



**Baseline Report - Detention situation as of end 2013**

# BEYOND DETENTION

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

August 2016



**UNHCR**  
The UN Refugee Agency



**Division of International Protection**  
**United Nations High Commissioner for Refugees**  
Case Postale 2500  
1211 Geneva 2, Switzerland

Cover Photo: A detention centre for refugees and migrants on Italy's Lampedusa Island. This centre was closed end of July 2007, and replaced with a new one opened in August. © UNHCR / G. Kotschy / 2007.

© UNHCR 2016

Layout & design: BakOS DESIGN

# TABLE OF CONTENTS

Methodology.....	5
Executive summary .....	6
General trends.....	8
<b>GOAL 1: END THE DETENTION OF CHILDREN.....</b>	<b>11</b>
<b>Sub-goal 1:</b> Legal and policy frameworks ensure that children are not detained, except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period .....	11
<b>Sub-goal 2:</b> Best interests of the child prevail .....	13
<b>Sub-goal 3:</b> Alternative reception/care arrangements (including for families) are available and appropriate.....	16
<b>Sub-goal 4:</b> Child-sensitive screening and referral procedures are in place .....	18
<b>Sub-goal 5:</b> Immediate release of children from detention and their placement in other forms of appropriate accommodation is coordinated amongst national agencies and, as appropriate, with UNHCR .....	19
<b>Goal 1. Detention indicators – General average score of focus countries .....</b>	<b>19</b>
<b>GOAL 2: ENSURE THAT ALTERNATIVES TO DETENTION ARE AVAILABLE IN LAW AND IMPLEMENTED IN PRACTICE.....</b>	<b>20</b>
<b>Sub-goal 1:</b> Legal and policy frameworks include alternatives to immigration detention .....	20
<b>Sub-goal 2:</b> Procedures are in place to assess and review the necessity, reasonableness and proportionality of detention in each individual case.....	21
<b>Sub-goal 3:</b> Screening and referral mechanisms exist to ensure that asylum-seekers are referred to alternatives to detention .....	23
<b>Sub-goal 4:</b> A variety of alternatives to detention are available.....	23
<b>Sub-goal 5:</b> Alternatives to detention take into consideration the needs of persons with special needs or vulnerabilities.....	29
<b>Goal 2. Detention indicators – General average score of focus countries .....</b>	<b>29</b>
<b>GOAL 3: ENSURE THAT CONDITIONS OF DETENTION, WHERE DETENTION IS NECESSARY AND UNAVOIDABLE, MEET INTERNATIONAL STANDARDS .....</b>	<b>30</b>
<b>Sub-goal 1:</b> Legal and policy frameworks related to detention are in accordance with international standards .....	30
<b>Sub-goal 2:</b> In practice, UNHCR and other independent national and international monitoring bodies are granted access to places of immigration detention for the purpose of regular monitoring .....	34
<b>Goal 3. Detention indicators – General average score of focus countries .....</b>	<b>36</b>
Annex - Detention checklist.....	37

# 12 FOCUS COUNTRIES



In June 2014, UNHCR launched its Global Strategy – Beyond Detention 2014-2019, which aims to support governments to end the detention of asylum-seekers and refugees. The Strategy lays out three main goals: (1) to end the detention of children; (2) to ensure that alternatives to detention (ATDs) are available in law and implemented in practice; and (3) to 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. For its initial two year implementation phase, the Global Strategy is being rolled out in 12 focus countries: Canada, Hungary, Indonesia, Israel, Lithuania, Malaysia, Malta, Mexico, Thailand, United Kingdom, the United States and Zambia.<sup>1</sup>

This report provides collated data relating to the detention situation in the 12 focus countries engaged in the Global Strategy – Beyond Detention, as well as on alternatives to detention. The data is valid as at the end of 2013, except where otherwise specified, and forms the baseline for monitoring progress on the roll-out and implementation of the Global Strategy. The information contained in this report has been provided by UNHCR country offices. The report is structured around the three main goals of the Global Strategy, each with five sub-goals. An update on this report shall be published regularly. In particular, a first update of the situation of detention in the 12 focus countries has been compiled in April 2016<sup>2</sup> to reflect the progress made under each goal of the Global Strategy two years after its launch, in June 2014.

<sup>1</sup> All documents relating to UNHCR *Global Strategy – Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014-2019*, June 2014, are available at: <http://www.unhcr.org/detention>.

<sup>2</sup> UNHCR *Global Strategy – Beyond Detention 2014-2019, Progress Report*, August 2016, available at: [www.unhcr.org/detention](http://www.unhcr.org/detention).

## METHODOLOGY



The key findings presented in this report are derived from an extensive review of the legal framework and detention situation in the 12 focus countries, as it was end 2013. This analysis has been structured through a detention checklist developed based on UNHCR *Detention Guidelines* (2012)<sup>3</sup> which reflect the state of international law relating to detention on immigration-related grounds of asylum-seekers, refugees and other persons of concern to UNHCR. References to the applicable guidelines are made throughout the report. The assessment and the measure of the implementation of the international standards are made through this checklist which corresponds to the sub-goals of the Global Strategy. The detention checklist is available in the annex at the end of this report. These detention indicators were assessed on the basis of UNHCR's regular dialogues with immigration departments and other relevant government counterparts such as enforcement, welfare or child protection agencies, as well as by partners receiving funding from UNHCR (hereafter "partner"), national human rights institutions and other civil society actors active in monitoring immigration detention. These indicators are qualitative in nature in the sense that they are articulated "as a narrative, in categories or classes, and based on information on objects, facts or events that are, in principle, directly observable and verifiable (objective) or on information that is a perception, opinion, assessment or judgement (subjective)."<sup>4</sup> Where figures are presented, the sources are either UNHCR or UNHCR's partner direct monitoring or the regular detention data reports shared by immigration authorities and recorded by the UNHCR offices. All data refer only to individuals who are detained for immigration-related purposes, including asylum-seekers, refugees, stateless persons and other persons of concern to UNHCR and excluding those detained for the sole reason that they are suspected or convicted of a non-immigration-related offense. In line with UNHCR *Detention Guidelines*, "detention" refers to the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.

Overall, this report and its first update published mid 2016 are intended to guide decision-makers and practitioners to remedy the shortcomings in the national frameworks pertaining to detention and support policy formulation, especially in the area of alternatives to detention, helping States to fulfil their international commitments. Globally, it intends to serve as a resource to evaluate progress in the implementation of the Global Strategy – Beyond Detention.

<sup>3</sup> UN High Commissioner for Refugees (UNHCR), *Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention*, 2012, <http://goo.gl/ETMzdb> (UNHCR *Detention Guidelines*).

<sup>4</sup> Office of the High Commissioner for Human Rights (OHCHR), *Human Rights Indicators, A Guide to Measurement and Implementation*, p.173, available at: <http://goo.gl/UJAYINs>.

# EXECUTIVE SUMMARY

The analysis of the situation of detention in 2013 in the 12 focus countries engaged in the Global Strategy showed that:

GOAL 1:

## END THE DETENTION OF CHILDREN

- Unaccompanied or separated children (UASC) were detained in 10 focus countries.
- Children in families were detained in all focus countries.
- In 9 focus countries, the legal framework related to child protection was not compliant with international standards and did not ensure that children are not detained for immigration-related purposes.<sup>5</sup>
- Positively, access for families with children to temporary or alternative care arrangements was available in 7 focus countries; this access was also ensured for UASC in 8 focus countries.

