



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## UNHCR/HCP/2015/7

### **Policy on Detention Monitoring**

Approved by: Volker Türk, Assistant High Commissioner for Protection

Signature:

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Contact: Protection Policy and Legal Advice Section (PPLA),  
Division of International Protection

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## 1. Purpose

1.1 UNHCR has long experience in accessing persons of concern in detention and monitoring the conditions in places of detention. UNHCR Offices adopt, however, a variety of approaches to detention monitoring. Given the lack of a consistent approach, this Policy aims to ensure that, where asylum-seekers, refugees or stateless persons are detained, monitoring is carried out in a harmonized manner.

1.2 As part of UNHCR's mandate for the protection of refugees and stateless persons and, together with Governments, to find solutions to their plight, the detention of asylum-seekers, refugees and stateless persons is of concern of the Organization.<sup>1</sup> Given the particular character of asylum-seekers, refugees and stateless persons as people who lack the protection of their own countries, UNHCR is entitled to and responsible for interceding directly on their behalf who would otherwise not be represented legally on the international plane. The High Commissioner also has responsibility to supervise the implementation of international instruments for the protection of refugees, laid down explicitly in paragraph 8(a) of the 1950 Statute, in Articles 35 of the 1951 Convention relating to the Status of Refugees and Article II of the 1967 Protocol, and in regional refugee instruments and under international human rights law.

1.3 In exercising these supervisory responsibilities, including in places of detention, States are expected to cooperate with the High Commissioner.<sup>2</sup> UNHCR is to be given prompt and unhindered access to asylum-seekers, refugees and stateless persons and to supervise their well-being, wherever they are, including when they are detained.<sup>3</sup> Part of this supervision entails accessing and visiting places of detention, as well as to intervene with and support the authorities in improving conditions of detention, both in individual cases and in relation to system-wide shortcomings. UNHCR's Global Strategy – Beyond Detention 2014-19 specifically calls on UNHCR Offices to work with the national authorities to ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards.

1.4 This Policy provides guidance for UNHCR Offices on building and strengthening capacities to monitor places where persons of concern are deprived of their liberty. Through the periodic or regular examination of places of detention, monitoring seeks to avert human rights violations at either the individual and/or system-wide level before they happen, and provides an opportunity to highlight to the authorities areas where improvements in conditions are needed. Monitoring can minimise the risk of arbitrary or unlawful detention, and to secure the release of asylum-seekers, refugees, stateless persons and, where appropriate, migrants.

1.5 This Policy is to be read in conjunction with UNHCR, Association for the Prevention of Torture and the International Detention Coalition, *Monitoring Immigration Detention: Practical Manual* (2014) ("UNHCR, APT and IDC *Monitoring Manual*"), which sets out the methodology to

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<sup>1</sup> The full mandate of UNHCR can be found at: UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, p. 2, available at: <http://www.refworld.org/docid/5268c9474.html>.

<sup>2</sup> See, e.g., Art. VIII of the 1969 *Organization of African Unity (now African Union) Convention governing the Specific Aspects of Refugee Problems in Africa*; Declaration 17 on Art. 73k of the *Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts*, OJ 340/134 of 10 November 1997; European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, Art. 10(3). A reflection of the High Commissioner's supervisory responsibility can also be found, *inter alia*, in recommendation (e) of the 1984 *Cartagena Declaration* and the Preamble to the 1957 *Agreement relating to Refugee Seamen*.

<sup>3</sup> See, e.g., Executive Committee Conclusion Nos. 44(XXXVII) – 1986 – Detention of Refugees and Asylum-Seekers, (f), (g); 46(XXXVIII) – 1987, (f); 47 (XXXVIII) – 1987, (f); 50 (XXXIX) – 1998, (i); 85 (XLIX) – 1988, (dd); 106 (LVII) – 2006 (on stateless persons), (w).

guide visits and the relevant standards for monitoring conditions of detention, as well as UNHCR's *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012) ("UNHCR Detention Guidelines").

