



**UNHCR**  
The UN Refugee Agency

Global Strategy Beyond Detention 2014-2019

# FINAL PROGRESS REPORT



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# LIST OF ACRONYMS AND ABBREVIATIONS

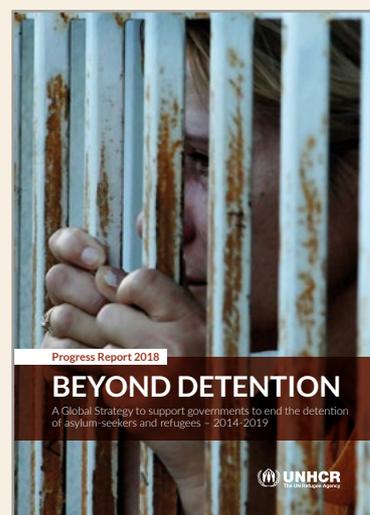
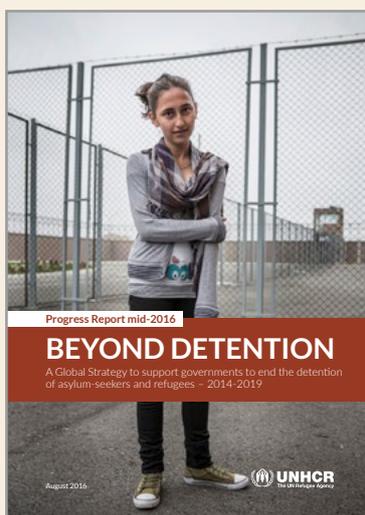
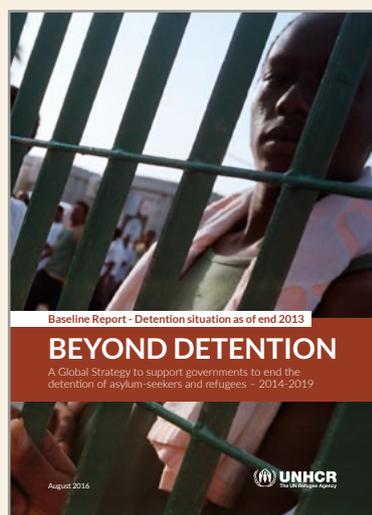
<b>AAM</b>	Alternative Arrangement for Minors (Canada)	<b>CRC</b>	<i>UN Convention on the Right of the Child</i>
<b>ABOD</b>	Administrative Budget and Obligation Documents	<b>CRRF</b>	Comprehensive Refugee Response Framework
<b>APT</b>	Association for the Prevention of Torture	<b>CWS</b>	Church World Service (Indonesia)
<b>ATD</b>	Alternatives to detention	<b>DGI</b>	Directorate General of Immigration (Indonesia)
<b>AVID</b>	Association of Visitors to Immigration Detainees (United Kingdom)	<b>DHA</b>	Department of Home Affairs (South Africa)
<b>AVRFC</b>	Assisted Voluntary Return for Families and Children (United Kingdom)	<b>DRC</b>	Democratic Republic of Congo
<b>AWAS</b>	Agency for the Welfare of Asylum Seekers (Malta)	<b>ECHR</b>	<i>European Convention on Human Rights</i>
<b>BHC</b>	Bulgarian Helsinki Committee	<b>ECtHR</b>	European Court of Human Rights
<b>CARL</b>	Canadian Association of Refugee Lawyers (Canada)	<b>EIDHR</b>	European Instrument for Democracy and Human Rights
<b>CBSA</b>	Canada Border Services Agency	<b>EU</b>	European Union
<b>CCMS</b>	Community Case Management and Supervision (Canada)	<b>FRC</b>	Foreigners Reception Centre (Lithuania)
<b>CCR</b>	Canadian Council for Refugees (Canada)	<b>FRJ</b>	Forum for Refugees Japan
<b>CJF</b>	Federal Council of the Judiciary (Mexico)	<b>FRP</b>	Family Returns Process (United Kingdom)
<b>CMDPDH</b>	Mexican Commission for the Defence and promotion of Human Rights	<b>HRM</b>	Hotline for Refugees and Migrants (Israel)
<b>CNDH</b>	National Human Rights Commission – (Mexico)	<b>IAB</b>	Immigration Appeals Board (Malta)
<b>COI</b>	Country of Origin Information	<b>ICCPR</b>	<i>UN International Covenant on Civil and Political Rights</i>
<b>COMAR</b>	Mexican Commission of Aid for Refugees	<b>ICIBI</b>	Independent Chief Inspector for Borders and Immigration (United Kingdom)
<b>CPP</b>	Case Progression Panels (United Kingdom)	<b>ICRC</b>	International Committee of the Red Cross
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	<b>ID</b>	Immigration Division (Canada)
		<b>IDC</b>	International Detention Coalition
		<b>IDFVC</b>	Immigration Detention Facilities Visiting Committee (Japan)

<b>IFDP</b>	Federal Public Defence Institute (Mexico)	<b>NGO</b>	Non-governmental organization
<b>ILPA</b>	Immigration Law Practitioners' Association (United Kingdom)	<b>NIDF</b>	National Immigration Detention Framework (Canada)
<b>INM</b>	National Migration Institute (Mexico)	<b>NPM</b>	National Preventive Mechanism, under the OPCAT
<b>IPS</b>	Israel Prison Services	<b>OHCHR</b>	Office of the UN High Commissioner for Human Rights
<b>IPU</b>	Inter-Parliamentary Union	<b>OPCAT</b>	<i>UN Optional Protocol to the UN Convention against Torture</i>
<b>IOM</b>	International Organization for Migration	<b>PIBA</b>	Population and Immigration Authority (Israel)
<b>IRB</b>	Immigration and Refugee Board (Canada)	<b>POC</b>	persons of concern
<b>IRC</b>	Initial Reception Centre (Malta)	<b>PPA</b>	Project Partnership Agreement
<b>JFBA</b>	Japan Federation of Bar Associations	<b>RALAS</b>	Refugees and Asylum-Seekers Legal Aid Scheme (Malaysia)
<b>JRS</b>	Jesuit Refugee Service (Malta)	<b>RRC</b>	Refugee Reception Centre (Lithuania)
<b>JTF</b>	Joint Task Force (Malaysia)	<b>SAHRC</b>	South African Human Rights Commission
<b>KLLAC</b>	Kuala Lumpur Legal Aid Centre (Malaysia)	<b>SBGS</b>	State Border Guard Service (Lithuania)
<b>KOMNAS HAM</b>	National Commissioner of Human Rights of Indonesia	<b>SGBV</b>	Sexual and Gender-Based Violence
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender and Intersex	<b>SOPs</b>	Standard Operating Procedures
<b>LHR</b>	Lawyers for Human Rights (South Africa)	<b>SUHAKAM</b>	Human Rights Commission of Malaysia
<b>LITP</b>	Law on International and Temporary Protection (North Macedonia)	<b>TVRH</b>	Humanitarian visas (Mexico)
<b>LRC</b>	Lithuanian Red Cross	<b>UNCAT</b>	<i>UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>
<b>MoU</b>	Memorandum of Understanding	<b>UNICEF</b>	United Nations Children's Fund
<b>MPP</b>	Migration Protection Protocol (Mexico)	<b>UNHCR</b>	Office of the United Nations High Commissioner for Refugees
<b>MWFCD</b>	Ministry of Women, Family and Community Development (Malaysia)	<b>YSTC</b>	Yayasan Sayangi Tunas Cilik (Indonesia)
<b>MYLA</b>	Macedonian Young Lawyers Association		
<b>NAP</b>	National Action Plan		

# INTRODUCTION

This third and final *Progress Report* aims to provide an update of the implementation of the *Global Strategy – Beyond Detention 2014-2019*, covering the period from 2018 to mid-2019, and to provide an overview of the overall progress achieved towards the implementation of its three main goals.<sup>1</sup>

Launched in June 2014, the Global Strategy is an ambitious five-year initiative that 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; and provides for guidance on how to achieve these goals, by defining areas of engagement such as advocacy interventions, awareness raising and campaigning, strengthening partnerships, strategic litigation and monitoring and evaluations.



Over the past five years, a wealth of policy positions, practical tools and capacity-building and training materials have been developed under each of these areas of implementation. Twenty countries<sup>2</sup> were directly engaged in its implementation, providing for its development and monitoring progress through the reports presented in 2013<sup>3</sup>, 2016<sup>4</sup> and 2018<sup>5</sup>; an increasing number of other countries and operations worldwide have also benefitted from its lessons learned, implementing targeted activities to achieve concrete protection outcomes.

<sup>1</sup> This objective will be complemented through the release of an Evaluative Report of the Global Strategy that will be available at <https://www.refworld.org/detention.html> by early 2020.

<sup>2</sup> Belgium, Botswana, Bulgaria, Canada, the Czech Republic, Hungary, Indonesia, Israel, Japan, Lithuania, Malaysia, Mexico, North Macedonia, South Africa, Thailand, the United Kingdom, the United States, Zambia and Zimbabwe

<sup>3</sup> 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: <https://www.refworld.org/docid/57b851874.html>

<sup>4</sup> 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: <https://www.refworld.org/docid/57b850dba.html>

<sup>5</sup> Progress Report 2018: *A Global Strategy to Support Governments to End the Detention of Asylum-Seekers & Refugees, 2014 - 2019*, February 2019, available at: <https://www.refworld.org/docid/5c9354074.html>

The Global Strategy has served UNHCR to consolidate clear and consistent protection messages in relation to detention of asylum-seekers and other persons of concern and to strongly position itself among UN Agencies and other international actors at the forefront of advocacy and promotion of alternatives to detention and alternative care arrangements for children in the immigration context.

The adoption in 2018 of the Global Compact on Refugees<sup>6</sup> and the Global Compact for Safe, Orderly and Regular Migration<sup>7</sup>, in which the issue of deprivation of liberty and restrictions to freedom of movement in the immigration context features prominently, provides a forward looking opportunity for UNHCR to continue strengthening its advocacy and promotion activities both at field and at the global level in this area. To this end, UNHCR will continue to build on its experience in promoting, advocating for and supporting alternatives to detention, in close coordination with a wide range of stakeholders.

Finally, as developed in detail in the following sections, this report provides for a number of recommendations on how to move forward beyond the end of the implementation phase of the Global Strategy and takes stock of its most positive experiences and those outstanding challenges for the implementation of its main three goals.

This final report builds on the qualitative and quantitative data provided by UNHCR country operations for the period January 2018 to June 2019. It is composed of the following sections:

<b>Overall progress towards the achievement of goals</b>	This section highlights positive outcomes reported over the entire period of the Global Strategy's implementation. It also outlines outstanding challenges that still need to be addressed.
<b>Developments at the global level</b>	Overview of the main actions undertaken and tools produced by UNHCR and partners to support the roll-out of the Global Strategy during the reporting period.
<b>Results by country</b>	Overview of the main national trends related to detention and alternatives during the reporting period. Indicators corresponding to the three main goals are also presented.
<b>Recommendations for future mainstreaming</b>	Recommendations for the future mainstreaming of good practices and approaches contributed by UNHCR offices.
<b>Strategy implementation</b>	Annex containing select examples of the various types of activities carried out by UNHCR offices and partners under the implementation of the Global Strategy.
<b>Quantitative trends</b>	Annex containing available statistics on the number of adults and children placed in immigration detention.

<sup>6</sup> <https://www.unhcr.org/the-global-compact-on-refugees.html>

<sup>7</sup> <https://www.iom.int/global-compact-migration>

# OVERALL PROGRESS TOWARDS ACHIEVEMENT OF THE GOALS

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As a result of the implementation of the Global Strategy Beyond Detention 2014-2019, there have been a variety of positive outcomes, which will also inform lessons learned and good practices going forward. The section below highlights specific measures and activities, carried out at country level, that resulted in measurable progress towards achieving the main goals of the strategy. These outcomes include stronger partnerships, formalized governmental commitments, significant legislative reform, the roll-out of new guidance and capacity building tools as well as the piloting of new alternatives to detention.

## National Action Plans as a framework for dialogue, capacity building and practical cooperation

Both the process of developing National Action Plans as well as the on-going dialogue with key stakeholders was an important element of the Global Strategy implementation in the focus countries. Having the Global Strategy as a point of reference for constructive discussions has provided a useful advocacy platform for engagement with the authorities. The fact that UNHCR is working with a wide range of States on common detention issues has contributed to governments being more receptive to discussing and engaging with UNHCR country operations on detention.

In some cases, the roll-out of the Global Strategy has resulted in formal Memoranda of Understanding between UNHCR and key governmental stakeholders. For example, in **Bulgaria** in 2017, the long-standing cooperation between UNHCR and Directorate Migration was formalised in a Memorandum of Understanding (MoU), covering monitoring of detention centres, exchange of information and training. The MoU envisages the establishment of a working group, which meets regularly to discuss issues of concern regarding detention and agrees on recommendations on how to address them. In addition, UNHCR engaged closely with the authorities on improving the quality of the statistical information collected and provided.

Similarly, UNHCR concluded a Project Partnership Agreement with the Ministry of Labour and Social Policy in **North Macedonia** for 2018 and 2019. The agreement outlines the support for further development of alternative care arrangements including for foreign national children and the additional staffing of a child care specialist for the Safe House. Activities also include supporting psycho-social interventions and therapy sessions based on individual needs as well as organizing a capacity-building training for interpreters and socio-cultural mediators.

In the **Czech Republic**, UNHCR developed and adopted the National Action Plan together with relevant stakeholders. UNHCR developed and translated training programmes that will be used to further enhance local capacities. Engagement in the Global Strategy, as well as discussions over the NAP, opened the door for continuous strategic dialogue with the government. UNHCR is able to work very closely with Czech authorities to further enhance the Czech reception system, including more complex services available for families with children, access to volunteers, empowerment of asylum-seekers and their involvement in local communities.

A key positive feature resulting from participation in the Global Strategy for **Israel** was the well-received and effective trainings that UNHCR provided to the government. This included an expert meeting on ATDs for asylum-seekers and migrants in November 2014 during which various good practice ATDs from other countries were showcased and it was discussed how such ATDS might be implemented in Israel. In the first half of 2017, six workshops were organised by UNHCR with government and NGOs on vulnerability

screening, each on a different domain from the UNHCR IDC Vulnerability Screening Tool (VST). Each group analysed the suggested questions in the VST and determined how to adapt it to the Israeli context. In June 2017, Grant Mitchell, the Director of the IDC, came on mission and conducted a session with government officials to present the VST, explaining how it is being implemented in other countries and continuing the discussion about how it could be implemented in Israel. This was followed up in mid-November 2017, in a series of trainings presenting pilots from other countries as well as training on the identification, assessment and treatment of victims of torture.

Throughout the entire period of the Global Strategy's implementation, UNHCR **Japan** has cultivated and furthered its positive relationship with the Ministry of Justice (MOJ). At the same time, study session about foreign practice about ATDs with civil society members has created the awareness of MOJ about the potential of ATD.

## Growing community of practice and platform for exchange

Throughout the implementation of the Global Strategy, an incipient community of practice was fostered and gradually consolidated among the different operations involved, which also brought in a wider net of civil society partners. Engaging with experts coming from the International Detention Coalition and other partners, at regional and international level, has helped UNHCR Offices in the focus countries to identify and promote positive practices that were further consolidated and shared through information and advocacy specific position papers and tools. The bi-annual workshops organised for officials from focus countries and partners have been a space for further sharing, reflection and identification of future avenues for the implementation of the Global Strategy. The organisation of the two Global Roundtables, on 'Alternatives to Detention in 2015'<sup>8</sup> and on 'Reception and Care Arrangements for Children' in 2018<sup>9</sup>, were successful platforms to disseminate and encourage participating stakeholders to develop these practices at national level.

## Ending the immigration detention of children

As noted in earlier progress reports, 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**. Non-detention of asylum-seeking and refugee children is also the practice in Israel, Lithuania and Zambia. Recent measures have also sought to better assess and respect the best interests of the children concerned.

In the past years, detention of children was very much in the public debate in **Belgium**, and some political parties denounced the practice, even calling for a prohibition in law. There was systematic monitoring of all families with children in detention, and UNHCR's civil society partner Nansen provided legal assistance to their lawyers. Legal action of civil society led to the suspension of detention of children in early 2019. While no new ATDs had been introduced as of the time of writing, there is now a legal obligation to consider less coercive measures and an increased willingness to consider new ATDs, notably coaching. NGOs are developing small scale pilot projects and the Immigration Office seems willing to consider other options.

<sup>8</sup> Second Global Roundtable on Reception and Alternatives to Detention: Summary of deliberations, August 2015, available at: <https://www.refworld.org/docid/55e8079f4.html>

<sup>9</sup> Global Roundtable on Reception and Care-Arrangements for Asylum-Seeking Children, Summary of Discussions, 10-11 October 2018, Bangkok, Thailand, December 2018, available at: <https://www.refworld.org/docid/5c17a6544.html>



Important progress was also made in **Canada** concerning the immigration detention of children. 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”. The Minister of Public Safety and Emergency Preparedness issued a Ministerial Direction to the CBSA in 2017 concerning minors in immigration detention. The directive stated the objective of avoiding detention of children as much as possible. In accordance with the directive, CBSA officers must therefore consider all alternatives to detaining minors. Children are detained only as a measure of last resort after consideration of the child’s best interest. The Immigration Division released new guidelines for detention reviews in April 2019, after significant consultation with stakeholders including UNHCR. The guidelines include positive measures such as requiring that a person subject to the detention review process is entitled to a meaningful and robust review that takes into account the context and circumstances of the individual case, that such persons have a meaningful opportunity to challenge their detention, that particular attention be paid to Charter considerations where detention is lengthy and/or where the prospect of removal has become remote, that detention and other liberty constraints (including release on conditions) must be reasonable, necessary and proportionate, in the particular circumstances of the case, that a minor shall be detained only as a measure of last resort and for the shortest appropriate period of time, that Board Members assess the best interests of the child in each case, and by the Member at each hearing, and that all options for alternatives to detention are canvassed before deciding to continue detention of a child or their parents/legal guardians. The guidelines further provide for special consideration for vulnerable persons, and require Members to adequately assess in each case the availability, effectiveness and appropriateness of alternatives to detention.

Joint efforts of UN agencies and partners In **Zambia** led to the government’s adoption of the practice of non-detention of children and single mothers with children. Working together partners advocated and supported the Government to establish shelters to accommodate migrants, refugees and asylum seekers, with specific arrangements for unaccompanied and separated children. The authorities have further adopted a practice of releasing mothers with young children detained in places where there are no shelters and facilitating their movement to the nearest shelters.

## Ensuring special protection for unaccompanied and separated children

Another area where there have been significant developments is the provision of special protection and assistance, including appropriate care arrangements, for unaccompanied and separated children. Child sensitive screening and referral procedures have also been put in place to ensure referrals to child protection institutions.

The main positive outcomes in **Bulgaria** concern the exemption of unaccompanied children from short-term immigration detention and the adoption of a mechanism for their identification and referral to the national child protection services as well as the introduction of additional alternatives to detention. In addition to the exemption of unaccompanied children from immigration detention, the authorities have adopted subsequent measures aimed at improving their identification and reception, including the possibility of granting them continuous residence permit until they reach 18. These advances would not have been possible without the concerted advocacy efforts of UNHCR for a number of years, including capacity-building and lobbying, supporting the Bulgarian government in its adoption of a firm stance against the detention of unaccompanied children.

To support the creation of new care arrangements and community based alternatives to detention in **Malaysia**, UNHCR together with SUKA Society embarked on a pilot project to develop and strengthen foster care arrangements in Rohingya community formally. At the end of March 2018, a manual and three handbooks on foster care aimed at building the capacity of foster care agencies and refugee families to support the establishment of foster care in the refugee community were developed. This project is currently ongoing as an identification of a foster care agency is ongoing. Further to this, identified refugee foster parents will be trained prior to screening and matching of foster children with the families are made. This project will continue with the support of UNICEF Malaysia in 2020 through their 'Children Affected by Migration' project.

In **Mexico** the legislative framework for children's rights, composed of the General Law for the Rights of Girls, Boys and Adolescents and its Regulations, established a nationwide system of protection of the rights of children and adolescents (SIPINNA- Sistema de Protección Integral a Niñas, Niños y Adolescentes). The legislation specifically prohibits the detention of migrant children and, therefore, creates the obligation for the state to establish reception centres and shelters that are adequate for children. Despite this legislation being passed and the system being established, as of the time of writing, detention of children continues to be common. Additionally, shelters established for unaccompanied children tend to be follow a "closed-door" model which resembles detention. The establishment of the SIPINNA is nevertheless recognised as an important development that should lead to improvements in practice. It should furthermore ensure that all children have access to the asylum system and international protection in case it is required. Another significant measure in Mexico is the development between the Mexican Commission of Aid for Refugees (COMAR), the National Migration Institute (INM) and UNHCR of a protocol to identify unaccompanied and separated children in need of international protection and guarantee their access to asylum. This tool was developed for Family Welfare Agency (DIF) and INM child protection staff (OPI) to improve the identification of children who are potential refugees, and to facilitate their referral to COMAR. The protocol includes the use of a video produced by UNHCR to inform children of their right to seek asylum. Both DIF and INM (OPI) staff must communicate to COMAR whenever they identify any indication that a child could be in need of international protection.

## Providing access to quality legal assistance and effective remedies

There have also been concerted efforts to ensure access to quality legal assistance to those in immigration detention. For example, in **Belgium**, a dialogue with the bar association and the Immigration Office led to an increased awareness of the need for prompt quality legal aid in detention and better procedures for judicial control. In that context, the bar association is taking initiatives to improve access and quality of legal aid in detention and are calling on the Belgian government to reinforce legal remedies against detention measures.

## Piloting Alternatives to detention

Legislative reform, new regulations and effective partnerships have led to the piloting of new alternatives to detention in several of the focus countries. Such mechanisms aim to establish an individual assessment and to ensure that asylum seekers and others with special needs or vulnerabilities are identified and referred to alternatives to detention. Several of these programmes allow community-based solutions to be developed in partnership with civil society.

The **Bulgarian** government introduced new alternatives to detention in 2017, in addition to the existing one of weekly police reporting. These included security deposit and surrender of passport. In 2018, secondary legislation introduced detailed rules on the modalities of their implementation. Bulgaria's participation in the GDS contributed to increasing awareness of international standards and good practices related to ATDs.

Since the roll-out of the Global Strategy implementation, the government of **Canada** has made some very positive changes with regards to immigration detention practices, which has resulted in a significant reduction of immigration detainees and in particular of children in detention. In August 2016, the government announced the National Immigration Detention Framework (NIDF) with an aim to improve the infrastructure of immigration holding centres, provide greater access to mental and medical services in immigration holding centres and enhance alternatives to detention available across Canada. In June 2018, the Canada Border Services Agency (CBSA) rolled out its Alternative to Detention (ATD) Program, a key pillar of the 2016 National Immigration Detention Framework (NIDF). The ATD Program establishes and expands on a set of tools and programs that enable officers to more effectively release individuals into the community. In addition to previously-existing options for release with conditions (i.e. in-person reporting, cash deposit or establishment of a bondsperson), the ATD Program now includes: a national Community Case Management and Supervision (CCMS) program that aligns in-community support services with individuals' needs to mitigate any risk factors; a national voice reporting program that enables individuals to comply with reporting conditions imposed by the CBSA or the Immigration and Refugee Board (IRB), by using voice biometrics to report to the CBSA at a prescribed interval; and, an electronic monitoring pilot for high risk cases in the Greater Toronto Area region that uses GPS and Radio Frequency to monitor an individual's whereabouts. Throughout 2017, CBSA released several directives advising officers to ensure that detention is used as a measure of last resort and to conduct risk assessments using the National Risk Assessment Detention Tool. Since the implementation of a 2017 Ministerial Direction to stop the detention and housing of minors, as much as possible, Canada has significantly reduced the number of minors detained in immigration detention centres. The number of accompanying minors housed or detained has decreased by almost 50% in the period of 2018-2019 when compared to the period of 2014-2015. In September 2017, an audit of the Immigration Division was undertaken to examine the fairness of the detention review process and its compliance with the Canadian Charter of Rights and Freedoms. A report was published in 2018 which recommended a substantive reform of the way the ID manages, conducts and decides detention review hearings. The IRB is now implementing some of these recommendations in particular the issue with respect to long-term detainees.

Significant developments in **Indonesia** have resulted in the release of persons of concern from detention. On 30 July 2018, the Directorate General of Immigration issued a Circular concerning “Restoring the Function of Immigration Detention Centres”. This stressed that the function of immigration detention centres is to temporarily host irregular immigrants subjected to administrative measures and not to serve as a shelter for refugees and asylum-seekers. Since then, the immigration officers proactively coordinated with IOM to release all the remaining refugees and asylum-seekers from detention to community accommodations. The issuance of the Circular was partially influenced by UNHCR’s advocacy with civil partners to end arbitrary detention, especially for children.

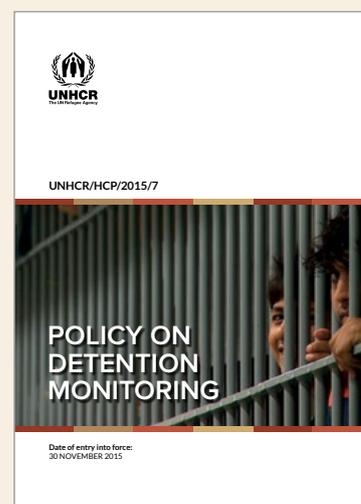
The main positive outcome of the Global Strategy work in **Lithuania** is that the practice of resorting to detention with respect to asylum-seekers was significantly reduced and remains limited. As a rule, asylum-seekers are now referred to either reception or ATD schemes. Families with children who have applied for asylum are not detained as a matter of established judicial and administrative practice, while necessity and proportionality screening in conjunction with vulnerability assessments play a decisive role in decision making procedures concerning detention or alternatives. The reception system has been developed and diversified, leading to better availability of alternative care arrangements for families and applicants with special needs. While in 2013 there was only one reception facility, which lacked capacity and social services, in 2019, asylum-seekers may be housed in one of three different reception facilities, including the Community Based Accommodation and Support Scheme. This is a direct result of systematic efforts undertaken by UNHCR and its partners in line with the National Action Plan. A low absconding rate demonstrated by the Community Based Accommodation and Support Scheme (out of 67 persons involved, only 2 absconded from 2018 – mid 2019) is promising. Following the participatory assessment planned for the second half of 2019, the outcomes of the pilot should be used as a source of references for promoting good practices and approached at country level.

Since 2016, the **Mexican government**, with technical support from UNHCR, has been operating an early release from detention program, referred to as the ‘alternatives to detention’ program. This program allows the release from detention of asylum seekers who are admitted into the asylum procedure by COMAR. Although it lacks normative framework, since its inception the program has allowed the release of 8,042 asylum seekers from detention. Additionally, as a program that is based on the collaboration between INM and COMAR, it has been an important exercise in interinstitutional cooperation. Without the implementation of the Global Strategy it would have been difficult to achieve the coordination amongst authorities and UNHCR to establish this program.

The **UK government** has given a clear commitment to testing ATDs in the UK. There is an ongoing development and delivery team at the UK Home Office. This team is part of the UNHCR/Home Office working group on ATD. The first pilot is up and running (for vulnerable women who would ordinarily be detained in Yarl’s Wood Immigration Removal Centre) and the second pilot is in development (tenders for partnerships from NGOs to run the Pilot alongside the Home office are currently being received). Arising from having direct contact with senior decision makers, UNHCR are now involved in providing independent review of ongoing developing process and policy in the UK. For instance, UNHCR now directly liaises and works with the Head of Detention, Progression and Returns Command when discussing Case Progression Panels, where individual detainees’ cases are examined. Measures were taken by the Director General for Immigration Enforcement in the UK to strengthen the practice following a recent review of this process.

## Immigration Detention Monitoring and engaging with national human rights institutions

The strengthening of immigration detention monitoring has been a priority objective in most operations. In many countries moving from the usual monitoring for identification of persons of concern or in need of international protection, to more specific monitoring of conditions and treatment in detention, in line the criteria setup in the 2015 High Commissioner’s Policy on Detention Monitoring<sup>10</sup>. Several UNHCR country operations have developed immigration detention monitoring strategies as part of their efforts under the Global Strategy implementation. Where they exist, National Preventive Mechanisms under the OPCAT have often proven to be strategic and effective partners in monitoring work and in putting recommendations for improvements to relevant government stakeholders. Other National Human Rights Institutions, including national human rights commissions or ombudsperson offices, have also been engaged through the signature of collaborative agreements or memoranda of understanding.



In **Indonesia**, UNHCR and the National Human Rights Commission signed a comprehensive Memorandum of Understanding in 2015 to partner and collaborate in monitoring and promoting the human rights of refugees and asylum-seekers in detention. A similar MoU was also signed in Malaysia, in 2017, between UNHCR and the National Rights Commission (SUHAKAM) which has proven critical to support the advocacy actions by UNHCR to support implementation of the Global Strategy.

In **Mexico**, UNHCR’s coordination with the National Commission on Human Rights (CNDH) has been a relevant outcome. Although CNDH has been cautious in its approach to migratory detention, regularly privileging an approach of legality instead of rights, coordination with its field offices has helped to identify and refer to COMAR persons who have international protection needs. Additionally, CNDH has focussed on detention conditions, issuing recommendations to INM when detention conditions have affected detainees’ human rights and their right to seek asylum.

Detention conditions in the in-land detention facility in **Lithuania**, the Foreigners Registration Centre, have improved notably compared to 2013. This is a result of partnership based monitoring activities and a structural dialogue with the government undertaken throughout the duration of the Global Strategy. In particular, the infrastructure of the detention facility has been completely renovated, social space and services introduced and the standards of conduct of security personnel have been improved. The National Preventive Mechanism and the Parliamentary Ombudsmen Office, which launched the Global Strategy jointly with UNHCR in 2014 and conducted a number of monitoring visits to the Foreigners Registration Centre, have played an important role in this respect.

In **North Macedonia**, UNHCR has concluded a Project Partnership Agreement with the Ombudsman’s National Preventive Mechanism for 2018 and 2019, supporting capacity building and advocacy activities for authorities as well as providing operational support for the conducting of immigration detention monitoring and implementing the activities outlined in the immigration detention monitoring strategy.

<sup>10</sup> Policy on Detention Monitoring, 3 December 2015, UNHCR/HCP/2015/7, available at: <https://www.refworld.org/docid/564199b54.html>



In regards to detention monitoring access, UNHCR **South Africa** is afforded unhindered access to all detained asylum-seekers and refugees at the main deportation centre in country, the Lindela Holding Facility. UNHCR continues to work with the Inspectorate Directorate of the Department of Home Affairs on monitoring support. UNHCR will continue to provide a supporting role at the Lindela facility by undertaking consultations with identified persons of concern to assist in screening for those claiming asylum. UNHCR also provides capacity building for the Inspectorate Directorate, such as the facilitation of a UNHCR Protection Information Workshop for immigration officers at the Lindela and regular capacity building workshops for immigration officials in the Limpopo Province. UNHCR has been requested by the Inspectorate to formalize this relationship and provide guidance on interventions. Assistance is provided by UNHCR according to Standard Operating Procedures, which are complementary to the responsibility and functions of state authorities.

## **Strengthening UNHCR expertise and leadership**

The implementation of the Global Strategy has strengthened the expertise of UNHCR staff through the e-Learning Course on the Fundamentals of Immigration Detention as well as the translation and roll-out of the self-study modules on alternatives to detention and on immigration detention monitoring, which are now available on Refworld and other learning platforms. More UNHCR colleagues also became trainers in the field of immigration detention and transferred knowledge to partners and local authorities. The Global Strategy enabled the translation of policy and legal documents into local languages, which were shared with the governments and partners during advocacy efforts and targeted trainings. Further, in support of the ongoing Monitoring and Evaluation of the ATD Pilots in the UK, the support from UNHCR's Evaluation Service is also proving crucial to the ability of UNHCR UK to provide an independent evaluation of the pilot series.

# OUTSTANDING CHALLENGES

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Unfortunately, despite the constructive dialogue, progressive legislative reform and piloting of alternatives to detention in the focus countries, UNHCR and its partners continued to face challenges in advancing the goals of the Global Strategy in some country contexts. The sections below summarize some of the trends and concerns raised in reporting from UNHCR country operations.

## Ending the immigration detention of children

During the five years of the Global Strategy, impressive progress has been made by the concerned governments and their partners towards ending the immigration detention of children. However, challenges remain which must be overcome in order to definitively end the practice.

**BORDER PRACTICES AND TRANSIT ZONES:** There is a continued need for monitoring of the practice of authorities at border points, including specifically the treatment of children and families, in so-called transit zones. At the time of reporting, some 162 children (who represented more than half of the individuals detained), including many with specific needs, were detained in **Hungary** in the transit zone, some of them for more than one year. In **Lithuania**, the applicable border procedure falls 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 regard to families with children and asylum-seekers with special needs at border crossing points and transit zones. In this respect, the UN Human Rights Committee, has called on the Lithuanian authorities to “ensure against unlawful or arbitrary detention of asylum seekers at the border, including by clarifying in the Aliens Law that the holding of asylum seekers at the border, including in the transit zones, constitutes detention with accompanying procedural and judicial guarantees.” While a number of advocacy interventions have been undertaken by UNHCR and the Lithuanian Red Cross to encourage the authorities to reconsider the applicable border procedure, further actions, such as strategic litigation, may be required to effectively address this gap.

**DURING THE ASYLUM PROCEDURE**, children and families continue to be detained in some countries. In the **Czech Republic**, when children are accompanied, they are accommodated at the detention centre together with their parents to ensure appropriate care and family unity. From the perspective of national legislation, they are not detained and can leave the centre anytime with parental consent. However, from the perspective of international law, such practice clearly qualifies as detention of children. UNHCR has observed that the length of detention of families with children in the Bělá-Jezová Detention Centre often exceeds two months. The practice of a lengthy detention of families with children constitutes a clear violation of international human rights standards, in particular the prohibition of ill-treatment.

In **Hungary**, unaccompanied children held in the transit zones do not benefit from the protection afforded under the mainstream child protection regime, which requires the appointment of a child protection guardian and ensures that the best interests of the child be a primary consideration. Unaccompanied children held in the transit zones are instead appointed with a temporary guardian solely mandated to represent them in the asylum procedure with no authority to ensure that their emotional, social and cognitive development needs are addressed. UNHCR has observed cases when unaccompanied children have withdrawn their asylum applications and have been released from the transit zone in order to move towards Serbia, without any formal arrangements or communication between the authorities of the two countries.

In the case of **Mexico**, the detention of children continues to happen even though it has been outlawed. In 2018, 31,717 minors were detained (10,417 of them were unaccompanied). In this sense, it is important to underscore the need for the Children Protection Authorities to strengthen their approach in regards to

detention of migrant children. Advocacy must be done to strengthen the approach of the child protection authorities when dealing with cases of detained children in *estaciones migratorias*. Additionally, further training should be offered to child protection authorities to strengthen their understanding of the particular needs of refugee children.

**INADEQUATE AGE ASSESSMENT PROCEDURES** may also result in the detention of asylum seeking children. In some countries, such as the **Czech Republic**, legislation allows for detention of individuals pending the outcome of the age assessment. The age determination process in **Hungary** for unaccompanied children is inadequate. The medical examination is merely confined to physical observation, without any examination of the psychological maturity of the applicant, and the ethnic and cultural background. A multidisciplinary and holistic approach has also not yet been used in age assessment procedures in Lithuania. Instead, applicable regulations and practices continue to rely on medical X-ray-based methods, which have a significant margin for error. In this respect, the forthcoming study on policies and practices with respect to unaccompanied and separated children in the Baltic States, highlighting also good practices available in other countries, should be used when advocating for institutionalising the multidisciplinary and holistic approach in Lithuania in the near future.

**DIFFERENTIAL TREATMENT OF ADOLESCENTS** can also be observed both in law and in practice. For example, in the **Czech Republic**, children above the age of 15 may be subjected to immigration detention under the Aliens Act. There is no provision related to vulnerable persons and respective decision-making or case considerations under the Aliens Act. While in **Hungary**, unaccompanied and separated asylum-seeking children fourteen years of age and older are subject to automatic detention in the transit zones for the entire duration of the asylum procedure in the case of a “crisis situation caused by mass immigration”. However, under regular circumstances, the Act on Asylum contains a general prohibition of detention of unaccompanied asylum-seeking children. Families with children can only be detained as a last resort, for up to 30 days.

**LACK OF SUFFICIENT ADEQUATE RECEPTION AND CARE**, such as in **Malta**, means that children may be detained for prolonged periods as all suitable care arrangements are at capacity.

**DUBLIN TRANSFERS AND RETURN PROCEDURES:** Detention is still often resorted to in the context of return procedures or Dublin transfers. In **Bulgaria**, the detention of children with families for up to three months pending return remains of serious concern. UNHCR will continue to advocate with the authorities for the exemption of all children from immigration detention in law and practice as well as for the introduction of alternative care arrangements for families. UNHCR will continue its advocacy to ensure the decision to detain is preceded by an individual assessment of reasonableness, necessity and proportionality and the applicability of alternatives to detention. In addition, further legislative amendments and judicial engagement, including strategic litigation will be pursued to address gaps in the effective remedy against detention decisions, in particular in relation to speedy judicial review and compensation following unlawful detention.