### Child protection mechanisms needed to be improved in several areas:

- Child-sensitive screening and referral mechanisms to avoid detention of children, both outside (e.g. at border entry points) and inside immigration detention places, were not always available or consistently implemented throughout the focus countries.
- Coordination mechanisms amongst national agencies and/or as appropriate, with UNHCR, for the immediate release of children, and their placement in appropriate accommodation, were only available in 5 focus countries.
- A qualified guardian was only appointed to UASC in 4 focus countries, and legal representation was only provided to UASC in 2 focus countries.

GOAL 2:

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

The ATD frameworks and practices in the focus countries revealed some promising findings:

- The national legislation of all the focus countries provided for ATDs for UASC, children in families and adults.
- In practice, ATDs were implemented in 11 focus countries.
- Governments played an important role in implementing these ATDs and in 7 focus countries, NGOs were also engaged.

### Procedural challenges were identified in relation to detention decisions and reviews:

- Procedures to assess the necessity, reasonableness and proportionality of detention in each individual case, before resorting to detention, were only available in 3 focus countries.
- In practice, authorities in only 3 focus countries examined ATDs in each individual case before resorting to detention.
- In only 5 focus countries were screening and referral mechanisms in place (e.g. at the border, upon disembarkation, prior or while in detention) to ensure that asylum-seekers were referred to ATDs.
- Access to detention reviews remained problematic, as the national legislation of 5 focus countries did not provide for detention decisions to be subject to periodic review.

<sup>5</sup> In accordance with the *Convention on the Rights of the Child* (CRC), the detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child.

### GOAL 3:

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

Significant deviations from international standards on detention were observed in the legal frameworks of the focus countries:

- 9 focus countries penalized irregular entry of asylum-seekers/refugees and 7 criminalized irregular entry of asylum-seekers/refugees, in contravention of the *1951 Refugee Convention*.
- The grounds for detention as prescribed by law were not in accordance with UNHCR *Detention Guidelines* and international law in all focus countries.
- Only 7 focus countries had a maximum time limit on detention set by law.
- UNHCR persons of concern were detained with persons suspected or convicted of a crime in 8 focus countries.
- Only 6 focus countries had national legislation which provided for the initial decision to detain to be systematically followed by a judicial or independent administrative authority to release or detain.

**Rights, such as access to asylum procedures, access to legal representation and access to information on the right to obtain legal advice, were either not provided in practice or were inadequate in many of the focus countries:**

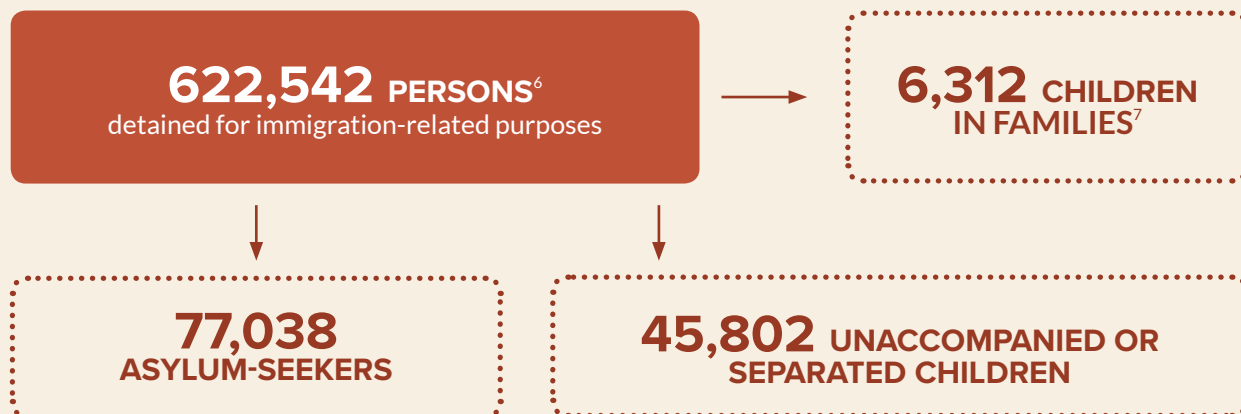
- Access to asylum procedures was ensured for persons detained for immigration-related purposes in only 7 focus countries, in others this access was partial or non-existent.
- Access to legal advice while in detention was not provided, in practice, in 10 focus countries.
- Information of the right to access legal advice was only made available to persons in detention in 5 focus countries.



In 2012, most asylum-seekers arriving in Bulgaria spent time in the transit centre at Pastrogor, some 12 km from the border with Turkey, before being referred to the established reception centres in Banya and Sofia. Ihsan is taking his two children to the closest shop in the village of Svilengrad to buy the basic essentials on the small allowance he receives. © UNHCR / G. Kotschy / November 2012.

# GENERAL TRENDS

## KEY FIGURES RELATED TO DETENTION IN THE 12 FOCUS COUNTRIES – YEAR OF REFERENCE: 2013



The total capacity (number of places available) in immigration detention in the 12 focus countries amounted to

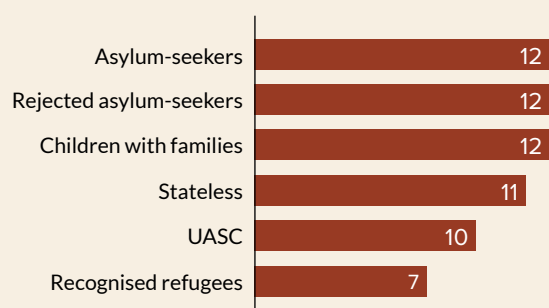
### 81,341 PLACES in 1,146 DISTINCT FACILITIES

such as dedicated immigration detention centres, prisons, holding centres in transit zones, border facilities, police lock ups and closed shelters for children, which may be administered either by public authorities or private contractors.

## KEY FACTS

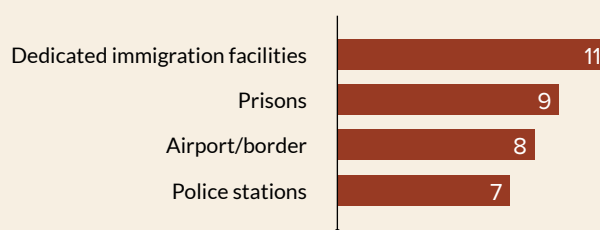
### CATEGORIES OF PERSONS DETAINED

Graph 1: Categories of persons detained for immigration-related purposes in the focus countries.<sup>8</sup>



### PLACES OF DETENTION

Graph 2: Places of detention for immigration-related purposes in the focus countries.<sup>9</sup>



<sup>6</sup> These figures do not include figures from Thailand, as they were unavailable at the time of collection (September 2014). The figures related to the United States cover fiscal year 2013.

<sup>7</sup> This figure does not include the number of children in families detained in the United States; however, family detention capacity was limited to approximately 100 people at any one time in 2013. This figure does not include numbers detained in Malta. For Hungary the figure covers the period July 2013 to September 2014. For Thailand, this figure covers only the number of children detained in the sole immigration detention centre in the capital.

<sup>8</sup> Number of focus countries detaining these categories of persons. Categories are not mutually exclusive i.e. children with families may also be asylum-seekers or stateless.

<sup>9</sup> Number of focus countries where these places of detention were used for immigration-related purposes.

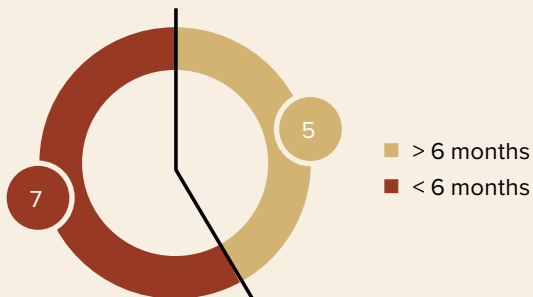




Men from sub-Saharan Africa, including Somali and Eritrean refugees, mill in the vast yard of an immigration detention centre in Benghazi, Libya. © UNHCR/ L. Dobbs/ February 2012.

