the duration of the asylum procedure. In 2018, UNHCR has **partnership agreements with 10 shelters and collaborates with 27 others**.

<sup>102</sup> "Colibrí" is a shelter hosting unaccompanied refugees. It has capacity for 28 teenagers (boys and girls). Its model is inspired by that applied by Covenant House which privileges an "open door" approach (an exception in Mexico), focusing on integrating teenagers into society and helping them to prepare for independent living when they reach adulthood. They receive specialized psychological support and learning opportunities as well as legal aid from Asylum Access (a UNHCR partner). UNICEF has been supporting the shelter's administrative board to develop and implement the model.





#### TRAININGS ORGANIZED IN MEXICO DURING THE REPORTING PERIOD

- 17 on Asylum Law, including UNHCR Detention guidelines
- 1 on Detention monitoring methodology
- 24 on Child Protection
- 6 on Attention to vulnerable groups
- 6 on Reception and Alternatives to Detention
- 1 on Detention condition standards
- 1 on Screening and Referral

#### NUMBER OF PERSONS TRAINED IN MEXICO DURING THE REPORTING PERIOD

- 1,074 on Asylum Law, including UNHCR Detention Guidelines
- 20 on Detention monitoring methodology
- 615 on Child Protection

UNHCR has also focused on disseminating information on the right to asylum and refugee status determination procedures in Mexico in order to ensure that asylum-seekers are identified and can make a claim while still in the community (thereby avoiding detention), and that they can be referred to a shelter.

Additionally, UNHCR continued organizing trainings for lawyers and judges on judicial engagement on detention-related cases. The objective is to provide tools to legal partners for the inclusion of international standards on detention in the legal remedies presented and support the development of a litigation strategy related to detention.

Finally, UNHCR **promoted the implementation** by INM and COMAR **of the UNHCR-IDC Vulnerability Screening Tool (VST)**<sup>103</sup> in the context of the program releasing asylum-seekers from detention.

## Gaps and challenges

The legal framework which outlines the bases for detention continues to be a challenge as it *establishes mandatory* detention in *estaciones migratorias* as a measure applicable to every adult found to be in an irregular migratory situation in the country. This includes detention of individuals who make a claim at a land border or airport. It also fails to specify maximum detention periods for people submitting administrative or judicial remedy while in detention and does not include periodic reviews.

Positively, national law prohibits the detention of children (both accompanied and unaccompanied), but in practice, children, including asylum-seekers, remain in large number deprived of liberty in *estaciones migratorias* or closed-door DIF shelters. Very few UASC in detention seek asylum, as introducing an asylum claim may delay their release from an *estación migratoria* and if recognised as refugees, they may be referred to a closed-door DIF shelter until they turn 18 years old. While the establishment of the Child Protection

<sup>103</sup> UN High Commissioner for Refugees (UNHCR), UNHCR and IDC (2016), *Vulnerability Screening Tool – Identifying and addressing vulnerability: a tool for asylum and migration systems*, 2016, available at: <https://bit.ly/2sldrFY>.

Act<sup>104</sup> offers a solid legal framework to address ongoing child protection concerns, the lack of systematic implementation of best interests procedures in the context of detention, deportation, refugee status determination and family reunification means that UASC continue to be detained and deported, and it also has contributed to the low number of asylum claims. Although asylum applications submitted by UASC have risen in recent years, with an increase of 82% between 2015 (142 applicants), and 2017 (259 applicants), application rates are still low compared to the number of UASC detained by migration authorities.

Although it is extremely positive, the INM and COMAR-run ATD programme, which began in July 2016, lacks a normative framework and this generates uncertainty. However, further legislative reforms would be needed to ensure the program is subject to oversight and has clear standards.

In September 2017, Mexico experienced an earthquake that rendered COMAR's premises uninhabitable. This, coupled with the continuing increase in asylum claims, has had an impact on COMAR's increasing backlog, including the issuance of documentation which has a direct impact in the length of detention of asylum-seekers.

## Next Steps

With the upcoming general elections and a new Government scheduled to take office on December 1<sup>st</sup> 2018, UNHCR will focus in 2018-2019 on consolidating the progress achieved since 2016 and on developing strategic documents on its priorities, which it will present to the new authorities.

Advocacy to obtain reforms to the legal framework will be prioritized, especially to ensure non-detention of persons claiming asylum at any entry point in the country and the availability of appropriate reception and ATDs.

UNHCR detention monitoring efforts will continue to support effective access to asylum procedures. Additionally, UNHCR recommendations will be used to enhance cooperation with INM management and staff stationed in detention centres and airports, as well as with DIF staff from shelters for children.

Cooperation with other actors monitoring detention centers, particularly with the National Human Rights Commission (CNDH)<sup>105</sup>, will be on the agenda to ensure that conditions of migratory detention are compliant with international standards. This will be coupled with efforts to reinforce access to legal assistance in detention and to strengthen capacities of legal partners and lawyers at the Public Defender's Office through the organization of trainings and regular communication and referral of cases. Strategic litigation through UNHCR legal partners and the implementation of a common strategy will be prioritized.

Additionally, UNHCR will continue supporting civil society shelters hosting asylum-seekers and refugees and will strengthen its efforts to support the development and implementation of actions to guarantee the sustainability of shelters receiving asylum-seekers released from detention, including professionalization, funding and infrastructure.

UNHCR will also continue advocating for more open-door DIF shelters and alternative care arrangements for UASC in different states in Mexico in order to ensure that when released from migratory detention centers, UASC are not housed in detention-like conditions or shelters that are not tailored to their needs.