While asylum-seeking families with children are not detained as a matter of established judicial and administrative practice in the **Czech Republic**, there have been instances of children being held in detention with their detained parents awaiting Dublin transfers.

In **Lithuania**, while judicial and administrative practice does not generally include detention of asylum-seeking families with children, there have still 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. In this respect, the Community Based Accommodation and Support Scheme could be extended to cover families with children in an irregular situation, e.g. families received final negative decisions on their asylum claims. Consultations with the authorities on this issue are on-going.

# IMPLEMENTING ALTERNATIVES TO DETENTION IN LAW AND PRACTICE

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**XENOPHOBIA, ANTI-IMMIGRANT AND ANTI-REFUGEE ATTITUDES AND POLICIES:** Unfortunately, in several of the focus countries, particularly in Central and Eastern Europe, there has been a surge in xenophobia, anti-immigrant and anti-refugee sentiments. This has negatively affected the protection space and opportunities for dialogue with authorities on reducing the use of detention. In some cases, it has delayed or halted the implementation of planned activities under the Global Strategy.

**INCONSISTENCIES BETWEEN LEGISLATION AND REGULATIONS:** In many contexts, while national authorities move forward in practice to facilitate access alternatives to detention and setup diverse non-custodial measures to manage the migration process, these positive changes are not yet reflected in the existing national legislation. For example, in **Mexico**, migration legislation establishes mandatory detention for all individuals who are irregularly in Mexico. This includes individuals who approach border entry points or arrive at international airports with the intention to seek asylum. In implementing its successful 'alternatives to detention' programme, enabling the release of a high number of asylum seekers to the community, the lack of a normative framework presents a set of persistent challenges. The lack of clear guidelines, principles and criteria for prioritization of persons with special needs continues to create uncertainty amongst asylum seekers who are not informed clearly or systematically of the criteria for release. Furthermore, the fact that it is not established in law or in a normative document means that the program can be terminated at any time by the Mexican government.

**PERSISTENCE OF ARBITRARY DETENTION SITUATIONS / ALTERNATIVES TO DETENTION ARE NOT APPLIED:** In other countries, alternatives are available in law and practice, but not always considered systematically and applied as appropriate. In **Hungary**, alternatives to detention were stipulated in law as of July 2013. However, in practice ATDs have been rarely applied. Furthermore, confinement in the transit zones is not interpreted by the government as detention. Hungary has continued to arbitrarily detain asylum-seekers as part of the special measures adopted under the national 'crisis situation caused by mass immigration' following increased arrival numbers in 2015. Requisite procedural guarantees are also not ensured in that context, i.e. no detention order is issued and no effective legal remedy is available for asylum applicants to challenge their detention before the court. UNHCR considers that confinement in the transit zones amounts to deprivation of liberty as asylum-seekers can leave the transit zones only to go to Serbia, without having the chance to have their asylum application examined.

While there is no exemption from detention for asylum-seekers in **Israel**, there is a policy decision since 2013 not to detain asylum-seeker children. In practice, difficulties remain in accessing asylum procedures while in detention. In **Zambia**, ATDs are currently provided for in the Immigration Act of 2010 through an asylum seekers permit and also through report orders. However, in practice these are rarely used. There is need for UN agencies and partners to continue lobbying the Government to implement these ATDs.

From mid-2019 in **Malta** all people arriving irregularly by boat are detained up to several months for medical checks. In reality, detention on medical grounds masks the lack of capacity in open centres. Children are also detained due to lack of space in dedicated centres. Specific nationals (e.g. Moroccans and Bangladeshi) are issued with immigration-related detention orders. These orders are not reasonably motivated in respect of an individual assessment and consideration of an ATD.

In **Canada**, where there have been positive developments under the ATD framework, there is still room for improvement including more clearly applying the framework to identity cases, the development of clear and objective criteria for determining “cooperation” for purpose of release the consistent reduction in detention and housing of children across all provinces in Canada. UNHCR and the government are continuing to work together in collaboration to address these issues in the rollout of the ATD Framework.

**LACK OF JUDICIAL ENGAGEMENT AND OVERSIGHT:** In **Mexico**, the lack of clear judicial precedent against detention of asylum seekers continues to be a challenge. The judicial branch has been hesitant when analysing asylum cases, referring detention cases to criminal judges who decide their cases upon technical grounds rather than as a violation of rights. Although there have been some efforts and advances in litigation, there continues to be a lack of effective judicial review of detention. In this sense, the judicial branch needs to become more active in challenging automatic detention, the length of detention and the lack of regular reviews of the decision to detain as well as the way in which detention can negatively impact access to the asylum procedure. Judicial engagement will be an increasingly relevant approach to ensure that judges and tribunals challenge the constitutionality of detention for asylum seekers.

**LACK OF A SYSTEMATIC MECHANISM TO IDENTIFY SPECIFIC NEEDS AND VULNERABILITIES:** In **Hungary**, there is no systematic mechanism to identify specific needs and vulnerabilities. As a result, asylum-seekers face major obstacles to access specific services, including specialized medical or psycho-social care. UNHCR has offered technical support to introduce standard operating procedures for the identification and adequate referral of asylum-seekers with specific needs, including victims of trafficking and SGBV to no avail. Another example is **Israel**, where the government has not adopted sufficient screening mechanisms to identify vulnerable individuals in detention and to exempt them from detention. Furthermore, the government does not provide adequate medical and psychological services to vulnerable detainees. It is important to establish better screening and referral measures as recognized victims of trafficking and those identified as unaccompanied children are exempt from detention by law.

**DETENTION IS NOT APPLIED FOR THE SHORTEST POSSIBLE TIME / NO TIME LIMIT:** The lack of a maximum length of detention remains a legislative gap in countries such as **Canada**, **Mexico** and the **United Kingdom**. The commitment of the United Kingdom to review the call for a time limit on immigration detention remains ongoing but has as yet not resulted in any published position statement. Prolonged detention without a clear fixed-term is also a challenge in **Japan**. While in **Hungary** there is also a lack of a statutory limit of the maximum period of detention in the cases dealt with as the result of the perceived crisis ‘caused by mass immigration.’ Finally, in some countries where the maximum length of detention is defined in law such as in the **Czech Republic**, UNHCR remains concerned that in most cases, detention lasts until maximum legally prescribed period and is terminated without achieving the purpose. This is particularly valid in cases of detention for the purpose of Dublin transfers.

# MONITORING AND IMPROVING CONDITIONS OF DETENTION

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**DATA COLLECTION AND ANALYSIS:** Data collection and transparency remain a challenge in many countries, as reflected in the limits on data in this report's Annex on quantitative trends. Even in countries where progress has been made in this regard, there are still some weaknesses in statistical information gathering systems. For example, in keeping its commitment to openness, fairness and transparency, the **Canadian** government has published on its website annual immigration detention statistics since Autumn 2016 and, more recently, started issuing quarterly statistics. However, this is not the norm. On the contrary, few other countries have clear and transparent systems in place to collect, analyse and report on immigration detention statistics and conditions. Particular shortcomings in this area relate to data on length of detention, the number of asylum-seekers detained, the grounds for detention and any ATD measures applied.

**ACCESS TO PLACES OF IMMIGRATION DETENTION FOR THE PURPOSE OF REGULAR MONITORING:** In most contexts, UNHCR and its partners have unimpeded access to immigration detention for the purpose of monitoring. However, in **South Africa**, the implementation of the judgment *Lawyers for Human Rights v Minister of Home Affairs and Others (CCT38/16)* has led to a number of changes surrounding the process of legal assistance including the barring of detention monitoring in Musina, Limpopo Province. UNHCR and legal partners continue to engage the authorities to advocate for the removal of the bar.

**CONDITIONS OF DETENTION AND TREATMENT OF DETAINEES:** Co-mingling of asylum seekers with criminal offenders remains a problem in several countries. In **Canada**, asylum-seekers can be detained in criminal correctional facilities rather than in immigration holding facilities for reasons including criminality (current or previous), lack of identity, flight risk and lack of co-operation. They may be transferred from Immigration Holding Centres to correctional facilities based on the level of risk and availability of services, for example, to handle serious mental health issues. UNHCR has advocated against co-mingling of asylum seekers with criminal populations. The ATD Framework has been designed to address these gaps, and the impact of which is yet to be determined fully. Immigration holding centres have generally not been equipped to house or provide services to individuals with mental health issues or those who may be a risk to themselves or others in detention. However, UNHCR notes that immigration holding facilities are currently being built and/or retrofitted to allow for "higher risk" populations to be held in such centres rather than in correctional facilities.

In some countries, conditions of detention still fall short of international standards. This is the case in **Malta**, for example, in relation to the number of toilets and showers, as well as personal space. Detention conditions also continue to be a persistent challenge in **Mexico**. There has not been much improvement and, due to the heightened number of detentions, there could be a further deterioration of conditions. Recent visits to detention centres in southern Mexico reveal an increasingly complex situation in which there is overcrowding (some centres housing up to three or four times their capacity); in some cases lack of adequate food and sanitation as well as disincentives for individuals to access the asylum procedure and legal counselling. The situation of detention conditions has not gone unnoticed. In 2017 INM's Citizen Council issued a report with 156 recommendations for improvement of conditions in detention centres. Additionally, since 2016 CNDH has issued eight non-binding recommendations to INM relating to detention conditions. This has led to the temporary suspension of two detention centres in northern Mexico, in which conditions were particularly dire. However, progress on the implementation of these recommendations is urgently needed.



### **SPECIFIC MEASURES TO ADDRESS THE NEEDS OF PERSONS IN SITUATION OF VULNERABILITY OR AT RISK:**

There is a real concern that the hostile detention environment in Hungary is likely to have a long-term impact and affect the psychosocial well-being of asylum-seekers. The limited living space, barbed wire and other physical security measures and the constant presence of uniformed guards further contribute to the deteriorating mental health condition of people in the transit zones. A significant number of asylum-seekers have previously experienced serious trauma and exhibit some form of mental health disorder, which remain largely unidentified and untreated. Asylum-seekers only have access to basic medical care, such as emergency interventions and treatment of chronic diseases, and lack of information and limited interpretation capacities also result in inadequate support and counselling for people with medical and mental health needs. Additionally, children's development, psycho-social and recreational needs are not met in Hungary, including in the case of teenagers who do not have access to age-appropriate leisure activities or to psycho-social support programmes. A basic education and recreation programme has been implemented by the authorities since September 2017, but it has had varying capacity and it is not well tailored to meet the needs of all children. There are no specific policies or regulations in place to provide protection against sexual and gender-based violence, discrimination and abuse. The transit zones are not equipped to meet the needs of persons with mental or physical disabilities and no alternatives are considered for their placement. The government has initiated regular visits by a psychologist and a psychiatrist, but this is insufficient to address the mental health needs of the people detained.

# DEVELOPMENTS AT THE GLOBAL LEVEL (JANUARY 2018–JUNE 2019)

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As in previous reports, this section provides selected highlights on the progress made towards the achievement of the Global Strategy's goals at the global level during the reporting period. The subsequent sections will focus on the national level.

Globally, UNHCR further clarified its policies concerning immigration detention and launched a series of training programmes to build capacity of staff, partners and other relevant stakeholders (including immigration officials, border guards, lawyers and judges). New tools were also developed to enhance the technical capacity of authorities regarding practical measures relating to the implementation of alternatives to detention and monitoring conditions of detention, among others.

## **4th Workshop for UNHCR Focus Country Focal Points in 2018**

The fourth annual workshop for UNHCR focus country focal points and partners was organized in April 2018 in Brussels. As with the earlier workshops, it provided an opportunity to exchange 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. The workshop also provided an opportunity for all participants to receive input on current opportunities and challenges and to brainstorm on ways forward after the end of the implementation of the Global Strategy. These discussions are reflected at length in the section *recommendations for future mainstreaming*, below.

## **EIHDR Project – Global technical assistance and capacity building programme to prevent detention of children and to protect children and other asylum-seekers in detention**

With support from the European Union through the European Instrument for Democracy and Human Rights (EIHDR), UNHCR implemented the project entitled “Global technical assistance and capacity building programme to prevent detention of children and to protect children and other asylum-seekers in detention” from 1 November 2016 until 28 February 2019. The project was a collaboration between UNHCR's Protection Policy and Legal Advice (PPLA) Section of the Division of International Protection (DIP), UNHCR's Global Learning Centre (GLC), and five UNHCR country operations in North Macedonia, Indonesia, Iraq, Malaysia, and Mexico. This 28-month long project focused primarily on advocacy interventions, technical assistance, and awareness-raising on international standards related to immigration detention. Its main objective was to contribute to the prevention of the detention of children, the promotion of care arrangements for children and non-custodial measures for asylum-seekers and refugees.

These objectives have been achieved through two specific outputs:

- ❶ Implementation of the country-wide immigration detention monitoring and capacity building programmes focused on children and families and other persons of concern at risk of detention, along with technical assistance and awareness raising activities in relation to relevant international standards.
- ❷ Support for the creation of new care arrangements and community-based arrangements for children and children in families, through technical assistance to various stakeholders.

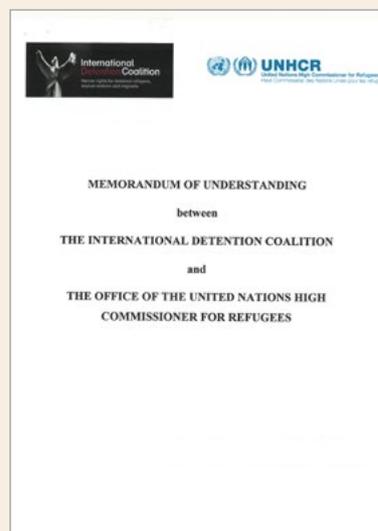
Under the project, UNHCR also developed three comprehensive learning programmes on detention, for staff and partners, that are detailed below in this section.

Additionally, a total of 208 workshops, conferences and awareness-raising sessions were delivered during the implementation of the project, to more than 4,400 participants. These events targeted a variety of audiences including officials from the relevant ministries, law enforcement agencies and immigration authorities, lawyers from partner organisations and law firms, judges and prosecutors, persons working at independent human rights organisations, academics, students, representatives from international organisations, NGOs, and UNHCR staff.

UNHCR operations also **supported lawyers working on a pro-bono** basis and liaised with judges and national bar associations to increase awareness about refugee law, children's rights, and situations of arbitrary and/or prolonged detention of asylum-seekers and refugees. These efforts included identification of potential cases for litigation and assisting in analysing these cases and developing legal arguments.

### **Renewal of the Memorandum of Understanding between UNHCR and the International Detention Coalition<sup>11</sup>**

In July 2019, UNHCR and the International Detention Coalition (IDC) renewed their Memorandum of Understanding (MoU) and reaffirmed their commitment to promoting effective alternatives to detention and to work together in the fields of monitoring, research, advocacy and capacity building. The practical collaboration between UNHCR and IDC has been represented by a large number of concrete joint activities at field level, from organising training and awareness raising activities to supporting individual cases through concrete protection interventions, many of which are reflected in the country chapters section of this report. At the global level, the synergies between the two institutions have been reflected by shared policy positions on different aspects of immigration detention, supporting common engagement with different fora and more practically by, jointly with UNICEF, leading the working group on alternatives to detention setup under the umbrella of the UN Network on Migration<sup>12</sup>. The MoU will continue in effect for five years, through to July 2024. As such, it provides a strong framework for continued collaboration after the timeframe of the Global Strategy.



### **Independent Desk Review of UNHCR's Global Strategy – Beyond Detention 2014-2019**

UNHCR commissioned an independent desk review of the Global Strategy in 2019. The review is intended to generate an overview of achievements and lessons learned from UNHCR's implementation of the Global Strategy at country and regional levels with a view to making recommendations for mainstreaming good practices and approaches in the future. The review is expected to be completed by early 2020 and will be made available at: <https://www.refworld.org/detention.html>

<sup>11</sup> Memorandum of Understanding between the International Detention Coalition and The Office of the United Nations High Commissioner for Refugees, 10 July 2019, available at: <https://www.refworld.org/docid/51b86f344.html>

<sup>12</sup> <http://migrationnetwork.un.org/>



## GOAL 1: End the detention of children

### UNHCR Global Roundtable on Reception and Care-Arrangements for Asylum-Seeking Children<sup>13</sup>

In October 2018, UNHCR organised the Global Roundtable on Reception and Care Arrangements for Asylum-Seeking Children in Bangkok, Thailand. The roundtable brought together 62 representatives and officials from Government, civil society/NGOs, international organisations, academia and other experts, drawn from 18 countries covering most regions of the world. The roundtable comprised numerous panel discussions over the course of eight sessions where participants benefited from substantive discussions and expert insights into challenges and good practices, including on the rights of asylum-seeking children; global/regional policy trends, law and standards for non-detention of children; screening for vulnerabilities and risk; community-based care arrangements; protection of children at national level; and care for unaccompanied or separated children (UASC). The Bangkok Roundtable further advanced thinking and awareness on ways to develop, design and promote reception and care arrangements for children and families within asylum and migration systems without recourse to detention.

#### The main conclusions and observations from the Global Roundtable focused on:

- the rights of children on the move and the international legal framework, which should guide all actions regarding their protection and well-being across international borders;
- the screening and assessments of vulnerabilities and risks, as well as best interests procedures, which are important to inform decisions on reception arrangements, including placement and support options; and
- the protection of children and families in the immigration context through community support and other placement options.

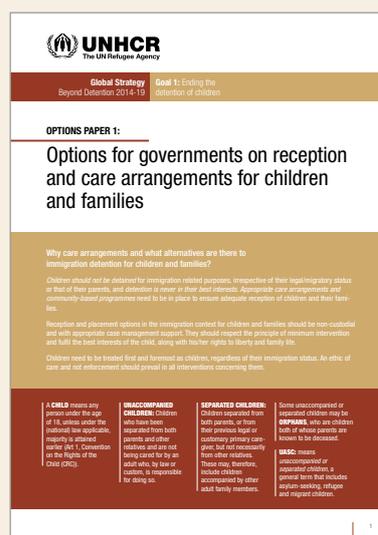
<sup>13</sup> For further reference see: <https://www.unhcr.org/protection/expert/3e5f78bc4/expert-meetings.html>

## UN Global Study on Children Deprived of Liberty<sup>14</sup>

In December 2014, the United Nations General Assembly (UNGA) adopted its Child Rights Resolution (A/RES/69/157), inviting the United Nations Secretary-General to commission an in-depth global study on children deprived of liberty. In October 2016, Professor Manfred Nowak was appointed as Independent Expert to lead the Study. He submitted the report on the Study (A/74/136) to the UNGA in September 2019. The study identifies best practices in non-custodial solutions applied by States in relation to the following six situations: (a) detention of children in the administration of justice; (b) children living in prisons with their primary caregivers; (c) migration-related detention; (d) deprivation of liberty in institutions; (e) detention in the context of armed conflict; and (f) on national security grounds. The study includes recommendations to support States and the United Nations in dealing with related issues. The Protection Policy and Legal Advice Section of UNHCR's Division of International Protection (DIP PPLA) was a member of the Study's Advisory Board and active in the Thematic Research Group on Children Deprived of Liberty for Migration related reasons. Feedback provided to the Study included practical examples of interventions, around care arrangements for children, in several focus countries for the Global Strategy both at legal/policy level but also at the implementation stage. This provided an opportunity, again, to present UNHCR's progress towards the achievement of the first goal of the Global Strategy.

### Revision of Options Paper No 1: Options for governments on reception and care arrangements for children and families<sup>15</sup>

After consultations with countries implementing the Global Strategy, in 2019 UNHCR revised and expanded its Option Paper No 1 on 'Options for governments on reception and care arrangements children and families.' This Options Paper highlights guiding principles for policy and decision makers designing and implementing reception and care arrangements. It includes noteworthy practices from countries around the world including both options for unaccompanied or separated children as well as for children in families. The paper now reflects the updated position on the detention of children (2017) and their appropriate care in specific reception arrangements.<sup>16</sup>



<sup>14</sup> See <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>

<sup>15</sup> Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families, 2015, available at: <https://www.refworld.org/docid/5523e8d94.html>

<sup>16</sup> UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, available at: <https://www.refworld.org/docid/5885c2434.html>



## GOAL 2: Ensure that Alternatives to Detention are available in law and implemented in practice

### UNHCR Beyond Detention Toolkit: Guiding Questions for the assessment of Alternatives to Detention<sup>17</sup>

This tool provides guidance to UNHCR’s operations 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 aims, as well, to provide a framework to support the future design and implementation of alternatives by building upon existing models. The guiding questions are focused on the situation of persons of concern to UNHCR but may be relevant for others, such as migrants in an irregular situation in general.



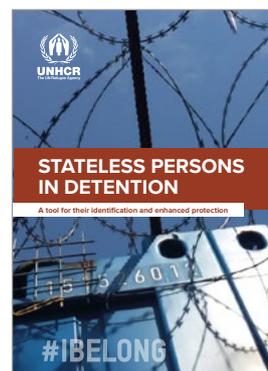
<sup>17</sup> UNHCR Beyond Detention Toolkit: Guiding Questions for the assessment of Alternatives to Detention, May 2018, available at: <https://www.refworld.org/docid/5b1e662d4.html>

## Session on preventing and ending the immigration detention of stateless persons at the World Conference on Statelessness and Inclusion<sup>18</sup>

In June 2019, UNHCR organised a workshop session at the World Conference, which brought together experts and practitioners to explore how tools such as UNHCR's *Stateless Persons in Detention Tool*<sup>19</sup> have been applied in practice. Participants exchanged lessons learned in relation to the following three themes:

- Prevention: ensuring an individual vulnerability screening before any decision to detain;
- Monitoring: identifying stateless persons as part of immigration detention monitoring;
- Securing solutions: providing alternatives to detention and facilitating referral to Statelessness Determination Procedures.

The aim of the workshop was to raise awareness, exchange tools and good practices as well as to explore what else could be done in this challenging field.



## Revision of Options Paper 2: Options for governments on open reception and alternatives to detention<sup>20</sup>

UNHCR is revising and updating its Options Paper 2, which includes good practices concerning screening and timely detention review as well as issues related to access to justice such as the provision of legal aid and the right to challenge. Noteworthy reception practices such as the granting of documentation and legal stay and case management models are also highlighted. Various approaches to open reception and alternatives to detention are also showcased in the paper.



## UN Committee on Migrant Workers: Draft General Comment No. 5<sup>21</sup>

The Committee is preparing a new General Comment No 5 on Migrants' Rights to Liberty and Freedom from Arbitrary Detention. UNHCR contributed a written submission, which can be found in the linked page, to inform the drafting process. The Committee is aiming to adopt the General Comment in April 2020.

## UNHCR Guidelines on International Protection No 14 on non-penalization of refugees for their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees

The forthcoming guidelines will include a section addressing necessary restrictions on freedom of movement, including detention. The release of the guidelines is expected in 2020.

<sup>18</sup> See <https://www.institutesi.org/conference>

<sup>19</sup> Stateless Persons in Detention: A tool for their identification and enhanced protection, June 2017, available at: <https://www.refworld.org/docid/598adac4.html>

<sup>20</sup> Options Paper 2: Options for governments on open reception and alternatives to detention, 2015, available at: <https://www.refworld.org/docid/5523e9024.html>

<sup>21</sup> See <https://www.ohchr.org/EN/HRBodies/CMW/Pages/GC5.aspx>



### **GOAL 3: Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards**

#### **UNHCR Briefing Note on Engaging with the Working Group on Arbitrary Detention<sup>22</sup>**

UNHCR developed this briefing note for the purpose of supporting UNHCR operations and other partners in their interactions with the United Nations Working Group on Arbitrary Detention (WGAD). It presents the working procedures of the WGAD and explores the options available to UNHCR operations and partners to engage with this mandate. It clarifies when detention can be considered arbitrary and outlines the possible actions that the WGAD may take under its mandate.

#### **Council of Europe Standard-Setting**

UNHCR is engaged in the consultation process for the development of a draft instrument to codify existing international standards relating to the rules on the conditions of detention of migrants. Updates on the process as well as factsheets, a feasibility study and compilation of relevant legal instruments are available at the Council of Europe website.<sup>23</sup>

<sup>22</sup> Engaging with the Working Group on Arbitrary Detention, 6 November 2018, available at: <https://www.refworld.org/docid/5be2c90a4.html>

<sup>23</sup> <https://www.coe.int/en/web/cdcj/activities/administrative-detention-migrants>

## E-learning and training materials<sup>24</sup>

Under the framework of the EIDHR project and in close collaboration with the Global Learning Centre, DIP developed the first e-learning course on the **Fundamentals of Immigration Detention**, that covers an introduction and prerequisite knowledge and concepts related to the topic of detention and freedom of movement in the immigration context. It contains 6 modules and can be completed in 3 hours of self-study, and is part of the mandatory component of the Certification Programme on International Protection (CP-IP).

Complementing this e-learning course, DIP developed two additional self-study modules. The self-study modules on **Immigration Detention Monitoring** are designed with the purpose to equip learners with practical knowledge and skills related to immigration detention monitoring and monitoring skills. 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 materials contain seven modules and involve a minimum of 12 hours of self-study. The self-study modules on **Alternatives to Immigration Detention** intend to equip learners with knowledge and skills related to advocating for, developing and implementing alternatives to immigration detention in a national context. The materials contain six modules and requires a minimum of ten hours of self-study.

The **Fundamentals of Immigration Detention** is now publically available for partners to access on the following platforms:

- Disaster Ready: <http://www.disasterready.org/immigration-detention>
- Humanitarian Leadership Academy: <https://kayaconnect.org/course/info.php?id=1213>

Additionally, the self-study modules on **Immigration Detention Monitoring** as well as the self-study modules on **Alternatives to Detention** are available on RefWorld in Arabic, French and Spanish.<sup>25</sup>

<sup>24</sup> The e-learning course can be accessed via the following link: <https://unhcr.csod.com/ui/lms-learning-details/app/curriculum/1748efaa-e67c-4b7f-b459-2b226ffc0186> or users can navigate to it by searching for "detention" on the Learn & Connect site ([www.learn.unhcr.org](http://www.learn.unhcr.org)). The self-study modules on Alternatives to Detention and Immigration Detention Monitoring are available on Refworld. They can be accessed from the menu on the right side at: <https://www.refworld.org/detention.html>

<sup>25</sup> To access other languages of the self-study modules, first access the English version of the modules on the right hand menu of <https://www.refworld.org/detention.html>. From there, the user has the option of selecting Arabic, French and Spanish as other languages.

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## KEY DEVELOPMENTS

- The **legislative changes of 21 November 2017**, which transposed relevant EU Directives and came into force on 22 March 2018, explicitly stipulate that no foreigner can be put in detention for the mere reason of being an asylum seeker. It also introduces the notion of less coercive measures that need to be considered before a detention measure is taken – a requirement that does not apply at the border. The law now stipulates that detention should be as short as possible, and the maximum period of 2 months can only be extended for reasons of public order or national security. Asylum applications at the border – de facto in detention – need to be processed within 4 weeks, counting from the moment Belgium takes responsibility for the claim under the Dublin Regulation. What can constitute a ‘risk of absconding’ is now clearly defined in the law, but the new law de facto increases the number of grounds for detention. UNHCR’s 2017 comments to the draft law were not taken into consideration;
- As part of the Masterplan on detention, that announced in 2017 an **increase of detention places** to 1100 in 2022, a **new closed center** opened in July 2019 in Holsbeek (50 places for women). The Netherlands donated 144 prison container units to Belgium, to be operational in Zandvliet in 2020, and construction works in Jumet (200 places to open in 2021) were initiated;
- **The Royal Decree on closed family units** entered into force in August 2018, but was **suspended by Council of State** in April 2019, supported by 16 organizations including IP NANSEN;
- **Commission Bossuyt** was installed by Parliament in March 2018 to **evaluate Belgium’s return policy** and launched its **intermediary report** in February 2019;
- The Belgian Chamber adopted on 19 July 2018 the **draft law ratifying OPCAT**, but the law was not officially published yet, making the ratification process incomplete.

## Activities undertaken by UNHCR and implementing partners from January 2018 – June 2019

### Awareness-raising and campaigning

UNHCR issued a press release on the Royal Decree introducing detention of children on 1 August 2018, followed by 2 radio interviews and large media coverage. UNHCR also partnered in the national campaign against detention of children <http://www.youdontlockupachild.be/> including 325 organizations. In light of May 2019 federal elections, meetings were held with 8 major political parties to convey key advocacy messages calling for an end to the detention of children, more ATDs, more limited grounds for immigration detention in law, improved judicial control on immigration detention and ratification of the OPCAT. A detailed advocacy note is being prepared together with Nansen with detention-related recommendations to the new government. The development of the Dutch version of the Learning Program on Fundamentals of Immigration Detention has been finalized in August 2019.

## Strengthening partnerships/alliances with national stakeholders to achieve policy changes

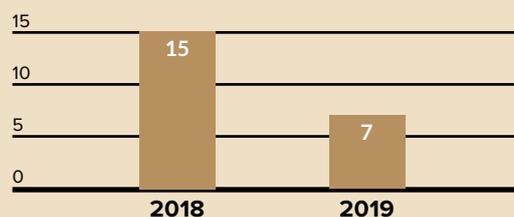
IP NANSEN receives UNHCR funding to visit detention centers, to identify detained persons in need of international protection and provide legal support to lawyers and other legal practitioners. UNHCR is a member of the Detention Working Group of *Plateforme Mineurs en Exil*, together with main refugee NGOs and child protection actors. Through monthly meetings, the WG exchanges information, coordinates monitoring of places where children are detained, and agrees on (joint) advocacy strategies. UNHCR is also a member of the expert panel on the evaluation of open return houses by *Plateforme Mineurs en Exil*. UNHCR is an observer in the Transit Group, which is comprised of the NGOs which visit immigration detention centers, and participates in its bi-monthly meetings where (volunteer and professional) visitors debrief and discuss their monitoring, and its monthly meetings in which relevant NGO staff to exchange information and decide on joint advocacy strategies. As part of its Quality Legal Assistance Project, UNHCR initiated and is part of working group meetings with Bar Associations, the Immigration Office and NGOs to improve access and quality of legal assistance in immigration detention. UNHCR enjoys a good dialogue with Immigration Office on detention-related issues.

## Alternatives to detention

Open return houses for families have been operational since 2008. Designated mandatory residence for families is possible since 2017. Other alternatives to detention (such as deposit of a financial guarantee and the duty to report regularly) are named in the Aliens Act, but a Royal Decree is yet to be published to make these provisions applicable.

## GOAL 1 End the detention of children

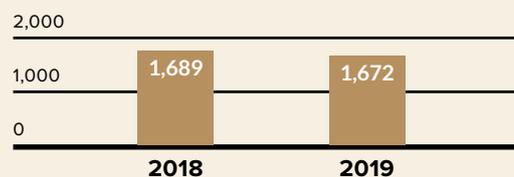
### NUMBER OF CHILDREN DETAINED\*



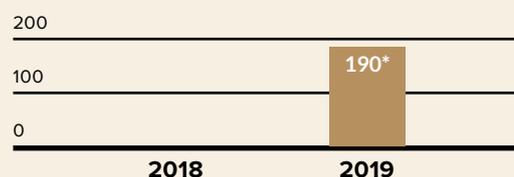
\* Children were detained with their families

## GOAL 2 Ensure that alternatives to detention are available

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



### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES (including children)



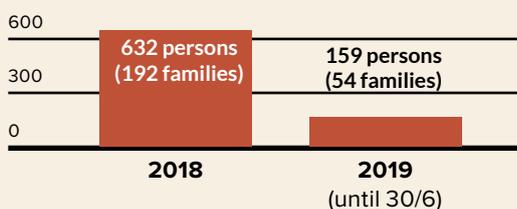
\* Open return houses: 28 units in 5 locations, with 168 beds + 22 baby beds. Designated mandatory residence: families stay in their own house.

### TYPES OF ATds IN PLACE

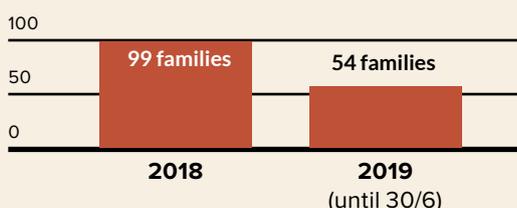
Open return houses for families and designated mandatory residence for families.

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

**Open return houses:**

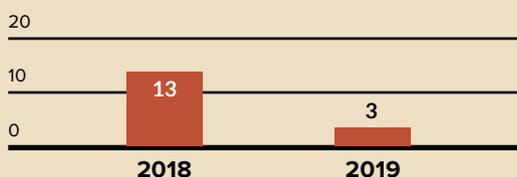


**Designated mandatory residence:**



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

**NUMBER OF MONITORING VISITS CONDUCTED BY UNHCR AND/OR IMPLEMENTING PARTNERS\***



\* Total number of monitoring visits: 16.

**Securing access to and monitoring places of immigration detention**

UNHCR has access to all six immigration detention centres that are managed by the Immigration Office, as guaranteed by Article 44 of the Royal Decree of 2 August 2002 on the functioning of closed centres.<sup>1</sup> UNHCR is not aware of any incidents where this might not have been the case, and enjoys a good collaboration with the Immigration Office in this regard. UNHCR has developed a detailed detention monitoring strategy for Belgium for 2018 – 2019.

**Future Plans**

In 2019 and beyond, the dialogue on quality legal assistance in detention will be continued. In policy advocacy, detention-related recommendations will be systematically inserted in the dialogue. The very good relations established with the Transit Group will be a good basis for further collaboration and exchange of information.



**TRAININGS ORGANIZED DURING THE TRAINING PERIOD**

2 on asylum law  
1 on detention monitoring

**NUMBER OF PERSONS TRAINED IN BELGIUM DURING THE REPORTING PERIOD**

120 on asylum law  
8 on detention monitoring

<sup>1</sup> Arrêté royal du 2 Aout 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, § 1er, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. <https://bit.ly/2RD1cMn>

## KEY DEVELOPMENTS

- **Amendments to the Law on Foreigners** exempting unaccompanied children from short-term immigration detention following apprehension upon irregular entry or stay entered into force in June 2018.
- **Identification and referral procedures for unaccompanied children**, providing a definition of which adults could be considered as accompanying a child, were introduced in the Regulation on the Implementation of the Law on Foreigners.
- **Modalities for the implementation of the ATDs** were enshrined in the Regulation on the Implementation of the Law on Foreigners.
- **Amendments providing for the possibility of granting a continuous residence permit to unaccompanied children who do not apply for asylum or whose claims have been finally refused** were promulgated in April 2019 and will enter into force in October 2019.
- Inter-agency working group, of which UNHCR is a member, was convened by the authorities to **draft guidance on age assessment**.
- UNHCR publicly presented its **National Action Plan** before all relevant stakeholders who expressed support for the identified goals.
- UNHCR produced **video information materials** on access to the asylum procedure in 9 languages which are screened at the two immigration detention centers run by the Directorate of Migration.
- Jointly with the National Police, UNHCR produced **child-friendly audio information materials and leaflets** in 8 languages containing information about access to the asylum procedure as well as about rights and obligations.
- **Fundamentals of Immigration Detention Learning** programmed was translated into Bulgarian and was made available online. The course was shared with the Academy of the Ministry of Interior.
- As envisaged under the MoU signed in 2017, **UNHCR convened meetings with Directorate Migration, managing immigration detention centres** (Special Centres for Temporary Accommodation of Foreigners) in order to discuss issues and potential concerns related to detention and agree on how to address them. The quality and frequency of the exchanged information has also improved considerably.
- The NGO Centre for Legal Aid Voice in Bulgaria completed the **project “Protecting migrants with precarious status: decreasing the use of detention and applying community-based alternatives”** aimed at implementing a case management ATD approach. The report on the implementation and recommendations have been published. The project was extended for two more years.
- **Amendments to the Law on Asylum and Refugees clarifying the procedure for documenting violations of restrictions on freedom of movement of asylum seekers** – with the second such violation resulting in automatic placement in a closed centre – were introduced.

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

In 2018 UNHCR commissioned a survey on Public Attitudes towards Refugees and Asylum-Seekers in Bulgaria and the findings were used in its awareness raising activities and efforts to advocate for ensuring that alternatives to detention are used.

### Strengthening partnerships/alliances with national stakeholders to achieve policy changes

UNHCR was invited and participated in all inter-departmental working groups tasked with drafting amendments to the relevant primary legislation (Law on Foreigners; Law on Asylum and Refugees) as well as secondary legislation (Regulation on the Implementation of the Law on Foreigners) and guidance (age assessment – ongoing). UNHCR's comments and recommendations were taken into consideration in the final draft of the Law on Foreigners, resulting in strengthening safeguards to ensure that unaccompanied children are exempted from immigration detention and have improved access to safe and age-appropriate reception and care arrangements within the national child protection system.