## LENGTH OF DETENTION

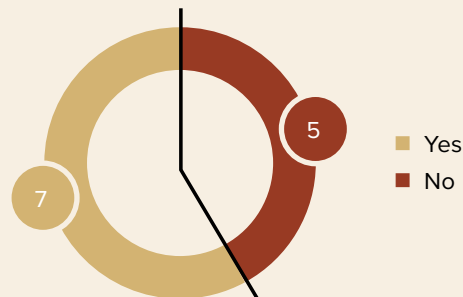
**Graph 3:** Average detention period in 2013 in the focus countries



Average detention period exceeding 6 months: Indonesia, Israel, Malaysia, Malta and Thailand.

Average detention period under 6 months: Canada, Hungary, Lithuania, Mexico, United Kingdom, United States and Zambia.

**Graph 4:** Maximum period for immigration detention was set by law in the focus countries



Countries with a maximum period set in legislation: Hungary, Indonesia, Lithuania, Malta, Mexico<sup>10</sup>, the United States<sup>11</sup> and Zambia.

Countries with no maximum period set in legislation: Canada, Israel<sup>12</sup>, Malaysia, Thailand and the United Kingdom.

*UNHCR Detention Guidelines*

*Indefinite detention is arbitrary and maximum limits on detention should be established in law (Guideline 6)*

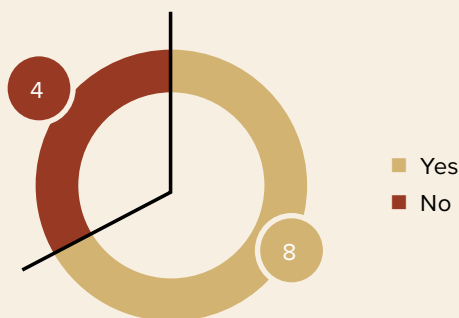
<sup>10</sup> In Mexico, a maximum time limit in immigration detention of 15 working days is set in law, and can be extended up to 60 working days in exceptional cases (i.e. nationality confirmation). Yet Article 111 (V) of the *Migration Law* does not specify a time limit for detention for those who initiate an administrative procedure or judicial remedy, with the consequence that in practice, there is no maximum period for immigration detention for asylum-seekers who initiate a legal remedy.

<sup>11</sup> In the United States, while there was no maximum period set in legislation, the Supreme Court had established reviews for detention for certain limited classes of detainees after a period of months. In the annex, a yellow indicator denotes this situation in the United States.

<sup>12</sup> In Israel, the *Law for the Prevention of Infiltration (Offenses and Jurisdictions) (Amendment No. 4 and Temporary Order)*, 2013 set a maximum detention period of one year for newly arriving "infiltrators" to Israel, however no maximum period was set in law for *mandatory residency* in Holot, a centre with restricted freedom of movement located in the Negev desert considered as a form of detention.

## COMMINGLING

**Graph 5:** UNHCR persons of concern were detained with persons suspected or convicted of a crime in the focus countries.<sup>13</sup>

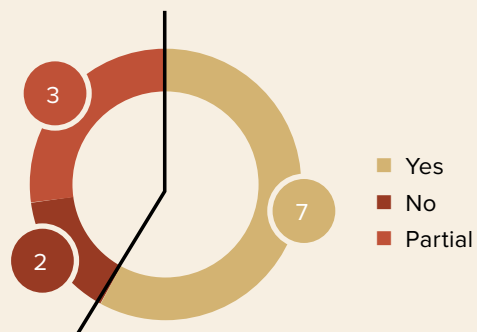


Commingling: Canada, Hungary, Lithuania, Malaysia, Thailand, United Kingdom, the United States<sup>14</sup> and Zambia.

Separated regime: Indonesia, Israel, Malta and Mexico.

## ACCESS TO ASYLUM PROCEDURES

**Graph 6:** Persons in detention were given access to asylum procedures in the focus countries.



Access was given to asylum procedures: Canada, Hungary, Indonesia, Israel, Malta, United Kingdom and the United States.

No access was given in: Lithuania<sup>15</sup> and Zambia.

Partial access was given to asylum procedures in: Malaysia (not to all persons in detention), Mexico (lack of adequate and accessible information on how to effectively access asylum procedures) and Thailand (not in all places of detention).

*UNHCR Detention Guidelines*

*The right to seek asylum must be respected (Guideline 1)*

<sup>13</sup> In some of the focus countries, such as in Lithuania and Hungary, some asylum-seekers were detained alongside those suspected or convicted of a crime when facing a pre-trial investigation for irregular entry. This contravened international standards stipulating that detention of asylum-seekers for immigration-related purposes should not be punitive in nature and that the use of prisons, jails and facilities designed or operated as prisons or jails, should be avoided. International standards require that asylum-seekers be separated from the general prison population if they are held in such facilities.

<sup>14</sup> In the United States, some commingling occurs pursuant to security restrictions.

<sup>15</sup> In Lithuania, access was guaranteed by law. Yet, in practice, in 2013, many asylum-seekers were able to access the asylum procedure only through sending their applications by post to the Migration Department leading to delays in accessing the asylum procedure.

## END THE DETENTION OF CHILDREN

In 2013, UNHCR was aware of a total of **52,141 children** across the 12 focus countries detained for immigration-related purposes. 45,802 were UASC (87 per cent of all children detained) and 6,312 (13 per cent) were detained with family member(s).<sup>16</sup>

### SUB-GOAL 1:

## LEGAL AND POLICY FRAMEWORKS ENSURE THAT CHILDREN ARE NOT DETAINED, EXCEPT IN EXCEPTIONAL CIRCUMSTANCES, AS A MEASURE OF LAST RESORT, FOR A LEGITIMATE PURPOSE AND FOR THE SHORTEST POSSIBLE PERIOD

### Protective laws and policies against the detention of children

Only 3 focus countries (Canada, Hungary and the United Kingdom) in 2013 had laws that ensured that children were not detained, except in exceptional circumstances, as a measure of last resort<sup>17</sup>, for a legitimate purpose and for the shortest possible period. This was in line with international law, in particular Article 37 of the *Convention of the Rights of the Child*.<sup>18</sup> Where this important provision was not reflected in domestic legislation, other legal provisions that provided for a similar level of protection against arbitrary detention, might have been available instead. This was the case in Malaysia where the law foresaw that the best interests of the child should be taken into consideration in any detention decision. Under *The Child Act 2001*, the Court had the power to order a child be placed in the care of a relative or other fit and proper person for such a period and subject to conditions as may be imposed by the Court.<sup>19</sup> In Thailand, the *Child Protection Act of 2003* foresaw that the treatment of the child in any case should give primary importance to the best interests of the child. In the United States, the *Flores settlement* which was codified into regulation, required that children<sup>20</sup> be held in the least restrictive setting appropriate to their age and special needs in order to ensure their protection and wellbeing pending their timely release where possible and safe to a parent, legal guardian, adult relative, individual specifically designated by the parent, or a licensed program. In Lithuania, pursuant to the *Aliens Law No. IX-2206 (2004)*, vulnerable persons and families with children could be detained only in an extreme case, taking into consideration the best interests of the child and vulnerable persons.