## 2. Scope

2.1 This Policy applies to all UNHCR operations where detention affects asylum-seekers, refugees and/or stateless persons.<sup>4</sup>

2.2 This policy is directed primarily towards UNHCR Representatives and their legal and other protection staff, including those engaged in strategic and operational protection planning and delivery. Monitoring when, how, for what purpose and in which circumstances or conditions detention takes place are essential components of detention monitoring. A specific strategy for monitoring of places of detention must be carefully planned and integrated into the overall protection activities of the operation.

2.3 Protection advocacy on detention more generally, including promoting alternatives to detention, is covered in other documentation, including in UNHCR *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (UNHCR Detention Guidelines).

2.4 Compliance with this Policy is mandatory.

## 3. Rationale

3.1 Persons deprived of their liberty are especially vulnerable and at risk of being mistreated, tortured or refouled. Detention has many negative and lasting effects on individuals and their families. It undermines their human dignity and can cause unnecessary suffering, with serious consequences for their health and wellbeing, in particular when they are detained for long periods. Detention increases anxiety, fear and frustration and can exacerbate past traumatic experiences. It frequently takes place in places and in conditions that do not meet international human rights standards. Detention of children is particularly serious due to the devastating effect it may have on their physical, emotional and psychological development, even if they are not separated from their families. Children should, in principle, not be detained at all.

3.2 Detention monitoring is an essential component of protection monitoring. Monitoring detention conditions forms an integral part of the system for protecting persons of concern who are deprived of their liberty. Depriving a person of his or her liberty is a serious act with far-reaching consequences for the individual and his or her family. Through the loss of liberty, the detainee comes to depend almost entirely on the authorities to guarantee his or her protection, rights and means of existence. The possibilities for persons deprived of their liberty to influence their own fate are very limited. Those detained are isolated from society, and in many cases, without access to outside assistance, including UNHCR and legal advisers, to prepare for their release.

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<sup>4</sup> The Policy does not cover monitoring of the detention of internally displaced persons as, being nationals of the country in which they are located, they are not detained for migration/asylum-related reasons. See, Global Protection Cluster (GPC), *Handbook for the Protection of Internally Displaced Persons*, June 2010, Part IV-6, available at: <http://www.refworld.org/docid/4790cbc02.html>. The Policy also does not cover monitoring of the internment conditions of combatants and/or armed elements, see UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, available at: <http://www.refworld.org/docid/452b9bca2.html>.

3.3 For UNHCR, monitoring entails both individual as well as system-wide monitoring relating to the conditions of detention and the circumstances of persons of concern. UNHCR carries out many activities in detention facilities, including visiting places of detention for the purposes of identifying persons of concern, ensuring access to asylum procedures or carrying out status determination. Detention monitoring should not be confused with, nor interpreted as being limited to, visits to individuals in detention for such purposes as carrying out registration or refugee status determination. Detention monitoring entails a broader range of activities, as mentioned in section 4 of this Policy, below), and described in full in the *UNHCR, APT and IDC Monitoring Manual*, which includes the careful examination of all relevant aspects of the *conditions* in which persons are held.

3.4 Compliance with this Policy will enable monitoring visits to be evidence-based and consistent across UNHCR's operations, and therefore more effective and credible.

#### **4. Overall Policy**

4.1 While acknowledging that irregular entry or stay may present challenges to States, UNHCR's view is that mandatory or routine detention of asylum-seekers, refugees or stateless persons is not the answer. Policy justifications for detention regularly encompass border control, national security, or public order reasons, as well as to execute swiftly deportation or expulsion orders. While these policy considerations form the backdrop to many government detention policies, they do not support the routine detention of asylum-seekers.

4.2 Detention for immigration-related purposes should only take place as an exceptional measure, where necessary and reasonable in each individual case, be proportionate to a legitimate purpose and occur only after less coercive or intrusive means are found not to be available and appropriate.