Pursuant to the bi-partite MoU signed in 2017, UNHCR convened regular meetings with the Directorate of Migration, in charge of managing detention centres, in order to discuss issues and potential concerns related to detention and agree on how to address them.

UNHCR cooperated with the Centre for Legal Aid Voice in Bulgaria currently implementing a project on case management ATD, including by regularly exchanging information and participating in the Roundtable on alternatives to detention organized in June 2019. UNHCR also participates in a working group convened by the Centre for Legal Aid which aims to draft proposals for regularisation on certain categories of irregularly residing foreigners and introduce a 'tolerated stay', thereby reducing the risk of detention and improving the effectiveness of alternatives to detention.

The Protection Working Group, co-chaired by UNHCR and comprised of government and non-government stakeholders continued to provide a useful platform for exchange and coordination on issues impacting on the protection of persons of concern, including detention and alternatives to detention.

### Alternatives to detention

#### Unaccompanied and separated children

While changes to the Implementing Regulation of the Law on Foreigners were introduced in 2018, providing a definition of unaccompanied and separated child and stipulating that those identified upon apprehension following irregular entry or stay are to be transferred directly to the Directorate "Social Assistance" to be accommodated in alternative care, in practice this has not resulted in an immediate placement in such care in all instances. This is due to the lack of capacity and reluctance of residential-type social services to accommodate unaccompanied and separated children and the absence of a specialized interim care facility.

Following UNHCR advocacy, the government has agreed to set up an interim care facility for the initial identification and temporary care of unaccompanied and separated migrant and asylum-seeking children. While external funds have been obtained almost a year ago, the project's implementation is severely delayed due to, in particular, resistance from local municipalities to hosting such a facility on their territory.

The Law on Asylum and Refugees provides that unaccompanied and separated asylum-seeking children can be accommodated with relatives, foster families, in residential care or specialized institutions, in accordance with the Law on Child Protection. In practice, however, due to a lack of administrative, residential and financial capacity of the national social services, including lack of specialized centres for children, language training and lack of experience with unaccompanied and separated children, they are accommodated at the State Agency for Refugees centres without specialized care.

Apart from security guards, there are no employees of the State Agency for Refugees present at reception centres outside working hours. IOM is currently implementing a project on establishing 'safe zones' within some of the reception centres where 24/7 care and adequate reception conditions will be provided. The construction and refurbishment of such a zone in Voenna Rampa reception centre in Sofia has been completed and it is operational as of 17 June 2019, while work on establishing one in Ovcha Kupel began in April 2019. However, children still have to share some premises with the adults accommodated at the centre (e.g. common yard, rooms for leisure activities and education). In addition, the sustainability of the project beyond its initial first year is not ensured.

### Children with families

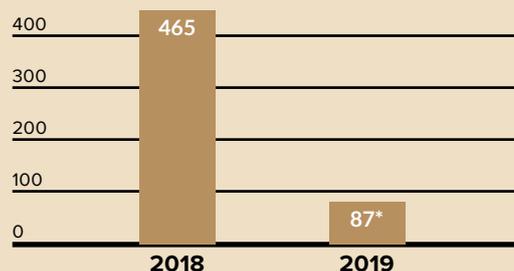
Unlike unaccompanied children, children with families can be detained at immigration detention centres under the Law on Foreigners – short-term for the purpose of initial identification for up to 30 days and for the purpose of removal, for up to three months. They are accommodated in separate wings of the immigration detention centres. There are no alternatives to detention applicable to families. Upon submission of an asylum application, families are normally transferred to open registration-reception centres managed by the State Agency for Refugees. Families are accommodated in separate wings of the registration-reception centres.

### Securing access to and monitoring places of immigration detention

Although UNHCR has been engaged in detention monitoring for a number of years, cooperation with the Directorate of Migration, including securing access to detention facilities, provision of statistical information and providing capacity-building was formalized in a MoU in 2017. UNHCR conducts regular weekly monitoring visits to each of the two immigration detention centres (as well as the closed centre for asylum-seekers managed by the State Agency for Refugees) so as to assess whether detention conditions are in line with international, European and national standards. Particular attention is paid to: ensuring the exemption of unaccompanied children from immigration detention in practice; timely and effective access to the asylum procedure including release of the applicant upon submission of a claim; as well as

## GOAL 1 End the detention of children

### NUMBER OF CHILDREN DETAINED\*



\* As of June 2019: 87 in total (of whom 31 were identified as UASCs)

## GOAL 2 Ensure that alternatives to detention are available

### TYPES OF ATDs\* IN PLACE:

#### Reporting conditions/provision of guarantor/surety/ surrender of passport

- Number of places available in care arrangements for children (UASC): 2018 / 2019

It is not possible to provide such a number – as mentioned children should be accommodated within the national child protection system but there are no specifically allocated places. The capacity of the “safe zone” within the registration-reception centre of Voenna Rampa is 100.

- No ATDs for families exist; during the asylum procedure families are accommodated at registration- reception centres

\* Please note that reference here is made to ATD under the Law on Foreigners which is applicable to those who have not made an application for international protection or those whose claims have been finally refused. The Law on Asylum and Refugees provides for regular reporting as an alternative to the detention of asylum-seekers but so far this has not been used. It should be noted that the detention of asylum-seekers under the LAR is not frequently used.

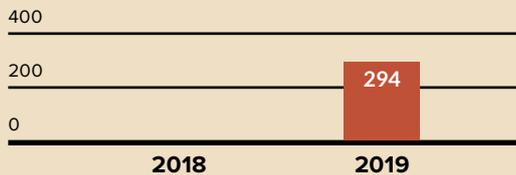
### PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)\*



\* These are absolute figures which reflect the total number of ATDs, without any break down

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

**NUMBER OF MONITORING VISITS CONDUCTED BY UNHCR AND/OR IMPLEMENTING PARTNERS**



**TRAININGS ORGANIZED DURING THE TRAINING PERIOD**



- 5 on asylum law
- 1 on detention monitoring
- 5 on child protection
- 1 on reception and ATDs
- 3 on detention condition standards
- 3 on screening and referral

**NUMBER OF PERSONS TRAINED IN BULGARIA DURING THE REPORTING PERIOD**

- 125 on asylum law
- 15 on detention monitoring
- 100 on child protection
- 30 on reception and ATDs
- 85 on detention condition standards
- 50 on screening and referral

ensuring the procedure for granting international protection is not conducted in immigration detention. An on-line monitoring form is used to assess the conditions at the centre. In addition, UNHCR's partner, the Bulgarian Helsinki Committee (BHC), has regular access to the detention centre and in addition to monitoring provides legal counselling and assistance including to persons who may be in need of international protection. Follow-up on the issues arising from the monitoring visits is ensured depending on the type of concern. Some issues are addressed with the senior management on the spot, while general trends and concerns are discussed at the regular bilateral meetings convened under the MoU. Where necessary, proposals for legislative and police changes are made.

**Future Plans**

Detention will remain one of the priorities of UNHCR Bulgaria. UNHCR will continue its monitoring activities at detention centres as well as the provision of legal counselling and assistance through its partner BHC. Advocacy and strategic litigation will be pursued in relation to areas which remain problematic including the timely release from immigration detention and conducting the entire procedure for granting international protection in immigration detention. UNHCR will continue to advocate for the exemption from detention of families with children and the introduction of alternatives to detention for families. Continuity regarding monitoring and follow-up will be ensured also through the regular working group meetings under the MoU with the Directorate of Migration. As envisaged under the MoU, UNHCR will continue to provide regular training to employees of the Directorate of Migration, including those at the two immigration detention facilities. Detention issues will continue to be discussed at the protection working group meeting, which will continue to provide a platform for exchange and coordination among stakeholders. UNHCR will continue to use opportunities such as providing comments to national legislation relevant to detention as well as to national, European and international human rights treaty monitoring bodies raising consistently gaps in relation to detention and providing recommendations. In addition, UNHCR will disseminate more widely the course Fundamentals of Immigration Detention, translated into Bulgarian and available online, among various stakeholders.

## KEY DEVELOPMENTS

- In June 2019, the Government amended the **Immigration and Refugee Protection Regulations** to specify that in deciding whether to detain or release a foreign national or permanent resident, a decision-maker must **consider the best interests of a child any time that the child is directly affected by a decision to detain their parent or legal guardian**. The Regulations also specify a **non-exhaustive list of factors to be considered** when determining the best interests of the child.
- In June 2018, the Canada Border Services Agency (CBSA) rolled out its **Alternative to Detention (ATD) Program**, a key pillar of its 2016 **National Immigration Detention Framework (NIDF)**. The ATD Program establishes and expands on a set of tools and programs that enable officers to more effectively release individuals into the community.
- In addition to previously-existing options for release with conditions (i.e. in-person reporting, cash deposit or establishment of a bondsperson), the ATD Program now includes: A national **Community Case Management and Supervision (CCMS)** program that aligns in-community support services with individuals' needs to mitigate any risk factors; A **National Voice Reporting program** that enables individuals to comply with reporting conditions imposed by the CBSA or the Immigration and Refugee Board (IRB), by using voice biometrics to report to the CBSA at a prescribed interval; and, an **Electronic Monitoring Pilot** for high risk cases in the Greater Toronto Area region that uses GPS and Radio Frequency to monitor an individual's whereabouts. The Electronic Monitoring Pilot ends on 31 March 2020. An options analysis looking at the possibility of an expansion of the pilot is being conducted.
- The **ATD program** was developed in close consultation with stakeholders, including UNHCR. It aims to ensure that all individuals subject to a detention decision are considered for alternatives to detention from the earliest point, throughout the detention continuum and in a nationally consistent manner. Through the increased and systematic use of ATDs, the CBSA hopes to achieve a reduction in the number and length of detentions, with more individuals being released from detention earlier in the review process. The expansion of ATD programming has resulted in better options to manage vulnerable people and family situations, given the new priority to the systematic application of the best interests of children as a primary consideration.
- The ID released **new guidelines for detention reviews** in April 2019, after significant consultation with stakeholders. The guidelines include positive measures recommended by UNHCR, such as requiring that Board Members assess the best interests of children impacted by detention (housed with their detained legal guardians or detained) and eliminating the use of house arrest as an alternative to detention.
- Since the **implementation of a 2017 Ministerial Direction to stop the detention and housing of minors**, as much as possible, Canada has significantly reduced the number of minors detained in immigration detention centres. The number of accompanying minors housed or detained has decreased by almost 50% in the period of 2018-2019 when compared to the period of 2014-2015.

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- An audit was commissioned in September 2017 of the Immigration and Refugee Board (IRB)'s Immigration Division (ID) which conducts detention review hearings. The audit took seven months to complete and was tasked with examining the fairness of the detention review process and its compliance with the *Canadian Charter of Rights and Freedoms*. The report published in 2018 recommended a substantive reform of the way the ID manages, conducts and decides detention review hearings. The IRB is now implementing many of the recommendations, giving priority to addressing the issue of long-term detention (over six months).

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- In *Canada (Public Safety and Emergency Preparedness) v. Chhina* (2019 SCC 29), the Supreme Court ruled that immigration detainees can challenge the lawfulness of their detention through the writ of habeas corpus where immigration detention is said to violate detainees' rights under the Canadian Charter of Rights and Freedoms due to its length, conditions and uncertain duration. Accordingly, superior courts should not decline to exercise habeas corpus jurisdiction in such cases.

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

UNHCR Commissioned a report on detention entitled "Domestic and international standards and the Immigration and Refugee Board's Guideline on Detention" to raise awareness of the key concerns around detention practices at the IRB and to promote inclusion of best practices in the revised IRB Detention Guidelines, which came out in 2018.

UNHCR continues to work closely with the government to establish best practices on detention (ending detention of children, systematic application of the best interests of the child principle, ongoing review of the possibility of release to an ATD in the detention review process) and actively advocates for statistical information on immigration related detention.

UNHCR continues to engage with authorities to improve data collection and analysis practices in order to receive particular categories of statistical information related to immigration detention of persons of concern to UNHCR. CBSA and other government agencies continue to cooperate by providing data when requested and making considerable efforts to rectify any gaps in information, demonstrating their commitment to transparency.

UNHCR collaborated with its partners and CBSA, to inform the Alternatives to Detention Project Framework project (ATD Project). UNHCR developed a draft tracking tool to assist partners to collect and analyze data and provide a timely feedback to CBSA and the ID.

In *Canada (Public Safety and Emergency Preparedness) v Chhina* (2019 SCC 29) the Supreme Court of Canada ruled that immigration detainees can challenge the lawfulness of their detention through the writ of habeas corpus. Several UNHCR partners intervened in this case, including the Canadian Association of Refugee Lawyers (CARL) and the Canadian Council for Refugees (CCR).

## Strengthening partnerships/alliances with national stakeholders to achieve policy changes

In September 2018, UNHCR organized a roundtable on Alternatives to Detention with key government and civil society partners, including the IRB, to discuss and facilitate a collaborative review of the first six months of the implementation of the CBSA's ATD Program. A report will follow the analysis of the data received from the first six months.

Regular and ongoing meetings are arranged periodically with the CBSA, the ID as well as civil society organizations such as Action Réfugiés, Toronto Refugee Affairs Council, Toronto Bail Program, detention duty counsel programs run by Legal Aid societies, service providers responsible for Community Case Management and lawyers and academics who work in the field of immigration detention such as Canadian Association of Refugee Lawyers (CARL).

UNHCR Canada engaged in dialogue with the IRB and made recommendations on its new Detention Guidelines. The key recommendations that were incorporated in the Guidelines focused on eliminating house arrest as an alternative to detention and requiring a best interests of the child assessment for detained minors or for minors housed or in detention facilities or impacted by the detention of a parent/guardian.

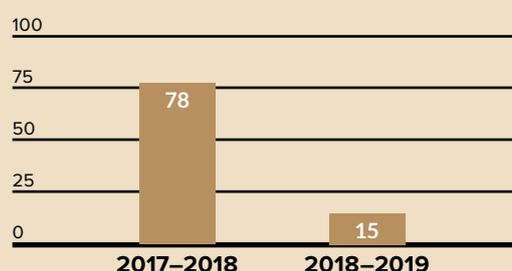
### Alternatives to detention

Currently there are 2 main ATD options for individuals:

- **ATD Community Case Management and Supervision Programming** allows individuals to live in the community supported by family, friends or a third-party community service provider. This includes:
  - Individuals using friends or family members in Canada with status and in good standing to serve as guarantors or bonds-people for release into the community. Programs such as the Toronto Bail Program, John Howard Society and Salvation Army are also helping immigration detainees when cases are referred to them by the CBSA.
  - Imposing conditions upon release into the community to report to the CBSA and/or the contracted service providers.
  - The Community Case Management and Supervision program (CCMS) is available to align in-community support services with individual needs. Individual cases are assessed by Service Providers for ATD options.

### GOAL 1 End the detention of children

#### NUMBER OF CHILDREN DETAINED (all statistics provided on a fiscal year)\*:



\* Please note that the above noted statistics are for detained children only (i.e. children formally subject to detention under the laws of Canada) regardless of status (i.e. not just asylum-seekers and/or refugees); however, there are children housed in a detention facility with their parents or legal guardian. CBSA considers a minor as housed when the parent or legal guardian has requested that the minor remain with them at the detention facility, instead of being sent to alternative arrangements such as foster care. A housed minor is not detained under the IRPA and is free to come and go from the facility at their volition and in conjunction with the parents' wishes. In 2017-2018, there were a total of 73 children housed with a parent/guardian in detention facilities in Canada and in 2018-2019 there were 103.

Please refer to the following link for further publicly available detention statistics: <https://bit.ly/2PoGKxa>

**GOAL 2** Ensure that alternatives to detention are available

**NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC): 2018 / 2019:**

Information currently not available.

CBSA works with child protective services in each province. There are currently **25 child protection services and family centres across the country.**

**NUMBER OF PLACES AVAILABLE IN ATDS FOR FAMILIES (INCLUDING CHILDREN):**

Information currently not available.

There is a detention program related to children called the “**Alternative Arrangement for Minors (AAM)**”. This program only tracks unaccompanied minors who are placed in the care of provincial child protection services or with other organizations instead of detaining these minors (it is not part of the ATD program administered by CBSA).

**PERCENTAGE OF PERSONS IN ATDS (OUT OF THE TOTAL NUMBER OF PERSONS DETAINED):**

2018 / 2019: **Information not available.**

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

**NUMBER OF MONITORING VISITS CONDUCTED BY UNHCR AND/OR IMPLEMENTING PARTNERS:**

None

The Government of Canada has a contractual agreement with the Canadian Red Cross for the monitoring of immigration detainees held in detention facilities across Canada. In FY 2018-2019, the CRC conducted 60 visits to 25 facilities used to hold persons detained for immigration purposes, including three immigration holding centres (CBSA run) and 22 provincial correctional facilities.

- Electronic Supervision Tools allow the CBSA to communicate and track individuals released into the community. These include:
  - A National Voice Reporting system that allows individuals to report by using voice biometrics is available across the country. This system is sometimes used in conjunction with Location Based Service which uses GPS technology to help locate individuals.
  - An Electronic Monitoring program which utilizes GPS and radio frequency technology is being used as a pilot in the Greater Toronto Area. This pilot allows CBSA to track individuals who particularly present a risk of evasion.

The Minister of Public Safety and Emergency Preparedness issued a Ministerial Direction to the CBSA in 2017 concerning minors in immigration detention. The directive stated the objective of avoiding detention of children as much as possible. In accordance with the directive, CBSA officers must therefore consider all alternatives to detaining minors. Children are detained only as a measure of last resort after consideration of the child’s best interest. The “**Alternative Arrangement for Minors (AAM)**” tracks unaccompanied minors who are placed in the care of provincial child protection services or with other organizations instead of detaining these minors (it is not part of the actual ATD program administered by CBSA).

22 June 2018: UNHCR worked closely with its partners to create and implement a project to monitor the ATD Program.

**Future Plans**

UNHCR plans to observe if the ATD Framework in Canada has made an impact for persons of concern and assess whether more work needs to be done to strengthen the availability of ATDs. Another priority area is supporting the Government to reduce and eventually eliminate the detention (and “housing”) of children for immigration purposes. UNHCR also aims to support CBSA and the IRB to develop best practices for assessing the best interests of the child principle in immigration detention decisions, a still evolving area in need of attention.

# CZECH REPUBLIC

## KEY DEVELOPMENTS

- During the first half of 2018, the Refugee Facilities Administration (RFA) completed refurbishment and modernization of the Bělá Jezová detention centre designated especially for women and families with children. RFA also introduced several adjustments to make the conditions of the centre more suitable for vulnerable persons.
- In January 2019, the Czech Constitutional Court abolished legislative amendments adopted in August 2017 that obliged the courts to discontinue judicial review of detention of foreign nationals once they were no longer detained. According to the Court, such regulation violated Article 5 § 4 of the European Convention of Human Rights (Pl. US 41/17 of 27 November 2018).
- In April 2019, the Office of the Public Defender of Rights (Office of the Ombudsperson, KVOP) started an inquiry into the limited application of ATDs, the results of which are pending.
- In March 2019, the Supreme Administrative Court dismissed an appeal against detention lodged by a 17-year old child and his older brother, both Iraqi Yazidis, who had been detained for 90 days in the Detention Centre in Bělá Jezová for the purpose of their expulsion. The Court noted distinctions from the established ECHR jurisprudence. The judgment was published in the Supreme Administrative Court yearbook and most probably will have an impact on decision-making of lower courts in matters of child detention (file no. 10 Azs 316/2018 of 21 March 2019).
- In April 2019, RFA designated a part of the Bělá Jezová Detention Centre as an open accommodation centre for asylum-seekers due to temporary problems with capacity in other accommodation centres in the country. Following this step, security measures in the detention part of the centre were strengthened to avoid contact between detained persons and clients of the accommodation centre (regular asylum-seekers).

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

In order to increase expert knowledge on detention principles and case law, UNHCR trained judges and their assistants, including from the Supreme Administrative Court, on ECtHR jurisprudence related to detaining families with children. The training was delivered through the system of mandatory education for judges organised by the Czech Judicial Academy. Furthermore, in order to build capacity of relevant stakeholders, including immigration officials, border guards, lawyers and judges, UNHCR translated its Fundamentals of Immigration Detention E-learning Course and Self-Study Modules on Alternatives to Detention into Czech. These materials will be made available on the Learn & Connect platform and shared with relevant stakeholders. Related workshops will be organized in 2020.

## Strengthening partnerships/alliances with national stakeholders to achieve policy changes

Even against the current negative political backdrop, perceived UNHCR expertise and credibility enabled it to widely share its positions and policies. UNHCR served as a catalyst and mediator able to bring a wide range of stakeholders together, sometimes even with opposing views, to discuss issues related to detention, including ATDs as well as reception and care arrangements for families with children and UAMs.

The Global Strategy Beyond Detention and its goals with a focus on ATDs were widely promoted within the state as well as NGO sector. Relevant technical units of the Ministry of the Interior and the Ministry of Justice, RFA management as well as the Office of the Public Defender of Rights (KVOP) were familiarized with the National Action Plan aiming at ending the detention of children and introducing appropriate alternatives to detention.

UNHCR continued to be a member of the Inter-Sectorial Working Group on Unaccompanied Minors, which meets regularly twice a year, and brings together relevant state authorities (Ministry of Education, Ministry of Interior, Facility for Foreign Children, social services for children, courts, municipalities, ombudsperson, etc.), UNHCR and NGOs assisting unaccompanied minors. The Working Group serves as a platform for discussions and exchange of information and practices, including in individual cases.

## Alternatives to detention

The Czech Republic does not detain asylum-seekers per se. It uses detention mainly for administrative expulsion, readmission and Dublin returns. Legislation is largely in conformity with EU standards but it is rigidly implemented by administrative authorities and the judiciary. Dublin cases, including families with children, are detained while awaiting their transfers, and detainees are supposed to pay daily fees, though in practice they do not for lack of resources.

There are three detention facilities, two for single men (Vyšní Lhoty and Bálková) and one for single women and families with children (Bělá Jezová). In the recent years, following pressure from the ECtHR and UNHCR and its allies, detention conditions have significantly improved. The current material standard is very good.

The legislative situation related to immigration detention and alternatives to detention did not change during the reporting period, and the approach of the authorities did not significantly deviate from the established practice. Asylum-seekers were not routinely detained and alternatives to detention were applied only in a limited number of Dublin transfer cases. There were no similar projects to the Beyond Detention campaign implemented by other stakeholders in the country.

In the Czech Republic, reception arrangements for families with children, incl. complex services and material conditions are available and appropriate. Free movement (except for cases awaiting Dublin transfers) is secured. Conditions in detention also maintain a good standard. UNHCR runs regular consultations with the RFA management (including at the level of the RFA Director) to further enhance services available for persons of concern in all RFA run facilities. RFA regularly turns to UNHCR for advice. UNHCR acknowledges the benefits of the meaningful spending of free time concept introduced by RFA in all of its facilities for persons of concern. A wide range of available free time activities (accompanied by excellent equipment and facilitation/support services) makes it easier for the clients to overcome some of the frustrations while they await decisions in immigration proceedings.

Care arrangements for unaccompanied children in the Czech Republic are in place. Unaccompanied children are usually placed in the Facility for Children of Foreign Nationals (Blue School) located in Prague which serves as a good example of a boarding school with the full diagnostic, psychological, educational and social support available. There is also a possibility to provide unaccompanied children reaching majority with a

follow-up semi-independent living with social support still available. UNHCR enjoys a good cooperation with the facility. The Halfway House as a long-term project run by UNHCR's partner OPU together with the Prague municipality also offers temporary accommodation for former unaccompanied children, including refugees, aged 18 and 26 years old, in order to facilitate their integration into the host society and complements services offered by the Blue School.

### Securing access to and monitoring places of immigration detention

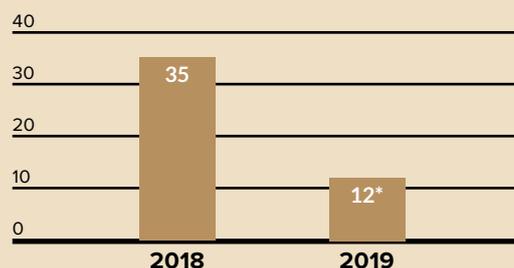
UNHCR secured full access to all RFA run facilities where persons of concern are accommodated or may be placed, including to places which put limits on the freedom of movement of certain categories of persons of concern (Dublin transfers in detention facilities). UNHCR can also access transit zones including security restricted areas of the Vaclav Havel Integration Airport in Prague.

The system of detention monitoring visits was designed taking into account the specificities of the Czech context as well as the size of UNHCR operation in the Czech Republic. Monitoring of facilities is conducted by UNHCR's partner on a regular basis; visited by UNHCR staff on an ad hoc basis; and at least once a year visited by a Multifunctional Team composed of UNHCR, NGOs and KVOP staff. Participatory Assessments fully incorporating age, gender and diversity principles are carried out on a yearly basis in the detention facilities. Results and recommendations are shared and discussed with RFA and Ministry of Interior management.

Throughout 2018 and 2019, UNHCR and its partner regularly conducted visits to detention centres. In order to make the visits more effective, UNHCR staff receive training on UNHCR standards and guidelines related to detention (including ATD and monitoring). Participatory assessments have been conducted with persons of concern in all detention facilities to collect information on conditions in the detention facilities as well as services provided.

## GOAL 1 End the detention of children

### NUMBER OF CHILDREN DETAINED



\* children were detained between January 1, 2019 and June 25, 2019

## GOAL 2 Ensure that alternatives to detention are available

The Czech legislation provides for various types of ATDs depending on the type of detention, i.e. immigration detention governed by the Aliens Act and detention of asylum-seekers regulated by the Asylum Act.

### AS FOR THE FORMER ("immigration detention"), THERE ARE THREE TYPES OF ATDs:

- (i) an obligation to disclose the residence address in the Czech Republic to the police and remain there at times agreed upon with the police for the purpose of residence control and disclose any change of address to the police the next day,
- (ii) financial guarantee in the amount of return costs,
- (iii) regular reporting obligation with the police at the time set by the police.

### AS FOR THE LATTER ("asylum detention"), THERE ARE TWO TYPES OF ATDs:

- (i) remain in the accommodation centre designated by the Ministry of the Interior, or
- (ii) regular reporting obligation with the Ministry of the Interior at the time set by the Ministry.

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC):

2018 / 2019

UASC are placed in the Facility for Children of Foreign Nationals, located in Prague, which is an institutional type of a child care. The facility has 12 places in the diagnostic section, 6 places

for long-term placement, 8 places in the section for students and 4 places in a training apartment.

**NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES (including children):**

2018 / 2019 – N/A

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

2018 / 2019

These statistics are not compiled by the responsible authorities.

According to the unpublished data collected by KVOP during the monitoring of expulsions and detention of foreign nationals, in the first ten months of 2018, the ratio between the applied ATDs (17 cases) and the total number of detained persons (819 cases) was 2% (it was around 3% in 2017). This data concern immigration detention (see the explanation above).

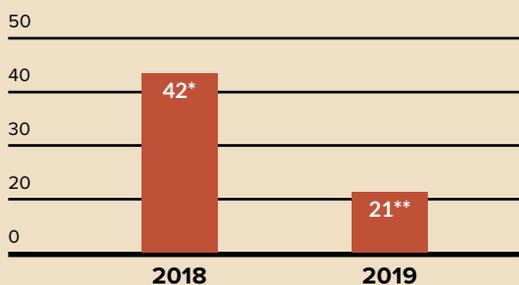
As to the asylum detention, there were no ATDs applied in 2018 and in the first six months of 2019, i.e. the percentage is 0%. The data were provided on request by the Ministry of the Interior.

**Future Plans**

UNHCR will continue to offer its technical support to the state authorities. Together with its partner, UNHCR will continue conducting regular monitoring visits to detention facilities. UNHCR together with its partners will continue with participatory assessments in the facilities. UNHCR will continue to roll-out the Self-Study Modules on Alternatives to Detention. UNHCR will develop a training targeted to judges and other decision-makers to assess and review the necessity, reasonableness and proportionality of detention in each individual case before resorting to detention. UNHCR will compile, translate 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. UNHCR will document and showcase good practice in the field (alternatives to detention in the context of Dublin transfers), and facilitate exchange of good practices including by facilitating a study visit (Sweden was identified as a relevant example). UNHCR will support a pilot project on alternatives to detention in the context of Dublin transfers.

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

**NUMBER OF MONITORING VISITS**



\* In 2018, the UNHCR IP/OPU conducted:  
 - 14 monitoring visits to the Bělá-Jezová Detention Centre  
 - 14 monitoring visits to the Bálková Detention Centre  
 - 14 monitoring visits to the Vyšní Lhoty Detention Centre

\*\* In the first six months of 2019, the UNHCR IP/OPU conducted:  
 - 7 monitoring visits to the Bělá-Jezová Detention Centre  
 - 7 monitoring visits to the Bálková Detention Centre  
 - 7 monitoring visits to the Vyšní Lhoty Detention Centre

## KEY DEVELOPMENTS

- The protection environment has further deteriorated. The 2018 legislative amendments introduced a **new inadmissibility ground** for rejecting asylum applications<sup>1</sup> and established preventive measures to sanction individuals and organizations supporting the arrival or stay of asylum-seekers and refugees in Hungary.<sup>2</sup> The asylum authority applied the new inadmissibility ground since mid-August 2018, and has so far declared the majority of new asylum applications in the transit zones inadmissible. Applicants do not have access to effective judicial remedy, and thus adequate procedural safeguards are not ensured. As a result, asylum-seekers face prolonged periods of detention in the transit zones. UNHCR published its concerns over the legislative changes.<sup>3</sup>
- The Government introduced restrictions for organisations providing support to people of concern and withdrew Asylum, Migration and Integration Fund funding for NGOs, reducing the capacity to receive and integrate refugees. The further dismantling of the reception and integration system affected the work of UNHCR's partners and their ability to provide essential services to people of concern. Irregular onward movements continued, and very few refugees remained in Hungary with the intention to stay.
- Between January and July 2018, the authorities admitted only five asylum-seekers a week in each transit zone, in total 40 a month. Since August 2018, they **restricted the access** even further, admitting an average of 33 people per month. **Most asylum-seekers were detained in the transit zones** throughout the procedure hence the number of people accommodated in regular reception and detention facilities was further reduced.
- Confinement in the transit zones is not interpreted by the Government as detention. Consequently, **no detention order is issued and no effective legal remedy is available** for asylum applicants to challenge their detention before the court. UNHCR conducted regular monitoring and supported asylum-seekers with legal assistance and counselling.
- **People considered by the authorities as 'repeat' or 'subsequent' applicants, and those whose claims are rejected, are not eligible for receiving material support, including food.** During 2018 and 2019, the Hungarian authorities have denied food during several days (except for children, and pregnant or nursing women, as well as persons in need of medical attention) for people whose applications have been rejected. UNHCR

<sup>1</sup> Section 51 (2) f) of the Asylum Act stipulates that the asylum application is inadmissible 'if the applicant arrived via a country where he/she is not subject to a risk of persecution as defined in Subsection (1) of Section 6 of the Act on Asylum or to the risk of serious harm as defined in Subsection (1) of Section 12 of the Act on Asylum or if adequate level of protection is provided in the country through which they had arrived to Hungary.'

<sup>2</sup> Among these measures, amendments to the Penal Code introduce a standalone criminal offence against the public order entitled 'facilitating, supporting unlawful migration', criminalizing, *inter alia*, 'organized' activities aiming at the initiation of an asylum procedure that can be sanctioned with detention and up to one year of imprisonment and banishment. See Section 353/A of Act C of 2012 on the Penal Code.

<sup>3</sup> See UNHCR, *UNHCR Observations on the Legislative Amendments Adopted in Hungary in June & July 2018*, 6 November 2018, available at: <https://www.refworld.org/docid/5c6bd18a7.html>.

staff and NGOs do not have regular access to enter the separate area designated for these cases. UNHCR made several interventions with the authorities and worked closely with the Hungarian Helsinki Committee to facilitate **Rule 39 submissions to the ECtHR, resulting in food being provided as requested by the court on a case by case basis.**

- In the **transit zones**, authorities have often failed or been unable to address specific needs of children and other vulnerable individuals, although some support has been provided in the transit zones through basic recreation and education activities as well as psychosocial counselling.

- Asylum-seekers rejected on admissibility grounds without access to a fair and efficient asylum procedure are at **risk of refoulement**, as the authorities have in several cases changed the deportation order for return to the country of origin after Serbia refuses to readmit them. On 8 May 2019, UNHCR called on Hungary to refrain from any attempts to send people back to their country of origin or otherwise remove them from Hungarian territory without proper assessment of their claim to asylum.<sup>4</sup>

- As a result of UNHCR supported **litigation efforts**, some asylum-seekers were released from the transit zones based on the rulings by domestic courts.

- The **European Commission referred Hungary before the Court of Justice of the EU<sup>5</sup>** over the systematic detention of asylum-seekers in the transit zones<sup>6</sup> and the incompatibility with EU law of the new inadmissibility ground and the criminalisation of persons who provide support for asylum-seekers.<sup>7</sup> The Commission also initiated an **infringement procedure** over the detention of rejected asylum-seekers and deprivation of food in the transit zones.<sup>8</sup>

<sup>4</sup> UNHCR, *Hungary's coerced removal of Afghan families deeply shocking*, 8 May 2019, available at: <https://bit.ly/2LHUOzt>

<sup>5</sup> In the context of a referral for a preliminary ruling, the CJEU issued a judgment on the power of domestic courts to vary the decision of the administrative authority and grant international protection. See Judgment of the Court (Grand Chamber) of 29 July 2019, ECLI:EU:C:2019:626, *Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal*, <http://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-556/17>

<sup>6</sup> See [https://europa.eu/rapid/press-release\\_IP-18-4522\\_EN.htm](https://europa.eu/rapid/press-release_IP-18-4522_EN.htm)

<sup>7</sup> See [https://europa.eu/rapid/press-release\\_IP-19-4260\\_en.htm](https://europa.eu/rapid/press-release_IP-19-4260_en.htm)

<sup>8</sup> See [https://europa.eu/rapid/press-release\\_IP-19-4260\\_en.htm](https://europa.eu/rapid/press-release_IP-19-4260_en.htm)

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

UNHCR urged the Hungarian Government to withdraw the package of laws restricting the ability of NGOs and individuals to support asylum-seekers and refugees. UNHCR also issued public statements against detention of asylum-seekers, particularly children.

UNHCR conducted regular participatory assessments which confirmed that widespread xenophobia and negative public attitudes directly affect the well-being of asylum-seekers and refugees. UNHCR's efforts to combat xenophobia included various public events, such as sponsoring the Hungarian edition of the novel "Exit West" by Mohsin Hamid; cooperation with bookstore chain Libri to promote the Hungarian edition of Khaled Hosseini's "Sea Prayer"; sponsoring the refugee film section of the Human Rights Documentary Film Festival "Verzio" and participation in a series of panel discussions. UNHCR also supported the travel of a journalist working for the top Hungarian news portal ("Index.hu") to Niger to facilitate more public information and stories about the situation of people in the region and why some decide to leave for Europe. UNHCR published compelling human stories on the resilience of refugees and the people who help them on [www.unhcr.org](http://www.unhcr.org) and social media.

UNHCR also targeted pupils and students with the aim to influence public attitudes in the longer term. Staff visited and hosted numerous student groups, and also made presentations and interventions at conferences and academic events. In addition, UNHCR engaged with mayors, local politicians and others with influence in local communities. To mark the World Refugee Day in 2019, UNHCR organised an exhibition of paintings of an Afghan asylum-seeker detained in one of the Hungarian transit zones. The paintings were also exhibited at the Sziget music festival which also included a performance by UNHCR Goodwill Ambassador Emi Mahmoud in front of thousands of people.

### Strengthening partnerships/alliances with national stakeholders to achieve policy changes

UNHCR engaged with the authorities on a regular basis to advocate for improvements in the protection environment and present its concerns over existing policies and practices, including as regards the detention of asylum-seekers. UNHCR supported lawyers associated with the Hungarian Helsinki Committee to provide legal counselling and representation in the transit zones, including through referrals by UNHCR staff. In addition, UNHCR cooperated with the Hungarian Helsinki Committee to challenge arbitrary detention and denial of access to asylum through strategic litigation. In total, 823 individuals were provided with legal assistance. UNHCR provided psycho-therapy, medication and somatic rehabilitation to 303 people held in detention through its partner Cordélia Foundation.

## Judicial Engagement

All UNHCR court interventions during the reporting period were made before the European Court of Human Rights (ECtHR):

### **Ilias and Ahmed v. Hungary (Application no 47287/15) concerning Article 3, 5(1) and 13 of ECHR**

The case concerns two Bangladeshi nationals who applied for asylum in September 2015 in Röszke transit zone where they were detained for 23 days. Following two sets of asylum proceedings, they were removed from Hungary essentially on the strength of a Government Decree, introduced in 2015, listing Serbia – the last country through which the applicants had transited – as a safe third country. The applicants alleged that the 23 days they spent in the transit zone amounted to a deprivation of liberty which had no legal basis and which could not be remedied by appropriate judicial review. Further, they alleged that their protracted confinement in the transit zone in substandard conditions, especially given that they had been suffering from post-traumatic stress disorder (PTSD), had been inhuman. In addition, they alleged that their expulsion to Serbia, without a thorough and individualised assessment of their cases, had exposed them to possible chain-refoulement – via Serbia and North Macedonia – to Greece, where they had been at risk of facing inhuman reception conditions.