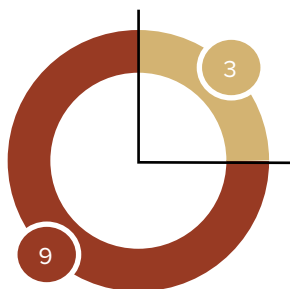
<sup>16</sup> Figures of children detained with their families were not available for the United States and Malta, hence these figures of children detained with family member(s) in these two countries were not included in the total number of children detained in 2013 (52,141), nor in the number of children detained with family member(s) (6,312). Also, while the number of children detained in the United Kingdom is included in the total number of children detained (52,141), the disaggregated data (UASC and children detained with family member(s)) do not include figures for the United Kingdom, as it is UNHCR's understanding that there was no disaggregation available in the official Home Office figures available at: <https://goo.gl/zJRTNl>.

<sup>17</sup> This important safeguards of detention as a measure of last resort only existed in the United Kingdom for families with children. A protective framework was also applicable to UASC with regards to detention (see *Enforcement instructions and Guidance*, UK Home Office, 10 December 2013 (updated 24 January 2014), para. 55.9.3, available at: <https://goo.gl/lfYmjZ>).

<sup>18</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>19</sup> While this provision existed in law it was however seldom applied to asylum-seeking or refugee children.

<sup>20</sup> As of the time of the publication of this report, plaintiff's counsel had filed a motion to enforce the settlement agreement for children detained with a parent in family detention facilities, a nearly abandoned practice which the US government greatly expanded in 2014. As of May 2016, there is an appeal pending before the US Court of Appeals for the 9<sup>th</sup> Circuit as to whether or not the US government's reinstatement of family detention practices violates the original Flores settlement agreement. More information on the Flores settlement agreement is available at: <http://www.aila.org/infonet/flores-v-reno-settlement-agreement>.



**Graph 7:** The legal framework in the focus countries ensured that children are not detained, except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period

■ Yes ■ No

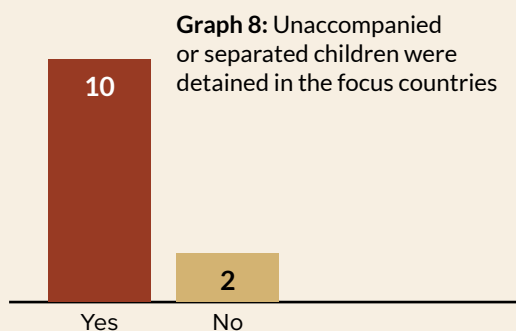
UNHCR Detention Guidelines

*The special circumstances and needs of particular asylum-seekers must be taken into account (Guideline 9)*

## In practice

Despite the fact that 3 focus countries (Canada, Hungary and the United Kingdom) had protective legal frameworks to ensure that children were not detained except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period, in 2013, all the focus countries detained children. Furthermore, families were detained in all focus countries. It is worth noting that some countries detained children only for a very short period of time and with important safeguards. This was the case in the United Kingdom, for example, where the family return process included detention as a measure of last resort, for a maximum period of 72 hours, a period which could be extended with Ministerial authority to one week.

Despite the official position of a number of countries to refrain from detaining children, and despite efforts to avoid the detention of children, UASC were detained in 10 out of 12 focus countries in 2013. Only Israel and Lithuania did not detain UASC. For example, in Israel, the *Procedure for the Treatment of Unaccompanied Minors*<sup>21</sup> foresaw that children under 14 years were released within 24 hours to the Child Services of the Ministry of Welfare and children over 14 years were not held in detention for more than the time necessary for medical checks and to find an appropriate framework for the child. In Hungary, though the vast majority of UASC benefited from a protective regime, age-disputed UASC could be detained until their identification was ascertained and the age assessment was completed. This practice contravened UNICEF standards for age assessment procedure which states that consistent with the principle of the best interests of the child, if doubts about the age remain, the child should be given the benefit of the doubt and the stated age of the child be relied upon. In consequence, he or she should be treated as a child unless subsequent evidence of age comes to light.<sup>22</sup>



**Graph 8:** Unaccompanied or separated children were detained in the focus countries



**Graph 9:** Children in families were detained in the focus countries

<sup>21</sup> *Procedure for the Treatment of Foreign Unaccompanied Minors*, Procedure number 10.1.0016, published 31.12.2007, updated 1.7.2011, Population Immigration and Border Authority, available at: <http://www.piba.gov.il/Regulations/10.1.0016.pdf> (Hebrew).

<sup>22</sup> UN Children's Fund (UNICEF), *Age Assessment: A Technical Note*, January 2013, standard 7, available at: <http://www.refworld.org/docid/5130659f2.html>.

## BEST INTERESTS OF THE CHILD PREVAIL

In accordance with Article 3 of the *Convention on the Rights of the Child*<sup>23</sup>, in all actions concerning children, the best interests of the child shall be a primary consideration. As such, all efforts should be made to:

- Include a best interests assessment or determination for all children, including children in families, when a decision to detain a child is taken;
- Prioritise the asylum processing of children, as well as family tracing and reunification;
- Provide access to age-appropriate information on asylum procedures, including how to contact UNHCR in child-friendly formats (e.g. picture books);
- Appoint a qualified guardian and legal representation for UASC;
- Give special attention to UASC who should not, as a general rule, be detained.<sup>24</sup>

### Best interests assessment or determination

In 2013, none of the focus countries carried out in a systematic way a best interests assessment or determination when making a decision to detain.

In the United States, a limited assessment was made when determining what type of programming to place a UASC in within the continuum of care in the Office of Refugee Resettlement's program which ranged from foster care placement to very limited use of secure detention. Accompanied children did not receive a best interests assessment and neither group received a best interests determination.

### Access to family tracing, reunification and prioritized processing of asylum claims

In 8 of the 12 focus countries (Indonesia, Israel, Malta, Malaysia, Thailand, United Kingdom, United States and Zambia), UASC were given access to family tracing and family reunification procedures. This access could be organised by the State or other stakeholders such as the ICRC, UNHCR or NGOs. In practice, this access was problematic in 3 focus countries (Canada, Hungary and Lithuania) and not organized in one focus country (Mexico). In Canada, access to family tracing depended on the region where the UASC found him or herself. In Quebec, this access was ensured thanks to Praid.<sup>25</sup> In other regions of the country, this access was not ensured: the Canadian Red Cross which facilitated this access to family tracing had offices in major cities but this service might not always have been available, known or utilized. In Canada, there were only two possibilities for family reunification for UASC upon receipt of status, through the private sponsorship program or if the family member was referred for resettlement from abroad. In Hungary, the national asylum authority had the obligation to take action to trace the person responsible for UASC pursuant to national law, yet in practice the tracing was ineffective unless the family member(s) could be traced within the EU,

---

<sup>23</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>24</sup> UN Committee on the Rights of the Child, *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*, 39<sup>th</sup> Session, 17 May-3 June 2005, para. 61.

<sup>25</sup> Praid, *Programme régional d'accueil et d'intégration des demandeurs d'asile*, is a program mandated by the provincial Health and Social Services Ministry to respond to the needs of asylum-seekers in the province of Quebec.