4.3 The legal framework for detention is set out in UNHCR Detention Guidelines.

#### ***Main activities foreseen***

4.4 To achieve the main aims of this Policy, UNHCR Offices need to:

- a) Develop detention monitoring strategies adapted to the particular context and challenges and carry out detention monitoring, with a view to:
  - preventing events of unnecessary detention, by identifying practices of arbitrary detention and advocating for release of affected persons;
  - ensuring the use of and referral to alternatives to detention, whenever appropriate;
  - ensuring that conditions of detention, where necessary and unavoidable, provide for humane and dignified treatment of all detainees; and
  - ensuring that the particular needs of persons of concern in situations of vulnerability or at risk are met.
- b) Promote, where relevant, accession to relevant international instruments: 1951 Refugee Convention/1967 Protocol and regional refugee instruments and other international human rights treaties; in particular, to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (CAT) and its Optional Protocol (OPCAT);
- c) Advocate, where relevant, for the removal of reservations to the 1951 Refugee Convention, in particular Articles 26 and 31(1) and (2);
- d) Bring to the attention of the authorities relevant international standards, through briefings, sharing of and translation of relevant materials, and capacity-building and training activities;

- e) Support, where relevant, the authorities through the provision of technical advice on the improvement of conditions and detention systems and the sharing of good practices on alternatives to detention;
- f) Advocate, where relevant, for the creation of independent monitoring mechanisms at national level, such as those required by State parties to the OPCAT (the National Preventive Mechanisms) or by engaging with other relevant National Human Rights Institutions (NHRIs);
- g) Coordinate with others involved in detention monitoring to reinforce UNHCR's interventions, reduce duplication or possible conflicting messages to the authorities; and
- h) Allocate funds, as appropriate, to carry out monitoring whether directly or through implementing partners.

### ***Detention monitoring***

4.5 Detention monitoring involves the regular examination of all aspects of detention for all or certain categories of persons deprived of their liberty in any place of detention.

4.6 Detention monitoring is best realised through teams with *multidisciplinary capacities*. Such teams would include protection and community-based protection staff, but as well and as far as possible, colleagues or partners with expertise in, for example, health care or other vulnerabilities, child protection and the like. Identifying appropriate partnerships in developing monitoring strategies may be needed. Different types of institutions may carry out monitoring, according to their specific mandates and purposes. UNHCR has supported the visits of other United Nations bodies, such as the Subcommittee for the Prevention of Torture, the Special Rapporteur on Torture or the Working Group on Arbitrary Detention, among others. Partnerships with other agencies such as IOM, OHCHR, UNICEF or particularly the ICRC, are also relevant. UNHCR has also developed partnerships with the national and international NGO community at both national or regional levels, including but not limited to National Preventive Mechanisms (NPMs) and National Human Rights Institutions (NHRIs). It is important that any activities are complementary to UNHCR's own monitoring function, with coordination being key to ensure the most effective ways to improve conditions in detention and to reduce incidents of arbitrary detention.

4.7 The detention monitoring promoted in this Policy can have different functions:

- a *preventive* function: detention monitoring of both individuals in detention and of system-wide issues can prevent human rights violations before they occur;
- a *deterrent effect*: periodic or regular monitoring visits and the prospect of such visits can deter abuses and bad practices;
- a *direct protection* function: external observation of places of detention contributes to the protection of those held there and may lead to the immediate response to the particular situation of individuals or their referral to required assistance, such as lawyers or others;
- a *corrective* function: external observation can lead to immediate changes in conditions or to longer-term improvements;
- a *direct support* function: in some cases, direct contact with the detainees can provide a form of support in itself, through enabling contact with the outside world;
- an *entry point* function for *establishing dialogue* with the detaining authorities: ensuring meaningful exchange of information and a constructive approach to the support of detainees and to the working relationship between the visiting body and the detaining authority; and

- a *documentation* function: monitoring needs to be properly documented, and the information collected can serve as a basis for proposed corrective measures/improvements and monitoring over time.