In its Chamber judgment, the ECtHR held unanimously that there had been a violation of Article 5(1) and (4) of the ECHR, finding that the applicants' confinement in the Röszke transit zone had amounted to detention, a violation of Article 13 (right to an effective remedy) in conjunction with Article 3 as concerned the lack of an effective remedy through which they could have complained about their conditions of detention, and a violation of Article 3 on account of the applicants' expulsion to Serbia insofar as they had not had the benefit of effective guarantees to protect them from exposure to a real risk of being subjected to inhuman or degrading treatment. The Hungarian Government requested the case to be referred before the Grand Chamber. UNHCR intervened as a third party before the Grand Chamber.

### **R.R. and Others v. Hungary (Application no 36037/17) concerning Articles 3, 5(1), 5(4), as well as 13 in conjunction with Article 3 of ECHR**

The case concerns a vulnerable family with three minor children who were detained in the transit zone. The main applicant who was denied access to basic detention conditions, including meals on grounds of his application being considered as a subsequent asylum application. The spouse of the main applicant was pregnant during their detention and a victim of torture with mental health problems. She and her children had health needs (all diagnosed with Hepatitis B). The applicants alleged that their detention and conditions in the transit zone amounted to inhuman treatment. They also alleged a lack of access to effective remedy to challenge their detention and the conditions of detention. Further, they complained about a lack of compliance of the authorities with the Rule 39 interim measure granted by the ECtHR. UNHCR submitted a written third-party intervention to the ECtHR, the case is currently pending before the Chamber.

### **I.A. v. Hungary (Application no 38297/17) concerning Articles 3, 5(1), 5(4), as well as 13 in conjunction with Article 3 of ECHR**

The case concerns an especially vulnerable applicant, a traumatized unaccompanied child of 16 years of age from Afghanistan of Hazara ethnic origin. The case exemplifies the Government's practice of detaining unaccompanied children above 14 years of age and the lack of adequate child-specific procedural guarantees (delay in appointing a guardian for the child resulting in delay in the asylum procedure despite a legal obligation to prioritise applications submitted by unaccompanied children). The applicant was released from detention, but only after 2 months and upon having been granted subsidiary protection. The applicant alleged

unlawful and arbitrary detention and a lack of access to effective remedy to challenge detention and conditions of detention. UNHCR submitted a written third-party intervention to the ECtHR, the case is currently pending before the Chamber.

### Alternatives to detention

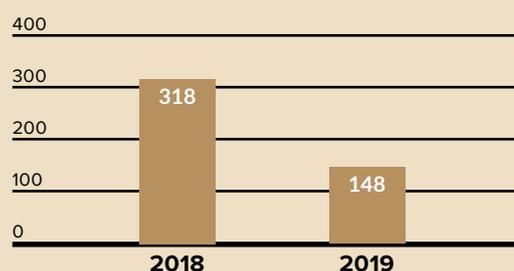
For asylum-seeking families measures in legislation include: reporting conditions, directed residence, residence at open reception or asylum centers, release on bail/bond. However, as of 28 March 2017, detention of asylum-seekers is automatic and arbitrary, alternatives to detention are generally not considered. UNHCR is aware of a few individuals in need of specific care, e.g. specialised medical treatment, who have been released from the transit zones based on humanitarian considerations. Asylum seeking unaccompanied children under the age of 14 should be placed in the care of the Children’s Home in Fót. However, as of 28 March, unaccompanied asylum seeking children, who are 14 years of age or older, are automatically detained in the transit zones.

### Securing access to and monitoring places of immigration detention

UNHCR maintained its field capacity to conduct regular monitoring in the two transit zones as well as in the asylum and aliens policing detention centres. This enabled UNHCR to strengthen the provision of information and counselling for asylum seekers, address protection concerns and prevent certain rights violations in individual cases. UNHCR’s monitoring at the transit zones and detention centres informed advocacy with the Government and external stakeholders, and it also facilitated coordination of humanitarian assistance by other entities. UNHCR advocated – through formal and informal communications with the authorities – for wider access to the transit zones for NGO partners.

## GOAL 1 End the detention of children

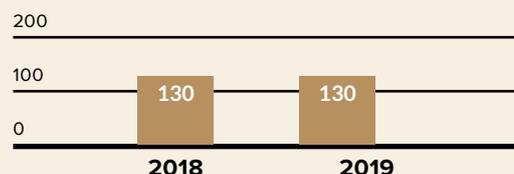
### NUMBER OF CHILDREN DETAINED\*



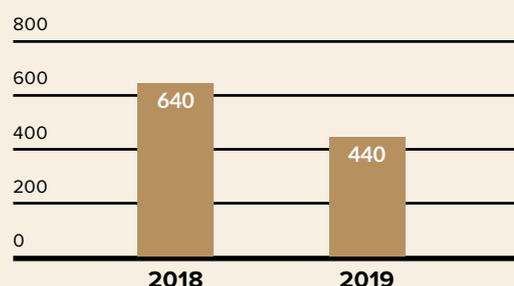
\* Source: UNHCR’s observations during monitoring visits in the transit zones.

## GOAL 2 Ensure that alternatives to detention are available

### NUMBER OF RECEPTION PLACES AVAILABLE WITH CARE ARRANGEMENTS FOR CHILDREN (UASC)



### NUMBER OF PLACES AVAILABLE IN OPEN RECEPTION FACILITIES FOR FAMILIES (including children):



### 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 CONDUCTED BY UNHCR AND/OR IMPLEMENTING PARTNERS**



\* including transit zones

UNHCR is currently the only entity that has access to the transit zones to monitor the conditions and procedures. However, UNHCR staff do not have access to enter the separate area designated for cases that have been determined inadmissible or are finally rejected by the Hungarian authorities. UNHCR has conducted detailed monitoring in line with existing tools, such as the Detention Guidelines and Practical Manual on monitoring immigration detention, including to assess the conditions of detention. While the Parliamentary Commissioner for Human Rights and the Public Prosecutor’s Office are entitled to conduct unannounced monitoring visits to detention facilities, these entities have so far not conducted any official visits to the transit zones.

**Future Plans**

UNHCR will continue to offer its technical support to the Government to address gaps in the asylum policy framework. UNHCR will continue conducting regular monitoring visits to detention facilities 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 before national and regional courts to challenge arbitrary detention policies and practices. Particular emphasis will be put on ensuring that ATDs are available in law and are implemented, particularly with regard to children, women at risk and other vulnerable individuals and on ensuring that children are not detained for administrative purposes.



**TRAININGS ORGANIZED DURING THE TRAINING PERIOD**

**1** on screening and referral

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

**1** on screening and referral

## KEY DEVELOPMENTS

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- On 30 July 2018, the Directorate General of Immigration (DGI) issued a **Circular concerning “Restoring the Function of Immigration Detention Centres”**. Basically, the DGI re-emphasized that the function of Immigration Detention Centres is to temporarily host illegal immigrants subjected to administrative measures and not to serve as a shelter for refugees and asylum seekers. Since then, the immigration officers proactively coordinated with IOM to release all the remaining refugees and asylum seekers from detention to community accommodations, allowing the number of persons of concern in detention to fall to 39 individuals by 30 June 2019, none of which are children.

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- The **local governments in Makassar are currently deliberating on issuing a Mayor Regulation** concerning refugees who stay there. This regulation will be the first of its kind and may inspire the government in other areas to follow suit. The regulation will address the issues refugees have to face on a daily basis. UNHCR, in collaboration with its partners such as the Legal Aid Institute, academics and other refugee-rights supporters, have prepared a draft Regulation to be considered by the Makassar Government and is actively involved in providing inputs.

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- Following Australia's decision to no longer add new asylum seekers and refugees in the IOM assistance program after 15 March 2018, **Immigration Detention Centres throughout Indonesia no longer detain new asylum seekers upon their arrival**. In Aceh, in accordance to Presidential Regulation 125/2016, two separate groups of Rohingya new arrivals were accommodated in local government's shelters, where their basic needs

were provided by the government with the support of local organizations. In other outpost locations, asylum seekers arriving after the cut-off date live independently with the help of local organizations. Some have received small livelihood trainings by UNHCR and partners to sustain their lives in Indonesia.

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- Australia's cut-off date decision also resulted in several **public suggestions by immigration officials to push back new arrivals from the Indonesia territory**. With no financial support from Australia, asylum seekers are perceived as financial and social burdens to Indonesia. The national body responsible for rescue at sea, the Search and Rescue Agency, is still of the stance to ensure the safety of distressed people at sea, but the Immigration Officials at the Immigration Detention Center remain to have the authority in approving whether the distressed people can be registered by UNHCR as asylum seekers.

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- In 2019, several individuals claiming to seek asylum were detained in the international zone of Soekarno Hatta airport, with risk of deportation from Indonesia. The DGI do not respond to UNHCR's requests to assess such cases. In all cases, the asylum seekers chose to leave Indonesia to seek asylum elsewhere. UNHCR Indonesia consulted UNHCR Malaysia and civil society partners for advice on approaching such cases, and will organize a training for Judges to secure future legal support on asylum access.

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- On 6-7 February 2019, the Coordinating Ministry of Political, Legal, and Security Affairs (KEMENKOPOLHUKAM) held a national coordination meeting involving relevant government agencies, UNHCR, and IOM. A resultant action point was to set up a government

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

UNHCR's recent engagement included the following activities:

- Development of a roll-up to promote the project. Each UNHCR operation involved in the project uses this tool during various workshops, meetings and sessions;
- Translation and printing of Option Paper 1, for distribution in every training and meeting with relevant stakeholders;
- Development of Alternatives to Detention poster, for distribution in every training and meeting with relevant stakeholders;
- Development of detention flowchart, for distribution in every training and meeting with relevant stakeholders;
- Translation and printing of Practical Manual: Monitoring Immigration Detention, for distribution in every training and meeting with relevant stakeholders;
- Translation and printing of Guiding Principles for Children on the Move and Other Children Affected by Migration, for distribution in every training and meeting with relevant stakeholders;
- Translation and printing of UNHCR Detention Checklist, for distribution in every training and meeting with relevant stakeholders;
- Development of EIDHR Block Note. The block note promoted the EIDHR project and featured the abovementioned publications as well as some drawings and paintings by refugees made during their time in detention and published with their consent;
- Printing of Know Your Rights booklet for refugees. The booklet, developed in consultation with various civil society partners and refugee representatives, outlined refugees' rights and responsibilities. The booklets were distributed to civil society partners and refugees in the Jakarta and Greater Area;

task force, led by provincial governments in all provinces with refugee presence. This task force is expected to produce a nationally-agreed regulation for persons of concern in Indonesia, with standardized type and length of sanctions for persons of concern who do not abide by the regulation, for instance those who break the accommodation curfew or those who are allegedly involved in criminal activities, etc. If realized, this regulation will standardize regulations for refugees throughout Indonesia, hence minimizing arbitrary clauses, arbitrary use of detention as punishment, and arbitrary length of disciplinary detention.

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- On 10 July 2019, a Directive from the Secretary General of the Ministry of Education and Culture was issued regarding access to education and public schools for refugee children in Indonesia.

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- In July-August 2019 UNHCR Indonesia conducted three different public awareness activities for the Criminal Police, Civil Servant Police and for the very first time airline personnel in Soekarno-Hatta Airport. The issues discussed included access to asylum, principles under refugee law and when refugees are in conflict with domestic laws.

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- On 12 September 2019, a Special Coordination Meeting was organized by MENKOPOLHUKAM involving relevant government agencies including the Ministry of Manpower (MENAKER), IOM, UNHCR and the private sector to discuss the possibility of refugees in Indonesia having access to livelihood activities while waiting for resettlement. The Ministry of Manpower is expected to issue a directive on this issue. The government prefers to use the terminology of *empowerment of refugee productivity while waiting for their resettlement process* than other terminologies such as right to work, or access to livelihood activities.

- Translation of International Detention Coalition's paper: Keeping Children Safe – Ensuring Unaccompanied Children Avoid the Harms of Immigration Detention. The papers are to be distributed in the joint IDC-UNHCR workshop on Alternative Care Arrangements for Children in August 2019.

### Strengthening partnerships/alliances with national stakeholders to achieve policy changes

On 12 April 2018, UNHCR organized a consolidation of a refugee network, resulting in working groups based on areas of interest. The event and eventual network consisted of 30 civil society organizations, international organizations, and refugee-led initiatives working on refugee issues. In June 2019, UNHCR was in the final drafting stage of a renewed MoU with the National Commissioner of Human Rights of Indonesia (KOMNAS HAM Indonesia), which reiterates among all KOMNAS HAM's support to UNHCR for ending the detention of refugees for Immigration-related reasons, detention and alternatives to detention monitoring, ensuring right to asylum, and right to livelihood.

### Alternatives to detention

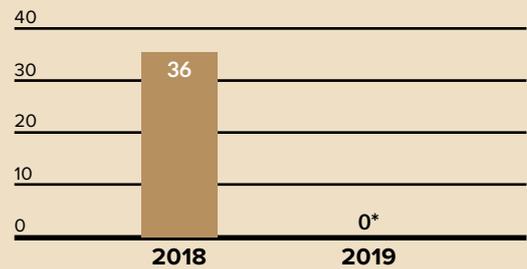
Shelters for unaccompanied and separated children as well as women at risk: The Office has been funding implementing partners, Church World Service (CWS) and Yayasan Sayangi Tunas Cilik (YSTC), to implement ATDs for unaccompanied children in Jakarta. Currently there are 5 CWS shelters: 4 for unaccompanied boys and 1 for unaccompanied girls, women at risk, and their children.

Semi-independent living scheme for unaccompanied children: Through its implementing partner, CWS, the Office supports a semi-independent living scheme in which teenage children live together in a rented room under regular supervision of CWS.

Foster care for unaccompanied children: Mindful of the importance of a family setting to the development of children, the Office strives to the best of its ability to identify foster parents

## GOAL 1 End the detention of children

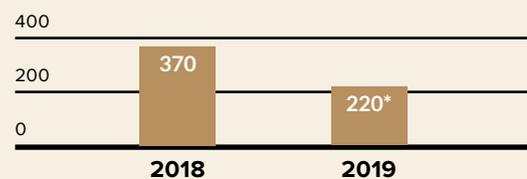
### NUMBER OF CHILDREN DETAINED



\* 30/06/2019

## GOAL 2 Ensure that alternatives to detention are available

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC)



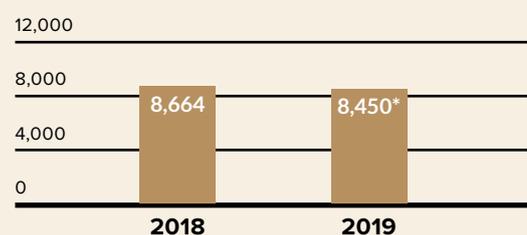
\* 30/06/2019

In 2018, many children under the IOM UAC shelter in Makassar, operated jointly with the Social Affairs Agency, aged out, and shelter was accordingly converted into an adult/family accommodation. The shelter had a capacity of up to 150 individuals.

The joint IOM-Social Affairs Agency UAC shelter in Medan was converted into an adult/family accommodation in June 2019, as most UACs had aged out.

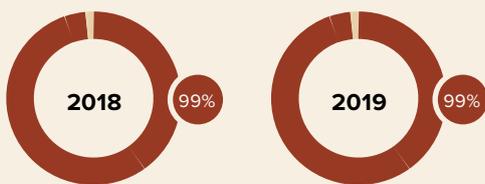
By July 2019, the IOM shelter in Medan, operated jointly with the Social Affairs Agency, were converted into adult/family accommodations as most children had aged out. The shelter had a capacity of up to 50 individuals.

### NUMBER OF PLACES AVAILABLE IN ATDS FOR FAMILIES (including children)



\* 30/06/2019

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



\* By 31/12/2018: 99% of registered 14,016 registered POCs in Indonesia were in ATDs  
By 30/06/2019: more than 99% of registered 13,983 POCs in Indonesia

### TYPES OF ATDS IN PLACE:

Community accommodation centers run by IOM. Residents can move freely in and out of the facilities during the day, but are required to remain in the facilities at night (with different facilities having different restrictions on the period outside). Residents are provided a monthly stipend to cover the costs of food and incidental expenses. Limited educational and recreational activities are provided.

Five UAC shelters managed by Church World Service (UNHCR's implementing partner). Residents can move freely in and out of the facilities during the day, but are required to remain in the facilities at night (with different facilities having different restrictions on the period outside). Residents are provided a weekly stipend to cover the costs of food and incidental expenses, and normally cook their meals collectively. Limited educational and recreational activities are provided.

Two UAC shelters managed by the Department of Social Affairs with IOM funding. Residents can move freely in and out of the facilities during the day, but are required to remain in the facilities at night (with different facilities having different restrictions on the period outside). Residents are provided pre-cooked food and are not allowed to cook for themselves. Limited educational and recreational activities are provided.

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

Number of monitoring visits conducted by UNHCR and/or implementing partners: 301 visits outside greater Jakarta area that includes Medan, Tanjung Pinang, Pekanbaru, Makassar, Bali, Kupang and Surabaya while 50 visits recorded in greater Jakarta area. **In total, 351 visits conducted by UNHCR and/or implementing partners from January 2018 to June 2019.**

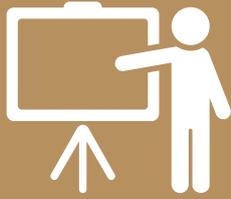
for unaccompanied children. The Office provides modest lodging allowance to foster parents willing to take care of the children.

### Securing access to and monitoring places of immigration detention

Through outpost staff overseeing Medan and Denpasar, two locations where UNHCR conducted joint detention monitoring with KOMNAS HAM in 2017, UNHCR continued to monitor that its recommendations were implemented by detention authorities. Responding to the national widespread problem of overcrowding in Immigration Detention Centres, UNHCR advised staff in Jakarta and outpost locations to visit the Immigration Detention Centres in their Areas of Responsibility at least twice a month.

Following the 30 July 2018 DGI Circular to restore the function of the Immigration Detention Centres, the total of persons of concern detained have reduced substantially, with no children in detention. The persons of concern remaining in detention are those who cannot be released to IOM accommodations due to their past criminal convictions or Immigration-related violations, or those who are temporarily detained as punishment due to violating the Immigration's regulations (violating curfews, having affairs with local women, committing domestic violence, etc.). Given that most persons of concern in Indonesia now live in refugee accommodations or independently, the Office has now shifted most of its visits to ATD sites, be it to IOM accommodations, partner shelters, or independent livers. Nevertheless, staff in Jakarta and outpost locations continue to visit Immigration Detention Centres at least once a month to liaise with Immigration officers, whom under Presidential Regulation 125/2016 have the mandate to supervise all persons of concern in Indonesia, and to meet with persons of concern who remain in detention.

KOMNAS HAM has verbally approved its commitment to continue cooperation on various areas with the Office, including on ending the detention of refugees for Immigration-related reasons, detention and alternatives to detention monitoring, ensuring right to asylum, and ensuring right to livelihood. The agency and the Office have renewed their MOU on 5 July 2019.



#### TRAININGS ORGANIZED DURING THE TRAINING PERIOD

25	on asylum law
9	on detention monitoring
8	on child protection
9	on vulnerable groups
19	on reception and alternatives to detention
3	on detention condition standards
3	on screening and referral

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

457	on asylum law
166	on detention monitoring
103	on child protection
127	on vulnerable groups
337	on reception and alternatives to detention
82	on detention condition standards
119	on screening and referral

### Future Plans

Following the DGI Circular to restore the function of Immigration Detention Centres, the total of persons of concern detained have reduced substantially, with no children in detention. Given that most persons of concern in Indonesia now live in ATD sites or independently, UNHCR has now shifted most of its visits to ATD sites, be it to IOM accommodations, partner shelters, or independent living accommodation. Responding to the current and possible continuous trend of Immigration refusing access to asylum to new arrivals, UNHCR plans to hold capacity-building activities on refugee rights, access to asylum, and alternatives for detention for judicial authorities and legal advocates, to support UNHCR's goal in using strategic litigation to advocate for refugee rights, access to asylum, and the provision of alternatives to detention.

## KEY DEVELOPMENTS

- On 1 January 2018, the Government announced a **new policy of forced relocation to third African 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, were told that they must agree to relocate, and those who refuse would be transferred to detention for failing to cooperate with their removal. This policy resulted in the detention of 340 Eritreans and Sudanese.
- On 2 April 2018, the **Comprehensive Solutions Framework Agreement** was signed between UNHCR and the Government of Israel which would have provided protection to 39,000 Eritreans and Sudanese that have been in a legal and social limbo situation for nearly a decade. According to the agreement, half of the asylum-seekers would remain in Israel with proper protection and some 16,000 would relocate to Western countries through complementary pathways or resettlement supported by UNHCR. However, the Agreement was cancelled in less than 24 hours due to resistance faced by the Prime Minister from certain factions of his coalition.
- While the reversal by the Prime Minister caused great disappointment among the refugee community and its supporters, there were significant gains in the lead-up to the Agreement that have significantly improved the protection of refugees. Most notably, **threatened widespread detention and forced relocation to Rwanda and Uganda were ceased and Holot was closed** in mid-March 2018.
- The end of the forced relocation policy in early April 2018 led to the **release of 340 asylum seekers** who were detained in Saharonim detention facility for refusing to cooperate. Only some 35 are detained at any given time since then – either under the Criminal Outline (which allows for administrative detention of asylum-seekers either suspected of serious criminal offenses and/or those who finished serving their criminal sentence) or for failing to establish their nationality or as rejected asylum-seekers who are to be deported but lack travel documents.

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

Interventions to promote ATDs include continued efforts to promote a pilot project to provide rehabilitation support, health care and housing support to the most vulnerable victims of torture. The Inter-Ministerial Committee that was established for this pilot submitted its recommendations to the Government but has yet to make them public.

During the period of forced relocation, advocacy was conducted to exempt groups of vulnerable individuals (e.g. victims of torture, LGBTI, elderly, etc.) from detention and forced relocation. An independent report

entitled "Better a prison in Israel than dying on the way," was published that detailed the fate of 18 asylum-seekers who had 'voluntarily' left Israel to Rwanda and Uganda and had since been smuggled to Europe. The report was valuable for advocacy purposes; some of the raw footage taken by the researchers in the interviews with the asylum-seekers was shown on Israeli television news. Members of Parliament were engaged on the issue. Later, advocacy efforts focused on preventing the arbitrary detention and deportation of nationals of the Democratic Republic of Congo (DRC).

UNHCR's legal partner published two annual monitoring reports on the conditions in all immigration detention facilities, including Holot (covering 2017 and 2018 respectively), which focused on issues including conditions for transgender inmates separated in solitary confinement, the detention of Darfuri asylum seekers, handcuffing of inmates during medical exams, over-crowding in detention cells, lack of access to the asylum system, and testimony about severe abuse by the Population Authority inspectors.

### **Strengthening partnerships/alliances with national stakeholders to achieve policy changes**

UNHCR provided authorities various Country of Origin Information (COI), UNHCR advisories and trainings on situations in the countries of origin (Ukraine, Sudan, Eritrea, and the DRC).

During the period of forced relocation, coordination meetings were held with legal partners and detailed information was collected and shared with the government concerning the lack of access to the asylum procedure in Rwanda – in an effort to persuade the government to cancel the policy or at least to exempt those with pending asylum claims from its purview.

Following the announcement of the end of temporary protection for rejected asylum-seekers from the DRC, UNHCR and legal partners met to discuss legal strategy. UNHCR and legal partners also shared detailed COI on current developments in DRC with the Israeli government.

### **Alternatives to detention**

Under the Anti-Infiltration Law (the "Law"), anyone entering Israel irregularly is defined as an "infiltrator", including persons seeking asylum, and are automatically detained for a three-month period. The Law allows for early conditional release of an "infiltrator" (prior to three months) for limited reasons such as health grounds (including mental health), special humanitarian reasons, or if the detainee is an unaccompanied minor. It also allows for the release of an asylum-seeker after a sixty-day period if their asylum request has yet to be processed (although for single Eritrean and Sudanese asylum-seekers, their "release" was in effect a transfer to Holot until its closure in March 2018), but this provision is not applied in practice (primarily because detainees are not given sufficient information about their right to file asylum and the process for doing so). In addition, an unwritten policy decision was taken in 2013 to exempt all asylum-seeker children from detention.

Those who are released on one of these grounds may be released with the following conditions, bail, bank guarantee or any other guarantee. The main alternative currently used is release on bail. The only other alternatives to detention are for those recognized as victims of trafficking and for unaccompanied and separated children.

Those recognized as victims of trafficking by the Government are excluded by law from detention. Once released, they are referred to the Ministry of Welfare for provision of a one-year rehabilitation package that includes voluntary stay at a state-run shelter (funded by the Ministry of Welfare) as well as a work visa (B/1 visa), granted by the Head of the Population and Immigration Authority (PIBA) and health services funded

by the Ministry of Health. There is no vulnerability screening or referral mechanism in place. In order to access the procedure, individuals must come forward and apply to be recognised as victims of trafficking. At the end of the one-year rehabilitation period, the victim is normally expected to return to his/her country of origin. If he/she is from a country to which Israel does not deport (e.g. Eritrea and Sudan) or s/he is afraid to return to her/his country of origin, s/he may file an asylum request with the Ministry of Interior. Upon doing so, s/he will receive the “conditional release” visa that all asylum-seekers receive while their request is pending, renewable every 2 months (for single males) or 4 months (for women and those with a spouse in Israel). The Procedure allows the victim to request an extension for an additional period; such requests will only be exceptionally approved when there is a special justification for extending the residence permit.

Those identified as unaccompanied children are exempt by law from both detention and mandatory residence. A written policy provides for their release from detention, after which they are either accommodated in “residential schools” under the supervision of the Ministry of Education or reside in the community with a custodian/guardian.

Throughout 2018 UNHCR supported partner efforts to promote a pilot project to exempt victims of torture from detention and to provide rehabilitation support, health care and housing support to the most vulnerable among them. As a result of a legal intervention by UNHCR partners, the State initiated a pilot project to identify the 100 most vulnerable victims of torture and to map the services they need. UNHCR and its partners were actively involved in the identification, assessments and referrals of individuals during this pilot project, as well as participating in the committee meetings and discussions. The Inter-Ministerial Committee that was established for this pilot submitted its recommendations to the Government but has yet to make them public.

## **Securing access to and monitoring places of immigration detention**

There are two immigration detention facilities that are run by the Israel Prison Services (IPS). Saharonim detention facility in Southern Israel is where all newly arriving ‘infiltrators’ would be detained as well as ‘infiltrators’ who cannot be returned to their country of origin (Eritreans and Sudanese) and others for whom there is a difficulty to remove (de facto and de jure stateless, those who lack documentation e.g. West Africans). Givon detention facility in Central Israel is where migrants, other illegal foreigners and rejected asylum seekers are detained while awaiting removal from the country.

UNHCR coordinates its monitoring visits with their legal partner the Hotline for Refugees and Migrants (HRM). For Saharonim, monitoring visits are conducted based on need. During the period of implementation of the forced relocation policy (January-April 2018), those who refused to relocate to Rwanda/Uganda were detained (indefinitely) in Saharonim. UNHCR therefore conducted weekly monitoring missions (as well as to the Holot semi-closed facility, until its closure in mid-March 2018). Since April 2018, almost all detainees have been released with only about 35 detainees in Saharonim at any given time, mostly those who have finished serving criminal sentences and are considered to be a danger to the public, as well as rejected asylum seekers and migrants awaiting deportation but lacking travel documents. The Office has met with almost all of these detainees in the past and have therefore only conducted one mission to Saharonim in the first half of 2019.

As those detained in Givon are primarily migrants and there for short periods or are asylum seekers already well-known to UNHCR, UNHCR primarily relies on reports by its legal partner that visits frequently. In May 2019, UNHCR requested permission for a monitoring mission to Givon, however this request was refused (likely because of IPS staff turnover and the fact that current staff are not aware of UNHCR’s mandate and monitoring role). Follow-up is being conducted with IPS Headquarters.

The only other detention facility is the airport facility run by the Ministry of Interior to which UNHCR does not have access to for regular monitoring although requests to visit specific cases known to UNHCR are approved. We rely on ICRC and legal partners to advise us of individual and/or systemic issues that are brought to their attention during their monitoring visits.

### Future Plans

As explained above, the risk of arbitrary immigration detention of thousands of asylum-seekers was avoided. But the key principle set out in Article 31 of the 1951 Convention is still not accepted. UNHCR’s strategy for beyond 2019 is three-fold: a) advocate for the non-detention of asylum-seekers; b) in case of detention, regularly monitor detention conditions to ensure compliance with international standards; c) promote humane, affordable and effective alternatives to detention, particularly for those who cannot be deported from the country.

UNHCR will continue to advocate for effective procedures for timely identification of vulnerable individuals who should not be detained and their access to adequate medical services (including psychological services). Concerning the Yahalom airport facility, UNHCR will continue to advocate for monitoring of the facility; for a new Procedure that would regulate the application for asylum at the border, including information on the right to access legal representation if detained; request that the Ministry of Interior inform UNHCR of any individual asylum-seekers being held at Yahalom; conduct training to border staff; and advocate that the authority of the Detention Review Tribunals be extended to persons who are refused entry to the country.

Finally, UNHCR will need to be prepared for the possibility of large scale immigration detention given the Government’s policy orientation to forcibly remove Eritreans and Sudanese to third “safe” countries. In such a scenario, UNHCR will work with partner organizations to expand legal representation as well as volunteer networks.

## GOAL 1 End the detention of children

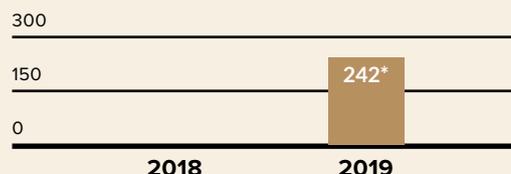
### NUMBER OF CHILDREN DETAINED\*



\* Despite the fact that generally asylum-seeker children are not detained in Israel, UNHCR is aware of a few cases of asylum-seekers being detained together with their children at the airport facility in 2018. Figures relating to the number of detained migrant children are unavailable.

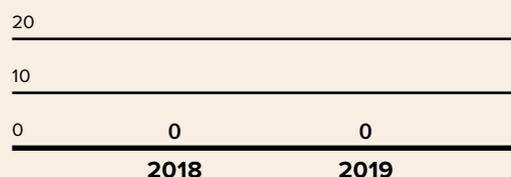
## GOAL 2 Ensure that alternatives to detention are available

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC):



\* Note that there are currently no UASC in Israel, as there have been no new arrivals through the southern border since May 2016. Any newly arriving UASC would be allocated a spot in an Israeli boarding school as in previous years.

### NUMBER OF PLACES AVAILABLE IN ATDS FOR FAMILIES (including children)



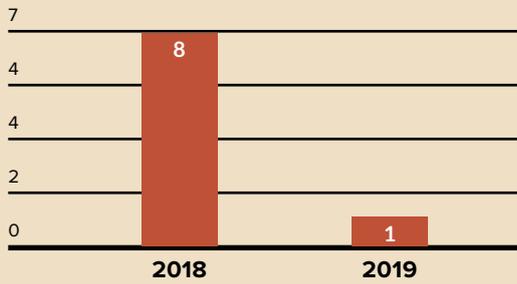
### PERCENTAGE OF PERSONS IN ATDS (out of the total number of persons detained)



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

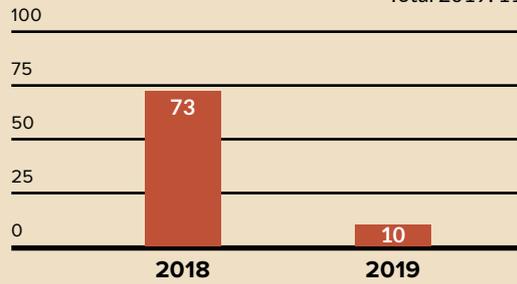
**MONITORING MISSIONS TO DETENTION**

**UNHCR**



**HRM**

\* Total 2018: 81  
Total 2019: 11



**TRAININGS ORGANIZED DURING THE TRAINING PERIOD**

- 29** on asylum law
- 2** on detention monitoring
- 1** on child protection
- 6** on vulnerable groups
- 2** on detention condition standards

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

- 630** on asylum law
- 18** on detention monitoring
- 15** on child protection
- 92** on vulnerable groups
- 26** on detention condition standards

## KEY DEVELOPMENTS

- The **Immigration Service Agency**, which is the upgraded successor of the Immigration Bureau, was established as a semi-independent body under the Ministry of Justice on 1 April 2019.
- Stakeholders including several Bar Associations issued their statements against the current administration in relation to the detention of foreigners including asylum seekers.
- There were **three ATD cases** during the period.

### **Activities undertaken by UNHCR and implementing partners from January 2018-June 2019**

#### **Strengthening partnerships/alliances with national stakeholders to achieve policy changes**

As an observer, UNHCR attended tripartite meetings between the Ministry of Justice (MOJ), the Japan Federation of Bar Associations (JFBA) and Forum for Refugees Japan (FRJ) mainly about ATDs based on the MoU concluded in 2011. Five meetings were held in the period from February 2018 through May 2019.

#### **Alternatives to detention**

In 2011, the MOJ concluded an MoU with the JFBA and FRJ on alternatives to detention, under which the involved organizations worked together towards provisional release of detained asylum seekers.

#### **Securing access to and monitoring places of immigration detention**

In Japan, detention monitoring is conducted by the specific committee appointed by the MOJ, the Immigration Detention Facilities Visiting Committee (IDFVC). UNHCR Branch Office Tokyo supports and cooperates with IDFVC as and when appropriate.

#### **Future Plans**

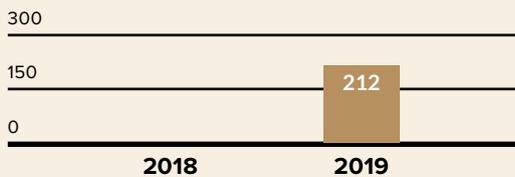
For monitoring, UNHCR would like to strengthen cooperation with IDFMC. For ATD, UNHCR plans to continue its efforts to raise awareness about the advantages of ATDs. In this regard, further handling of actual cases, when there are such cases considered appropriate for ATD, would be useful for relevant actors.

### GOAL 1 End the detention of children

There are reportedly no children detained in 2018 and 2019.

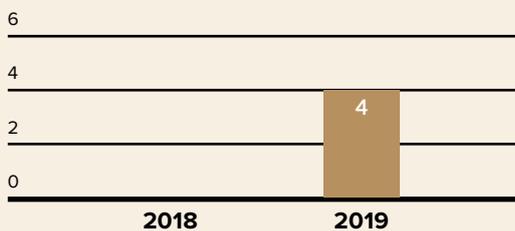
### GOAL 2 Ensure that alternatives to detention are available

#### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC)



It is very rare to have an unaccompanied child in Japan. In the case of an unaccompanied child, the arrangement for the child will be made on an individual case-by-case basis. The child guidance center (*Jidosodanjo*) can be an option to accommodate and take care of the child. 212 child guidance centers exist in Japan.

#### NUMBER OF PLACES AVAILABLE IN ATDS FOR FAMILIES (including children)



#### TYPES OF ATDs IN PLACE:

- 1) There are several methods to avoid detention in law, such as Provisional Release (*Karihomen*), Landing Permission for Temporary Refugee (*Ichijhigo-Joriku-Kyoka*), and Permission for Provisional Stay (*Kari-Taizai-Kyoka*). To illustrate, among the persons who have received a deportation order, 2,303 have been granted Provisional Release as of 30 Jun 2019 (not limited to asylum seekers).
- 2) There is one program implemented in practice for ATD. Based on the MoU by MOJ, JFBA and FRJ, MOJ grants Provisional Release, FRJ prepares the shelter and JFBA provides legal support for asylum applications. Since the program utilizes PR, the target person lives in the society, out of detention facilities. The individual concerned needs to appear to the authorities periodically, and a guarantor is required.