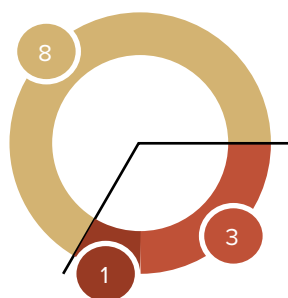


A Syrian girl is seen at the entrance of her apartment in Athens, Greece. She describes getting used to "the sounds of different types of bombs" when conflict worsened in her neighbourhood close to Damascus. © UNHCR / A. D'Amato / July 2014.

under e.g. the Dublin Regulation. In Lithuania, the Migration Department at the Ministry of Interior was responsible for family tracing of family members of identified UASC, but in practice, this obligation was not implemented effectively.<sup>26</sup>

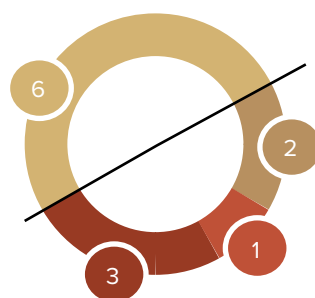
In 6 of the 12 focus countries (Canada, Indonesia, Lithuania, Malaysia, Thailand and Zambia), processing of asylum claims of detained children<sup>27</sup> was prioritised.<sup>28</sup> In 3 focus countries (Malta, Mexico and the United States), this prioritisation was not consistently applied to all children's claims. In Hungary, despite the *Asylum Act 2007*<sup>29</sup> providing that detained asylum-seekers must be prioritized for asylum processing, prioritisation was not always implemented in practice.<sup>30</sup>

**Graph 10:** UASC had access to family tracing/reunification in the focus countries



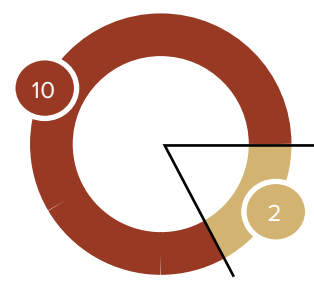
■ Yes ■ No ■ Partially

**Graph 11:** Detained children had access to prioritisation in asylum processing in the focus countries



■ Yes ■ No ■ Partially ■ Not applicable (N/A).

**Graph 12:** UASC had access to age appropriate information on asylum procedures in the focus countries



■ Yes ■ No

<sup>26</sup> The use of "partially" in the pie graph denotes this situation in Hungary and Lithuania.

<sup>27</sup> This question was not applicable in the United Kingdom, where children were not detained while their asylum claims were being processed, nor in Israel, where asylum-seeking children were not detained.

<sup>28</sup> In Indonesia, Malaysia and Thailand, refugee status determination was organised under UNHCR's mandate. Consequently, this prioritisation was taking place through UNHCR country offices.

<sup>29</sup> *Act LV of 2007 on Asylum*, available at: <http://www.refworld.org/docid/4979cc072.html>

<sup>30</sup> The use of "partially" in the pie graph denotes this situation.

## Access to information on asylum procedures

A lot of work remained to be done in promoting access to age-appropriate information (including how to contact UNHCR) since only two focus countries (Indonesia and the United Kingdom) provided such information. In many focus countries however, this information was provided by UNHCR or NGO partners. End 2013, in Mexico, UNHCR produced a video using animation and child-appropriate language to support migration authorities to inform children in detention of their right to seek asylum. This video is available at: <https://youtu.be/93OgdoQBMnE>.

## Appointment of a qualified guardian and legal representation

The appointment of a qualified guardian and legal representation for UASC was problematic among the focus countries. Only 4 focus countries appointed a qualified guardian for UASC (Hungary, Lithuania, Malta and the United Kingdom). In some of these countries, such as Hungary, capacity-building was planned to enhance the capacities and the skills of the guardians. The appointment of a guardian to the child was not effective in other focus countries. This was the case for example in Israel, where a guideline provided that the Ministry of Social Affairs and Social Services initiated legal proceedings in the Family Court in order to appoint the custodian as a legal guardian for the minor, but this guideline was not implemented in practice.

In other countries, such as in Canada and in the US, a person could be appointed with the objective to protect the child's best interests in court or tribunal proceedings or in determining their appropriate reception placement. This was the case in the US where according to the *Trafficking Victims Protection Reauthorization Act* (2008), the government could appoint an independent 'child advocate' for child trafficking victims and other vulnerable unaccompanied children, although it was only done for a minority of UASC. In Canada, there was no guardian appointed *per se*, but a "designated representative" with a prescribed limited role to provide support to UASC in detention reviews at the Immigration Division and later on, at the Immigration and Refugee Board status determination hearing only.

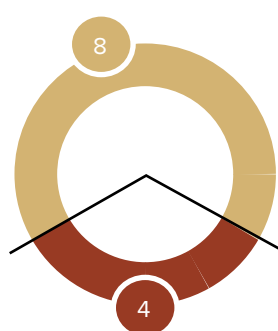
"Guardian" refers to an independent person with specialized skills who looks after the child's best interests and general well-being. Procedures for the appointment of a guardian must not be less favourable than the existing national administrative or judicial procedures used for appointing guardians for children who are nationals in the country. "Legal representative" refers to a lawyer or other person qualified to provide legal assistance to, and inform, the child in the asylum proceedings and in relation to contacts with the authorities on legal matters.<sup>31</sup>

UNICEF's *Technical Note on Age Assessment* indicates that age assessments should only be initiated if serious doubt about the child's age exists and as a measure of last resort. In these circumstances, UASC should have a guardian appointed to support them through the age assessment procedure. The guardian also has a key role in ensuring that the child's views are heard and that the child fully understands the process.<sup>32</sup>

<sup>31</sup> UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>. See also ExCom, *Conclusion No. 107*, para. (g)(viii), CRC, *General Comment No. 6*, paras. 33–38, 69, and UN High Commissioner for Refugees (UNHCR), *Guidelines on Unaccompanied Children Seeking Asylum*, op cit., p. 2 and paras. 4.2, 5.7, 8.3, 8.5.

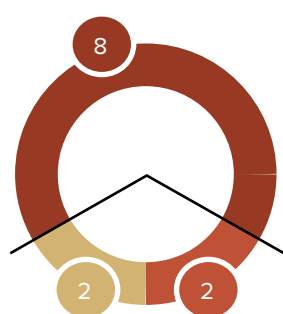
<sup>32</sup> UN Children's Fund (UNICEF), *Age Assessment: A Technical Note*, January 2013, standards 2 and 5, available at: <http://www.refworld.org/docid/5130659f2.html>.

In 2013, legal representation was provided for UASC in only 2 of the 12 focus countries (Lithuania and the United Kingdom). In Israel, legal representation was provided for UASC but only for the purpose of their release from detention. In Canada, the right to retain and instruct counsel at own expense was enshrined in law. In practice, legal representation was not automatically provided to UASC who were subject to a legal aid application process, however it was generally successful. In the United States, some UASC were provided with legal representation. In Thailand, in the context of UNHCR’s mandate on refugee status determination, the appointment of legal representation occurred through the involvement of NGOs and was not applied systematically to all UASC.<sup>33</sup>



**Graph 13:** UASC were appointed a qualified guardian in the focus countries

■ Yes ■ No



**Graph 14:** UASC were provided legal representation in the focus countries

■ Yes ■ No ■ Partially

SUB-GOAL 3:

## ALTERNATIVE RECEPTION/CARE ARRANGEMENTS (INCLUDING FOR FAMILIES) ARE AVAILABLE AND APPROPRIATE

The Global Strategy encourages countries to make alternative reception/care arrangements available to UASC and families. These alternatives should respect the principle of minimum intervention and fulfil the best interests of the child, along with his or her rights to liberty and family life. They may include foster care, community-based support with proper supervision, age-appropriate and small scale open reception centres. Family-based care arrangements should be prioritised, with residential and institutional care being used always as a last resort. In practice, alternative care arrangements are most effective when designed and approved by competent child protection authorities, in close coordination with asylum or migration authorities, and when they are integrated into existing national child protection systems.

The analysis of the situation in the focus countries in 2013 showed that the availability of alternative care arrangements for UASC was relatively high. In 8 of the 12 focus countries (all except Malaysia, Mexico, Thailand and Zambia), UASC had access to temporary or alternative care arrangements, either through the system available to national children, or via specific arrangements dedicated to non-national children. In different countries, the provincial or local level authorities were charged with the duty to find an appropriate solution for the child. In 2013, in Malaysia and Thailand, this access was restricted to certain groups of children.<sup>34</sup>

<sup>33</sup> The use of “partially” in the pie graph denotes this situation in Israel and Canada. Thailand is included in the group of focus countries where no legal representation was provided to UASC.