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<sup>104</sup> *Ley general de los derechos de niñas, niños y adolescentes*, December 2014, available at: <http://goo.gl/al3VSD>; *Reglamento de la ley general de los derechos de niñas, niños y adolescentes*, December 2015, available at: <http://goo.gl/zl66O9>

<sup>105</sup> In 2017, the CNDH issued four non-binding recommendations documenting protection gaps within Mexico's asylum protection framework, including human rights violations of people held in migratory detention centers. The following are the recommendations issued: 35/2017 (August 31st, 2017); 47/2017 (September 29, 2017); 51/2017 (October 24, 2017); and 59/2017 (November 22nd, 2017). All are available at: <http://cndh.org.mx/Recomendaciones>.

# UNITED KINGDOM

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**THE UNITED KINGDOM (UK)** continues to rely on and utilise detention in asylum procedures more frequently than most other countries in the EU. In the UK, asylum-seekers may be detained: to establish their identity or basis of claim; to effect removal; or where there is reason to believe they will fail to comply with conditions of bail. The UK is the only country in the EU that does not have a general time limit on immigration detention.

## KEY DEVELOPMENTS

- Schedule 10 of the *Immigration Act 2016* came into force on 15 January 2018.<sup>106</sup> Amongst other changes, this ensures automatic judicial oversight of detention. In practice, the Immigration and Asylum Chamber of the First-tier Tribunal will automatically list bail hearings every four months for those persons who remain in immigration detention. There is as yet no published statistics or available information on this process which may lead to a greater reliance on alternatives to detention.
- In September 2016, The Home Office published their policy in relation to *Adults at Risk in Immigration Detention*<sup>107</sup>. This policy was subject to litigation in March 2017. In March 2018, the Home Office laid before Parliament proposed new guidance and a statutory instrument to amend the *Detention Centre Rules 2001*. The changes are expected to come into force in July 2018.
- Missions to the UK by the HCR and the Assistant High Commissioner for Protection (AHC-Protection) in 2017 included advocacy for a reduced use of immigration detention and improved usage of ATDs. In Parliament, UNHCR and partners engaged with Members of Parliament and Peers to raise awareness of the issue and advocate for reform.
- In 2017 the Home Office committed to introducing ATD pilots. UNHCR met with Home Office officials and civil society stakeholders in order to develop ATD pilots for roll out in 2018 and 2019, with workshops held in 2017 and 2018 to progress this key positive development.
- Throughout 2016 and 2017 and into 2018, there were two predominant social media campaigns in relation to immigration detention. They were #Time4aTimeLimit; and #unlockingdetention. UNHCR regularly used these hashtags in social media messaging.

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<sup>106</sup> Schedule 10, *Immigration Act 2016*, available at <https://bit.ly/2kr7i0y>

<sup>107</sup> Home Office, *Immigration Detention Policy on Adults at Risk in Immigration Detention*, available at <https://bit.ly/2knak5U>.

At the end of December 2017, there were 2,138 people held in detention (excluding prisons), which represented a 22% decrease from 2016<sup>108</sup>. An additional 407 people were held in prisons. 1,508 people who had sought asylum at some stage were being detained solely under the Immigration Act powers (representing 59% of all immigration detainees).<sup>109</sup> The total number of asylum-seekers detained in the UK also dropped from a total figure of 14,811 in 2016 to 12,916 in 2017 (12.8%).<sup>110</sup> The number of children detained has significantly reduced. A small number are, however, still kept in “pre-departure accommodation” or short-term holding facilities for short periods of time. Throughout 2017, according to the Home Office statistics, 42 children entered detention, of whom 29 were asylum detainees. 18 of these children were detained at the Gatwick pre-departure accommodation, and 10 at Tinsley House Family Unit. At the end of 2017, however, there were no children recorded as being held in detention.<sup>111</sup>

UNHCR visited Tinsley House Immigration Removal Centre in July 2018. The visit was to tour the recently opened Pre-Departure Accommodation wing for families who are detained pending removal, as well as a visit to the general detention area for adult male detainees.

In September 2017, Mr Stephen Shaw, the former Prisons and Probation Ombudsman for England and Wales, began his second review into the welfare of vulnerable persons held in detention. The first review had been published in January 2016<sup>112</sup> and contained numerous recommendations in respect of improving screening and routing and investigating alternatives to detention. In its response to the review,<sup>113</sup> the government

<sup>108</sup> 2,738 persons were detained end 2017. UK Home Office, Immigration Statistics, available at: <https://bit.ly/2BIZ2Tg>

<sup>109</sup> UK Home Office, *Immigration Statistics*, published February 2018, available at: <https://bit.ly/2BIZ2Tg>

<sup>110</sup> UK Home Office, *Immigration Statistics*, published February 2018, available at: <https://bit.ly/2GNKGJz>

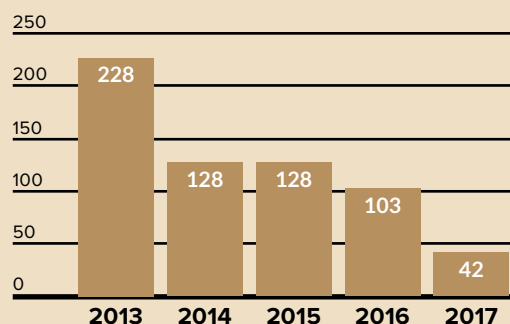
<sup>111</sup> Ibidem.