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

#### NUMBER OF MONITORING VISITS CONDUCTED BY UNHCR AND/OR IMPLEMENTING PARTNERS



#### TRAININGS ORGANIZED DURING THE REPORTING PERIOD



- 2 on asylum law
- 2 on reception conditions and alternatives to detention
- 1 on detention condition standards

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

- 52 on asylum law
- 11 on reception conditions and alternatives to detention
- 11 on detention condition standards

## KEY DEVELOPMENTS

- The **reform of the Immigration and Asylum Management System** was a major development during the reporting period. It has *inter alia* resulted in establishing a central Immigration and Asylum Authority, i.e. the Migration Department comprised of a national HQ and 10 territorial units across the country. As of 1 July 2019, the Migration Department is in charge of immigration and asylum decision making, including decisions on applicable examination procedures and directed residence with respect to asylum-seekers. The State Border Guard Service (SBGS) is now entirely responsible for border and irregular migration controls, including immigration detention, while police is no longer involved in immigration and asylum procedures.
- The **Community Based Accommodation and Support Scheme** has been piloted by the government in cooperation with NGOs since January 2018. Within the model, the asylum-seekers concerned (mostly families with children and other persons with special needs) are offered accommodation, other reception support and case-management services in local communities, i.e. outside the Government run collective accommodation facilities.
- **Amendments to the Ministerial Order on Unaccompanied and Separated Children** adopted in August 2018 provide for mandatory participation of representatives of the State Child Rights Protection and Adoption Service in initial procedures following the discovery of an unaccompanied child on Lithuanian territory. This has significantly increased the transparency of identification, registration and referral procedures conducted by the SBGS.
- The **judgements of the Supreme Administrative Court of Lithuania** have reaffirmed and further developed the previously established jurisprudence imposing **strict limits on detention** of asylum-seekers, notably as regards families with children and other applicants with special needs. As a result, resort to detention has remained limited, while newly arriving asylum seekers have predominantly been referred to either reception or ATD schemes. During the reporting period, a new case-law related development was that the Supreme Administrative Court made it clear that **conditions at the ATD facility** (i.e. the Foreigners Registration Centre) **must adequately meet special needs of traumatised children**. The Court quashed the previously imposed ATD, and the family concerned was eventually referred to the Community Based Accommodation and Support Scheme. The Supreme Administrative Court has also spelled out the principle that both detention and ATDs may be applied with respect to vulnerable persons in exceptional cases only and for the shortest possible period of time, and that interests of children and other vulnerable persons must be given priority vis a vis other legal values.
- Challenges faced during the reporting period mostly concern **detention at border crossing points and transit zones** in relation to the border procedure which lacks requisite safeguards against unlawful and arbitrary detention. While following border monitoring visits and follow up interventions by UNHCR and its partner, the Lithuanian Red Cross, the persons concerned were generally allowed entry into the territory within a short period of time. However, the applicable legal framework and practices fall short of compliance with international standards, notably Article 5 of the European Convention on Human Rights.

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

There were no advocacy interventions in the area of awareness-raising and campaigning during the reporting period. Targeted interventions *via a vis* competent authorities were undertaken to address gaps in the border procedure, strengthen the Community Based Accommodation and Support Scheme Pilot and improve reception conditions in the Foreigners Registration Centre, border crossing points and transit zones.

### Strengthening partnerships/alliances with national stakeholders to achieve policy changes

Coordination meetings within the Community Based Accommodation and Support Scheme have proved to be instrumental in making alternative care arrangements available for families with children and other asylum seekers with special needs. They have been hosted by NGOs implementing the pilot – the Lithuanian Red Cross and Caritas – and involved the Ministry of Interior, Social Ministry, Migration Department, SBGS, and UNHCR. At the meetings, the participants discussed the progress made, challenges and obstacles faced, and a way forward.

### Judicial Engagement

The Lithuanian Red Cross has conducted strategic litigation activities under the UNHCR Project Partnership Agreement (PPA). During the reporting period, the cases initiated *inter alia* concerned:

- **Non-penalization.** In 3 cases, asylum seekers were exempted from criminal liability for irregular entry, including the use of forged documents. An added value of judgments is that courts relied directly on Art. 31 of the Refugee Convention and UNHCR guidance when concluding that the use of forged documents falls under the notion of illegal entry.
- **Quality of ATD arrangements for a vulnerable single mother with 5 children.** The Supreme Administrative Court allowed the appeal concluding that the environment and services at the Foreigners Registration Centre were not suitable for traumatized children. The ATD was quashed, and the family referred to the Community Based Accommodation and Support Scheme.
- **Detention of a traumatized single woman at risk of suicide.** The Supreme Administrative Court quashed the detention order based on the necessity and proportionality requirements, and applied an ATD.
- **Family unity in the context of ATDs and open reception.** The Supreme Administrative Court quashed the ATD with respect to an 18 year old youth based on the family unity principle leading to his accommodation at a reception facility together with his parents and siblings.

As in previous years, litigation, in general, and strategic litigation, in particular, have been instrumental in achieving the relevant objectives of the strategy. Administrative practices, to a large extent, have followed the judicial pronouncements leading to a country wide practice of referring asylum seekers to reception/ATD schemes. Families with children who have applied for asylum and other asylum applicants with special needs are generally not detained. More attention is now given to the quality of the ATD and reception arrangements at the Foreigners Registration Centre, and the upcoming AMIF projects should strengthen and expand the Community Based Accommodation and Support Scheme.

## Alternatives to detention

By law, **unaccompanied and separated children** may not be detained. Once identified on Lithuanian territory, a child is referred to the Refugee Reception Centre (RRC) by border guards based on a decision of the State Child Rights Protection and Adoption Service. The RRC includes a unaccompanied and separated children unit, and provides social support and care services to the children concerned. It is also formally appointed and acts as an institutional guardian.

Upon arrival, **families who have applied for asylum** are normally referred to reception arrangements. There are three possible options. The first option is accommodation at the *Pabrade* Foreigners Registration Centre (FRC) by a decision of the Migration Department. Families are offered accommodation at the reception/ATD unit, and are entitled to social support and services available at the centre. The FRC is part of the SBGS. Its personnel are mostly border guard officers leading to security oriented environment and lack of social services. At the same time, as a result of the Government efforts during the reporting period, material reception conditions have improved in the FRC. In particular, a separate unit for asylum-seekers with special needs such as single mothers became operational in early 2019. New initiatives, including the newly approved AMIF project on reception conditions should, to some extent, further improve material reception conditions and services at the centre and the hosting community. The current capacity of the centre is 103 asylum-seekers.

The second option for asylum seeking families is accommodation at the *Rukla* Refugee Reception Centre (RRC) by a decision of the Migration Department (as of mid-2017). The RRC belongs to the Social Ministry, and is much better equipped when it comes to psycho-social support, health care and integration oriented services. Families are accommodated at the centre based on the agreement concluded between the MOI and the Social Ministry, and are offered accommodation and social support and services on the same footing with recognized beneficiaries of international protection. The current capacity of the centre is some 150 persons.

The third option for asylum seeking families is referral to the Community Based Accommodation and Support Scheme by a decision of the Migration Department (as of early 2018). Families are offered accommodation in private apartments, other material support and case management services. The Lithuanian Red Cross and Caritas run the scheme. It is currently financially supported by the Lithuanian state (MOI) and AMIF. UNHCR also contributed to supporting the case management element of the pilot from mid-2018 – 30 June 2019. Since 2018, 67 persons, mostly families with minor children have participated in the pilot. The European Commission has recently approved amendments to the National AMIF programme of Lithuania allocating 250 000 EUR for the scheme. This should allow expanding the programme and strengthening its case-management element. UNHCR RRNE intended to conduct a participatory assessment involving beneficiaries of the pilot in the second half of 2019.

Families who have not applied for asylum and families whose asylum claims have been rejected by a final decision are not currently entitled to any social support in Lithuania. In 2019, the Lithuanian Red Cross supported by UNHCR has initiated consultations with the Ministry of Interior with a view to including such families in the Community Based Accommodation and Support Scheme. Possible developments may be expected in the coming years.

Families **who have applied for asylum** may be imposed an ATD in the form of directed residence at the Foreigners Registration Centre (FRC) by a judicial decision. They are accommodated at the reception/ATD unit alongside with asylum seekers referred to the reception scheme, and receive the same support and services (as described in the first option above). Both groups are allowed to leave the centre for 24 hours. This period may be extended up to 72 hours. The difference in treatment mostly concerns the consequences of absconding, as asylum seekers who are the subject to ATDs face a greater risk of detention when they violate the rules applicable at the centre. Formally, families may also be allowed to stay in the community subject to reporting requirements. This ATD is rarely applied in practice with respect to asylum seekers.

Families **who have not applied for asylum** may not be accommodated at the reception/ATD unit of the Foreigners Registration Centre, as this ATD covers asylum applicants only. They may, however, be imposed other ATDs, i.e. reporting requirements and the provision of guarantor/surety. However, absence of social support arrangements, such as housing, appears to be an obstacle for applying these ATDs with respect to the families concerned in practice. During the reporting period, courts ordered the accommodation of several vulnerable families in irregular situation at the reception/ATD unit of the Foreigners Registration Centre, despite the lack of applicable ground in legislation.

The reception, care and ATD arrangements for families who have applied for asylum, as outlined above, are also available for **other asylum-seekers**, i.e. single men and women. The only particularities are that, in the FRC, single men are placed separately from families at the reception/ATD unit and that, as of February 2019, single women are accommodated at the newly established unit for applicants with special needs. Finally, asylum-seekers (both families and single persons) may also request (and are generally allowed by the Migration Department) to stay in private accommodation/local communities on their own costs. This is essentially a directed residence measure which is not formally considered an ATD.

### Securing access to and monitoring places of immigration detention

The monitoring activities are part of the PPA being implemented by the Lithuanian Red Cross (LRC). In 2019, a multi-year PPA was concluded covering the period until end 2020. Pursuant to the PPA and the Detention Monitoring Strategy, LRC conducts regular monitoring visits to (i) border crossing points and frontier stations and (ii) detention and reception/ATD units of the FRC. The basis for these visits is the Border Monitoring MOU concluded between UNHCR, the Lithuanian Red Cross and the SBGS in 2010.

In addition, the UNHCR associate Legal Officer in Lithuania pays monitoring visits to the above locations as part of the direct implementation activities. There are also joint UNHCR and LRC monitoring visits and there will be joint visits conducted by UNHCR and the Parliamentary Ombudsmen Office within the National Preventive Mechanism Programme under the OPCAT. The first such visit took place in June 2019.

Generally speaking, the overall goals of the monitoring activities are that asylum-seekers are treated in line with international standards and that dignified reception and detention conditions are available. The Detention Monitoring Strategy contextualises and specifies these goals. Its key elements are:

#### **GOAL 1** To ensure that asylum-seekers are not unlawfully or arbitrarily detained in relation with the border procedure

The Lithuanian Red Cross will conduct, on average, 20 monitoring visits to BCPs and frontier stations per year.

There are two types of visits:

- 1) **Ad hoc visits**, i.e. visits based on information received that asylum-seekers are present at a particular BCP / frontier station. In this respect, all the SBGS units are required to inform the LRC about the arrival/presence of asylum-seekers. In addition, in some cases, the LRC receives information about arriving asylum-seekers from relatives or friends. There may also be follow-up visits, notably where a person stays at the border for a longer period of time.
- 2) **Planned visits**, i.e. visits to different BCPs which are not necessarily linked to the presence of asylum-seekers. These visits are primarily used for assessing reception conditions at the border and maintaining working relationship and trust with the border guards. They sometimes include a training element, and are conducted jointly by UNHCR and LRC.

**GOAL 2** To ensure that families with children who have not applied for asylum are not detained

The LRC will pay 6 monitoring visits to the FRC Detention Unit per year. The visits will encompass monitoring of detention conditions in both the asylum-seekers' detention section and the sections for irregular migrants. While under the present goal a key focus will be placed on documenting incidents of detention of families with children and exploring the causes of such occurrences, the monitors will also examine and assess the detention conditions in the unit in line with HC's Standards on Detention Monitoring.

The monitoring visits allow documenting and reporting incidents of detention and detention conditions. The reports include findings and recommendations, and are submitted to the SBGS on quarterly and annual bases pursuant to the Border Monitoring MOU of 2010. In line with the MOU and established practice, the SBGS provides its formal feedback to the reports submitted. The relevant findings and recommendations are also discussed at the coordination meetings of the parties to the MOU (UNHCR, LRC and SBGS). Such meetings take place twice per year.

The monitoring activities also inform relevant UNHCR and LRC advocacy interventions aimed at (i) amending the legislative framework governing the asylum-seekers' stay at the border; (ii) introducing accommodation and other support arrangements as part of ATD schemes for irregularly staying families with children. In 2019-2022, the advocacy interventions should include:

- UNHCR bilateral engagements with the MOI and the Social Ministry at middle, higher and political levels;
- UNHCR comments on the draft legislation regarding the legislative framework for the border procedures, and participation at Parliamentary hearings;
- UNHCR comments on the draft legislation regarding the ATDs for irregular migrants, and participation at Parliamentary hearings;

**GOAL 1** End the detention of children

**NUMBER OF CHILDREN DETAINED**

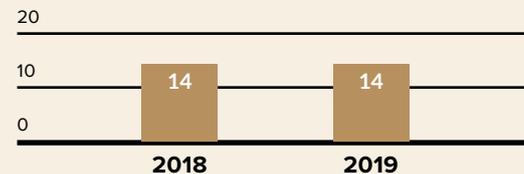


\* The figure mostly refers to children in families who were detained based of their irregular stay in Lithuania.

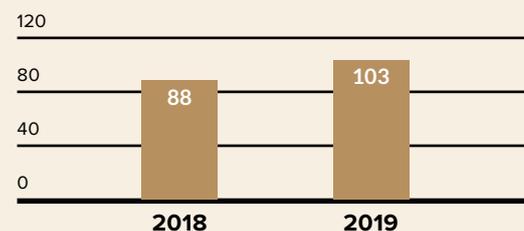
\*\* The figure refers to a short-term detention (up to 48 hours) of the family of asylum-seekers who have been detained by border guards at the Lithuanian and Polish border following the absconding from the Foreigners Registration Centre). The family concerned has been imposed an ATD once the 48-hour period has expired).

**GOAL 2** Ensure that alternatives to detention are available

**NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC)**



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



NB: places available within the Community Based Accommodation and Support Scheme are not included, as it is not formally considered an ATD.

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



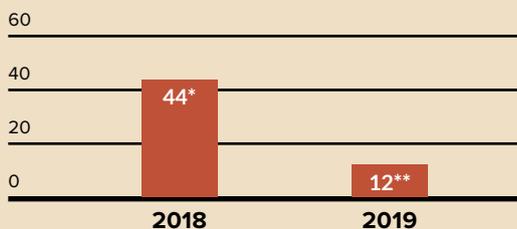
2018: 152 persons detained, 176 ATDs imposed  
2019: data is not yet available, as it is systemised on the annual basis

### TYPES OF ATDS IN PLACE:

Reporting conditions, residence at the semi-open facility (the Foreigners Registration Centre), and provision of guarantor/surety are on the list of applicable ATDs. Asylum-seekers are mostly imposed directed residence at the semi-open facility – the Foreigners Registration Centre.

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

### NUMBER OF MONITORING VISITS CONDUCTED BY UNHCR AND/OR IMPLEMENTING PARTNERS



\* 34 visits to BCPs and transit zones and 10 visits to the in-land detention facility – the Foreigners Registration Centre.

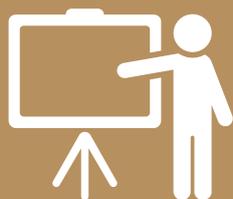
\*\* 10 visits to BCPs and transit zones and 2 visits to the in-land detention facility – the Foreigners Registration Centre

In total: 56 monitoring visits.

- UNHCR positions communicated to the Social Ministry and other stakeholders in relation to the EU AMIF programmes and proposals (UNHCR is a member of the Supervising Committee of the AMIF National Programme in Lithuania).

In addition, efforts will be undertaken to engage other stakeholders having a strong voice at policy level, i.e. the Parliamentary Ombudsmen Office and the Child Rights Ombudsperson Office. Their positions are expected to reinforce UNHCR’s advocacy messages. The same applies to the conclusions of the Treaty Monitoring Bodies based on UNHCR’s Confidential Comments. There will also be an element of follow-up legal interventions, including strategic litigation to further develop the relevant national case-law which in turn should reinforce the advocacy message describe above.

January 2018- Present: The Community Based Accommodation and Support Scheme is a result of targeted UNHCR and the LRC advocacy, technical support and competence building efforts. The LRC currently leads the pilot, while UNHCR is part of the coordination team. The initiative has been reflected in the AMIF multiannual programme and allocated required financial support.



#### TRAININGS ORGANIZED DURING THE TRAINING PERIOD

2	on asylum law
2	on child protection
1	on vulnerable groups
1	on screening and referral

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

50	on asylum law
15	on child protection
70	on vulnerable groups
79	on screening and referral

### Future Plans

Monitoring, advocacy and strategic litigation efforts will focus on the border procedure with a view to introducing requisite guarantees against unlawful or arbitrary detention, and improving reception conditions at BCPs and transit zones. Regular visits of NGO lawyers to the Foreigners Registration Centre will be continued to ensure rapid legal interventions in cases involving applicants with special needs, in particular families with children.

Furthermore, strategic litigation on Article 31 of the Refugee Convention will remain a priority. The non-penalisation principle will also be promoted through advocacy activities. Once issued, the *UNHCR Guidelines on International Protection No 14 on non-penalization of refugees for their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees* will be translated into Lithuanian and presented to the Lithuanian authorities followed by competence building events.

The outcomes of the Community Based Accommodation and Support Pilot will be assessed involving its beneficiaries, and recommendations provided to the authorities and other actors of the reception and ATD systems. Advocacy efforts will follow to strengthen and expand the model. This will *inter alia* include steps aimed at extending the scheme to cover families with children in irregular situation.

Competence building activities promoting applicable international and EU standards will target personnel of reception, ATD and detention facilities. This will include a seminar for social, health care and psychological assistance staff of the Rukla Refugee Reception Centre and a seminar for security personnel and social staff of the Pabrade Foreigners Registration Centre. Both events are planned for the second half of 2019.

The Way Forward based advocacy and competence building activities will further promote child sensitive identification and referral procedures for unaccompanied and separated children. The report based on the study on policies and practices with respect to unaccompanied and separated children in the Baltic States will be used as a source of reference for addressing the remaining protection gaps, notably as regards age assessment techniques and procedures.

Monitoring of the in-land reception and detention facilities will continue in line with the Detention Monitoring Strategy and cooperation arrangements established with the National Preventive Mechanism, the Parliamentary Ombudsmen Office. The joint monitoring visit to the FRC conducted by the Ombudsmen Office and UNHCR on 21 June 2019 will be used as a good practice example complementing the regular monitoring activities conducted by UNHCR and its partner, the Lithuanian Red Cross.

## KEY DEVELOPMENTS

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- In May 2018, the **new Pakatan Harapan Government** was elected in Malaysia. The new-Government's Manifesto included commitments to **legitimize the status of refugees** and to ensure them the **right to work** legally on par with locals.

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- As of 18 June 2019, the **Government has revived the Joint Task Force (JTF)** where key Government actors discuss protection of refugees on a practical level. This is the first time that the JTF has met since 2016 when it was created, and it serves as a significant indication of the new Government's willingness to engage on policy and direction for refugee protection.

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- A meeting with the Deputy Minister of the Ministry of Women, Family and Community Development (MWFCD) was convened in July 2018, to sensitize the new Minister and the Deputy Minister on the **ATD Pilot Project** and to seek their support. The Deputy Minister was very receptive towards this project and agreed to a number of concrete steps, including briefing the Minister and arranging a visit to an Immigration Detention Centre (IDC) in Malaysia. A visit to an IDC was carried out by the Minister and she later endorsed the implementation of the pilot project. To further the implementation of the project, key NGOs are working with the Government on a toolkit to support its implementation and this is done with support from UNHCR. Additional support in this area is also given through a legal and policy strategy team, coordinated by Asylum Access and the International Detention Coalition and in collaboration with the National Human Rights Commission (SUHAKAM).

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- In July 2019, the Deputy Prime Minister of Malaysia, who is also the Minister of WFC, **confirmed the Government's commitments to**

**execute a pilot project** which could see hundreds of children being moved out of immigration detention centres throughout the country. SUHAKAM has since issued a press statement calling for the implementation of the pilot without delay and to ensure that children are never detained. UNHCR together with key partners has offered its support to the Government.

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- In 2018, UNHCR's Retainer Counsel acting on a pro bono basis and with support from UNHCR, filed a **Habeas Corpus Application on behalf of 7 Rohingya minors**, which challenged the illegal and irregular detention of minors by the Immigration Department of Malaysia. The High Court delivered a **landmark decision of precedential value which recognised a place of shelter as an alternative to immigration detention while giving effect to Article 22 of the Convention on the Rights of the Child and the Malaysian Child Act 2001 in its decision.** The Court also recognized UNHCR's role and ordered the children to be released to UNHCR as the mandated institution to protect and assist asylum-seeking children. The case has since been reported in law journals.

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- **Refugees and Asylum-Seekers Legal Aid Scheme (RALAS) and Partnership with the Bar Council of Malaysia:** In 2018, UNHCR identified a need for refugee communities to have access to legal support and assistance, given the serious legal challenges and threats of arrest and detention faced by Persons of Concern (POCs). Thirty (30) lawyers selected by the Kuala Lumpur Legal Aid Centre (KLLAC) underwent a Training for Trainers programme in October 2018, facilitated by senior lawyers from the KLLAC where they were sensitized on challenges faced by refugees in Malaysia and applicable laws that could protect this vulnerable community. Following on from

this, three legal awareness and consultation sessions were held in collaboration with KLLAC, sensitizing refugee communities including *inter alia*, the Rohingya, Pakistani, Sri Lankan as well as POCs from the Middle Eastern and Northern African communities, totalling approximately 150 persons. Following the success of the 2018 RALAS, UNHCR and the Malaysian Bar Council entered into a partnership in July 2019 to launch RALAS. The Scheme aims to equip lawyers with knowledge about refugees and asylum-seekers, which would enable lawyers to help empower and to assist refugees and asylum-seekers to become more self-reliant through legal means. RALAS 2019 will be targeting refugee communities in 2 states, namely the Klang Valley and Penang.

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- There have been **continued challenges in the protection space for non-Rohingya**. Refugees and asylum-seekers continue to be at risk of arrest, detention, prosecution, imprisonment, deportation and in some cases refoulement. Law enforcement operations undertaken against ‘illegal migrants’ continue, which has resulted in persons of concern particularly asylum seekers who are not yet registered with UNHCR, being arrested and detained. While UNHCR has access to all persons of concern, registered or not, in detention, their release from detention is a challenge. Since late 2017, UNHCR has witnessed a trend whereby POCs who are not Rohingya are not being released from detention and this appears to be a policy decision made by the Government of Malaysia. This practice continues at present and has led to serious physical and psychological consequence for the POCs in detention. UNHCR advocates for the release of these individuals on multiple Government levels but has had very little success so far.

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- **Refoulement, ‘soft refoulement’ and denial of access to territory:** The GOM has on an international scale said that despite not being a signatory to the Refugee Convention, it adheres to the principle of non-refoulement. Section 8 of the Extradition Act 1992 prohibits extradition in certain circumstances, including – (a) if the offence in respect of which [an individual’s] return is sought is of a political character or he proves to

the Minister that the warrant for his return has in fact been made with a view to try or punish him for an offence of a political character, (b) if the request for his surrender although purporting to be made for an extradition offence was in fact made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions; or (c) if he might be prejudiced at his trial or punished or imprisoned by reason of his race, religion, nationality or political opinions. Despite this, UNHCR has from January 2018 – June 2019, received information of deportation cases. This included the deportation of a Thai national who was a recognised refugee. Many of these deportations are a result of the nature of indefinite detention coupled with poor detention conditions in Malaysia, leading to persons registered or non-registered to ‘voluntarily’ elect to return to their country of origin. UNHCR has also witnessed unaccompanied children from Syria succumbing to the same.

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- In relation to **access to territory**, UNHCR notes a number of cases, involving **both registered and non-registered persons being denied entry into Malaysia at border points, including airports, by sea and by land**. UNHCR’s immediate access to boat arrivals from Myanmar in 2018 and 2019 have also been limited. In April 2018, a boat of 56 Rohingya individuals arrived on Malaysian soil. UNHCR was only given access to these individuals in detention in October 2018, following an application for Habeas Corpus challenging the illegal and irregular detention of minors. In 2019, UNHCR was given access to the 35 women and children who arrived by boat in March 2019, only 3 months after their arrival in Malaysia. UNHCR emphasises the **need for a more comprehensive contingency strategy in dealing with arrivals at sea, ensuring immediate access, screening and appropriate interventions are offered to the most vulnerable**. In 2019, UNHCR took the lead to coordinate and collaborate on maritime movements of refugees with partners and relevant stakeholders, in terms of services and response that each actor would be ready to provide in the event of disembarkation of larger numbers of boat arrivals. It is hoped that the Government can be engaged in this collaboration.

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

UNHCR's awareness raising strategy on detention related issues in Malaysia is generally to support campaigning by others and to undertake direct dialogue with the authorities and 'key influencers'. The second phase of awareness raising session with SUHAKAM was held with front-line immigration detention officials through a nationwide dialogue session between the period of October – December 2018. During this time, UNHCR took the opportunity to meet with district police officers as well as state prosecutors to sensitize officers on UNHCR's mandate and refugee-related issues, including detention. In total, approximately 600 law enforcement officers were sensitized and these sessions were very well received. The training methodology for these sessions were jointly developed between UNHCR and SUHAKAM staff members, utilising learning and capacity building programmes held in 2018. The outcome of these learning programmes was the development of a joint development monitoring strategy, together with the Enforcement Agency Integrity Commission (EAIC).

Between the period of November 2017- December 2018, UNHCR successfully advocated for an expansion of the ACT4CAT campaign to expressly include torture prevention in immigration detention. UNHCR provided input into the development of awareness raising materials and in total 40,000 pamphlets were distributed during joint awareness raising sessions.

Other engagements on immigration related issues are seen with EAIC, a statutory body established by an Act of Parliament which has a specific mandate to receive complaints on misconduct from the public against law enforcement officers and agencies and to investigate such complaints, as well as with enforcement agencies such as the Malaysian Maritime Enforcement Agency (MMEA), where discussions centred on access to boat arrivals in April 2018. Since the dawn of the new-Government, EAIC has now been upgraded to the Independent Police Complaints and Misconduct Commissions (IPCMC), thus, becoming an avenue for UNHCR to discuss issues of police exploitation and extortion of persons of concern.

During her one week mission in October 2018, the UN Special Rapporteur on the sale and sexual exploitation of children met with Ministries, key stakeholders and refugee communities suggested by UNHCR. The Special Rapporteur mentioned the need for the Government of Malaysia and NGOs to closely collaborate to ensure that women and young children are not detained in immigration detention centers and to support alternative solutions such as shelter placements and safe houses inclusive of the necessary assistance for child victims of sexual exploitation. She also recommended that the Government harmonize its legislation to introduce safeguards and concrete non-discriminatory welfare measures and to protect refugee and asylum-seeking and stateless children.

A Judicial Engagement Workshop with the judiciary and state prosecutors was organized by SUHAKAM in July 2018 at the Malaysian Judicial and Legal Training Institute (ILKAP). UNHCR was invited to present on refugee protection. UNHCR will be organising its own Judicial Engagement Workshop on Refugee Protection for the Malaysian Judiciary in November 2019.

UNHCR further focused on raising awareness of refugee and detention issues in the legal community, with the intention to expand the pool of pro-bono legal service providers. This involved a range of meetings with prominent law firms, lectures to students and speaking at international networking platforms such as the Asia Pacific Pro-Bono Conference in October 2018. In total and between the periods of January 2018 – May 2019, UNHCR met and sensitized approximately 143 lawyers and 730 students, mostly from the legal fraternity.

UNHCR Malaysia recognizes that a clear outreach and engagement strategy to promote community awareness and better understanding on refugee related issues is necessary to remove public misconceptions and to instil support and confidence in the Malaysian public. This could eventually support efforts towards policy changes, surrounding legal stay and detention related issues. Important entry points include the 12th Malaysia Development Plan and a SDG Summit co-organised by the UNCT and the Government where refugees are highlighted among other groups in meeting the objective of leaving no-one behind. Moving forward, UNHCR Malaysia is exploring a stronger communication strategy. Media engagement for awareness raising and campaigning in 2019 included: engagement with local radio broadcasting channels; online news engagement on World Refugee Day; and the RALAS 2019 launch with the Bar Council of Malaysia.

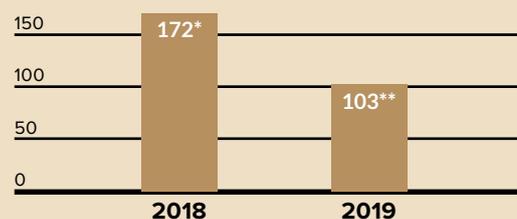
### Strengthening partnerships/alliances with national stakeholders to achieve policy changes

UNHCR continues to co-operate and collaborate with SUHAKAM on issues relating to refugees and asylum-seekers through a Memorandum of Understanding. The joint UNHCR-SUHAKAM nationwide dialogue, detention monitoring strategy and engagement in capacity building activities have further strengthened this partnership.

The Law and Policy Group is a group of individuals and organizations who are committed to improve the protection of and assistance to asylum seekers and refugees in Malaysia. This Group convened in late 2018 with the ultimate goal of advocating for legislative and policy changes concerning asylum-seekers and refugees in Malaysia, including detention related policies. This Group involves key stakeholders such as SUHAKAM, UNHCR, International Detention Coalition, Medecins Sans Frontieres, Bar Council, Geutanyoe Foundation and Asylum Access among others. The alliance and partnership of this group was formalised in January 2019, through the formulation of a Team Contract. UNHCR continues to participate in this Group supporting their strategizing and coordination of expertise and resources in advancing law and policy changes.

## GOAL 1 End the detention of children

### NUMBER OF CHILDREN DETAINED\*



\* 64 UASC

\*\* January – June 2019: 46 UASC

## GOAL 2 Ensure that alternatives to detention are available

In Malaysia, a 2005 circular issued by the Attorney-General's Chambers states that those persons registered with UNHCR at the time of arrest should not be prosecuted for an immigration offence. This Circular provides a certain degree of immunity to POCs from the prosecution of immigration charges and this is mainly through good cooperation with authorities. Be that as it may, individuals who are unregistered continue to face heightened risk of arrest and detention under applicable immigration law.

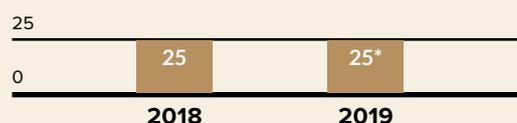
Through a strategic litigation case in 2017\*, a Rohingya minor was granted bail, where he was placed at an identified shelter by the Courts (case attached with this report). Following on from this, in 2018, bail was granted to three (3) non-Rohingya POCs, two (2) of whom were minors who were charged for immigration offences.

The 2018 Habeas Corpus application for 7 Rohingya minors in detention, led to a landmark decision, recognizing a place of shelter as an alternative to immigration detention.\*\*

\* <https://bit.ly/2PrFwRV>

\*\* <https://bit.ly/2EnoePy>

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC)



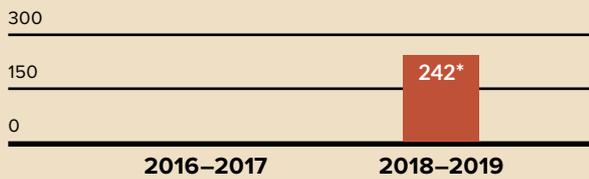
\* Mid-2019

### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



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

#### NUMBER OF MONITORING VISITS



\* From January 2018 to June 2019, UNHCR conducted 242 missions to various detention facilities for the purposes of monitoring, registration and release of persons of concern.

### Judicial Engagement

Throughout 2018, capacity building and outreach activities with the judiciary were complemented by court monitoring which was done to collate data and information on individuals appearing in court for an immigration-related offence and to monitor sentencing trends, with a view to explore potential engagement in this area. During this outreach programme, UNHCR strengthened its relationship with key prosecutorial, judicial and legal stakeholders throughout Peninsular Malaysia. Building on this outreach programme, UNHCR collaborated with the Training and Capacity Development Division of the Malaysian Judiciary to organise a two day Judicial Engagement Workshop in November 2019. The objective of the Workshop was to have a dialogue with the Immigration Sessions Court Judges and Magistrates on UNHCR's mandate and activities in Malaysia, international protection needs of refugees, refugee country of origin information, and verification methods of UNHCR-issued documentation. Discussions were to mainly focus on the law and other legal and protection issues related to refugees in Malaysia, including immigration detention and alternatives to detention.

Building upon the strategic litigation case conducted in 2018, UNHCR's Retainer Counsel filed a revision application at the Kangar High Court against the conviction and sentence given by a lower court judge against 11 Rohingya children who had come to Malaysia by boat in 2019. These minors were initially sentenced to 3 months imprisonment and had their conviction recorded. In addition, they were not allowed access to UNHCR and a welfare officer despite Counsel making a formal application to do so. It was argued at the High Court that a serious miscarriage of justice had occurred because the lower court judge failed to apply provisions of the Malaysian Child Act 2001 to these children. Counsel argued that the Child Act 2001 was applicable to all children irrespective of their nationality, race and religion. The High Court agreed with Counsel's submissions and after concession set aside the conviction against the minors. Further, to ensure that the children are not unnecessarily detained any longer, a court case management was fixed where UNHCR was to be granted access to these children to conduct the necessary assessment and to update the Court on the status of their release.

The decision by the Kangar High Court further amplifies that the immigration detention of a child should be a measure of last resort and the provisions of the Malaysian Child Act apply to all children without distinction of any kind. In this case, to ensure that these principles are followed, the High Court had fixed a short Case Management date to ensure that the children have access to UNHCR.

## Alternatives to detention

To support the creation of new care arrangements and community based alternatives to detention, UNHCR together with SUKA Society embarked on a pilot project to develop and strengthen foster care arrangements in the Rohingya community. Following the publication of a manual and handbook on foster care in early 2018, Phase 2 of the project focused on sensitisation of the Rohingya refugee community in the Klang Valley area on the concept of foster care and the need for safe care arrangements while simultaneously identifying potential Rohingya foster parents. A total of 43 Rohingya participants benefited from the session with 6 parents indicating their interest to be foster parents. Additionally, 8 NGOs throughout Malaysia were introduced to the foster care programme in the refugee community to empower them to further develop and implement the programme. This project is currently ongoing as the identification of a foster care agency is ongoing. Identified refugee foster parents will be trained prior to screening and matching of foster children with the families. This project will continue with the support of UNICEF Malaysia in 2020 through their 'Children Affected by Migration' project.

In line with UNHCR's strategy to build resilient refugee communities and strengthen the network of stakeholders supporting refugees, UNHCR Malaysia engaged the Malaysian Council for Child Welfare (MKKM) in August 2018 to undertake simplified case monitoring of low risk cases of Rohingya and Myanmar-Muslim refugee children in Kuala Lumpur and Selangor. This pilot project aims to strengthen and expand case management for refugee children as there are limited stakeholders that provide these services. Refugee community workers were trained on case management alongside MKKM's staff, promoting social cohesion. This project will complement the Foster Care Project whereby children will benefit from regular monitoring after placement with suitable foster parents.

## Securing access to and monitoring places of immigration detention

UNHCR Malaysia does not have complete access to detention centres for the purposes of monitoring detention conditions. However, through registration interviews conducted in detention, UNHCR documents detention with detainees and also provides observational reports. These missions are primarily conducted to monitor the profiles of persons of concern and to make adequate interventions, including registration, RSD and requests for release. In 2018, merged registration-RSD and heightened risk interviews and assessments were conducted for 2,327 POCs and UNHCR successfully reduced the risk of refoulement for 3,693 persons of concern from IDCs, police and immigration lock-ups and prisons. As of mid-2019, 1,029 persons of concern underwent similar interviews and 1,353 have been released from detention.

UNHCR's strategy in relation to monitoring places of immigration detention is to cooperate with and build capacity of key stakeholders and partners working on detention related issues. The outcome of this was that UNHCR, SUHAKAM and the EAIC developed a tripartite Immigration Detention Monitoring Strategy. This strategy formalised the relationship between all three organizations with two key objectives: a) stronger coordination between the organizations, including through strengthened interagency relationships, information sharing and implementation of monitoring mechanisms; b) improvement of treatment of all detainees in immigration detention centers.



#### TRAININGS ORGANIZED DURING THE TRAINING PERIOD

73	on asylum law
65	on detention monitoring
11	on child protection
65	on reception and alternatives to detention
65	on detention condition standards

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

1,759	on asylum law
1,229	on detention monitoring
232	on child protection
1,229	on reception and alternatives to detention
1,229	on detention condition standards

### Future Plans

UNHCR will continue to undertake advocacy, in coordination with key partners, on ATD, immigration detention standards and refugee protection. Given the shift in the political environment there is now an opportunity to undertake advocacy at levels where it was not previously possible. In particular advocacy with members of parliament is seen as a new strategic area of engagement for UNHCR Malaysia and its partners. Through the EIDHR project, UNHCR printed 1000 copies of the UNHCR IPU Handbook "A guide to international refugee protection and building state asylum systems". These handbooks will be utilised in bilateral and other dialogue sessions with members of parliament and other government stakeholders in 2019 and beyond.