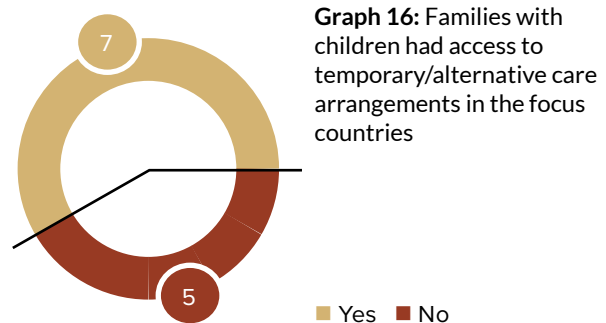
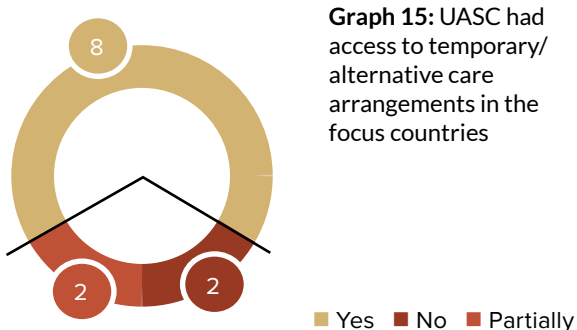
<sup>34</sup> The use of “partially” in the pie graph denotes this situation. In Thailand, based on age and gender, UASC could be referred to shelters managed by the Ministry of Social Development and Human Security (MSDHS) in the South of the country. In Malaysia, only UASC registered with UNHCR as asylum-seekers or refugees were referred to shelters organized by non-governmental organisations. These shelters were registered with the government as shelters providers for children (some of which receive government funding).





L-R Sarhad, Sardar, Revana and Sherin, at Szeged train station, just after disembarking from a bus, after their release from a detention camp in Szeged, Hungary. They spent there 3 nights after they were arrested by the police for crossing the border from Serbia. IN 2015, once released asylum-seekers have between 1 and 2 days to reach the refugee camp that they have been assigned.  
© UNHCR / A. McConnell

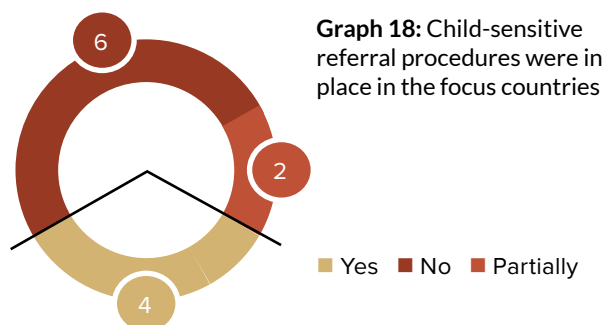
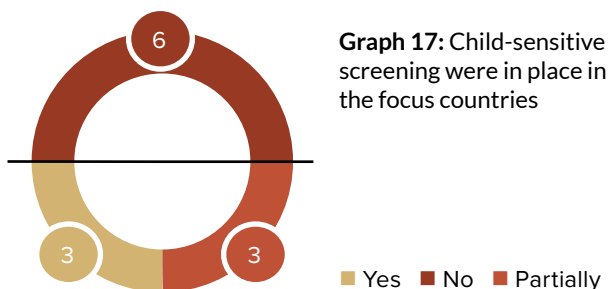
In 2013, the situation was less positive in relation to children in families, with only 7 of the focus countries (Canada, Hungary, Indonesia, Lithuania, Malta, United Kingdom and Zambia) providing access to ATDs for families. In Canada, this placement was left at the discretion of the authorities or, in the Greater Toronto region, the *Toronto Bail Program*, a government-funded professional bail programme.<sup>35</sup>



<sup>35</sup> For further information on the *Toronto Bail Programme*, see UN High Commissioner for Refugees (UNHCR), *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, PPLA/2011/01.Rev.1, A. Edwards, April 2011, available at: <http://www.refworld.org/docid/4dc935fd2.html>.

## CHILD-SENSITIVE SCREENING AND REFERRAL PROCEDURES ARE IN PLACE

Child-sensitive screening and referral procedures are important mechanisms in order to minimise harmful detention, to ensure children are released without delay and to provide necessary services and assistance.



Only 3 of the 12 focus countries (Indonesia, Malta and the United Kingdom) conducted child-sensitive screenings of vulnerabilities and the identification of specific needs of children. In Thailand, in 2013, screening only took place on an ad hoc basis in the South. In Canada, Quebec employed a regular screening process, and in Ontario, the Children Aid Societies provided such screening for those children that were referred to them. Child-sensitive screening was available in law in the US but a review of the existing practice<sup>36</sup> revealed that in 2013, it was not implemented in a child-sensitive manner at the border, particularly for children from contiguous countries.<sup>37</sup>

Referral procedures involve providing information to newly arrived children, gathering information on the welfare and best interests of the child in order to undertaken appropriate action, establishing a preliminary profile for each child, and counselling and referring the child to the relevant entities or procedures that best meet his or her needs.<sup>38</sup> These referral procedures were implemented by the authorities inside immigration detention places and at the border, in 4 of the 12 focus countries (Canada, Indonesia, the United Kingdom and Zambia). Referral procedures were only partially implemented in Thailand and in the United States.<sup>39</sup>

<sup>36</sup> See *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, Appleseed, 2011, available at: <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>. The report's conclusions remained relevant end 2013 because border authorities did not substantially modify their screening policy or the training given to staff on policy's implementation.

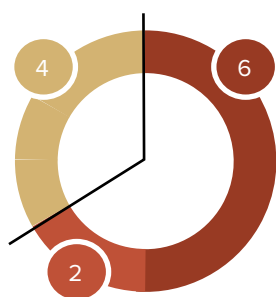
<sup>37</sup> The use of "partially" in the pie graph denotes these situations in Thailand, Canada and in the United States.

<sup>38</sup> See UN High Commissioner for Refugees (UNHCR), *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, p. 292, available at: <http://www.refworld.org/docid/4d9430ea2.html>.

<sup>39</sup> The use of "partially" in the pie graph denotes this situation. In the United States, children have access to different referral mechanisms depending on whether they are UASC or they arrive with family.

## IMMEDIATE RELEASE OF CHILDREN FROM DETENTION AND THEIR PLACEMENT IN OTHER FORMS OF APPROPRIATE ACCOMMODATION IS COORDINATED AMONGST NATIONAL AGENCIES AND, AS APPROPRIATE, WITH UNHCR

A rapid and coordinated response amongst national agencies, child protection actors and, as appropriate, UNHCR, is necessary to ensure immediate release of children from detention and their placement in other forms of appropriate care arrangements. In 2013, this coordination was already established in 4 focus countries (Indonesia, Malta, United Kingdom and the United States), partially established in 2 focus countries (Canada<sup>40</sup> and Hungary<sup>41</sup>) and was missing in 6 focus countries (Israel, Lithuania, Malaysia, Mexico, Thailand and Zambia). In Thailand, a non-governmental detention taskforce had been set up to report on individual cases in detention who could require specific and urgent attention from part of the authorities.