<sup>112</sup> *Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office by Stephen Shaw*, January 2016, available at: <https://bit.ly/2mUYDqI>

<sup>113</sup> Government response to the review on welfare in detention of vulnerable persons, January 2016, available at: <https://bit.ly/2sicpnI>

## GOAL 1 End the detention of children

### NUMBER OF CHILDREN DETAINED



Source: National Statistics Home Office, available at: <https://bit.ly/2sciX6L>; and <https://bit.ly/2BIZ2Tg>

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

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC

Year	U	U	U	U
	2014	2015	2016	2017
0				

### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES

Year	U	U	U	U
	2014	2015	2016	2017
0				

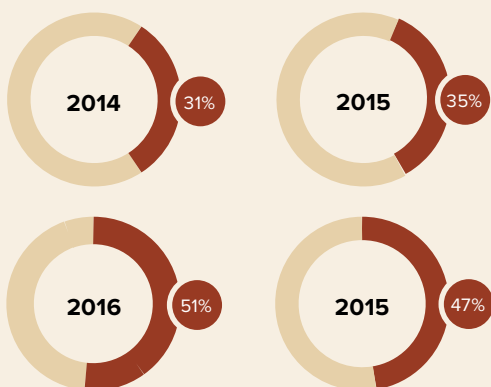
TYPES OF ATDs:	2015	2016	2017
Deposit or surrender of documentation			
Reporting conditions	☑		
Directed residence	☑		
Residence at open/semi-open reception/asylum centres			
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety	☑	☑	☑
Community supervision arrangements			

☑ available in legislation ☑ used in practice

**2018:** (as at 15 January 2018 – as per schedule 10 of the Immigration Act 2018) Bail with conditions, such as the requirement for the person to appear before or report to the Secretary of State or the Tribunal at a specified time and place; the restriction on work, occupation or studies; specified residence; electronic monitoring; and ‘such other conditions as the person granting the immigration bail thinks fit.’

Source: Immigration Act 2016, available at: <https://bit.ly/2GPcyn9>

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

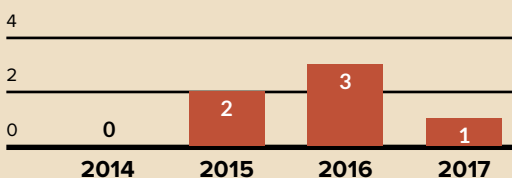


Source: National Statistics Home Office, available at: <https://bit.ly/2BIZ2Tg>

- ✔ *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)?*
- ✔ *Is there case management provided in ATDs?*  
Yes, in the ATDs implemented by Detention Action.

**GOAL 3** Ensure that conditions of detention meet international standards

**NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)**



**LEGEND:** ✔ Yes ✘ No ○ Partially  
N/A Not available U Unknown

**SOURCE:** Indicators were compiled based on UNHCR and/or UNHCR’s implementing partner(s) monitoring visits and observations, except if otherwise stated

undertook various changes, including a moderate reduction in the use of detention. The purpose of the second review is to assess the Government’s response to the recommendations arising from the first review. UNHCR met with Mr Shaw in 2017 to discuss the position on ATDs and the use of detention in the UK. It is anticipated that the report will be published in mid-2018 with a Government response to the second review being made in Parliament on the day of publishing. UNHCR recognises the positivity of this work and the open debate which is happening in the UK as a result of the reviews conducted by Mr Shaw and his team.

In January 2018, The Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment published the response of the UK<sup>114</sup> to the report on the CPT’s April 2016 visit to the United Kingdom.<sup>115</sup> Key aspects of this response include the commitment to review health care services, with the NHS being commissioned to complete a review. The Government did not, however, commit to the introduction of a time limit which was recommended by the CPT.

UNHCR continued to work in close cooperation with NGOs working in the fields of immigration, asylum, detention and medical care in detention in the UK who give regular feedback and their concerns. The Office also continued during the reporting period to update stakeholders on the progress of its work under the Global Strategy through briefings and meetings with stakeholders.

<sup>114</sup> *Response of the Government of the United Kingdom to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the United Kingdom from 30 March to 12 April 2016*, available at: <https://rm.coe.int/pdf/168077fa13>

<sup>115</sup> *Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 12 April 2016*, available at: <https://rm.coe.int/168070a773>



#### TRAININGS ORGANIZED IN UNITED KINGDOM DURING THE REPORTING PERIOD

4 on Asylum Law, including  
UNHCR Detention Guidelines

4 on Attention to vulnerable  
groups

#### NUMBER OF PERSONS TRAINED IN UNITED KINGDOM DURING THE REPORTING PERIOD

250 on Asylum Law, including  
UNHCR Detention Guidelines

250 on Attention to vulnerable  
groups

## Activities undertaken by UNHCR and implementing partners during the roll-out period of the Global Strategy

Throughout 2017 and early 2018, UNHCR continued to advocate for a reduction in immigration detention and strengthened use of alternatives to detention (ATD) in the UK. UNHCR met with Mr Shaw in 2017 to discuss the position on ATDs and the use of detention in the UK. In late 2017, the Home Office, with UNHCR support, convened a roundtable discussion on ATDs with government counterparts from Sweden and Canada. Participants agreed to continue to discuss key issues, including: (1) Identification of and strategies for implementing ATDs, including for vulnerable people (with HO interest in learning about UNHCR, IDC *Vulnerability Screening Tool* (VST)); and (2) collaboration with NGOs.