UNHCR will continue to undertake regular visits to the immigration detention centres throughout Peninsular Malaysia including to register and request the release of persons of concern as well as to monitor conditions in the detention centres. Following participation in the Immigration Detention Monitoring Learning Programme and building on the awareness raising sessions undertaken with immigration detention centre officers, UNHCR staff are now in a much stronger position to be able to engage in dialogue with immigration authorities regarding detention standards. In line with its Immigration Detention Monitoring Strategy, UNHCR will also share information collated regarding conditions with SUHAKAM and EAIC, to inform their respective advocacy and training activities. At the moment capacity is limited to do so in a sustained way, with appropriate follow-up on the outcome of information shared.

Additionally, UNHCR is exploring a range of judicial engagement activities to build on the momentum and ensure sustainability of the gains achieved during the course of the EIDHR project. UNHCR will support the expansion of the RALAS project to other areas of Malaysia in partnership with local legal aid centres.

## KEY DEVELOPMENTS

- Mid-2018 saw a return to **automatic detention for medical checks** (in practice detainment for immigration-related reasons) of all people arriving irregularly. People are de facto detained at the Initial Reception Centres. These centres are the Initial Reception Centre (IRC) in Marsa locality and the Safi Detention Centre, located in a military base in Safi locality. Despite earlier successful lobbying by UNHCR to turn the IRC into an open centre, since boat arrivals from Libya resumed in mid-2018, the facility is once again being used as an initial closed site. The Safi Detention Centre is being used as an extension of the initial detention site because of the large number of arrivals. Some groups of arrivals are detained for weeks while others (subject to relocation) remain up to two months before being released to open centres. Children are also detained (not separated from adults) due to lack of space in dedicated centres.
- By mid-2019, **full capacity for both closed centres** had been reached. All people arriving irregularly by boat are detained up to several months for medical checks. In reality, detention on medical grounds masks the lack of capacity in open centres. Detention for reasons of medical checks can legally continue up to ten weeks. Children are also detained due to lack of space in dedicated centres for minors.
- Immigration related detention can continue for several months before the first **detention review** takes place. This review is often discretionary and the outcome is often influenced by factors other than just the lawfulness of detention, such as the availability of accommodation.
- Specific nationals (Moroccans and Bangladeshi) are issued with immigration-related detention orders during their initial medical detention. These orders are not reasonably motivated in respect of an individual assessment and ATD.
- **Reception conditions in the detention centre** fall short of CPT standards, in particular in relation to the number of toilets and showers, as well as personal space. Other issues are lack of telephones or contact with families after life-threatening sea-journeys, lack of open-air areas, lack of recreational activities and problematic interaction with detention staff. Interpreters are rarely used by detention staff so communication and understanding are extremely difficult, thus straining relations. Lack of clarity on reasons and time-frame for detention have a psychological impact, as does the environment of a military detention site close to the airport in Safi. There are also issues with timely and efficient medical and psychological attention for detention residents due to the increased arrivals and lack of capacity.

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Strengthening partnerships/alliances with national stakeholders to achieve policy changes

In order to achieve policy changes UNHCR carried out a variety of activities. UNHCR continued working constructively with the national authorities, in particular relevant agencies responsible for the administration of the detention facilities. Together with its national partner organisation, Jesuit Refugee Service (JRS), UNHCR continued to raise and address the problems to improve the quality of the material conditions of the detention facility and ensure international standards are applied. UNHCR met regularly with the Board of Visitors for Detained Persons established in 2007 in accordance with the Optional Protocol to the UN Convention against Torture (OPCAT), to discuss the Board's monitoring activities and to explore avenues for cooperation in improving the conditions in the places of detention. UNHCR carried out direct advocacy with the Ministry of Home Affairs and with the Government reception agency (AWAS) on the conditions and treatment of children under their custody.

### Judicial Engagement

UNHCR's partner, JRS, assisted 49 people with the review of their detention before the Immigration Appeals Board (IAB). Only 2 out of 44 people had their detention deemed unlawful by the IAB. In practice, in most cases, JRS followed up with the police to request a review of the decision to detain and in a number of cases JRS have managed to get the police to review their decision within one or 2 months. However, because this review is completely discretionary, the outcome is often influenced by factors other than just the lawfulness or otherwise of detention, such as the availability of accommodation. JRS has also flagged vulnerable persons with asylum authorities to advocate for release from detention in an informal manner.

### Alternatives to detention

Unaccompanied children of a young age (up to 15) are usually (not always) accommodated in a dedicated open centre. People who declare to be a child upon arrival and appear to be between 15-18, are subject to automatic detention until conclusion of age assessment procedures, or until space is available in the dedicated open centre or in another open centre for adults. Younger children and families are usually accommodated in the IRC under automatic detention until space is available in open centres. Unaccompanied male minors are often housed with single male adults during initial detention, due to lack of reception capacity.

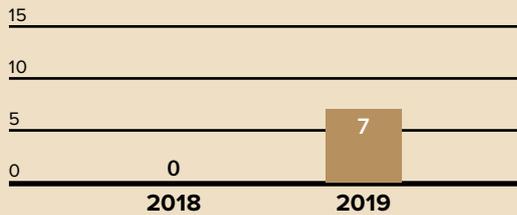
Types of ATDs in place include the possibility for the Principal Immigration Officer (even when detention is not required) to order the individual to report to a police station (sometimes up to three times per week); to reside at an assigned place; to deposit or surrender documents; to place a one-time guarantee or surety. While the interpretation of ATD is not in compliance with international and EU standards, it is also unclear how ATDs are currently applied in practice in individual cases due to a drastic increase of irregular arrivals by boat which led to a complete reversion in policy and practical implementation of policies previously adopted.

### Securing access to and monitoring places of immigration detention

UNHCR continues to conduct weekly visits to all the centres where persons of concern are detained. 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 IAB hearings and represents some detainees. UNHCR also regularly meets with the Head of Detention

**GOAL 1** End the detention of children

**NUMBER OF CHILDREN DETAINED\***



\* 381 alleged minors initially detained for medical checks in 2019 (as per above background, extended medical detention is due to lack of space in open centres)

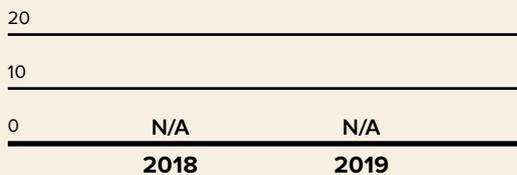
**GOAL 2** Ensure that alternatives to detention are available

**NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC)**

Open centre arrangements for children currently consist of 1 centre with 50-70 spaces (all occupied).

Closed centre arrangements for children consists of the Marsa Initial Reception Centre, currently hosting 560 persons. The centre has three floors, with upper two floors reserved for families, single women and children. Spaces are adapted to host children or families according to needs. Child-friendly spaces with specific amenities are not available. Staff try to adapt ad-hoc.

**NUMBER OF PLACES AVAILABLE IN ATDS FOR FAMILIES (including children)**



**PERCENTAGE OF PERSONS IN ATDS**



**TYPES OF ATDS IN PLACE**

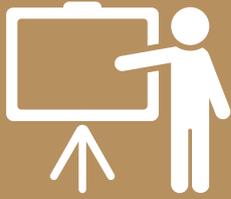
include the possibility for the Principal Immigration Officer, even when detention is not required, to order individuals to report at a police station; to reside at an assigned place; to deposit or surrender documents; to place a one-time guarantee or surety.

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

**NUMBER OF MONITORING VISITS**



\* until 30 June 2019



#### TRAININGS ORGANIZED DURING THE TRAINING PERIOD

1 on reception and alternatives to detention

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

70 on reception and alternatives to detention

Services to discuss key developments and concerns and to discuss solutions to improve both the quality of the conditions and the leisure activities available in the centres (e.g. library, football field, etc.).

UNHCR also shares recommendations with the authorities after every visit, in particular on the condition of the detention facilities, the provision of suitable food and drinkable water, the provision of information, the availability of on-site doctors and the possibility to communicate with lawyers and family members.

UNHCR meets regularly with the Board of Visitors for Detained Persons established in 2007 in accordance with the OPCAT, to discuss the Board's monitoring activities and to explore avenues for cooperation in improving the conditions in the places of detention.

### Future Plans

UNHCR Malta's next steps will be to continue monitoring the places of detention and to urge the authorities to respect international and EU standards. UNHCR will also encourage the authorities to modify the existing policy on ATD to ensure consistency with international standards in law and in practice. 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 to advocate for measures aimed at addressing the current shortcomings of detention and ATD, in light of the increasing risk for Malta to be found in breach of European law. In particular, in view of ECtHR's past decisions in *Louled Massoud v. Malta*, *Suso Musa v. Malta*, *Aden Ahmed v. Malta*, and most recently in *Abdi Mahamud v. Malta*. 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.

## KEY DEVELOPMENTS

• During the second half of 2018 a number of caravans crossed Mexico with the intent to reach the northern border or seek asylum in Mexico. This led to an **increase in the number of asylum applications**. Mexico finished 2018 with 29,600 asylum applications, of which 91.6% were from the Northern Triangle of Central America (NTCA), the highest number of asylum applications recorded since the 1980s. The number of applications increased by 156.4 % compared to 2015. Based on changes in migration trends, UNHCR projects that the total number of asylum applications in 2019 could be over 60,000. As of June 2019, 31,355 persons have lodged an asylum request. This represents an 205% increase in relation to asylum requests lodged between January and June of 2018.

• A **new government administration** took office in December 2018 and announced a “**New Migration Policy**” which was based on an inter-sectoral approach with a focus on human rights. Amongst the relevant components of this approach the government underscored respect for human rights, restructuring of the National Migration Institute (INM) and strengthening of the Mexican Commission of Aid for Refugees (COMAR) as well as efforts to strengthen dialogue with the USA and NTCA countries to foster development that can stem the flow of migrants and refugees.

• At first this approach led to the **issuance of “humanitarian visas” (TVRH)** to persons who entered the country in caravans at the beginning of the year. This document allows persons a regular stay in Mexico for up to a year and can be renewed; however, it does not protect against refoulement. Given the high number of TVRHs that were issued, the INM decided to instead start issuing migrants a Regional Visitor’s Card (TVR) which allows only a 7-day stay in Mexico in the 7 southern border states.

• Since the end of January people who have expressed fear to go back to their country of origin in the US have been returned to Mexico under the **Migration Protection Protocol (MPP)** which presupposes that asylum seekers in the US will await in Mexico while their case is adjudicated. Persons under MPP receive a migration document. UNHCR has found some cases of persons in this status who have been detained- not for reasons related to their “MPP status” but because of attempts to irregularly cross into the US or previously standing “**alertas migratorias**” (internal INM notices of issues with an individual’s migratory status that can span from a previous visa infraction all the way to serious crime or outstanding detention orders from a third country).

• **Mexico and the US reached an agreement** on June to strengthen enforcement of migration laws in Mexico and stem the flow of migrants to Mexico’s northern border. This has led to a sharp increase in detention of migrants. Available official data shows that between January and August 2019 144,591 persons have been detained. This has overcome 2018 detention figure (138,612 individuals)<sup>1</sup>.

• As a consequence of higher detention numbers conditions in **detention centres in Mexico have been worsening**. Most detention centers report high **overcrowding** and some have faced **riots** by persons in detention- notably the detention center in Tapachula. To ease the pressure at the detention centers, **INM has established an alternate detention spaces in places such as Tapachula and Tuxtla Gutiérrez, Chiapas, Villahermosa, Tabasco, Zacatecas and Monterrey**. Detention conditions in these spaces seem to be inadequate and not apt for a long period of detention.

<sup>1</sup> Data available at: <https://bit.ly/2YAXVOS>

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- The **ATD program** has continued functioning. During 2018 3,596 persons were released from detention under this program. During 2019- as of July- 4,988 persons have been released under this program. Release is done to shelters supported by UNHCR in which people can remain until they can rent a space on their own or their asylum procedure has concluded. The main persistent challenge is that the **program has not been formalised in a normative document that establishes clear criteria and is subject to accountability.** UNHCR continues to insist with both COMAR and INM that this program be formalized. Despite this being referred to as the “ATD program,” it is not a real ATD as such because the detention decision is not based upon an individualized assessment.

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- On May 2019 a **High Level Dialogue on Protection** took place in Mexico with the participation of government authorities from Mexico and the Director of the Division on International Protection of UNHCR. As a result, it was agreed that an interinstitutional working session to identify challenges and gaps in the ATD program will be held with a view to taking steps to ensure that the program can eventually be formalized. There was no clear-cut commitment to formalize the program as such, however, INM expressed willingness to eventually reach the formalization of the program in conformity with Mexican law.

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- In June 2019 a **Federal Judge granted precautionary measure consisting in the order to release all minors from detention in the Mexico City Detention centre.** This was the result of a constitutional-based rights litigation procedure (Juicio de Amparo) initiated by four UNHCR partner organizations demanding the proper registration and release of all children in detention at the Mexico City detention centre because this violates their rights. As of this writing the precautionary measure has not been fully implemented. This decision is not on the merits of the case. That decision is still pending.

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- The **National Human Rights Commission (CNDH) issued 3 non-binding recommendations to the National Institute on Migration and Child protection authorities for human rights violations of children in detention.** In the first case

(recommendation 37/2019) a 16 year old minor and his father were physically abused after an altercation with INM agents. CNDH found that INM’s procedures did not fully comply with the migratory legislation and that the Child Protection authorities were absent from the administrative procedure and did not actively seek the best interest of the detained minor. In the second case (recommendation 40/2019) CNDH found that INM and the Child Protection authorities had not adequately considered the best interests of the child by allowing them to remain in detention 56 days despite that a number of laws prohibit detention of migrant children. Additionally, the CNDH found that INM had violated the rights of the children by not separating them from their stepfather despite the children expressly stating he was violent towards them, which led to an episode of SGBV within the migration detention center. In both cases CNDH recommended specific actions that INM and the Child protection authorities must undertake as reparations in favour of the victims. In the third case (recommendation 79/2019) three unaccompanied adolescents from Honduras asked for asylum in Chiapas and were not transferred to a proper shelter, so two of them were victims of sexual aggression, and then detained by INM and sent to a migrant detention center for several weeks. In addition to this, one of them was pregnant and didn’t receive proper medical attention. CNDH found that COMAR didn’t protect their integrity and didn’t give proper psychological attention. CNDH also found that the Child Protection Authorities didn’t conduct a best interest determination.

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- Since May 2019 a **Pilot Protocol has been in place which allows access to the territory** to request asylum to family groups which include children, trans women or elderly people without being transferred to a detention center and for referral to the COMAR office in Tapachula for access to the asylum procedure. Since its inception this protocol has benefitted 24 persons (5 families). The downside of this program is that the regularization document that is granted is a provisional regularization document instead of a TVRH to which individuals should be entitled.

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

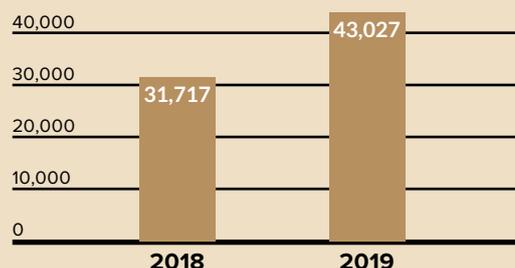
UNHCR translated the 2018 Progress Report into Spanish and distributed it amongst relevant governmental authorities such as COMAR, INM and the Under Secretary for Population and Religious Affairs. During 2018 UNHCR continued advocacy with the CNDH to ensure they inform detained individuals of their right to seek asylum and refer their cases to COMAR and the Federal Public Defender's Office. On September 2019, UNHCR shared with relevant authorities a report on the results of its participatory diagnostics of 2018 relating to detention and access to the asylum procedure and legal assistance in detention.

### Strengthening partnerships/alliances with national stakeholders to achieve policy changes

In collaboration with the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMPDH)*, the *Alaíde Foppa Legal Clinic of the Iberoamericana University* and *Sin Fronteras* (all UNHCR partner organizations) a strategy for access to detention centers to offer legal representation is being developed. This proposed strategy was presented to all legal partners during the November 2018 National Meeting for Legal Partners. The strategy is based on requesting access to INM for access to detention centers to offer information on the right to seek asylum and to offer legal assistance and representation for asylum seekers. If the authorization is denied, which has been common practice, then legal partners will initiate a Constitutional Based Rights Litigation (known in Mexico as a *Juicio de Amparo*) arguing that the rights of the organization as a human rights defender had been violated. Currently one organization (CMDPDH) has successfully prevailed in litigation. The rest of the organizations have not filed litigation because their access to selected detention centers has been approved or their time to request access to detention centers has

## GOAL 1 End the detention of children

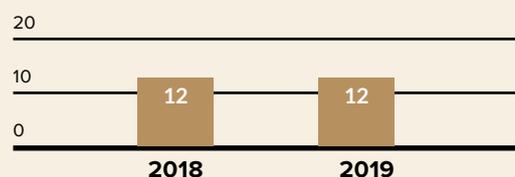
### NUMBER OF CHILDREN DETAINED\*



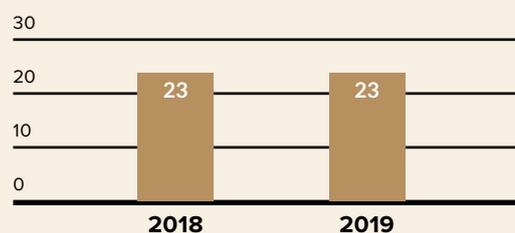
\* Children were detained with their families

## GOAL 2 Ensure that alternatives to detention are available

### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC)



### NUMBER OF PLACES AVAILABLE IN ATDS FOR FAMILIES (including children)



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



### TYPES OF ATDS IN PLACE:

After being released from the migratory detention center, asylum-seekers are channeled to open-shelters run by faith-based organizations and Civil Society Organizations some of them financially supported by UNHCR) For unaccompanied children the options are regularly closed-door shelters

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

**NUMBER OF MONITORING VISITS CONDUCTED BY UNHCR AND/OR IMPLEMENTING PARTNERS:**



694 visits by UNHCR and 210 visits by UNHCR partners. Total: 904

It must be specified that until now visits to detention centers are only to identify and register persons of concern. We have requested INM permission to conduct monitoring visits but have not received an answer yet. Our expectation is that during the second half of 2019 we can conduct monitoring visits at least in the Mexico City detention center.

**TRAININGS ORGANIZED DURING THE TRAINING PERIOD**

- 8 on asylum law
- 8 on detention monitoring
- 3 on child protection
- 9 on vulnerable groups
- 14 on reception and alternatives to detention
- 14 on detention standards

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

- 187 on asylum law
- 41 on detention monitoring
- 57 on child protection
- 247 on vulnerable groups
- 98 on reception and alternatives to detention
- 98 on detention standards

not yet come.<sup>2</sup> If the strategy is successful access to legal representation in detention will be easier for asylum seekers, especially in places where UNHCR partners have presence. Additionally, on September 2019 a strategy against detention was developed alongside legal partners. This strategy focuses on combatting detention in two fronts: 1) the Constitutionality of detention of asylum seekers will be questioned (due to the fact that there are pathways to a regular migratory status which would not require detention); and 2) Detention will be combatted as a violation of articles 16 and 17 of the Mexican Constitution-due process violations. Currently legal partners are working on draft writs which will be used by all UNHCR legal counterparts.

An MoU has been signed with the Federal Public Defender's Office (IFDP) through which we seek to ensure nationwide access to legal assistance and representation for asylum seekers. One of the components of UNHCR's agreement is that IFDP can take part in the development and implementation of legal strategies that are developed alongside our legal partners. One of the components we have been discussing with IFDP is that they challenge the constitutionality of detention in all cases they undertake.

**Judicial Engagement**

Strategic litigation by UNHCR partners against detention of asylum seekers has been ineffective because of the way in which the Migration Law has been interpreted and the way in which judges decide to interpret the relevant legal provision. Related constitutional-based rights litigations tends to be ineffective. The Migration Law establishes that when a detainee in a migration detention centre files an administrative complaint and/or appeals to a Court against being detained -through a constitutional-based mechanism called *Juicio de Amparo*- the detainee must then remain in

<sup>2</sup> UNHCR partner organizations routinely request for permission to access migration detention centers and this is granted with a limited scope- to offer information to individuals in detention but not to assume legal representation of cases. UNHCR has to refer each case to the organizations for this to be possible.

detention until such mechanism is exhausted. In practice, this has led to appeals against arbitrary detention actually extending the detention of asylum seekers beyond the time they would initially be in a detention centre and/or asylum seekers withdrawing their complaints and/or appeals in order to be released from detention. The challenge relating to litigation mechanisms as effective mechanisms for appeals has not been undertaken by UNHCR legal partners because individuals are not willing to await in detention until precautionary measures before the Inter-American Court of Human Rights are admitted and decided upon. Additionally, it must be taken into account that Federal Administrative judges are reluctant to decide upon detention- referring appeals against detention to Criminal Judges who decide upon detention based on an approach on legality (if it is established in law) and bypassing the rights violations issues altogether. The main challenge remains in convincing the Federal Judicial Branch that immigration detention should be studied with an administrative law approach and with a basis in international refugee law and international human rights law standards.

### **Alternatives to detention**

For asylum seekers shelters tend to be the only alternative arrangements available. These shelters are run by faith-based organizations, dioceses of the places where they are located or NGOs in certain places. There are no Government-funded alternative arrangements. For unaccompanied asylum seeking children there are a number of government-funded shelters, but these tend to be closed-door, with conditions similar to detention. From July-December 2016 a pilot program for release of asylum seekers was implemented, which led to the release of 663 asylum seekers from detention. Since January 2017, the program has continued functioning albeit no longer in a pilot phase. Since then, 7,384 persons have been released from detention (1,325 persons in 2017, 3,596 persons in 2018 and 4,988 persons between January-July 2019). Decisions to release individuals are responsibility of INM and COMAR. UNHCR supports the government with the following actions: identification of PoCs in detention and referral to COMAR so that they can have access to the asylum procedure; flagging to COMAR cases in detention which already have the necessary documents to be released; identification of and referral to shelter spaces in which persons benefiting from an early release from detention can reside until they can rent their own home or their asylum procedure is completed. The main challenge of this so called ATD program lies in the fact that it has not been established in any normative document subject to accountability and which lays out clear standards and criteria for release. The program continues to be highly discretionary, subject to changes and, potentially, cancellation at any moment from the government. However, there has been no indication this will happen and overcrowding in detention centers seems to point towards a strengthening of this program. Additionally, due to its discretionary, non-formal nature, the program has faced some challenges related to the logistics of release: not enough information is provided to persons of concern about their release and what this means which creates an atmosphere of uncertainty both for persons of concern and shelters, release takes a long time to process which leads to persons leaving detention centres very late and therefore arriving very late at shelters, notification of release of groups of persons are issued with very short notice which leads to challenges in identification of shelter spaces. Finally, with the increasing number of released individuals UNHCR is encountering complications to find enough shelter spaces. Additionally, since January 2017, UNHCR has given support to Hotel San Agustin in Tapachula, which functions as a shelter to receive asylum seekers released from detention.

## Securing access to and monitoring places of immigration detention

UNHCR has developed a detention monitoring strategy for Mexico. A version of this has been presented to the new Director of Detention Centres of INM with the proposal that UNHCR begins a pilot stage at the Mexico City Detention centre for a three-month period and once this is completed a confidential report to INM on conditions will be presented. Once this stage has been completed, UNHCR will conduct regular monitoring visits- besides the visits to identify and register persons of concern- to detention centres in the area of responsibility of UNHCR field offices and will present regular reports to INM. A response to this proposal is pending as the head of INM recently changed and, therefore, all decisions are pending at the moment. In preparation for the possible approval of this plan, UNHCR field offices have been asked to ensure that all personnel who regularly conduct visits to detention centres complete the Immigration Detention Monitoring e-Learning Program on Learn and Connect. Additionally, the UNHCR Detention Consultant is conducting visits to all field offices to offer a 1 day workshop on detention monitoring and SOPs on detention centre visits. Finally, the SOPs on detention centre visits were updated in 2018 and are now being updated again to include detention monitoring considerations in addition to registering persons with international protection needs and offering information on access to the asylum procedure as well as their rights as asylum seekers.

## Future Plans

UNHCR has a few priorities relating to the implementation of the Global Strategy for the rest of 2019 and 2020.

One main aim is to ensure that the ATD program is enshrined in a normative document that establishes clear criteria and guidelines for the release of asylum seekers from detention. In the absence of this document, or in the meantime until it is published, efforts must be made to ensure proper coordination between INM, COMAR, and the civil society shelters that receive asylum seekers in order to reduce uncertainty about the program. Clear criteria must be established and mechanisms for streamlining cases of persons with special needs must be developed and implemented. UNHCR will also continue to coordinate with child protection authorities to eliminate the detention of children. Additionally, UNHCR will strengthen judicial outreach efforts to ensure that Federal Judges understand the needs of refugees and when deciding cases relating to detention of asylum seekers they prioritize a rights-based approach and a focus on challenging detention of asylum seekers. In this sense, and through the MoU UNHCR has signed with the Federal Council of the Judiciary, UNHCR will offer training to judges on International Refugee Law, the asylum procedure in Mexico and UNHCR's detention guidelines. Additionally, UNHCR's legal partners will continue with proposed strategic litigation to challenge both detention and detention conditions.

UNHCR has proposed to the INM to conduct a pilot program to monitor detention conditions and is awaiting approval of this request. UNHCR will continue its efforts to ensure that it is allowed to monitor detention conditions and share its findings with relevant authorities to ensure that measures are taken to apply international standards when detention of an asylum seeker has been deemed necessary. Coordination with CNDH will be a central aspect of our monitoring efforts in particular to ensure that our efforts are complementary and promote that detention conditions comply with international standards.

Finally, legislative reform efforts to eliminate mandatory detention for asylum seekers must be strengthened. UNHCR will develop normative documents to present to relevant legislators in order to pursue a reform of the Migration Law. Additionally, working sessions with legislators should be held to ensure they understand the needs of refugees and understand how detention can become an obstacle for effective access to international protection.

## KEY DEVELOPMENTS

- In 2018 the new **Law on International and Temporary Protection (LITP)** entered into force, which introduced provisions on detention of asylum seekers for the first time. UNHCR provided comments on the provisions of the law. Since the introduction of a possibility of detaining asylum seekers, three have been detained.
- During 2018, a total of 201 **(67.2% of all asylum applications)** were filed by persons **previously held in immigration detention** at the Reception Centre for Foreigners in Gazi Baba, a reduction compared to 2015 (72% of all asylum applications), but an increase over the previous years 2016 (57%) and 2017 (58%). In 2019 until the end of May, a total of 48% of persons applying for asylum did so while in immigration detention (80 out of 165 applications).
- In its **2018 annual report**, the **National Preventive Mechanism (NPM)** of the Ombudsman concluded that “in the reporting year the problem of illegal detention in the Center for Foreigners was still unresolved. Namely, the practice continues to keep the persons in the Center with decisions of the Ministry of Internal Affairs for the purpose of determining the identity, although the only competent body to reach a decision for detention on those grounds is the court”. The conclusions of the NPM were confirmed with the European Commission, North Macedonia 2019 Report. The European Commission notes that the trend of arbitrarily detaining a certain number of persons apprehended in irregular movements in the Reception Centre for Foreigners in Gazi Baba, primarily in order to ensure their statements as witnesses in court cases against smugglers, continues. Most of those placed in detention were men – 72%, while 7% were women, 19% boys and 2% girls.
- In the period from March 2017 to February 2019, UNHCR North Macedonia implemented the **EIDHR supported project: Global technical assistance and capacity building programme to prevent detention of children and to protect children and other asylum-seekers in detention**, targeting the Government, NPM and civil society partners. Within the scope of the project, detention related materials were produced, printed and disseminated, including the on-line training module on the fundamentals of immigration detention.
- UNHCR has concluded a **Project Partnership Agreement (PPA) with the Ministry of Labour and Social Policy** for 2018, outlining *inter alia* the support for further development of the alternative care arrangement system to include support for foreign nationals, in particular children. One **child care specialist** for the Safe House has also been engaged under the PPA, supporting psycho-social interventions and therapy sessions based on individual needs, as well as, organizing a capacity-building training for interpreters and socio cultural mediators.
- During 2018 and 2019, an **overall improvement of the conditions in immigration detention** has been reported by detainees. Additionally, a **decrease in the average detention period** has been noted from two to one weeks. However, one case of prolonged detention was observed, in the reporting period, whereas one detainee is being held for a total of 229 days in immigration detention. In addition, **judicial review of the detention decision under the new LITP appeared not to be done urgently, as prescribed by the law**, but spanned even beyond the final judicial decision on asylum application for the same applicant.

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

The Fundamentals of Immigration Detention e-Learning Course is in the process of being translated into Macedonian, voiced over and will be made available through the Learn and Connect platform for UNHCR staff and partners as well as for relevant authorities. The following detention materials were translated and proofread from English to Macedonian, printed and disseminated among relevant stakeholders in the country during events organized by UNHCR and Partners with the purpose of increasing the capacity of immigration detention monitoring bodies in the country, promoting the vulnerability screening tool to stakeholders and serving as an advocacy tool vis-a-vis authorities for the development of alternatives to detention: UNHCR APT IDC *Monitoring Immigration Detention: A Practical Manual*; UNHCR IDC *Vulnerability Screening Tool*; UNHCR IPU *Handbook for Parliamentarians N° 27: Guide to international refugee protection and building state asylum systems*. Additionally, the following reports were developed and printed by UNHCR's partner, Macedonian Young Lawyers Association (MYLA): annual immigration detention report for 2018 and MYLA mid-year Immigration detention report for 2018.

### Strengthening partnerships/alliances with national stakeholders to achieve policy changes

UNHCR and the MYLA organized a roundtable on "Immigration Detention in Macedonia – Current practices and applicable legislation," with the objective to review and discuss current practices pertaining to immigration detention, applicable national legislation, as well as the deprivation of freedom of movement. Focus was given to the conditions and treatment of refugees and migrants in North Macedonia, the procedure with unaccompanied children and possible ATDs. The round table was an opportunity to put decision makers, academia, judges, lawyers and persons working directly with detainees in the immigration context in the same room to discuss practical and legal challenges. 38 representatives from the Ministry of Interior, Ministry of Labour and Social Policy, academia, judges from the Administrative Court and High Administrative Court, lawyers and international organizations took part in the roundtable.

UNHCR supported the Ombudsman's NPM in the organization of four trainings on the NPM's mandate and the rights of detainees for the four Regional Centres for Border Affairs of the Ministry of Interior. 86 representatives from the Border Police took part in the four trainings. UNHCR also organized a soft skills training for Border Police staff focusing on tools for dealing with vicarious trauma and burnout in the context of working with UNHCR persons of concern. 32 representatives from the Border Police took part in the training.

UNHCR supported the Ministry of Labour and Social policy in the organization of a workshop for the training for interpreters, cultural mediators and professionals responsible for reception and protection services on the topics of asylum and international protection, social protection, vulnerability profiling, interviewing and communication. 25 interpreters, cultural mediators and professionals responsible for reception and protection services took part in the training.

Six participants from UNHCR, Ministry of Labour and Social Policy, Ministry of Interior and Ombudsman's National Preventive Mechanism took part in the Global roundtable on alternative care arrangements for children and families, organized by UNHCR in Bangkok on 10-11 October 2018, which focused on the exchange of good practices from policymakers and practitioners on care arrangements for children.

Three representatives from UNHCR and 1 representative from MYLA took part in the UNHCR's Facilitated Protection Learning for Immigration Detention Learning Programme which consisted of a two-month self-study phase and a workshop in Kuala Lumpur, Malaysia for the training of facilitators in the areas of

immigration detention and ATDs. Following the workshop, UNHCR organised a training session on vulnerability screening for persons in situation of vulnerability/risk and alternatives to detention which aimed at capacity building for UNHCR staff and partners on the topics of Immigration detention, vulnerability screening, and alternatives to detention.

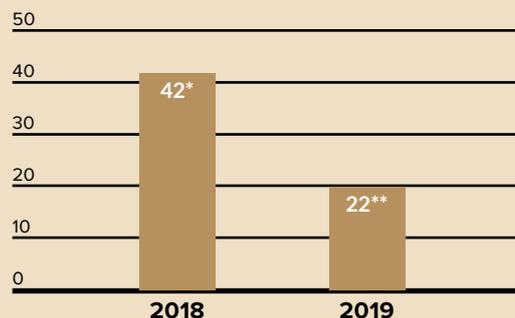
UNHCR was a member of the Working Group drafting the text of the LITP. UNHCR employed its membership to advocate for inserting appropriate safeguards in accordance with international legal standards, during working meetings with the authorities. In addition, the points of difference, in particular those related to detention of asylum seekers and the need for identifying modalities of alternatives to detention, as well as providing specific procedural safeguards, were subsequently elaborated in UNHCR's comments on the LITP.

### Alternatives to detention

While exercising immigration detention, outside the scope of the LITP, national authorities either promptly refer people to asylum procedure (and accommodate persons in the Reception Centre for Asylum Seekers in Vizbegovo – open type facility with a capacity of 150), or refer them to the Safe House (alternative care-arrangement, a semi-open type facility with a capacity of 35) to avoid placing them in detention-like conditions. As of recently, the national authorities are resorting to accommodating persons intercepted in irregular movement who opted to apply for asylum in the country, in the Reception Transit Center in Vinojug (entry point on the border with Greece). This is a temporary accommodation modality before asylum seekers are transferred to Vizbegovo, usually a few days after applying for asylum.

## GOAL 1 End the detention of children

### NUMBER OF CHILDREN DETAINED\*

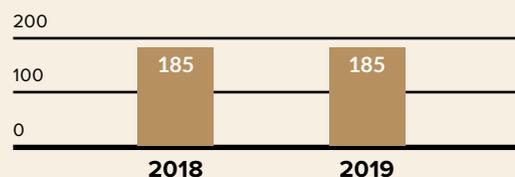


\* children, of which 36 UASC

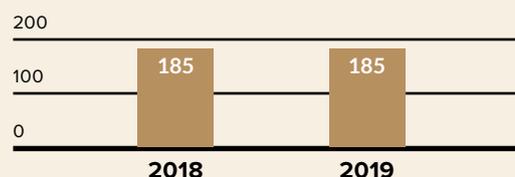
\*\* children, of which 16 UASC

## GOAL 2 Ensure that alternatives to detention are available

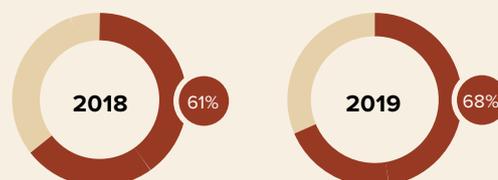
### NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN (UASC)



### NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES (including children)



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



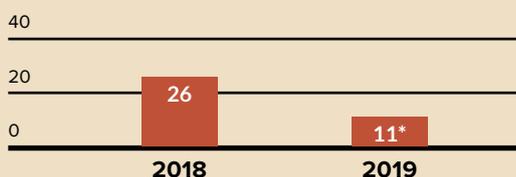
## TYPES OF ATDs IN PLACE

No proper ATDs are in place. The new Law on International and Temporary Protection that entered into force in April 2018 limits ATDs for asylum seekers to two measures – confiscation of an identification document and regular reporting, both inspired by the similar provisions in the Criminal Procedures Law. The Law does not provide for possibility of introduction of any other alternative, which is a gap.

While exercising immigration detention, outside the scope of the LITP, national authorities resort to accommodating children and vulnerable persons in the Safe House (alternative care-arrangement, a semi-open type facility, capacity: 35), or promptly refer them to asylum procedure (and accommodate persons in the Reception Centre for Asylum Seekers in Vizbegovo) to avoid placing them in detention-like conditions.

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

#### NUMBER OF MONITORING VISITS



\* until 30 June 2019

## Securing access to and monitoring places of immigration detention

A national consultant for immigration detention monitoring was hired for the duration of the EIDHR project to facilitate the implementation of the project activities and to coordinate immigration detention monitoring, under the supervision of the detention focal point in UNHCR Skopje. The national consultant conducted desk research on detention-related issues focused on collection and analysis of relevant statistics on detained population, news and trends on immigration detention, review and comments on national mechanisms, policy and legislature. In 2018, UNHCR, together with the Ombudsman's NPM and the MYLA implemented the national detention monitoring strategy. During the period, UNHCR conducted regular (bi-weekly) and ad hoc visits to places of immigration detention. MYLA, UNHCR's legal aid partner, conducted regular (weekly) monitoring and information visits to the Reception Center for Foreigners in Gazi Baba to provide information and assistance on the asylum procedure. The Ombudsman's NPM conducted regular and ad hoc visits, to the Reception Center for Foreigners in Gazi Baba (detention-like facility), aiming at ensuring protection of human rights of persons placed in detention, including access to information on asylum system in the country, as well as access to the asylum procedure, in accordance with the respective legal procedures and in line with the international standards.

UNHCR has increased the frequency of ad hoc visits at the Gazi Baba Reception Centre for Foreigners and coordination with the Ombudsman's NPM to ensure that persons in immigration detention are provided with adequate protection. UNHCR however, has hindered access to persons in detention.