**Graph 19:** A coordination mechanism amongst national agencies and/or as appropriate, with UNHCR, for immediate release of children and placement in appropriate accommodation existed in the focus countries

■ Yes ■ No ■ Partially

### Goal 1. Detention checklist – Average compliance score globally

To support measuring progress against Goal 1 of the Global Strategy and its 5 sub-goals, the detention checklist includes 15 detention indicators developed based on UNHCR *Detention Guidelines*. These indicators have been detailed throughout this section of the report and are also available in table format, in the Annex. 3 potential scores have been allocated to the indicators: 1 (if the assessment was positive), 0.5 (where the assessment revealed to be partially acceptable) and zero (where the situation was negatively assessed). All indicators received the same consideration in relation to weight.

The addition of the scores<sup>42</sup> of these indicators divided by 12 – which is the number of focus countries engaged in the Global Strategy – reveals that end 2013, the focus countries average compliance score for the 15 indicators related to goal 1 was 5.29. This low score (5.29 out of 15) has been heavily impacted by the absence of legal and policy frameworks in the focus countries, to ensure that children are not detained. The non-consideration of the best interests of the child in the decision to detain in all focus countries end 2013, also largely contribute to lower this general average score. These indicators will be measured throughout the implementation of the Global Strategy, and hopefully, this average will increase throughout the time thanks to continued implementation of the Global Strategy and increased compliance by focus countries with international standards related to child protection.

<sup>40</sup> In Canada, this coordination mechanism to ensure immediate release of children from detention was not implemented in a comprehensive way across the country.

<sup>41</sup> In Hungary, though national law required immediate release of unaccompanied children from detention once it had been established that he or she is a child, in practice there were various shortcomings in the identification of children and the timely release following identification. In Canada, the coordination was not systematic and did not result in the immediate or automatic release of all UASC from detention.

<sup>42</sup> Situation where the indicator was considered not applicable (marked as N/A in the table in the annex) were not included in the calculation.

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

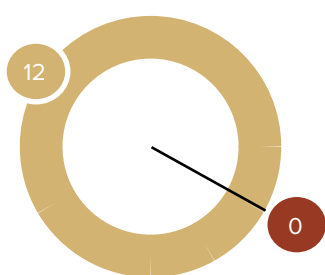
An “alternative to detention” (ATD) is not a legal term but refers to any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. As some alternatives to detention also involve various restrictions on movement or liberty (and some can be classified as forms of detention), they are also subject to human rights standards.<sup>43</sup>

Lessons and good practices can be drawn from many alternatives to detention currently in use in a wide range of countries and contexts. In March 2015, UNHCR published two options papers on open reception and alternatives to detention, which documented more than 30 good examples.<sup>44</sup>

### SUB-GOAL 1:

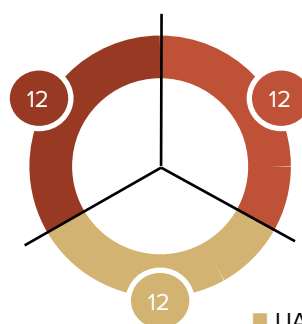
## LEGAL AND POLICY FRAMEWORKS INCLUDE ALTERNATIVES TO IMMIGRATION DETENTION

The national legislation of all focus countries included one or more provisions on ATDs, either for UASC, for families or for adults.



**Graph 20:** National legislation in the focus countries provided for alternative(s) to detention

■ Yes ■ No



**Graph 21:** Categories of persons for whom national legislation or policy frameworks in the focus countries provided alternative(s) to detention

■ UASC ■ Families ■ Adults

In practice, 11 of the 12 focus countries (Mexico being the exception) implemented at least one alternative care arrangement for children or an ATD.

*UNHCR Detention Guidelines*

*Alternatives to detention need to be considered (Guidelines 4.3)*

<sup>43</sup> UNHCR *Detention Guidelines*, p.10.

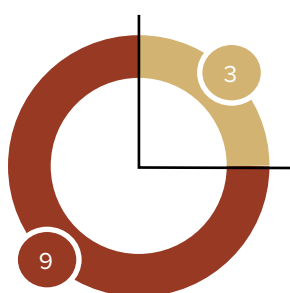
<sup>44</sup> See UN High Commissioner for Refugees (UNHCR), *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, 2015, available at: <http://www.refworld.org/docid/5523e8d94.html> and UN High Commissioner for Refugees (UNHCR), *Options Paper 2: Options for governments on open reception and alternatives to detention*, 2015, available at: <http://www.refworld.org/docid/5523e9024.html>.

## PROCEDURES ARE IN PLACE TO ASSESS AND REVIEW THE NECESSITY, REASONABLENESS AND PROPORTIONALITY OF DETENTION IN EACH INDIVIDUAL CASE

### Initial assessment

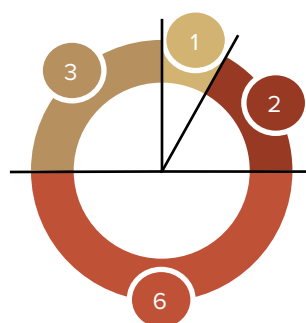
Necessity, proportionality and reasonableness assessments required strengthening in most of the focus countries. Only 3 of the 12 focus countries (Canada, the United Kingdom and Zambia) had procedures to assess the necessity, reasonableness and proportionality of detention *in each individual case* before resorting to detention.

In the United Kingdom, although the policy framework provided that necessity, proportionality and reasonableness assessments should take place prior to resorting to detention, given the extent to which detention was used in practice, it was not apparent that the policy framework was always correctly applied. In the United States, the Immigration and Customs Enforcement (ICE) used a “risk classification and assessment tool” to conduct individualized custody assessment at the moment of intake. The tool evaluated flight risk and danger to the community and identified and took into consideration certain vulnerabilities in order to inform decisions to detain or release as well as a security classification within the detained population. However, this assessment only applied to individuals who were not subject to mandatory detention<sup>45</sup> according to the United States immigration framework. Consequently, it did not apply to all refugees and asylum-seekers.



**Graph 22:** Procedures were in place in the focus country to assess the necessity, reasonableness and proportionality of detention in each individual case before resorting to detention

■ Yes ■ No



**Graph 23:** Alternatives to detention were considered in each individual case before resorting to detention measures in the focus country

■ Systematically  
 ■ In most cases  
 ■ Rarely ■ Never

*UNHCR Detention Guidelines*      *Detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose (Guideline 4.2)*

An important part of the assessment is the consideration of whether an ATD could be resorted to in each individual case before resorting to detention. ATDs were systematically considered in only 1 of the 12 focus countries (Canada). In two focus countries (the United Kingdom and Hungary), this assessment was made in most cases. Legislation in Hungary provided for the obligation to consider the application of less coercive measures. Although in most cases this assessment was made by the Office of Immigration and Nationality, the analysis of the detention decisions showed that these assessments were superficial and inadequately individualized. In the United Kingdom, policy<sup>46</sup> indicated that ATDs should be considered before detention

<sup>45</sup> Individuals, including some asylum-seekers, who seek admission at a port of entry, arrive at the border without proper documentation, or fall under one of the other categories detailed in the *Immigration and Nationality Act (INA)*, are subject to procedures that mandate detention under U.S. law. Asylum-seekers in these categories are detained pending screening for a credible fear of persecution (i.e. an accelerated procedure designed to identify unfounded claims).

<sup>46</sup> *Enforcement Instructions and Guidance*, para. 55.1.1 and 55.3, United Kingdom Visas and Immigration, 10 December 2013, updated 23 January 2014, available at: <https://goo.gl/a1YzW5>.