In early 2018, UNHCR and the UK Home Office convened an ATD workshop which included civil society stakeholders. Subject to ministerial approval, the UK Home Office will now take the lead in starting work to design and implement ATD pilots. UNHCR continues to support this process and advocate for a strong focus on case support in the development of ATD pilots. The latter represents a very important strategic step forward in our efforts to promote ATDs in the UK.

February 2018, UNHCR presented the UNHCR-IDC *Vulnerability Screening Tool* (VST)<sup>116</sup> to key members of staff in Immigration Enforcement, Asylum/Detention Policy and Operations at the Home Office. The Home Office expressed interest in the VST. In a separate meeting in February 2018, UNHCR also presented the VST to the UK Detention Monitoring Group. UNHCR have had positive feedback, and will continue to advocate for the inclusion of elements of the VST into UK screening and routing policy.

In 2017, there was an expose into allegations of abuse within Brook House Immigration Removal Centre. Highlighted allegations included: assault, racial abuse; and failure to report control/restraint. UNHCR submitted evidence to the parliamentary inquiry and will continue to monitor this situation. As yet, the report of the Committee has not been published.

<sup>116</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR and IDC (2016), Vulnerability Screening Tool – Identifying and addressing vulnerability: a tool for asylum and migration systems*, 2016, available at: <http://www.refworld.org/docid/57f21f6b4.html>.

## Gaps and challenges

Cuts in legal aid and further restrictions on judicial reviews have made it more difficult to bring cases challenging detention before the courts. This has resulted in persons remaining within the Immigration detention estate without easy access to legal representatives. In light of the lack of a time limit on detention, this increases the risk of indefinite detention.

The UK does not have a time limit on detention. Despite this fact, some progress was achieved through the *Immigration Act 2016*,<sup>117</sup> when on 15 January 2018, automatic judicial review was introduced for all people in detention after four months of detention or from four months following their last bail application.<sup>118</sup> The time limit of not more than 72 hours for pregnant women continues.

While ATDs are used relatively widely in the UK, they do not currently follow a community-based engagement-focused approach. As discussed with the Home Office, there are valuable opportunities and interest in strengthening the quality of ATDs in use for improved case resolution and outcomes.

## Next Steps

The detention landscape in the UK remains challenging and complex as the Detention Fast Track is still suspended and detained asylum casework remains in policy and procedure. In response, UNHCR will have to continue to adjust its strategy going forward as the situation develops.

The introduction by law of automatic judicial oversight after four months in detention and the Adults at Risk policy developments alongside the introduction of the detention gatekeeper and case progression panels indicate some progress. The recent Home Office shift in focus to strengthen ATDs and the reduction in reliance on the detention estate are also signs of gradual progress being made. This progress is expected to be advanced through the publishing of the forthcoming second Shaw Review. UNHCR will continue to engage with the UK authorities and other stakeholders to promote the use of ATDs. Where possible, it will continue to advocate for the introduction of a time limit on immigration detention.

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<sup>117</sup> *Immigration Act 2016*, available at <https://bit.ly/2kr7i0y>

<sup>118</sup> *Ibidem*, schedule 10.

# ZAMBIA

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**IN APRIL 2017**, Zambia repealed the Refugee (Control) Act of 1970 and enacted a new refugee law. *The Refugee Act no. 1 of 2017*<sup>119</sup> has maintained some restrictive provisions, including the encampment policy and some restrictions on freedom of movement for asylum-seekers and refugees, limitation to the right to work, and the requirement to submit an asylum application within 7 days of entry into the country. Despite having maintained some of these restrictive provisions, the new Act presents opportunities to further improve the protection environment in Zambia. The *Refugee Act* has domesticated both the *1951 Refugee Convention* and the *1969 OAU Convention*, including most refugee rights; institutionalised the Office of the Commissioner for Refugees; created a Refugee Fund; provided for status determination procedures and introduced concepts of vulnerability and special procedures for women and children. The Act also provides for the right to education and the right to self-employment. The implementing regulations to the new law are yet to be published.

## KEY DEVELOPMENTS

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- Announcement at the Obama Summit in New York in 2016 by the President of the Republic of Zambia of the Government's commitment to consider the possibility of relaxing the encampment policy to enhance the movement of refugees and enable them engage in gainful employment and self-reliance activities. Together with the introduction of provisions on self-reliance in the new refugee law, this Presidential pronouncement created room to advocate for enhanced implementation of ATDs.

- Establishment by the Government of 5 semi-permanent reception facilities for asylum-seekers in the border areas, as a result of the Government's lobby with traditional authorities for the identification of land to accommodate

new arrivals. The 5 reception centres currently serve as alternatives to detention (ATDs) for new arrivals from Democratic Republic of Congo (DRC) and ensure they are no longer housed in police cells or detained in correctional facilities as shelter options. New arrivals are housed in these reception facilities before they are first relocated to Kenani transit Centre in Nchelenge, then relocated to the Mantapala refugee settlement.

- Promotion by authorities of assisted voluntary return for migrants with support of the IOM. This has resulted in migrants spending less time in detention facilities and has also proved to be cost effective for the Government.

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<sup>119</sup> *The Refugee Act, 2017*, available at: <http://www.refworld.org/pdfid/5a97c5154.pdf>.



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- New practice of non-detention of children and single mothers with young children for immigration offences. These vulnerable groups are instead referred to UNHCR for onward relocation to refugee settlements. Further, authorities have adopted a practice of facilitation of release of children and mothers with young children detained in places where there are no shelters, by releasing and referring them to the nearest shelters.

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- Opening by the Government of a new shelter at Chikumbi, as a follow up to the MIDSA<sup>120</sup> recommendations encouraging governments to promote alternatives to detention. Another shelter is being refurbished at Sesheke in Western Province with support of the IOM.