#### TRAININGS ORGANIZED DURING THE TRAINING PERIOD

- 1 on asylum law
- 1 on detention monitoring
- 3 on child protection
- 3 on vulnerable groups
- 3 on reception and alternatives to detention
- 6 on detention condition standards
- 1 on screening and referral

#### NUMBER OF PERSONS TRAINED IN NORTH MACEDONIA DURING THE REPORTING PERIOD

- 30 on asylum law
- 4 on detention monitoring
- 61 on child protection
- 60 on vulnerable groups
- 42 on reception and alternatives to detention
- 128 on detention condition standards
- 25 on screening and referral

### Future Plans

UNHCR plans to conduct regular (bi-weekly) and ad hoc monitoring visits to places of immigration detention for the purposes of monitoring and advocacy in coordination with the Ombudsman's NPM and the MYLA as well as advocacy following immigration detention monitoring visits. UNHCR will also carry out desk research on immigration detention-related issues focused on collection and analysis of relevant statistics on detained population, news and trends on immigration detention, review and comments on national mechanisms, policy and legislation. UNHCR will continue to carry out capacity building for partners and government counterparts.

# SOUTH AFRICA

## KEY DEVELOPMENTS

- South Africa deposited the instrument of **ratification of the Optional Protocol on the Convention against Torture (OPCAT)** with the Secretary-General of the United Nations in New York. One of the country's main OPCAT obligations is to establish or designate a National Preventive Mechanism (NPM) for preventing torture, cruel, inhuman treatment or punishment, among others, through regular visits to places of deprivation of liberty. As a multi-body mechanism, the NPM will be coordinated by the South African Human Rights Commission (SAHRC). This is indeed a significant and positive development – in line with UNHCR South Africa's recommendation to the Committee Against Torture.
- Various **court interventions have resulted in improved oversight of immigration detention** in South Africa. Namely, the South African Human Rights Commission (SAHRC) instituted legal proceedings against the Department of Home Affairs (DHA) relating to the detention periods of foreign nationals including asylum seekers and refugees in South Africa in contravention of provisions of the Immigration Act 13 of 2002. **The High Court ruled in favour of the SAHRC and that no illegal foreign national should be held for the purposes of immigration detention for a period exceeding 120 days, without being furnished a notice indicating the intention to detain the foreign national beyond the standard 30-day period.** The Court directed the SAHRC to monitor DHA's compliance of the court order.
- Furthermore, UNHCR's legal partner, Lawyers for Human Rights (LHR) launched legal proceedings to challenge the constitutionality of Section 34 of the Immigration Act which provides "illegal foreigners can be detained for a period of up to 30 days without a warrant of a court." **The Constitutional Court held that section 34(1) (a) and (d) are unconstitutional in that they do not provide for adequate judicial oversight over immigration detention.**

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

UNHCR consulted the DHA Inspectorate, legal partners and other concerned stakeholders in the development of the South African Beyond Detention – National Action Plan, which provides a comprehensive framework for UNHCR and stakeholders to effectively address the three main goals of the Global Strategy.

UNHCR's legal partner, the University of Cape Town's Refugee Rights Unit (UCT) conducted research and published a Report on Alternatives to Detention (ATDs). The UCT report serves as a diagnostic tool for UNHCR in order to identify ATDs within South Africa's immigration detention process and recommended areas in which UNHCR may intervene or focus its advocacy efforts in order to curb and even eliminate the detention of asylum seekers and refugees in South Africa. The report was launched and a workshop held with government and civil society stakeholders. Furthermore, the University of Cape Town held a dialogue with University of Michigan Law School Professor James Hathaway entitled "Conversation on Refugee Law Challenges" including the topic of immigration detention attended by UNHCR, members of the South African Judiciary and the Refugee Appeal Board, academics, refugee lawyers, and civil society.

## Strengthening partnerships/alliances with national stakeholders to achieve policy changes

UNHCR is a member of the Lindela Monitoring Framework developed and instituted by the SAHRC. The Framework monitors the Government's overall compliance with detention immigration standards and humane detention conditions. In particular, the monitoring aims to ensure that no foreign national is held for the purposes of immigration detention for a period exceeding 120 days, without being furnished with a notice indicating the intention to detain the foreign national beyond the standard 30-day period. Members of the Framework conduct monitoring of pre- and post-detention centers, including designated police stations, across the country.

## Alternatives to detention

Although no specific pilot projects were implemented in several instances, through UNHCR's consultative interventions and recommendations, the immigration authorities have assisted released persons of concern by providing instructions to the Refugee Reception Office to document the individuals. UNHCR also works with the Government to expand ATDs based on UNHCR's recommendations of resettlement for specific persons of concern who are detained and who meet the criteria for resettlement.

## Securing access to and monitoring places of immigration detention

UNHCR South Africa is afforded unhindered access to monitor on a bi-monthly basis all detained asylum-seekers and refugees at the main deportation centre in country, the Lindela Holding Facility (Lindela). UNHCR continues to work with the Inspectorate Directorate of the DHA on monitoring support. UNHCR will continue to provide a supporting role at the Lindela by undertaking consultations with identified persons of concern to assist in screening for those claiming asylum. UNHCR also provides capacity building for the Inspectorate Directorate, such as the facilitation of a UNHCR Protection Information Workshop for immigration officers at the Lindela and regular capacity building workshops for immigration officials in the Limpopo Province.

## GOAL 1 End the detention of children

South Africa's implementing legislation, the Refugees Act, embraces a broad definition of a refugee, enables access to territory and protects against refoulement for refugees and asylum-seekers, including children. Founded on the principles of the South African Constitution, the Children's Act gives effect to the obligation of the State, as set out by Section 28 of the Constitution, to respect, protect, promote, and fulfil the rights of children. The University of Cape Town's Refugee Rights Unit reported in their study on ATDs that they have encountered some cases of children in their practice who have been detained simply because their parents were detained for not having documentation at all or for having expired documentation, or for remaining in the country after a final negative decision was issued. In some instances, women with infant children have been kept in police cells. In this regard, UNHCR's partners intervene with the South African immigration authorities throughout the country to secure the release of detained children and to advocate for ATDs with consideration of the specific needs of vulnerable groups in detention. Furthermore, UNHCR has developed an integrated training package on child protection in collaboration with partners and UNHCR will continue to strengthen its coordination efforts on child protection.

## GOAL 2 Ensure that alternatives to detention are available

UNHCR promotes ATDs through awareness-raising and information sessions on the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-seekers and Alternatives to Detention with immigration authorities. Particular consideration for the specific needs of vulnerable groups in detention is emphasized and advocated for. Activities include detention monitoring to identify vulnerable persons and facilitation of their release from detention; information workshops and inclusion of ATDs in the SOPs on detention.

## TYPES OF ATDS

In the context of UNHCR's monitoring activities, UNHCR works with the Government to expand ATDs based on UNHCR's recommendations of release from detention e.g. new arrivals are immediately released based on UNHCR's recommendation and allowed access to asylum. In the case of rejected asylum seekers, in particular persons with specific needs – resettlement for persons of concern who are detained and who meet the criteria for resettlement, are utilized.

## NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR CHILDREN

Children in detention has not been common in UNHCR's experience. However, UNHCR's legal partners have reported at times the detention of children due to the expired asylum permits of parents or rejected asylum applications of parents. In all reported cases, the children and their families were released through advocacy and court interventions. There are various child-friendly child and youth care centres facilities throughout South Africa utilized to accommodate children in conflict with the law.

## NUMBER OF PLACES AVAILABLE IN ATDS FOR FAMILIES

As aforementioned child and youth care centres accommodate children in conflict with the law. Consideration is given to reunify families with their children.

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

UNHCR is working and cooperating with the Government to improve conditions in detention through monitoring of detention facilities and development of SOPs. In addition to monitoring support, UNHCR also conducts capacity development with immigration authorities as well as regular meetings with authorities and partners.

UNHCR has been requested by the Inspectorate to formalize this relationship and provide guidance on interventions. Assistance is provided through UNHCR according to SOPs, which is complementary to the responsibility of the state.

### Future Plans

UNHCR and partners continue to work with the immigration authorities on monitoring support and development capacity. UNHCR will continue to play a vital role in safeguarding the rights of asylum seekers and refugees against arbitrary detention by monitoring refugee legislative developments and providing technical guidance to the Government on the proposed establishment of asylum processing centers in border areas, to advise that administrative detention in relation to people seeking international protection is to be avoided and fundamental protection principles including for children are upheld in the establishment of asylum seeker processing centres. In addition to the aforementioned detention monitoring activities and the formal submissions to the Government on legislative and policy changes, concerted political engagement will also continue at a higher-level.

### TRAININGS ORGANIZED DURING THE TRAINING PERIOD

- 1 on asylum law
- 1 on vulnerable groups
- 1 on reception and alternatives to detention
- 1 on detention condition standards
- 1 on screening and referral



### NUMBER OF PERSONS TRAINED IN SOUTH AFRICA DURING THE REPORTING PERIOD

- 35 on asylum law
- 35 on vulnerable groups
- 35 on reception and alternatives to detention
- 35 on detention condition standards
- 35 on screening and referral

## KEY DEVELOPMENTS

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- There was an **announcement by the Home Secretary on 24 July 2018 that ATDs would be developed** in consultation with UNHCR and in partnership with civil society. Specific reference was made to a pilot for vulnerable women. The Home Secretary also announced that the UK would be reviewing how immigration detention was used in other countries with specific focus on the operation of a time limit on immigration detention. Currently, as at November 2019, the position of the Home Office is that they would not support the introduction of a time limit.

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- In his announcement, the Home Secretary also referred to **implementation of the recommendations from the Shaw review** – specifically in reference to the operation of the Detention Gatekeeper, Case Progression Panels, Automatic Judicial Bail hearings and the provision of mental health services in immigration detention.

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- The Immigration Minister announced on 3 December 2018 that the **first pilot ATD** would be starting – this would be **for vulnerable women** who would otherwise be detained in Yarl's Wood Immigration Removal Centre.

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- Ongoing calls from the wide NGO sector in the UK for **transparency in relation to decision making by Detention Gatekeepers** continued throughout 2018 and 2019 with the primary concern being that decisions made by the Detention Gatekeeper are made based on the evidence given by the referring caseworker. Calls for the potential detainee to be able to provide submissions to the Detention Gatekeeper have been made, but the practicalities of this, including access to legal representation in these often tight time limits makes this a difficult prospect for the

Home Office to consider. The advocacy is coming mainly from British Refugee Council, British Red Cross, Detention Action, Liberty, Amnesty International and Medical Justice.

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- A number of NGOs in the UK are **campaigning for a 28-day time limit** on immigration detention. NGOs are also campaigning for more to be done to **identify vulnerable individuals and treat them appropriately**. The Immigration Law Practitioners' Association (ILPA) and the Association of Visitors to Immigration Detainees (AVID) have been calling for detainees to have better and more consistent **access to legal aid to challenge their detention**.

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- Detention Action, Medical Justice, British Refugee Council, British Red Cross and others are seeking an **improvement in conditions of detention** and calling for the Home Office to improve the oversight and assurance mechanism in the immigration detention estate to ensure that any ill-treatment or abuse is found out immediately and action is taken.

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- The **Home Office have reviewed the process of detention Gatekeeping** – this is an individual government official who reviews a caseworker's decision to detain and either approves or denies – agreeing or disagreeing with the decision to detain.

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- The **Home Office have also reviewed the process of Case Progression Panels (CPP)**. CPPs review cases of people who have been detained for longer than three months and are constituted to review grouped cohorts of detainees at three, six, nine and 12+ months to ensure focus on case progression and to review

the necessity of continued detention. All CPP meetings are chaired and made up of operational and administrative staff with multi-disciplinary backgrounds from within the Home Office. The chair is expected to encourage all members of the CPP to give their views on the position of the individual matters before them. In 2018 UNHCR, along with the British Red Cross, were invited by the UK Home Office to attend six CPPs, which took place in November 2018, February 2019 and March 2019, as non-participatory observers. These sessions were followed by meetings with Home Office officials to discuss observations regarding the operation of the CPPs and the provision of the brief internal report below. The observations carried out by UNHCR and British Red Cross were not part of a formal monitoring mechanism for the operation of the CPP. The report was provided for internal review purposes only. UNHCR and British Red Cross are in the process of observing further CPP in October and November 2019 with a further report due in December 2019.

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- The UK introduced **automatic judicial bail for everyone remaining in detention for more than four months** in January 2018 – see schedule 10 of the Immigration Act 2016. At present, NGOs such as Bail for Immigration Detainees (BiD) believe that this is not operating as it should be. A number of concerns relate to the operation of the ‘opt out’ process – where during the administration process at the outset of detention individuals are offered a form to complete which waives their right to this process. The main concerns are that individuals are having bail applications without legal support and that negative decisions are being recorded on their records, which do not help in future bail applications where legal support is provided.

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- **Court Decisions:** As ever, the UK remains a rich arena for asylum and detention litigation. There have been more than 50 reported decisions in respect of immigration detention in the previous 18 months. Of key note are the following cases:

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- **Medical Justice Case – re ‘removal window’**  
– Under the government’s policy, an individual is given between 72 hours and 7 days’ notice that they can be removed from the UK at some point during the subsequent 3 months without any warning. Mr Justice Walker ordered the suspension of the policy after finding there were grounds for real concern about access to justice. The interim injunction was granted along with permission for a full judicial review which has recently been withdrawn on consent that the Government will amend policy.

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- **B v SSHD<sup>1</sup> (re bail conditions)** – The case was a dispute about what the correct approach to the availability of immigration bail is when the Hardial Singh limit on actual detention is reached (Hardial Singh principles set out the conditions under common law for the lawful detention of a migrant). The Government suggested that a purposive interpretation of the legislation should apply so that bail is available regardless of whether the individual is lawfully detained or would hypothetically be lawfully detained. The Court saw no basis for such an approach. It is a fundamental principle of the common law that Parliament is presumed not to intend to interfere with the liberty of the subject without making such an intention clear. This was a situation where the principle of legality was in play.

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- **KG, R (On the Application Of) v Secretary of State for the Home Department [2018] EWHC 1767<sup>2</sup> (Admin)** – where the court ruled that a physical and mental examination must be arranged for every detainee to take place within 24 hours of their admission to a detention centre, unless the detainee does not consent to the examination.

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<sup>1</sup> <https://www.supremecourt.uk/cases/uksc-2015-0147.html>

<sup>2</sup> <https://www.bailii.org/ew/cases/EWHC/Admin/2018/1767.html>

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

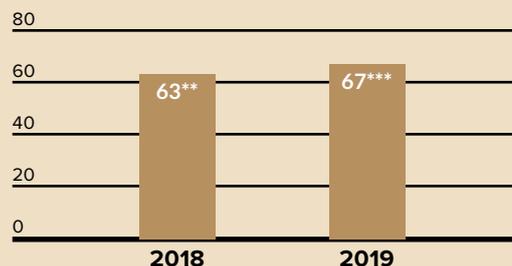
UNHCR UK has not specifically produced webpages or released targeted social media campaigns in relation to immigration detention. This has largely been due to the focus on bilateral advocacy with the UK Home Office, which has produced significant positive results over the past 18 months. At the same time UNHCR has liaised closely with stakeholders working on detention and, where possible, sought to ensure that its bilateral advocacy is complementary to wider efforts in the sector. There have, however, been some media releases by the Home Office (July 2018; December 2018) in which the UK Representative has commented on the development of ATD.

### Strengthening partnerships/alliances with national stakeholders to achieve policy changes

UNHCR UK attended the **National Asylum Stakeholder Forum – Immigration Detention** – quarterly meetings. This meeting is co-chaired by the Home Office and Liberty (a UK NGO) and is a large meeting comprised of over twenty NGOs and various government officials and contractors. UNHCR has been able to refer to the Global Strategy whenever discussions have arisen in relation to the relevant goals. UNHCR has continued to advocate for the development of ATDs, to discuss issues arising in relation to the detention of children and to consider the ongoing monitoring of conditions in detention. At meetings throughout 2019, UNHCR updated on work being done in Newcastle for Pilot 1 of the ATD pilot series. UNHCR has also regularly fed into discussions in relation to conditions in detention arising from the Shaw review and introduction of a series of new government procedures and policies in relation to the Gatekeeping Team (comprised of a number of government officials not involved in the specific case who independently reviews and approves or refuses to approve the initial decision to detain) and Case Progression Panels (a panel of government officials who independently review continued detention and issue recommendations on releasing or maintaining detention based on an independent overview of the circumstances at point of review).

## GOAL 1 End the detention of children

### NUMBER OF CHILDREN DETAINED\*



\* Since the coming into force of section 5 and 6 of the Immigration Act 2014, there are restrictions in place in respect of the detention of unaccompanied children (Section 5: <https://bit.ly/2YT1gsS>) and accompanied Children (Section 6: <https://bit.ly/2swHPtA>)

In reference to transparency data that has been released for the period 01 January 2018 – 31 March 2019 (currently data only covers the period to the end of March 2019), the numbers that have been detained are as follows:

\*\* At the end of December 2018, no children were held in detention. However, for the year ending December 2018, it is reported that a total number of 63 children were detained with 22 being removed from the UK and 41 granted Secretary of State Bail. This compares with a total number of 67 children detained throughout 2017 out of which 11 were removed from the UK, 52 were granted Secretary of State Bail, 1 was granted Immigration Judge Bail, 1 was granted leave to remain and a further child left detention for a reason not stated.

\*\*\* At the end of March 2019, no children were held in detention. However, for the year ending March 2019, it is reported that a total number of 67 children were detained with 25 being removed from the UK and 42 granted Secretary of State Bail. This compares with a total number of 75 children detained throughout the year ending March 2018 out of which 21 were removed from the UK, 51 were granted Secretary of State Bail, one was granted Immigration Judge Bail, and two left detention for reasons not stated.

## GOAL 2 Ensure that alternatives to detention are available

### TYPES OF ATDS IN PLACE

Since January 2018, **Schedule 10 of the Immigration Act 2016** has been in force. Schedule 10 is the framework for 'bail' in the UK. Anyone who is present in the UK who is either not a British National or who does not have a form of leave to remain, should either be in the community on 'bail' or in Immigration Detention. Bail is therefore used in the majority of cases as the primary ATD in the UK.

Anyone on bail has specific conditions that they must adhere to which generally include the requirement to live at a specified address, to report to the Home Office on a regular basis (generally monthly). In theory, schedule 10 allows the Home Office to apply any conditions that they deem fit – with further conditions generally related to prohibition from work and study.

Since the government's announcement in July 2018 that ATDs would be piloted, work has been ongoing to design and deliver on this announcement. Currently, as at July 2019, one ATD is up and running in the North of England for vulnerable women who would otherwise have been detained at Yarl's Wood Immigration Removal Centre. A second ATD is currently being planned, and may be specific to the Bedfordshire area and managed in conjunction with a number of partner NGOs.

A further ATD is being run by Detention Action in the North West of England. This is their Community Support Project (CSP) and is specific for foreign national offenders. The CSP has been running since 2014 and is an alternative to detention pilot scheme that works with young men who have experienced or are at risk of long-term detention. The participants in the project are all aged 18-30 and have significant barriers to removal. They have each been detained for periods ranging from three months to four years, following the completion of prison sentences. The project coordinator addresses the particular needs of each participant and creates a transition plan setting out the goals and actions that need to take place. This involves addressing the issues raised by participants and advocating on their behalf with a range of statutory and non-statutory bodies.

**The number of places available in care arrangements for children (UASC) and the number of places available in ATDs for families (including children) is not known.**

**The percentage of persons in ATDs (out of the total number of persons detained) is not currently known.**

This is not currently known. Statistics from the Home Office confirm that in 2018 a total number of 29,380 people claimed asylum. The number of beds in Immigration Detention is variable due to the closure of a number of centres. As of April 2019, there are seven IRCs (Brook House, Colnbrook, Dungavel, Harmondsworth, Morton Hall, Tinsley House, Yarl's Wood), two STHFs (Manchester Residential STHF, formerly Pennine House, and Larne House), one pre-departure accommodation facility, and 30 holding rooms. There are also short-term units within some IRCs, including at Colnbrook and Yarl's Wood. Of the short-term holding rooms, 19 are at ports and airports, and 11 at reporting centres. There are 14 reporting centres in the UK, which under some circumstances released detainees must report regularly to. All of these

facilities are in England, except for Dungavel IRC in Scotland, and Larne House STHF in Northern Ireland. Total number of beds is not known, but is c.3,000.

It is not possible to confirm exactly how many people are in the community on schedule 10, Immigration Act 2016 'bail', at this time. However, a review of the transparency data confirms that for the year ending March 2019 a total number of 24,333 people entered immigration detention and a total number of 14,670 left detention by way of Secretary of State Bail (11,029 people), Immigration Judge Bail (3,316 people) or for 'other' reasons (which are not explained) (325 people). Out of the 14,670 people who left immigration detention and entered the community, 21,591 were reported as being male and 3,610 were reported as being female. This would suggest that approximately 60% of persons detained are released onto ATDs within a 12 month period. However, the transparency data does not record all instances of detention, as these are currently limited to those kept in Immigration Removal Centres and Short Term Holding Facilities. The number of detained will therefore be higher than the figure stated above and could include, for example, those detained by the authorities at the border for a brief period of time before being released on bail.

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

#### **NUMBER OF MONITORING VISITS CONDUCTED BY UNHCR AND/OR IMPLEMENTING PARTNERS:**

**Three visits:** UNHCR UK visited Brook House Immigration Removal Centre in June 2018, Yarl's Wood Immigration Removal Centre in August 2019 and Morton Hall Immigration Removal Centre in October 2019. A further visit to Harmondsworth Immigration Removal Centre is scheduled for December 2019.

There have also been six visits to Action Foundation in Newcastle (March, July and October 2018 and February and two in May 2019) to support the development of the pilot ATD.

UNHCR also regularly participated in the **Detention Monitoring Group's** bi-monthly meeting of stakeholders – including mainly visiting groups to immigration detainees but also Amnesty International, the British Red Cross and the British Refugee Council. UNHCR UK presented the vulnerability screening Tool to the group in 2018 and regularly attends in order to support the visiting groups and to update on the work being done with government in relation to improving conditions for those in detention.

UNHCR UK and the Home Office have a specific working group on ATD. Two round table meetings were held in March and October 2018. The former was a UNHCR/Home Office co-convened meeting with a large number of faith based organisations and NGOs in attendance. The latter was a specific working group meeting on ATD case management in which a representative from the Cyprus Refugee Council, UK based NGOs Detention Action and Detention Forum and potential partner organisation representatives from Action Foundation and King's Arms Project were in attendance. Other meetings throughout 2018 were bilateral or involving a further attendance from Action Foundation or King's Arms Project and were specific to the development of a series of ATD in the UK and meetings in 2019 have been directed towards the launch of Action Access, pilot 1 in the ATD series, which is being managed in partnership with Action Foundation in Newcastle.

UNHCR UK attends a weekly telephone conference call in relation to the continuing ATD pilot 1 work with Action Foundation and the Home Office. These calls have been mainly in relation to arising issues for both the participants but also the partners in the pilot. UNHCR has attended each call throughout 2019 and continued to refer to the global strategy as well as to principles and guidance on ATD.

UNHCR UK also participates in both the Refugee Forum and the Adults at Risk Forum, which is held by the Independent Chief Inspector for Borders and Immigration. The former is not specific to Immigration Detention, but the ICIBI does retain a focus on detention. The latter is specific to Immigration Detention with the focus of one of the ICIBI's yearly inspections being on the operation of the Home Office Adults at Risk in Immigration Detention policy further to Recommendation 14 from the review report<sup>3</sup> of July 2016 that "The Independent Chief Inspector of Borders and Immigration should be invited to report annually to the Home Secretary on the working of the Adults at Risk process."

## Alternatives to detention

Adults who spontaneously arrive in the UK and claim asylum on arrival are normally granted bail and dispersed pending consideration of their application. Where they are eligible, they will be provided with accommodation and subsistence pending the determination of their claim. Housing is subcontracted. Adults who are refused leave to enter the UK and who are detained pending their removal from the UK and who then seek asylum in the UK may have their detention maintained whilst their application is decided. Alternatives to the UK other than 'bail' are currently only in pilot phases and are discussed below in more detail.

As for children, the Home Office policy confirms that an asylum claim can be made by or on behalf of a child in their own right whether accompanied or unaccompanied, and must only be processed by a decision maker who has received appropriate training for that role. Unless it is considered by the Home Office to be in the best interests of the child (i.e. they arrive into the UK in the middle of the night and need to be given a bed in a short term holding facility until the morning) they will not be detained. There is specific policy available in relation to managing situations where a child is not submitting an asylum claim in their own right, or they are part of a family that has been refused asylum.

<sup>3</sup> <https://bit.ly/2rEfW2G>

The type of accommodation provided to the child, once they are assessed as being a child, will depend on the child's circumstances and the local authority's assessment of their needs. A child aged under 16 is likely to be placed with a foster parent or in a children's home. Statutory guidance and care planning regulations in England clearly set out that in some cases, a child aged over 16 can be suitably placed in accommodation termed as "other arrangements". This is covered by statutory guidance and regulations explaining when and how local authorities might use them. Where there has been an assessment of need of a young person 16 or over and the best match to their needs is in "other arrangements" the placement could be supported lodgings, supported accommodation or shared accommodation. This is a decision for the local authority and the local authority must be satisfied that any such placement is in the best interests of each individual young person, with practice in line with all relevant statutory guidance and care planning regulations.

Families composed of childless couples will be dispersed as per the single adult policy, as referenced above, and will have access to housing and subsistence pending the determination of their application. Families without children may only be detained during their asylum claim in circumstances where they are already detained at the point they claim asylum. Families with children will also be dispersed and provided with suitable housing and subsistence and can only be detained in very specific circumstances related to the family returns process (FRP).

The FRP applies to all families with a dependent child or children where an adult family member is liable to be removed as an illegal entrant; someone who requires leave to enter or remain in the UK but does not have it; a deportee; a person refused leave to enter or leave to remain; or a person who has not been granted asylum and has asked for assistance in leaving the UK. Children will either be removed as a dependent of that adult, or may be reasonably expected to accompany them. Families will enter the FRP when either: all in country appeal rights have been exhausted and the family has no legal right to remain in the UK, and any outstanding documentation or other barriers can be resolved in parallel with the returns process; or the family has indicated that they wish to leave the UK either voluntarily or under the assisted voluntary return for families and children scheme.

The UK has a pilot ATD programme that was designed and developed in 2018 and is currently being rolled out for vulnerable women who would ordinarily be detained in Yar's Wood Immigration Removal Centre. At present, this programme is specific to women only who have claimed asylum at some point during their stay in the UK and who are currently in detention. This pilot is being provided by the Home Office in partnership with Action Foundation. UNHCR have worked closely with the government and Action Foundation in the design of this ATD. A second pilot is in early phase of development with the tender process for implementing partner(s) underway in October 2019 and will be for all adults who are not necessarily currently in detention but for whom there are specific grounds for detention and who may about to be detained, but where it is considered that detention is not necessary.

### **Securing access to and monitoring places of immigration detention**

UNHCR UK visited Brook House Immigration Removal Centre in June 2018, Yar's Wood Immigration Removal Centre in August 2019 and Morton Hall Immigration Removal Centre in October 2019. UNHCR UK will also be visiting Harmondsworth Immigration Removal Centre in December 2019.



#### TRAININGS ORGANIZED DURING THE TRAINING PERIOD

3 on asylum law

2 on vulnerable groups

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

60 on asylum law

15 on vulnerable groups

### Future Plans

UNHCR will continue to advocate for a time limit to be introduced within the Immigration Detention estate and for the introduction of ATD in the UK. This will involve a specific focus on the pilots, the evaluation of the pilots and, where focus can be given in the future, to the working aspects of the pilots that can be scaled up into mainstream UK Government operations. Furthermore, UNHCR UK will also monitor conditions of detention and continue on the programme of three visits to the Immigration Detention Estate in the third and fourth quarter of 2019.

## KEY DEVELOPMENTS

- Pronouncement by the Republican President of Zambia at the UN General Assembly on the **new encampment policy** that created a suitable atmosphere to advocate for some leniency on the part of immigration officials for enhanced implementation of ATDs.
- Zambia repealed the Refugee (Control) Act of 1970 and enacted the **Refugees Act no.1 of 2017**. The new Act has maintained some restrictive provisions concerning the encampment policy and freedom of movement, the right to work and the requirement to submit an asylum application within 7 days of entry into the country.
- The Refugees Act of 2017 introduces the **right to self-employment**, which is a positive development as it has paved way to self-reliance and offers refugees opportunities for livelihoods outside the settlements.
- In 2017, UNHCR supported the Government of Zambia to establish **semi-permanent reception facilities in border areas** for asylum seekers from the DRC. New arrivals are no longer hosted in police cells as shelter options, but are accommodated in established transit/reception areas. UNHCR has supplied core relief items in all reception centers to assist new arrivals from the DRC.
- UNHCR, in collaboration with the Ministry of Home Affairs, has conducted capacity building **trainings on Refugee Law and Refugee Status Determination** for Government officials in Lusaka and border districts. In 2018, a total of 65 Government officials were trained.
- Zambia has rolled out the **Comprehensive Refugee Response Framework (CRRF)**. This is a solution that entails that refugees and locals live together in the community. The government opened Mantapala refugee settlement in 2017, to settle DRC refugees entering the country through the northern borders. The Government has introduced new ways of protecting and assisting refugees by settling them in an area already inhabited by locals where locals live side by side with refugees. The focus is on self-reliance and integration.
- **Six shelters for victims of trafficking** managed by the Ministry of Community Development set up with the support of IOM in 2015 are still functional. They provide food, accommodation and counselling services for victims of trafficking, refugees and asylum seekers.
- In June 2019, the **Committee on the Elimination of Racial Discrimination** recommended in its **Concluding Observations** that Zambia “amends the Refugee Act No. 1 of 2017 to ensure that asylum seekers and refugees have the right to access to employment, health care and education, and enjoy freedom of movement, and that effective protection is provided to them against refoulement.”
- UNHCR has maintained one **Protection Officer in the Northern Province**, who monitors the borders, conducts on the spot training for border officials on international refugee law principles and provides border officials with information on ATDs.

## **Activities undertaken by UNHCR and implementing partners from January 2018-June 2019**

### **Strengthening partnerships/alliances with national stakeholders to achieve policy changes**

During the reporting period, protection working group meetings were held with both implementing partners and operational partners once every month in order to share achievements, challenges and gaps in protection activities in Mantapala refugee settlement and Lusaka. No cases of detention of children were reported in either location. The establishment of five reception centres in the northern borders worked well as ATDs and no cases of detained asylum seekers were recorded.

### **Alternatives to detention**

Asylum seekers entering through the Northern borders are accommodated in reception/transit centres. In Northern province, the centres are in Chiyengi, Nsumbu, Kaputa, Mpulungu and Nchelenge. Kenani transit located in Nchelenge district was closed after the government opened Mantapala refugee settlement and moved all the refugees to the new settlement. There is one transit centre at Maheba refugee settlement (North Western province), one transit centre at Mayukwayukwa refugee settlement (Western Province) and Makeni transit centre in Lusaka. With the support of IOM the Government through the Department of Social Welfare has put up six shelters across that country that accommodate trafficked persons, unaccompanied and separated children, refugees and asylum seekers. The shelters provide food, accommodation and counselling services to victims of trafficking, asylum seekers and refugees. All the shelters are functional.

### **Securing access to and monitoring places of immigration detention**

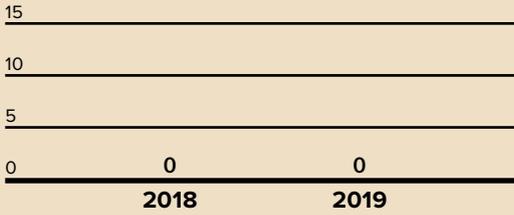
To secure access to detention facilities, UNHCR presents a request in writing to the Office of the Commissioner for Refugees, who then provides a written response authorising named UNHCR staff to visit the detention centres. At the beginning of the year, UNHCR prepares a table specifying the number of visits and places to be visited to monitor the situation of detained asylum seekers and refugees. During the visits, persons of concern are identified and are provided with legal and material support. Once identified, the refugees are released through a UNHCR intervention and are subsequently relocated to refugee settlements. Refugees are frequently detained by immigration authorities for relocating from designated sites or for residing in urban areas without authorisation. Generally, UNHCR and implementing partners have access to the detention centres.

### **Future Plans**

UNHCR plans to continue advocacy with the Government to expedite the drafting of the implementing regulations to the Refugee Act and publishing of the refugee policy as well as to ensure that the issue of ATDs is addressed in the regulations and policy. Advocacy efforts with the Immigration authorities will aim to ensure that ATDs provided for in the Immigration Act of 2010 (asylum seekers permit and report Orders) are implemented in practice. UNHCR and IOM will support the Government to train border officials, partners and UNHCR staff in child protection and ATDs. The trainings should have a wider coverage to include officials on the copper belt, North Western, Western and Lusaka Provinces. UNHCR will partner with IOM to provide support in the management of the exiting shelters. UNHCR, IOM, UNICEF and implementing partners will continue monitoring the situation of persons of concern in detention and make necessary interventions for their release.

**GOAL 1** End the detention of children

**NUMBER OF CHILDREN DETAINED\***



\* Children were detained with their families

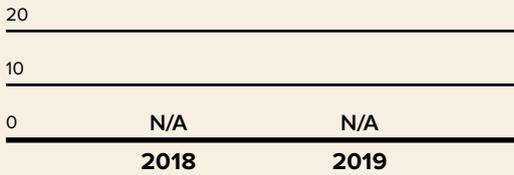
**GOAL 3** Ensure that conditions of detention meet international standards

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

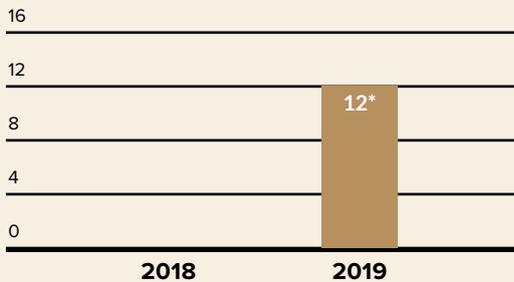


**GOAL 2** Ensure that alternatives to detention are available

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



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



\* shelters and reception centers

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



**TYPES OF ATDs IN PLACE**

Residence at semi-open shelters.



**TRAININGS ORGANIZED DURING THE TRAINING PERIOD**

- 2 on asylum law
- 2 on child protection
- 2 on reception and alternatives to detention
- 2 on detention condition standards
- 2 on screening and referral

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

- 65 on asylum law
- 100 on child protection
- 56 on reception and alternatives to detention
- 56 on detention condition standards
- 56 on screening and referral

## KEY DEVELOPMENTS

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- In 2018, UNHCR Zimbabwe continued to work closely with prison, immigration, police and state security authorities to ensure the **implementation of ATD** and that persons of concern receive fair and equal treatment while in detention.

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- **UNHCR's border and detention monitoring activities** are a key component in the facilitation of alternatives to detention and access to territory for asylum seekers.

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- UNHCR continues to advocate for context specific alternatives to detention for asylum seekers especially the **issuance of letters granting safe and unhindered passage** to asylum seekers and refugees on their way to the refugee camp to which the authorities have agreed.

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- In 2018, UNHCR in collaboration with the Department of Immigration facilitated the **transfer of 55 asylum seekers** [45 adults and 9 minors], from Nyamapanda Border post and

other prisons, **to Tongogara Refugee Camp**. The transfer of asylum seekers followed a border monitoring mission to Nyamapanda border post through which UNHCR reinforced its advocacy message for the application of the ATD which dissuades the government's practice of transferring asylum seekers through the prison system. Senior immigration officials at the border engaged UNHCR on the best way to assist the asylum seekers. UNHCR facilitated the transfer by paying for transportation directly to Tongogara Refugee Camp thereby avoiding the detention of the asylum seekers.

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- UNHCR is concerned with the trend of **migrants who are en route to South Africa** but manipulate the facilitation of safe passage to the refugee camp by availing themselves of letters issued by Immigration after declaring that they are seeking asylum but then never ending up in the Tongogara Refugee Camp. These migrants are intercepted en-route to South Africa to the prejudice of those who genuinely seek asylum in Zimbabwe.

## Activities undertaken by UNHCR and implementing partners from January 2018-June 2019

### Awareness-raising and campaigning

UNHCR enhanced its advocacy on ATDs which saw the government, in particular the Department of Immigration, continuing to allow most asylum seekers to proceed to Tongogara Refugee Camp using public transport as opposed to being transferred through immigration detention. UNHCR also ensured that relevant Protection Staff attended further training in Brussels to ensure effective interaction with relevant detention authorities.