4.8 UNHCR Offices need, in particular, to take into account that monitoring *conditions of detention* encompasses *all aspects* of the lives of persons deprived of their liberty and access to *all areas* where detainees are held. These aspects include, but are not limited to:

- the legal and administrative framework applicable to detention, access of detainees to detention review procedures, courts of law, lawyers and/or alternatives to detention;
- access of detainees to asylum and immigration procedures in detention;
- access of detainees to UNHCR and other international or non-governmental organisations, or in the cases of non-asylum-seekers/refugees, to consular assistance;
- practical measures set and applied with a view to protecting the detainee (guaranteeing the rights to life and physical and psychological integrity);
- the living conditions during detention (ensuring dignified and humane treatment);
- the regime of detention (activities, contact with the outside world);
- access to medical care and other specific services (taking into account the particular needs of persons in situations of vulnerability or particularly at risk);
- the organisation and handling of persons deprived of their liberty by the detaining authorities and public or private officials assigned to these tasks;
- the provision of information on the rights and duties of detainees, including effective complaints procedures; and
- the treatment of vulnerable persons or those at particular risk.

Not all aspects need to be monitored in a single visit, as visits covering particular issues (thematic visits) are also important, and can be effective.

4.9 In order for detention monitoring to be successful, the UNHCR visiting team needs to enjoy the necessary guarantees of access and respect for its mandate to carry out visits regularly, to places of their choice and at times of their choice. Monitoring is to be conducted independently from the detaining authorities. This may need to be carefully negotiated in advance and formalised in practice with the acknowledgement of the relevant authorities through, for example, written agreements, memoranda or letters of understanding, and/or through specific legal provisions.

4.10 UNHCR Offices shall ensure that visits are properly documented and generally followed by written reports shared with the authorities, accompanied by written recommendations to help improve the detention system over the short- and long-term. Follow-up on these recommendations with the authorities would form part of the monitoring strategy. Offices may provide technical support to the authorities to facilitate the implementation of the recommendations, or they may source such technical expertise from others.

4.11 Monitoring places of detention is a serious activity, with UNHCR and partner staff being required to work in often difficult conditions (e.g., overcrowding, poor hygienic conditions, isolated locations) and exposed to a risk of violence. Monitoring activities are to be properly supervised by senior protection staff and supported by UNHCR Representatives. UNHCR managers have a duty of care for the security, health and wellbeing of staff carrying out detention monitoring and need to take steps to fulfil this duty, including, for example, by ensuring that the whereabouts/movements

of staff are properly recorded, emergency telephone numbers are provided to staff who they can contact in an emergency, and that an officer-in-charge will be available to respond and make the necessary interventions with the authorities as required. Each Office/Representative must have established a direct line of communication with the relevant authority to be activated in the event of a serious incident or, for example, where access is denied to UNHCR staff. At all times, UNHCR staff (including, for example, interpreters or UN/UNHCR security officers) shall be visible as UNHCR (such as wearing UNHCR vest, t-shirt or badge) and ensure that such identification is clearly displayed and easily distinguished from any form of identification worn by the authorities.

4.12 UNHCR Offices may recruit, on a temporary or honorary (pro bono) basis, experts in particular areas to join UNHCR monitoring teams. Such persons must sign confidentiality agreements and be provided with the necessary documentation to be part of the UNHCR team. For example, where the particular office does not have a medical or health worker on staff, they might consider building a relationship with a local service provider to participate in UNHCR monitoring visits.

4.13 This Policy is to guide, as well, UNHCR's implementing partners with whom UNHCR carries out, funds or coordinates detention monitoring activities. While UNHCR may contract implementing partners to carry out monitoring on its behalf, careful selection of partners with the appropriate expertise and experience will be necessary. Offices may need to carry out capacity building with implementing partners. Evaluating the monitoring activities of such partners is crucial, including for example through carrying out periodic joint monitoring visits.

4.14 UNHCR and its partners sometimes engage in, after careful assessment, the provision of services and/or assistance in places of detention, aiming at alleviating conditions in detention in the short-term and/or building the capacity of the national or local authorities to take responsibility for conditions in detention. Such activities include funding legal advice providers or providing information to detainees on their rights and duties and on how to access asylum procedures, procedures for the review of their detention and/or legal counsel. Any provision of services or assistance should have a specific objective as part of the overall detention strategy, taking into account that the primary responsibility for such services and assistance in detention rests with the national authorities. When providing such services or assistance, care needs to be exercised to avoid inadvertently supporting activities that may result in further or prolonged deprivation of liberty or arbitrary restrictions on the freedom of movement of persons of concern, or which allow the authorities to disregard their own responsibilities over the long-term. Advice can be sought from the Division of International Protection.