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- Opening by the Zambian Government of Mantapala refugee settlement in Luapula Province in January 2018. So far about 3,000 refugees from DRC have been relocated from Kenani transit centre to the new refugee settlement. The area is already inhabited by locals who are now living side-by-side with refugees and will be equally benefitting from health and education services put in place as part of the emergency response, in line with the spirit of CRRF roll out. When relocated and settled in the new settlement, the refugees will be able to engage in livelihood activities alongside the locals and will be able to move freely and access services in the settlement area.

In 2017, the instability in Burundi and in the Democratic Republic of Congo (DRC) resulted in 18,194 persons applying for asylum in Zambia. The 2017, UNHCR and the Government of Zambia's countrywide verification exercise also recorded a large number of asylum-seekers from Somalia. UNHCR was informed through its regular visits to detention facilities and reports from detaining authorities that 267 persons of concern were detained for immigration-related purposes, mainly due to the continued encampment policy, subsequent to the country's reservations to Article 26 of the 1951 *Convention*, restricting refugees' right to exercise freedom of movement and residence.

Zambia also became part of the Comprehensive Refugee Response Framework<sup>121</sup> in November 2017 following its own request made during EXCOM 2017. Building on past experience with the Zambia initiative, the Local Integration Framework and the enactment of new refugee legislation, the country introduced a new way of protecting refugees by settling them in village type clusters, with adequate land to cultivate, in an area where refugees live side-by-side with locals. The new program's focus is on self-reliance and integration as new infrastructure and services in the settlement areas will benefit both refugees and the host population. A whole of society approach is taken to bring on board a wider range of actors and stakeholders, through development interventions rights from the start of the emergency unfolding in the north of the country.

## Activities undertaken by UNHCR and implementing partners during the roll-out period of the Global Strategy

As part of emergency preparedness, and as a way of building capacity for government officials in the border areas, UNHCR, in collaboration with the Government of Zambia, organised **3 trainings on refugee status determination (RSD)** for border officials receiving new arrivals and members of

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<sup>120</sup> Ministerial Migration Dialogue meeting for Southern Africa.

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<sup>121</sup> More information available at: <http://crrf.unhcr.org/en/#>.

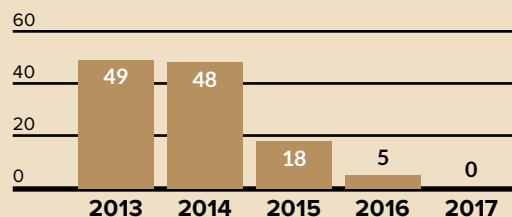
the Refugee Status Determination Committee in Lusaka. The topics included RSD, refugee law and international standards related to detention. A total of 75 government officials were trained. The trainings were well-received, and as a result, asylum-seekers arriving in the northern borders were not detained but instead referred to UNHCR for onward relocation to reception centres. Other trainings on mixed migration and ATDs supported by IOM were organised for border officials across the country. A total of 294 first line officials were trained.

The 5 additional shelters / reception centres which were opened in Chiyengi, Nsumbu, Kaputa, Mpulungu and Nchelenge (Luapula and Northern Province) serve as shelter and accommodation for asylum-seekers from the DRC who enter Zambia through the Northern borders, North Western and Copper-belt provinces. **UNHCR delivered food and core relief items in the 5 locations.** The opening of these shelters in the border areas has provided an alternative to detention as immigration authorities do not have to resort to the detention of asylum-seekers whilst their RSD process is pending. In collaboration with the Ministry of Community Development, IOM supported the Government to refurbish new identified shelters at Sesheke in Western Province and Chikumbi in Lusaka Province. The shelter at Chikumbi is open and currently in use, while the Sesheke shelter is still undergoing refurbishment. The opening of the two shelters are part of the government response to the MDSA recommendations.

Throughout 2016 and 2017, **UNHCR continued to monitor detention centres and worked closely with the Department of Immigration** with regards to immigration detentions. The authorities exhibited flexibility by releasing previously-detained asylum-seekers detained for various immigration offenses after their preliminary interviews and by according them access to asylum procedures. In Solwezi (North Western Province), out of 182 detention cases, including 38 Burundians, 38 Congolese, and 105 Rwandans, 74 were prosecuted, and 108 were released and relocated to settlements after UNHCR intervened for their release.

## GOAL 1 End the detention of children

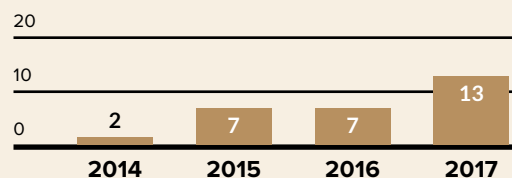
### NUMBER OF CHILDREN DETAINED



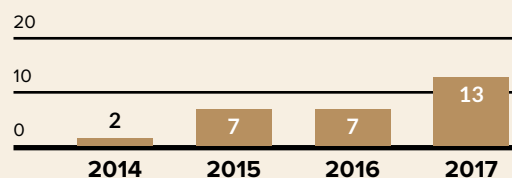
Source: UNHCR's monitoring and reports from detaining authorities.