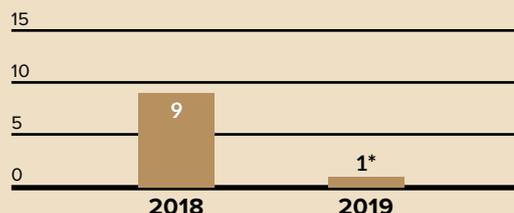
## Strengthening partnerships/alliances with national stakeholders to achieve policy changes

UNHCR continued to leverage its cooperation with IOM by co-facilitating 2 refugee and migration protection related trainings. UNHCR facilitated a series of training sessions at a workshop on mixed migration in Bulawayo attended by participants from the Ministry of Public Service, Labour and Social Welfare, IOM, UNICEF, Zimbabwe Republic Police (Victim Friendly Unit – PGHQ and Beitbridge), District Officers, Childline Trust (Beitbridge), Department of Immigration (Beitbridge, Bulawayo and Victoria Falls), Save the Children and Ministry of Education. Participants familiarized themselves with the concepts of mixed migration and the categories of persons travelling in mixed migrations flows. Participants were also trained on techniques to identify and assist child victims of trafficking with particular attention to skills for communicating with traumatized victims. UNHCR unpacked ATDs and reiterated the non-detention of children. Immigration officials also gave practical examples of how the main ATD, the issuance of clearance letters for safe passage to the refugee camp, works.

The trainings continued to target technical level government officials from the Ministry of Home Affairs, Department of Immigration, Department of State Security, the Police, Ministry of Justice and the Zimbabwe Prison and Correctional Services. Forty government officials attended the trainings which had the full support and participation of the Director of Home Affairs, responsible for migration related issues who has a hands on approach. UNHCR continued to build on previous trainings outlining the “Beyond Detention Strategy”, highlighting examples from Belgium, Zambia and Zimbabwe. UNHCR also continued to unpack the details of and distributed its Detention Guidelines, which continue to be an eye opener for government officials who may not have come across the guidelines. UNHCR continues to be a key member of the Chirundu Cross border Forum which brings together border management authorities between Zimbabwe and Zambia on a quarterly basis.

## GOAL 1 End the detention of children

### NUMBER OF CHILDREN DETAINED\*



\* after his mother gave birth

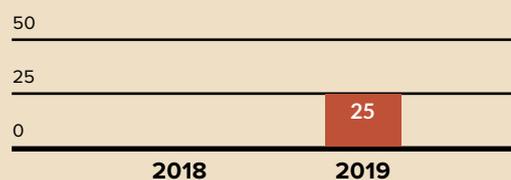
## GOAL 2 Ensure that alternatives to detention are available

UNHCR continues to advocate for context specific alternatives to detention for asylum seekers especially the issuance of letters granting safe and unhindered passage to asylum-seekers and refugees on their way to the refugee camp to which the authorities have agreed.

The 9 children previously detained are now in care arrangements at a children’s home following UNHCR démarches. The tenth child from a separate case was reunited with his mother a refugee in South Africa.

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

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



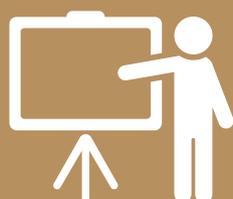
## Securing access to and monitoring places of immigration detention

UNHCR has access to most detention/prison facilities. UNHCR border and detention monitoring activities are a key component in the facilitation of ATDs and access to territory for asylum seekers. However, the Zimbabwe operation's Administrative Budget and Obligation Documents (ABOD) for 2018 was reduced and it was increasingly difficult to field missions to all the key border areas. Most border areas did not receive the requisite monitoring and attention, a situation which is untenable and undesirable for effective access to territory and protection of persons of concern. This lack of monitoring also increases the risk of refolement and detention, as border management authorities do not have an independent accountability mechanism. Essential border areas such as Nyamapanda [Zimbabwe-Mozambique border] and Chirundu [Zimbabwe-Zambia] did not benefit from border monitoring activities for the greater part of the year, with each border only receiving one mission from UNHCR. Border and detention monitoring activities rely heavily on ABOD and with a reduced budget competing priorities have outweighed this need.

UNHCR conducted regular detention monitoring visits to Harare Remand and Chikurubi Female Prison given its proximity to the office. In May 2018, there were 178 foreign nationals at Harare Remand Prison. Of interest to UNHCR were 44 from the DRC, 10 from Burundi, 76 Ethiopians and 22 Somalis. UNHCR established that all those who were of interest were arrested either en route to South Africa via the border at Beitbridge without documentation or not seeking asylum in Zimbabwe. UNHCR established that all these nationalities were in the process of being deported through self-financing of tickets and had appeared in court for breaching the Immigration Act. The Embassy of the Democratic Republic of Congo in Zimbabwe arranged transportation for the deportation of their nationals that were not seeking asylum and were detained at Harare Remand Prison. UNHCR established that none of these persons were seeking asylum in Zimbabwe and some refused to engage with UNHCR as they stated that their destination was South Africa. UNHCR is concerned with the trend of migrants who are en route to South Africa but manipulate the facilitation of safe passage to the refugee camp by availing themselves of letters issued by Immigration after declaring that they are seeking asylum but then never ending up in the Tongogara Refugee Camp. These migrants are intercepted en-route to South Africa to the prejudice of those who genuinely seek asylum in Zimbabwe.

## Future Plans

The Zimbabwe operation has a very limited ABOD and therefore will continue to make use of IOM's funding and trainings to target the same audience regarding ATDs. UNHCR will continue to monitor detention facilities in Harare and where possible conduct visits to the main border areas, Nyamapadna and Chirundu on a bi-monthly basis. The operation will continue to advocate with the Senior Management in the Department of Immigration for the implementation of ATDs.



### TRAININGS ORGANIZED DURING THE TRAINING PERIOD

- 2 on asylum law
- 2 on child protection
- 2 on reception and alternatives to detention
- 2 on screening and referral

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

- 50 on asylum law
- 50 on child protection
- 50 on reception and alternatives to detention
- 50 on screening and referral

# RECOMMENDATIONS FOR FUTURE MAINSTREAMING

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With the finalisation of the implementation period of the Global Strategy, it is important for UNHCR to take stock and advantage of the wealth of policy, tools and training materials developed both at the global and country level. While these materials are available online in different platforms, with Refworld's Detention Special Features page<sup>1</sup> being the most prominent, it is important that the momentum gained through the Global Strategy for its dissemination and promotion is not halted.

In consultation with the involved operations, a number of recommendations to achieve this goal and continue strengthening advocacy around the goals of the strategy are put forward below.

## Facilitate an internal Community of Practice

Building on the existing network of contacts developed under the Global Strategy, it is important to maintain some form of an internal network such as an on-line **Community of Practice** where participating countries and partners could continue to share information, challenges and good practices. In addition to exchanging developments and lessons learned, such a platform could also facilitate discussions with counterparts in different country and regional contexts, as well as cooperation between state officials that face similar challenges.

## Build the evidence base

Country operations also identified the need to carry out additional **research on good practices** globally related to detention and ATDs to share with governments as they continue to advocate for ATDs.

## Communicate clear priorities at the global level and advocate for alternatives

It was recognised that the Global Strategy had a significant impact because it communicated **clear priorities at the global level and an agenda for advocating for alternatives**. Therefore, UNHCR will propose to continue the prioritisation of the Beyond Detention goals as the basis for strategic advocacy efforts, seeking to lend additional weight to messaging at the national level. In this regard, UNHCR will encourage governments to undertake reforms related to the established priorities, which could then be promoted as good practices internationally. UNHCR should communicate its expertise and experience in the field of detention and ATDs. In addition to national level advocacy, it is recommended that UNHCR engage in advocacy at the EU level to address the prevailing anti-refugee sentiments among some EU Member States and also advocate through its Executive Committee for ATDs in line with good practices to be made more available.

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<sup>1</sup> <https://www.refworld.org/detention.html>

## Provide operational guidance, support and resource opportunities

Country operations also requested the continued **provision of operational guidance, support and resources**. It was noted that concerted efforts will be needed between UNHCR's country operations and regional Bureaux, as well as HQ, in order to address the challenges related to advocacy for ATDs in transit country contexts. Additionally, some specific UNHCR operations may seek to increase Protection Staff in order to ensure consistent monitoring as well as to strengthen advocacy and pilot ATD projects, which have been initiated during the implementation of the Global Strategy. Support for study visits for governments to see good practices in other countries was another proposal for future consideration.

Closely related to this **continued capacity building** with partners and, in particular, to further roll-out the Fundamentals of Immigration Detention e-Learning Course as well as the *Alternatives to Detention Self-Study Modules and the Immigration Detention Monitoring Self-Study Modules*, was also identified as a priority. As these materials have been translated into several languages and made available on-line, UNHCR will continue to promote their use by key stakeholders and training institutions.

## Support judicial engagement and cooperate on strategic litigation strategies

Finally, in several contexts, UNHCR will continue to support **judicial engagement** and cooperate on **strategic litigation strategies**. In this regard, UNHCR and partners will carry out specific capacity-building activities targeting judicial authorities and legal advocates. Furthermore, continued cooperation on litigation strategies and the use of court interventions will remain an important advocacy tool. UNHCR's strategic litigation efforts will aim to ensure respect for refugee rights, access to asylum, and the provision of ATDs.

## Engaging in an evaluation of the Global Strategy

As mentioned in the introduction to this report, UNHCR commissioned an **independent desk review**, which is intended to generate an **evaluative report** with an overview of achievements and lessons learned from the implementation of the Global Strategy at country and regional levels, with a view to making recommendations for mainstreaming good practices and approaches. The results of the review will be available in early 2020. Country operations contributed the suggestions above in the final round of reporting on the implementation of the Global Strategy.

# ANNEX: LIST OF ACTIONS UNDERTAKEN UNDER THE GLOBAL STRATEGY – BEYOND DETENTION

January 2018 – June 2019

Comments provided on national legislation and policies		
Belgium	January 2018	Confidential comments to government on draft Royal Decree installing new ATDs (including the deposit of a financial guarantee and the duty to report regularly).
Bulgaria	April 2018	Comments to the Draft Regulation on the Implementation of the Law on Foreigners laying down the detailed rules for the implementation of ATDs introduced in 2017. Recommendations regarding the need to ensure individual assessment prior to imposing each type of alternative; modalities of providing security deposit and its amount to ensure their effectiveness and accessibility in practice; the need to provide a written document to a person under ATD certifying their status.
Bulgaria	January 2019	Comments to the Draft Law on Foreigners. Recommendations regarding the proposed amendments related to the possibility of granting a residence permit to unaccompanied children who have not applied for asylum or whose claims have been finally refused; ensuring the mandatory examination of alternatives to detention prior to imposing a detention order.
Canada	14 November 2018 and 30 November 2018	Guidelines Issued by the Chairperson, Pursuant to paragraph 159(1)(h) of the <i>Immigration and Refugee Protection Act</i> UNHCR Canada provided two sets of comments and recommendations to the Immigration and Refugee Board for the development of these new Guidelines.
Canada	22 June 2018	Expansion of release tools for the ATD Program, a key pillar of the National Immigration Detention Framework This ATD Program established by CBSA was developed in consultation with UNHCR Canada and other key partners. The framework will result in fewer people in immigration detention overall, better options for managing vulnerable people and for managing family situation while keeping the best interests of the child a priority.
Hungary	November 2019	UNHCR observations regarding legislative amendments adopted in Hungary in June and July 2018
Indonesia	2018 – mid 2019	The local government in Makassar are currently deliberating on issuing a Mayor Regulation concerning refugees who stay there. UNHCR, in collaboration with its partners such as the Legal Aid Institute and academics, have prepared a draft Regulation to be considered by the local government and will be actively involved in providing inputs. In the draft Regulation, UNHCR encouraged the local government to start identifying shelters for refugees, in accordance with the Presidential Regulation 125/2016, and to grant education and livelihood rights for refugees in Makassar.

Israel	First quarter 2018	UNHCR and partner organizations provided comments on the forced relocation policy, drawing on information gathered from UNHCR in Rwanda/Uganda concerning the asylum-seekers' status, rights and services in these third countries and advocating for exemptions for vulnerable groups.
Japan	April 2019	Comments on the draft Basic Policy for Immigration and Residency Control of MOJ.
Lithuania	January 2019	UNHCR RRNE commented on draft amendments to the Penal Code. The draft addressed preconditions for exempting asylum applicants from liability for irregular border crossing and introduced sanctions for facilitating irregular entry and migration. UNHCR comments focused on non-penalisation related safeguards and guarantees for refugee assisting NGOs. The amendments were not adopted by the end of the reporting period.
Mexico	April 2019	UNHCR commented on proposed amendments to the Refugee Law emphasizing in the relevant section that asylum seekers should not be in detention. As the proposed legislation was drafted It established that all asylum seekers should be in <i>estaciones migratorias</i> because this is their right. UNHCR pointed out that this was an issue because permanence in an <i>estacion migratoria</i> means being in detention and the relevant portion was rephrased to establish that asylum seekers should not be in detention. The proposed reforms did not survive Committee Review in the Chamber of Representatives which means that there is no possibility for these reforms to be approved.
Mexico	July 2019	UNHCR is participating in the process for the renewal of the <i>Protocol to Decide Cases Relating to Migrants and Persons with International Protection Needs</i> of the Supreme Court. The process includes participation in public forums before judges, magistrates and human rights defenders as well as the submission of commentary on the Protocol itself.
North Macedonia	January 2018	UNHCR comments on the Law on International and Temporary Protection (LITP). Commenting regarding immigration detention, UNHCR pointed out that the LITP introduces detention of asylum seekers as an option, without adequate legal and procedural safeguards for asylum seekers. UNHCR further expressed concern that provisions for detention of asylum seekers are unclear about the scope to which freedom of movement might be lawfully restricted and the legislator clearly confuses conditions or restrictions on freedom of movement with deprivation of liberty. Full comments available at: <a href="https://www.refworld.org/docid/5b066b172e.html">https://www.refworld.org/docid/5b066b172e.html</a> Annotated comments available at: <a href="https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&amp;docid=5b066b354">https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&amp;docid=5b066b354</a>
North Macedonia	April 2019	UNHCR Comments on Rulebook on the Manner of Limitation of the Freedom of Movement of an Applicant for International Protection. UNHCR pointed out that the provisions of the Rulebook do not provide for adequate procedural guarantees, neither in terms of the competent authority to order deprivation of liberty, nor regarding the deadlines for appeal. Additional remarks related to the lack of mandatory automatic review of the detention decisions and lack of alternatives to detention.
South Africa	September 2016	Comments on the Draft Green (Now White) Paper on International Migration.

South Africa	October 2017	Comments on the Draft Border Management Authority Bill.
South Africa	June 2018	Comments on the Draft Refugees Act Regulation.
United Kingdom	July 2018	Response to the Governments Consultation on the revised Adult at Risk in Immigration Detention Policy.
United Kingdom	October 2018	Response to the Consultation on Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to detained appellants.
United Kingdom	June 2019	Response to the Government consultation on the proposed Removal Centre Rules 2019.
<b>Participation in parliamentary/government inquiries or commissions</b>		
Bulgaria	May and November 2018 and March 2019	UNHCR attended several meetings of the Parliamentary Commission on Internal Security and Public Order to participate in expert discussions and hearings as well as to provide its comments and recommendations to the draft amendment of the Law on Foreigners.
Bulgaria	January – June 2019	UNHCR participated in the Working Group tasked to amend the Law on Foreigners and the Regulation for the Implementation of the Law on Foreigners.
Bulgaria	February- June 2019	UNHCR attended the meetings of the Working Group convened to draft guidance on age assessment.
South Africa	September 2017	Representation to Portfolio Committee of Home Affairs – Refugee Amendment Bill.
United Kingdom	April 2018	Submission to the Home Affairs Select Committee – Inquiry into the use of Immigration Detention.
United Kingdom	December 2018	Submission to the Joint Committee on Human Rights – Inquiry into the use of Immigration Detention.
<b>Making submissions to international, regional or national human rights bodies</b>		
Belgium	May 2018	Pre-mission Briefing Note to UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.
Bulgaria	July 2018	Confidential comments to the Human Rights Committee, raising inter alia the issue about detention of children with families and the need to ensure detention is a measure of last resort, imposed for the shortest possible period, following an individual assessment of its reasonableness, necessity and proportionality and applicability of ATDs.
Bulgaria	March 2019	Pre-mission Briefing Note for the UN Special Rapporteur on the sale of children raising, inter alia the need for adequate identification procedure at first contact so as to ensure unaccompanied children can benefit in practice from the exemption from immigration detention enshrined in law.
Czech Republic	March 2018	Confidential Comments to the Committee against Torture.
Czech Republic	June 2018	Briefing Note for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Czech Republic	October 2018	Oral briefing to the visiting CPT delegation
Czech Republic	July 2019	Confidential Comments to the Committee on the Rights of the Child.
Czech Republic	August 2019	Oral briefing to the Committee on the Elimination of Racial Discrimination.
Hungary	July 2019	Pre-mission Briefing Note for the UN Special Rapporteur on the human rights of migrants.
Hungary	April 2019	Confidential Comments to the Committee on the Elimination of Racial Discrimination.
Hungary	February 2019	Child Protection note for the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
Hungary	January 2019	Pre-mission Briefing Note for the CoE Commissioner for Human Rights.
Hungary	November 2018	Pre-mission Briefing Note for the UN Working Group on Arbitrary Detention.
Hungary	October 2018	Pre-mission Briefing Note to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
Hungary	October 2018	Pre-mission Briefing Note to the CoE Group of Experts on Action against Trafficking in Human Beings.
Hungary	May 2018	Confidential Comments to the Committee on the Rights of the Child.
Hungary	February 2018	Confidential Comments to the Human Rights Committee.
Israel	April 2018	Confidential Comments to the Human Rights Committee.
Israel	May 2018	Confidential Comments to the Committee Against Torture.
Israel	February 2019	Confidential Comments to the Committee on Economic, Social and Cultural Rights.
Lithuania	April 2019	Confidential Comments submitted to the Committee on the Elimination of Racial Discrimination.
Lithuania	December 2018	Confidential Comments submitted to the Committee on the Elimination of Discrimination against Women.
Lithuania	June 2018	Confidential Comments submitted to the Human Rights Committee.
Malaysia	February 2018	Oral Briefing to Committee on the Elimination of Discrimination against Women.
Malaysia	March 2018	Submission to Universal Periodic Review.
Malaysia	November 2018	UNHCR Confidential Summary at UPR Session.
Malaysia	March 2019	Oral Statement on the adoption of outcomes for Malaysia's 3rd UPR Cycle.
Malaysia	May 2018	Confidential Inputs to Bar Council Submission to the Government's Institutional Reform Committee.
Malaysia	4 September to 1 October 2018	Oral briefing to the UN Special Rapporteur on the sale and sexual exploitation of children.
Malaysia	November 2018	UNHCR Briefing Note to the Special Rapporteur on human rights to safe drinking water and sanitation.

Malta	July 2018	Submission to Universal Periodic Review.
Malta	May 2019	UNHCR Confidential Comments to the Committee on the Rights of the Child.
Mexico	August 2019	UNHCR is preparing Confidential Comments for the Human Rights Committee addressing the elimination of automatic detention of asylum seekers and codifying the ATD program.
Mexico	August 2019	Confidential Comments to the Committee on the Elimination on Racial Discrimination regarding the elimination of automatic detention for asylum seekers amongst other topics.
Mexico	January 2019	Confidential Comments to the Committee Against Torture with a focus on eliminating automatic Immigration detention.
Mexico	July 2018	Confidential Comments to the Committee on the Elimination of Discrimination Against Women relating to access to the asylum procedure for women, eliminating automatic detention for women who claim asylum, codifying the ATD program amongst others.
North Macedonia	October 2018	Joint United Nations Country Team Submission for the Adoption of Concluding Observations on the former Yugoslav Republic of Macedonia for the 71st Session of the Committee on the Elimination of Discrimination against Women.
South Africa	April 2019	Confidential Comments to the Committee Against Torture.
South Africa	May 2017	UNHCR Submission to Universal Periodic Review.
United Kingdom	November 2018	Submission to CEDAW.
United Kingdom	December 2018	Submission to UNCAT.
<b>Facilitating and supporting pilot projects on alternatives to detention</b>		
Czech Republic	Continued Engagement	Dialogue with the state authorities, especially the Ministry of Interior, on the pilot project of ATDs in Dublin transfer cases.
Indonesia	2018 – mid 2019	Shelters for unaccompanied and separated children as well as women at risk: The Office has been funding implementing partners, Church World Service (CWS) and Yayasan Sayangi Tunas Cilik, to implement ATDs for unaccompanied children in Jakarta. Currently there are 5 CWS shelters: 4 for unaccompanied boys and 1 for unaccompanied girls, women at risk, and their children.
Indonesia	2018 – mid 2019	Semi-independent living scheme for unaccompanied children: Through its implementing partner, CWS, UNHCR supports a semi-independent living scheme in which teenagers live together in a rented room under regular supervision of CWS.
Indonesia	2018 – mid 2019	Foster care for unaccompanied children: Mindful of the importance of a family setting to the development of children, UNHCR strives to the best of its ability to identify foster parents for unaccompanied children. UNHCR provides modest lodging allowance to foster parents willing to take care of children.

Israel	Throughout 2018	UNHCR supported partner efforts to promote a pilot project to exempt victims of torture from detention and to provide rehabilitation support, health care and housing support to the most vulnerable among them. As a result of a legal intervention by UNHCR partners, the State initiated a pilot project to identify the 100 most vulnerable victims of torture and to map the services they need. UNHCR and its partners were actively involved in the identification, assessments and referrals of individuals during this pilot project, as well as participating in the committee meetings and discussions. The Inter-Ministerial Committee that was established for this pilot submitted its recommendations to the Government, which has yet to make them public.
Lithuania	January 2018 – present	The Community Based Accommodation and Support Scheme is a result of targeted advocacy, technical support and competence building efforts by UNHCR and its partner the Lithuanian Red Cross, which currently leads the pilot, while UNHCR is part of the coordination team. The initiative has been reflected in the AMIF multi-annual programme and allocated required financial support.
Malaysia	January 2018	UNHCR together with other stakeholders (i.e. SUKA Society, YCK, IDC, etc) met with officials from the Prime Minister’s Office and Immigration Department on the ATD Pilot Project to discuss the barriers in implementing the project.
Malaysia	January – March 2018	Technical guidance on the development of foster care materials.
Malaysia	July 2018	Meeting with Deputy Minister of Women, Family and Community Development to introduce the stakeholders and raise awareness on the ATD Pilot Project, including barriers to implementation and next steps.
Malaysia	August – December 2018	Technical support on refugee child protection and community coordination for Phase 2 of the refugee foster care pilot project: Capacity building with NGOs to expand on foster care placements and sensitization with refugee community on foster care to identify a pool of suitable foster parents for the pilot project.
Malaysia	November 2018	Observer function via strategic litigation case as well as facilitating and identifying appropriate NGO to support with ATD.
Malaysia	December 2018	A 2-day Alternative Care Workshop was coordinated with together with Asia Family First, Yayasan Chow Kit and UNICEF. The workshop was the first national platform that brought together practitioners, service providers and child advocates on developing alternative care of children in Malaysia focusing on marginalized children.
Malaysia	January 2018 – June 2019	Supported UNICEF with baseline data and project development for continuation of the foster care pilot project, alternative care and children on the move capacity building with stakeholders.
Mexico	October 2015- June 2016	A pilot project on alternatives to detention and care arrangements focused on unaccompanied children and vulnerable individuals was implemented.
Mexico	July-December 2016	A pilot program for release of asylum seekers was implemented. This led to the release of 663 asylum seekers from detention.

Mexico	January 2017-ongoing	<p>The program has continued functioning albeit no longer in a pilot phase. Since then, 7,384 persons have been released from detention (1,325 persons in 2017, 3,596 persons in 2018 and 2,463 persons between January-May 2019).</p> <p>Decisions to release individuals are responsibility of INM and COMAR- UNHCR supports the government with the following actions:</p> <ul style="list-style-type: none"> <li>- Identification of PoCs in detention and referral to COMAR for that they can have access to the asylum procedure.</li> <li>- Flagging to COMAR cases in detention which already have the necessary documents to be released.</li> <li>- Identification of and referral to shelter spaces in which persons benefited with an early release from detention can reside until they can rent their own home or their asylum procedure is completed.</li> </ul> <p>The main challenge of so called ATD programme lies in the fact that it has not been established in any normative document subject to accountability and which lays out clear standards and criteria for release. The program continues to be highly discretionary, subject to changes and, potentially, cancellation at any moment from the government. However, there has been no indication this will happen- and overcrowding in detention centers seems to point towards a strengthening of the program.</p> <p>Additionally, due to its discretionary, non-formal nature, the program has faced some challenges related to the logistics of release: not enough information is provided to PoCs about their release and what this means which creates an atmosphere of uncertainty both for PoCs and shelters, release takes a long time to process which leads to persons leaving detention centres very late and therefore arriving very late at shelters, notification of release of groups of persons are issued with very short notice which leads to challenges in identification of shelter spaces. Finally, with the increasing amount of released individuals UNHCR is encountering complications to find enough shelter spaces.</p>
North Macedonia	Jun - Dec 2018	<p>UNHCR supported the Ministry of Labour and Social Policy in the hiring of experts to develop guidelines for the implementation and mainstreaming of alternative care arrangements to expand the existing protection mechanism. The following guidelines were prepared, pending adoption by the MLSP:</p> <ol style="list-style-type: none"> <li>1) Guidelines for reception standards for asylum seekers in the Republic of North Macedonia.</li> <li>2) Guidelines for the reception procedures for of unaccompanied minors and vulnerable persons under international protection.</li> <li>3) Guidelines for the criteria and manner of use of an appropriate accommodation apartment or financial aid for the provision of facilities for the reception of persons with refugee status.</li> </ol>
United Kingdom	ONGOING	<p>A pilot ATD for vulnerable women who would ordinarily be detained in Yarl's Wood Immigration Removal Centre. This is being provided by the Home Office in partnership with Action Foundation. UNHCR have worked closely with the government and Action Foundation in the design of this ATD.</p>
United Kingdom	ONGOING	<p>A pilot ATD for adults who have support in the community and who are currently or who are about to be detained in the UK immigration detention estate. The Home Office are currently inviting tenders for this pilot. UNHCR are working closely with the government in the development of this new pilot.</p>

## Investing in, carrying out and disseminating research

Canada	February 2018	<p>Domestic and International Standards and the Immigration and Refugee Board's Guideline on Detention researched and written for the UNHCR by Jared Will</p> <p>This report examines the Immigration and Refugee Board's <i>Guideline 2: Guideline on Detention</i> which is meant to assist members of the Immigration Division when reviewing the legality and appropriateness of immigration detentions in Canada.</p>
Hungary	February 2019	Research on Integration for Beneficiaries of International Protection in Hungary
Indonesia	October 2018	Invited Prof. Yunizar Adiputra from Gadjah Mada University, to disseminate his paper "The Granting of Work Access as a Solution for Refugees in Indonesia" to 30 Immigration officers from the Directorate General Immigration, Immigration offices in Jakarta and surrounding areas, and IDC Heads from various provinces. The paper disputes the common government fear that granting work access to refugees will cause more unemployment for Indonesian locals.
Israel	January 2018	Independent research commissioned that led to the publication of a report entitled " <i>Better a prison in Israel than dying on the way</i> " – testimonies of refugees who left Israel for Rwanda and Uganda and received protection in Europe. The report detailed the fate of 18 asylum seekers who had 'voluntarily' left Israel to Rwanda and Uganda and had since been smuggled to Europe. The report was valuable for advocacy purposes; some of the raw footage taken by the researchers in the interviews with the asylum-seekers was shown on Israeli television news. Members of Parliament were engaged on the issue.
Israel	March 2018	Hotline for Refugees and Migrants, <i>Immigration Detention in Israel, Annual Monitoring Report – 2017</i> . The report highlights issues including conditions for transgender inmates separated in solitary confinement, the detention of Darfuri asylum seekers, handcuffing of inmates during medical exams, and over-crowding in detention cells.
Israel	April 2019	Hotline for Refugees and Migrants, <i>Immigration Detention in Israel, Annual Monitoring Report – 2018</i> . The report reveals an increase in the number of mothers detained with their children, lack of access to the asylum system in the prisons and in Yahalom Detention Facility, and testimony about severe abuse by the Population Authority inspectors.
Lithuania	January – December 2018	A study on policies and practices with respect to unaccompanied asylum seeking children in the Baltic States was conducted by a UNHCR consultant. It <i>inter alia</i> focused on identification and referral procedures, BIA and BID. The launch of the report is planned for 2019.
Mexico	July 2017-August 2018r	UNHCR conducted 36 focal groups with 165 persons of concern to understand how detention conditions impact asylum requests and to get a better understanding of detention conditions.
North Macedonia	July 2018	UNHCR supported the Macedonian Young Lawyers Association (MYLA) in preparing and printing their Immigration detention in North Macedonia mid-yearly report outlining findings regarding immigration detention legislation, statistics, practices and conditions in the country.

North Macedonia	May 2019	UNHCR supported the MYLA in preparing and printing their immigration detention in North Macedonia yearly report outlining findings regarding immigration detention legislation, statistics, practices and conditions.
South Africa	April 2018	University of Cape Town's Refugee Rights Unit, UNHCR's legal partner, conducted research and published a Report on Alternatives to Detention
<b>Judicial engagement and strategic litigation</b>		
Belgium	Continued Engagement	Continued dialogue with Bar Associations, Immigration Office and civil society actors to improve the quality of legal assistance to asylum seekers in detention
Belgium	May 2018	Training for 90 lawyers at Antwerp Bar Association on global detention strategy, detention of asylum seekers and upcoming detention of children.
Belgium	June 2018	Presentation at Nansen Brussels intervision with 30 lawyers on global detention strategy, detention of asylum seekers and upcoming detention of children
Bulgaria	July 2018 (CoE); September 2018	Joint Roundtable with the CoE on detention of children and alternatives to detention for judges; facilitating the exchange of good practice by enabling the participation of judges at international events on detention.
Bulgaria	August – December 2018	Newsletter on European and national case law on asylum and immigration – monthly provision of case summaries in Bulgarian.
Czech Republic	Continued Engagement	Fundamentals of Immigration Detention e-Learning Course and the Alternatives to Detention Self-study Modules were translated in the Czech language. An associated workshop including the judiciary and lawyers is planned for 2019/2020.
Czech Republic	March 2018	Czech Judicial Academy: a training provided by UNHCR on the ECtHR jurisprudence related to detaining families with children (to judges and their assistants, including from the Supreme Administrative Court).
Hungary	Continued Engagement	UNHCR 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.
Hungary	Continued Engagement	Ilias and Ahmed v. Hungary (Application no 47287/15) concerning Article 3, 5(1) and 13 of ECHR
Hungary	Continued Engagement	R.R. and Others v. Hungary (Application no 36037/17) concerning Articles 3, 5(1), 5(4), as well as 13 in conjunction with Article 3 of ECHR
Hungary	Continued Engagement	I.A. v. Hungary (Application no 38297/17) concerning Articles 3, 5(1), 5(4), as well as 13 in conjunction with Article 3 of ECHR
Indonesia	July – September 2018	From July to September 2018, UNHCR engaged Legal Aid Jakarta to defend two Afghan asylum seekers who were prosecuted in Tangerang District Court for being undocumented. The Court decided to sentence the Afghans with one month of jail for breaking Immigration law. UNHCR eventually managed to register the asylum seekers in jail, and managed to advocate for their release.

Israel	Continued Engagement	UNHCR and its legal partner trained 62 new <i>pro bono</i> lawyers and fellows from prominent law firms. A total of 6 trainings for lawyers and law students where UNHCR lectured were conducted, as well as 3 trainings for law firms and seven in-depth trainings to fellows in the network and volunteers. Trainings on stateless persons and the removal of temporary protection and deportation of DRC nationals were also conducted jointly with UNHCR. The network of lawyers and volunteers enabled timely response to legal needs: During the forced relocation policy, 100 trained volunteers accompanied around 100 persons of concern to deportation hearings and appeals were filed against forced relocation on behalf of vulnerable groups.
Japan	September 2018	Initial Training about asylum for entry level MOJ officials.
Japan	January 2019	Seminar about detention and ATD in France for MOJ officials and civil society.
Japan	April 2019	Seminar about detention and ATD in Canada for MOJ officials and civil society
Lithuania	April 2019	Judicial seminar on statelessness co-organised by UNHCR and the National Courts Administration. Issues addressed: SDP and guarantees against unlawful/arbitrary detention for stateless persons.
Lithuania	January 2019	Judicial seminar on the right to family life co-organised by UNHCR and the National Courts Administration. Issues addressed: family unity and best interests of the child in detention and ATD decision making.
Lithuania	December 2018	Annual meeting of the National Network of Asylum and Immigration Lawyers co-organized by UNHCR and the Lithuanian Red Cross. Issues addressed: detention related case-law.
Lithuania	October 2018	Judicial seminar on preventing, combating and responding to SGBV co-organized by UNHCR, the CoE and the National Courts Administration. Issues addressed: prevention of and response to SGBV in reception, ATD arrangements and detention facilities.
Malta	Continued Engagement	Continued engagement with Jesuit Refugee Services on monitoring, appeals against detention and ATD.
Mexico	March 2018	Breakfast of the Representative with Federal Magistrates of Appeals Courts of the First Circuit (Mexico City) in which UNHCR explained its main concerns with the asylum system in Mexico (including detention) and how the Judicial Branch can contribute to addressing the situation.
Mexico	May 2018	In the framework of INM's Citizen Council UNHCR offered an awareness session on international standards on immigration detention, Alternatives to Detention and children's rights. We also offered information relating to the release from detention program currently in place in Mexico.
Mexico	June 2018	Workshop on legal protection for unaccompanied children who wish to seek asylum. This workshop was offered for UNHCR's legal partners and it included a portion for strategic litigation related to detention of children.

Mexico	August 2018	Regional Workshop on the Inter-American Standards for Protection of Asylum Seekers and Refugees and their use in strategic litigation procedures. This workshop was offered to legal partners of UNHCR in Mexico and elsewhere in the region. Although its focus was placed on Inter-American Human Rights Standards in general, there was strong emphasis in the case of Mexico in the use of precautionary measures before the IAHRC to combat detention.
Mexico	October 2018	Seminar with Federal Magistrates and Circuit Judges on the standards set out by Advisory Opinion OC-25 of the Inter-American Court of Human Rights. UNHCR offered a seminar to 20 Magistrates and Judges in Mexico City to analyse the content and extent of Advisory opinion OC-25. During the seminar, a special focus was set on automatic detention of asylum seekers and how this can represent a challenge to their right to seek asylum.
Mexico	November 2018	During the National Meeting of Legal Partners, we presented and discussed the viability of implementing a nationwide strategy to ensure access of UNHCR's legal partners to detention centers to offer not only information on the asylum system but also legal assistance and representation.
Mexico	April 2019	MoU with the Federal Public Defender's Office has been signed. The collaboration strategy includes the possibility of conducting strategic litigation alongside UNHCR's partners. Detention will be one of the issues to be taken up by IFDP.
Mexico	June 2019	MoU the Federal Council of the Judiciary (CJF) has been signed. The CJF is the body that oversees all operations of the Federal Judicial Branch. Through this MoU UNHCR will offer training to Federal Judges and Magistrates on the right to seek asylum, international refugee law standards and international human rights law standards. A special focus will be set on automatic detention of asylum seekers and the need for administrative law judges to decide upon these cases rather than criminal law judges.
Zimbabwe	Continued Engagement	UNHCR engaged with two law firms representing asylum seekers held in detention and continues to engage with them until a solution is found.

## ANNEX: QUANTITATIVE TRENDS

All figures relate to detention for immigration-related purpose. "NK" indicates that statistics are not known or not available.

Adults detained					
Country	End 2013	End 2015	End 2017	Mid- 2019	
Belgium	6,285	6,229	7,105	NK	
Bulgaria	8,920	12,154	2,566	667	
Canada	NK	NK	NK	2,395	
Czech Republic	42	103	69	112	
Hungary	1,687	5,525	2,788	17	
Indonesia	1,476	3,568	3,299	30	
Israel	NK	NK	NK	NK	
Japan	NK	NK	NK	NK	
Lithuania	362 total #	553 total#	NK	NK	
Malaysia	9,076	8,996	3,951	1,336	
Malta	NK	144	169	*HC: 945 *IR: 257	
Mexico	76,688	159,627	75,780	54,681	
North Macedonia	n/a	1,050	122	58	
Republic of South Africa	NK	NK	NK	NK	
United Kingdom	30,646	32,610	27,411	24,440	
Zambia	NK	NK	29	40	
Zimbabwe	NK	NK	NK	224	

Children detained					
Country	End 2013	End 2015	End 2017	Mid- 2019	
Belgium	0	0	0	7	
Bulgaria	NK	NK	729	76	
Canada	NK	NK	78	1 (Jan-March)	
Czech Republic	2	0	1	4	
Hungary	NK	0	1,227	466	
Indonesia	297	838	860	0	
Israel	NK	NK	NK	NK	
Japan	NK	NK	NK	NK	
Lithuania	6	5	10	2	
Malaysia	2,061	1,320	482	88	
Malta	500	11	NK	*HC:331 *IR:20	
Mexico	9,630	38,514	18,066	22,263	
North Macedonia	NK	323	9	15	
Republic of South Africa	NK	NK	NK	NK	
United Kingdom	228	163	63	67	
Zambia	NK	NK	0	0	
Zimbabwe	NK	NK	NK	10	

\* In the case of Malta, there is a distinction between detention for health checks(HC) and immigration-related detention(IR).





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