4.15 UNHCR Offices are not authorised to fund in any way the construction of detention facilities, or the expansion, refurbishment or improvements in infrastructure of existing places of detention. Advocacy efforts should remain focused on monitoring and advocacy for improving conditions in detention and in promoting alternatives to detention. Advice can be sought from the Division of International Protection.

4.16 This Policy is also relevant, in so far as applicable, to the monitoring of alternatives to detention places such as open and semi-open reception facilities or arrangements in place for persons of concern.

## **5. Relationship to the Global Strategy - Beyond Detention 2014-2019**

5.1 Monitoring is an integral part of the *Global Strategy – Beyond Detention 2014-2019*, which has the ultimate goal of ending the routine detention of asylum-seekers and, in particular, to end the detention of children. Goal 3 of the Global Strategy focuses on ensuring that conditions of detention,



where detention is necessary and unavoidable, meet international standards. To achieve this goal, a number of objectives need to be met:

- Legal and policy frameworks related to detention are in accordance with international standards and in particular provide for access to places of detention for UNHCR and other independent national or international monitoring bodies;
- In practice, UNHCR and other independent national and international monitoring bodies are granted access to places of detention for the purpose of regular monitoring;
- Authorities responsible for places of detention are aware of and implement international standards regarding conditions of detention and treatment of detainees;
- Detainees are treated in a humane and dignified manner, in accordance with these international standards; and
- Specific measures are taken to address the needs of persons in situations of vulnerability or at particular risk.

5.2 The Global Strategy further provides specific recommendations on a number of actions and activities that would need to be pursued in order to achieve the overall goal of ensuring that conditions of detention meet international standards.

5.3 In implementing this Policy, UNHCR Offices are encouraged to develop a detention strategy consistent with the three main goals of the *Global Strategy – Beyond Detention 2014-2019*.

## 6. Terms and definitions

**Detention** *Detention* refers to the deprivation of liberty or confinement in a closed space which persons of concern are not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities. Detention of persons of concern can therefore take place in a range of locations, including but not limited to:

- designated immigration detention centres;
- removal or transit centres;
- closed reception or processing centres;
- airports, ports, transit and “international zones”, harbour facilities, islands;
- vehicles, aeroplanes, boats or other vessels;
- prisons, police lockups or police stations, military bases;
- medical facilities and psychiatric institutions; and
- or any other place where people are physically deprived of their liberty.

**Alternatives to detention** *Alternatives to detention* refer to any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement.

**Detention Monitoring** For the purposes of this Policy, *detention monitoring* describes the process of periodic or regular examination of places of detention through on-site visits. The examination can involve all or certain categories of UNHCR’s persons of concern held in one or more types of detention, and may involve a single issue or be a more comprehensive visit. Detention monitoring can be undertaken as part of individual casework, which can in turn provide information about more systemic or structural issues, or visits to look into the system-wide conditions of detention.

## 7. References

- UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>
- UNHCR, Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), *Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>
- UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees-2014-2019*, 2014, available at: <http://www.refworld.org/docid/536b564d4.html>

Further reference materials and guidance can found in:

- **UNHCR Protection Manual** (internal version), section B.10. Entry (article 31) / Freedom of movement (article 26) / (alternatives to) detention.
- Refworld **Detention Special Features** page: [www.refworld.org/detention.html](http://www.refworld.org/detention.html)
- UNHCR *Emergency Handbook* entry on detention, <https://emergency.unhcr.org/>

## 8. Monitoring and Compliance

The Policy on Detention Monitoring is comprehensive in nature and implementation will take place across the Organization. The Assistant High Commissioner for Protection has primary responsibility for ensuring compliance through the Regional Bureaux at Headquarters and the Division of International Protection.

## 9. Date

This Policy is effective on 3 December 2015. It will be reviewed and updated regularly to reflect major evolutions in United Nations and UNHCR practices. The next scheduled review shall be conducted no later than 3 December 2020.

## 10. Contact

The contact for this Policy is the Protection Policy and Legal Advice Section, Division of International Protection.

## 11. History

This is the first approved version of this Policy.