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

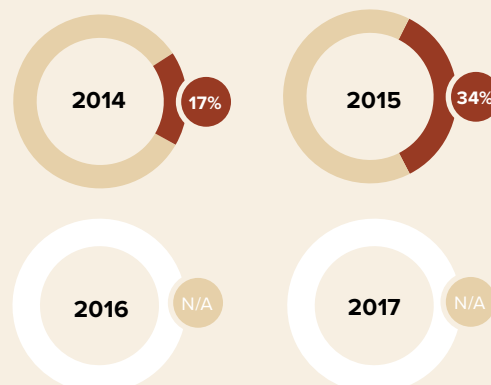
### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



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



TYPES OF ATDs:	2015	2016	2017
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

**2016:** ATDs in legislation: asylum seekers permit and Report Orders.

**2017:** As above. Asylum seekers who are issued with report orders or asylum seekers permits live in the community. They are not accommodated in reception centers or kept in detention. Asylum seekers rarely apply or are released on bail/bond. Once identified during monitoring visits, UNHCR intervenes on their behalf and they are provided access to the RSD procedures. Once their case is determined, they are released and relocated to the refugee settlements.

- ☑ *Is there a mechanism allowing asylum-seekers to stay legally in the community?*  
Yes; the asylum-seekers permit.
- ⊘ *When residing in the community, do asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance)?*  
No, only the most vulnerable persons have access to these rights, through a UNHCR implementing partner.
- ☑ *Is there case management provided in ATDs?*  
Yes 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.

**LEGEND:** ☑ Yes    ⊘ No    ⊙ Partially

N/A Not available    U Unknown

**SOURCE:** Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

In Lusaka, a multifunctional team comprising UNHCR, Office of the Commissioner for Refugees (COR) and Africa Action Help International (AAH) conducted **regular visits to 2 correctional facilities** (Lusaka Central and Kamwala correctional facilities). The aim was to identify persons of concern and intervene for their release. A total of 85 persons of concern were detained for various immigration offenses. With the intervention of UNHCR, all of them were released and relocated to Meheba refugee settlement. No children were among the detained population.

In order to maintain a presence in the border areas and ensure that asylum-seekers are not detained and have access to territory, UNHCR stationed one protection staff member in the Luapula Province. The role of the staff member is to **monitor the borders**, ensure that asylum-seekers are not detained, and provide information on alternatives to the detention and on the spot training for border officials on international refugee law, well as conduct sensitisations of headmen and populations in the border villages on the rules and procedures to access asylum.

With regard to **judicial engagement**, UNHCR Zambia continued to collaborate with the judiciary via mobile courts in refugee settlements, resulting in the establishment in 2016 of a permanent court structure in Meheba. This collaboration gives UNHCR an opportunity to hold information sessions on the rights and obligations of refugees in Zambia.

## Gaps and challenges

The Government's reservation to Article 26 of the *1951 Convention* continues to pose a challenge with regards to detention. In areas where reception facilities are absent, at entry points, border officials place asylum-seekers and refugees 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. The high degree of rotation of first line officials within the Immigration Department also led to some difficulties in implementing the Strategy,

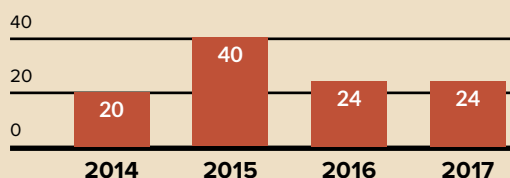
highlighting the need for continued trainings. Although persons in detention have a right to legal representation under national legislation and are informed of this right by arresting officials, legal advice is not readily available to all detainees as there are very few government lawyers employed by the Legal Aid Board who can provide free legal representation. Moreover, conditions of detention are substandard due to overcrowding, thus exposing detainees to diseases and unsanitary conditions.

### Next Steps

Following the enactment of the Refugee Act in 2017, UNHCR will support the Ministry of Home Affairs in the drafting of the implementing regulations accompanying the new law, including the Refugee policy that will spell out the implementation modalities of the Refugee Act. In the coming months, UNHCR Zambia will work closely with the Office of the COR in the drafting of the implementing regulations to the new law to ensure that a flexible approach is adopted by the Refugee Office for the delivery of gate passes to asylum-seekers and enhanced freedom of movement is guaranteed for refugees as well as engagement of refugees in gainful employment and self-reliance. In addition, UNHCR will continue urging the Office of the COR to include the self-employment as a ground for urban residency so

### GOAL 3 Ensure that conditions of detention meet international standards

#### NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



LEGEND:  Yes  No  Partially  
 N/A Not available U Unknown

SOURCE: Indicators were compiled based on UNHCR and/or UNHCR's implementing partner(s) monitoring visits and observations, except if otherwise stated

that refugees can live legally in urban communities. UNHCR, in collaboration with IOM, UNICEF and the Human Rights Commission, will continue to advocate for enhanced implementation of the existing ATDs enshrined in legislation, including the asylum-seeker permit, and will work closely with the authorities to map available reception centres in the Copper belt and North Western provinces border areas.



#### TRAININGS ORGANIZED IN ZAMBIA DURING THE REPORTING PERIOD

- 3 on Screening and Referral
- 12 on Child Protection
- 8 on Reception and Alternatives to Detention

#### NUMBER OF PERSONS TRAINED IN ZAMBIA DURING THE REPORTING PERIOD

- 93 on Screening and Referral
- 296 on Child Protection Training
- 234 on Reception and Alternatives to Detention



# ANNEX: QUANTITATIVE TRENDS

## a. Adults detained

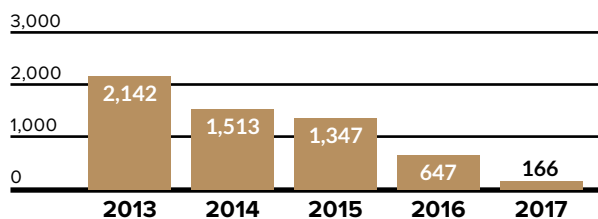
Name of country	2016	2017	Variation	Comments
Canada	6596	6251	5.23%	All persons detained Comparison between FY2016-2017 and FY 2015-2016
Hungary	2621	2374	9.42%	Asylum-seekers detained
Israel	2400	1397	41.79%	Asylum-seekers detained
Israel	2900	1900	34.48%	All persons detained
Indonesia	1607	957	40.45%	Asylum-seekers detained
Indonesia	5609	5106	8.97%	All persons detained
Lithuania	232	183	21.12%	All persons detained
Lithuania	14	12	14.29%	Asylum-seekers detained
Malaysia	4961	3975	19.88%	Asylum-seekers detained
Malta	146	169	-15.75%	All persons detained
Malta	14	57	-307.14%	Asylum-seekers detained
United Kingdom	14811	12916	12.79%	Asylum-seekers detained
United Kingdom	28903	27331	5.44%	All persons detained
Zambia	N/A	267		All persons detained
United States	406,595	450,000	-10.68%	All persons detained
United States	83720	225,000	-168.75%	Asylum-seekers detained

Source		
Official statistical website of CBSA	✔ Total number of persons detained	5,2% (compared to previous year)
Monitoring visits by UNHCR and partner organizations and partially data provided by the Government.	✔ Total number of a-s detained	10% (between 2016 and 2017)
UNHCR Monitoring	✔ Total number of a-s detained	41,8% (between 2016 and 2017)
UNHCR Monitoring	✔ Total number of persons detained	34,5% (between 2016 and 2017)
UNHCR Monitoring	✔ Total number of a-s detained	40,5%
UNHCR Monitoring	✔ Total number of persons detained	9%
Migration Yearbook 2016, Lithuania's Migration Department and the FRC	✔ Total number of a-s detained	21,1%
UNHCR Monitoring	✔ Total number of persons detained	14,3%
UNHCR Monitoring	✔ Total number of a-s detained	19,9%
Immigration police	⚠ Total number of persons detained	15,75%
Immigration police	⚠ Total number of asylum-seekers detained	307%
Official website Home Office	✔ Total number of a-s detained	12,8%
Official website Home Office	✔ Total number of persons detained	5,5%
Information provided by official sources to UNHCR	no variation	no variation
Source To be completed	⚠ Total number of persons detained (compared to end 2015)	10,68%
Source To be completed	⚠ Total number of asylum-seekers detained (compared to end 2015)	168,75%

## b. Children detained

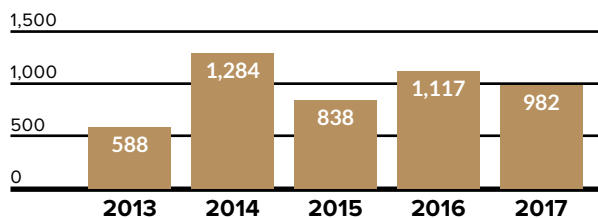
### Malaysia

NUMBER OF CHILDREN DETAINED



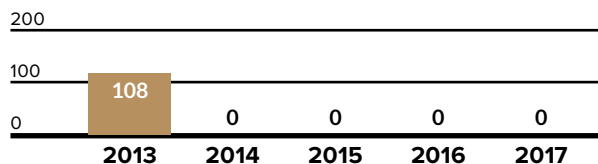
### Indonesia

NUMBER OF CHILDREN DETAINED



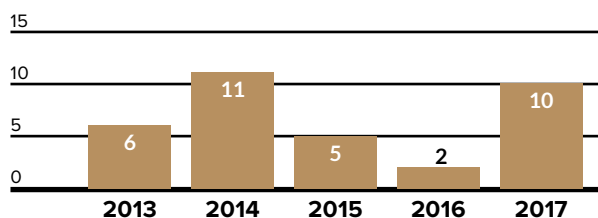
### Israel

NUMBER OF CHILDREN DETAINED



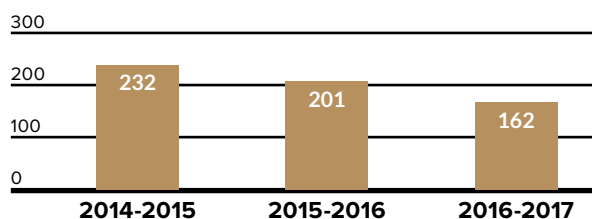
### Lithuania

NUMBER OF CHILDREN DETAINED



### Malaysia

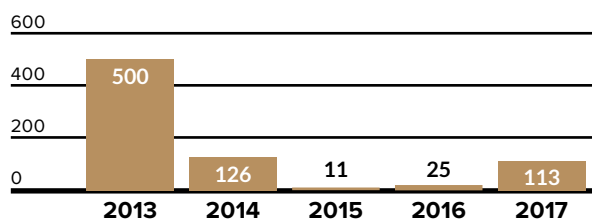
NUMBER OF CHILDREN DETAINED



A total of 162 minors (both unaccompanied or detained or housed with parents or guardians) in 2016-2017 (this represents a 19.4% decrease from 2015-2016 and a 30.2% decrease from 2014-2015).

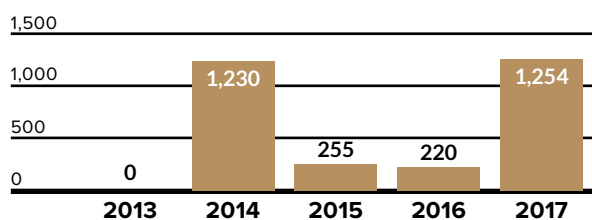
### Malta

NUMBER OF CHILDREN DETAINED



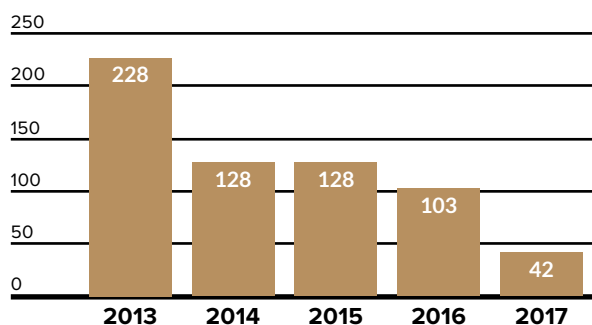
### Hungary

NUMBER OF CHILDREN DETAINED



### United Kingdom

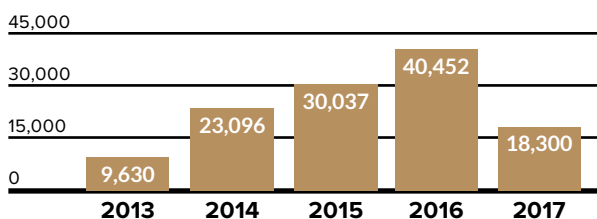
NUMBER OF CHILDREN DETAINED





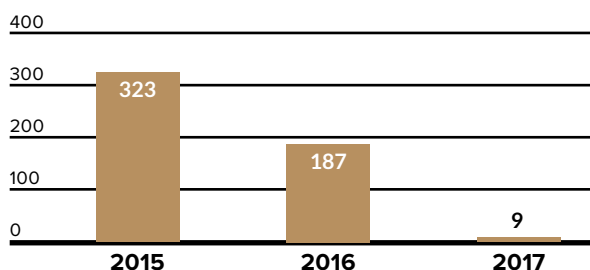
## Mexico

### NUMBER OF CHILDREN DETAINED



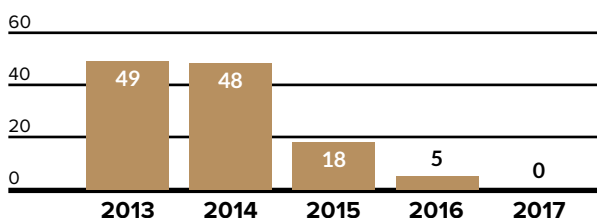
## FYR Macedonia

### NUMBER OF CHILDREN DETAINED



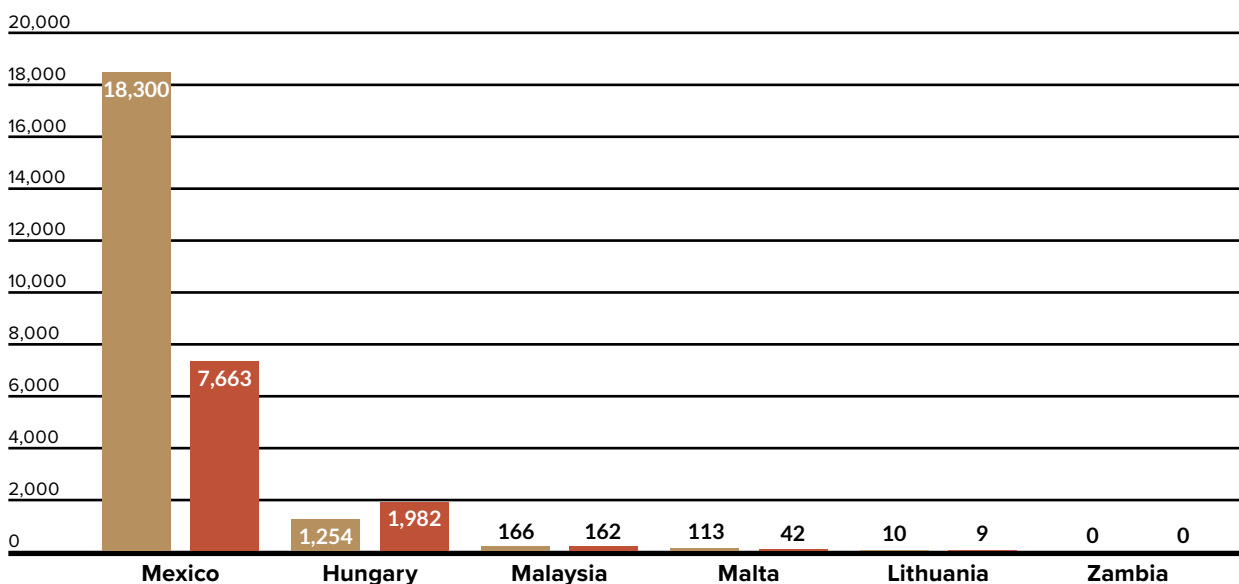
## Zambia

### NUMBER OF CHILDREN DETAINED



## OVERVIEW ALL COUNTRIES

### NUMBER OF CHILDREN DETAINED



Area for Improvement, based on the Progress Report:

1) **Monitoring detention and improving detention conditions:** we see a lot of operations active with the monitoring of immigration detention but few reported on real improvements with regards to the detention conditions. Monitoring seems to be still focused on the identification and individual demarches to release persons of concern.

> Need to further work with UNHCR monitoring methodology, as exposed in the UNHCR Policy







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