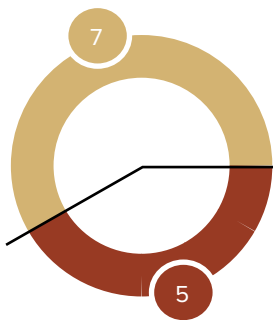


Afghans waiting for their official papers in Moira camp, Lesbos, Greece. Refugees and migrants were required to wait at least 2 days in the camp. Once they had received their papers, they were free to leave and could then take the ferry to Athens. © UNHCR / A. McConnell / July, 2015.

is used. In practice, this consideration was undertaken in most cases, except in the accelerated processing of asylum claims in detention. In 6 of the 12 focus countries, an alternative to detention was rarely considered in practice (Indonesia, Lithuania, Malaysia, Thailand, United States and Zambia). Israel, Malta and Mexico did not take such considerations in any cases.

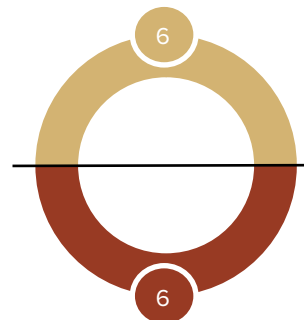
### Periodic reviews of the decision to detain

National legislation should provide for regular periodic reviews of the necessity for the continuation of detention. Analysis of the national frameworks of the focus countries in 2013 indicated that 7 of the 12 focus countries provided for the periodic reviews of the decision to detain (all except for Indonesia, Malaysia, Malta, Mexico and the United States<sup>47</sup>). In 6 of the 7 focus countries that had legislation in place providing for periodic reviews of the decision to detain, such reviews were implemented in practice. In Thailand although national legislation required a review of the decision to detain, these reviews were not always conducted.



**Graph 24:** National legislation provided that the detention decision is subject to periodic review in the focus countries

■ Yes ■ No



**Graph 25:** In practice, the decision to detain was subject to periodic review in the focus countries

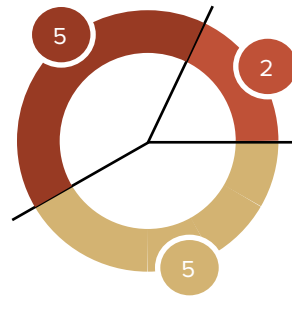
■ Yes ■ No

<sup>47</sup> In the US, the *Trafficking Victims Protection Reauthorization Act* of 2008, section 235 (c)(2) required that the decision to detain an unaccompanied child in a secure facility – the most restrictive level of detention of unaccompanied children – be reviewed, at a minimum on a monthly basis, to determine if such placement remained warranted. This important safeguard is not required by law for adults and families, or for unaccompanied children detained in less restrictive placements. The *Trafficking Victims Protection Reauthorization Act* (2008) is available at: <http://www.state.gov/j/tip/laws/>

SUB-GOAL 3:

## SCREENING AND REFERRAL MECHANISMS EXIST TO ENSURE THAT ASYLUM-SEEKERS ARE REFERRED TO ALTERNATIVES TO DETENTION

Screening is a key component of successful asylum and migration systems and it is vital to the implementation of ATDs, as it allows for better case by case determination of the necessity and proportionality considerations in any decision to detain. Screening involves identity, security and health checks, as well as importantly the detection of specific vulnerabilities.<sup>48</sup> Screening helps minimise reliance on detention, by supporting the early identification of persons with protection needs and, if applicable, their channelling into the most appropriate alternative to detention in the individual case.<sup>49</sup>



**Graph 26:** Screening and referral mechanisms were in place in the focus country to ensure that asylum-seekers are referred to alternatives to detention

■ Yes ■ No  
■ Partially

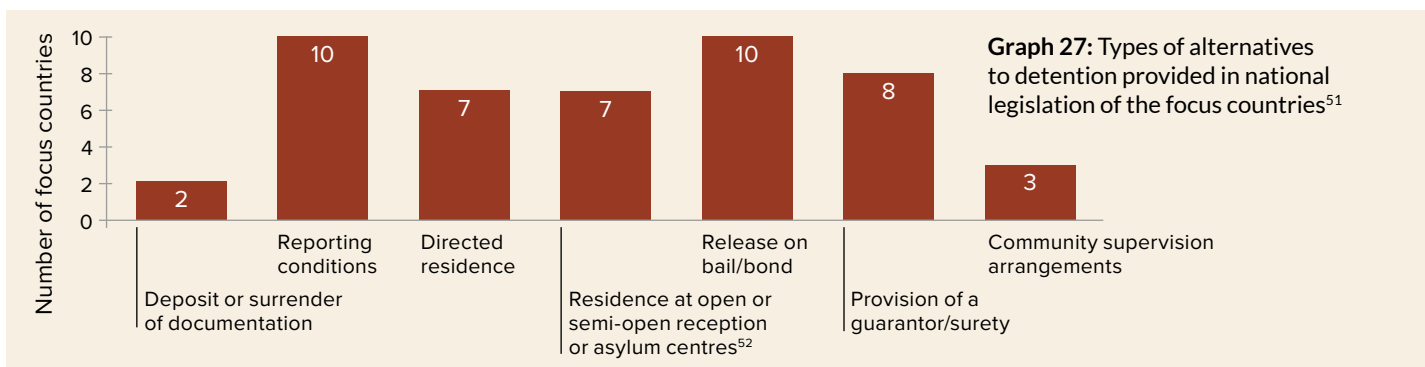
*UNHCR Detention Guidelines*      *The rights to liberty and security of person and to freedom of movement apply to asylum-seekers (Guideline 2)*

In only 5 focus countries (Canada, Indonesia, Lithuania, Malta and Zambia), screening and referral mechanisms were in place, including referrals to ATDs. At least in one case, screening also took place for individuals already in detention (Malta). In 2013, while screening processes were in place in the United Kingdom, they were not found to be comprehensive nor applied consistently through a unified policy. In the US, while a screening mechanism was in place, it did not consistently provide access to alternatives to detention for asylum seekers.<sup>50</sup>

SUB-GOAL 4:

## A VARIETY OF ALTERNATIVES TO DETENTION ARE AVAILABLE

The most popular ATDs provided for in the national legislation of the focus countries were release on bail or bond and reporting, the provision of a guarantor or a surety and directed residence. These ATDs tend to discriminate against persons with limited funds, or those who do not have connections in the community, as may be the case for many asylum-seekers. Efforts to minimize these disadvantages and explore other ATDs such as community supervision arrangements have been encouraged.



**Graph 27:** Types of alternatives to detention provided in national legislation of the focus countries<sup>51</sup>

<sup>48</sup> Particularly vulnerable groups or individuals include children, torture survivors, asylum-seekers and victims of past persecution, victims of trafficking, individuals with a serious physical or mental illness or disability, elderly, pregnant and nursing mothers, parents with a primary caretaker responsibility or individuals with a diverse sexual orientation or gender identity.

<sup>49</sup> For further information on screening, see UNHCR, *Second Global Roundtable on Reception and Alternatives to Detention: Summary of deliberations*, August 2015, available at: <http://www.refworld.org/docid/55e8079f4.html>

<sup>50</sup> The use of “partially” in the pie graph denotes this situation in the United Kingdom and in the United States.

<sup>51</sup> Multiple responses per country are possible.

<sup>52</sup> In Malaysia, upon registration by UNHCR in detention, UASC under the age of 16 are generally released into NGO-run shelters.

## Release on bail or bond

### DEFINITION:

*Bail involves a financial deposit placed with the authorities in order to guarantee the individual's future attendance at interviews or asylum or immigration proceedings. The sum of money is returned if the individual appears as required; otherwise it is forfeited. Release on bond refers to a legal agreement, sometimes with sureties, guaranteeing the faithful performance of acts and duties, such as reporting or attendance at interviews, inquiries and/or removal proceedings.*

Release on bail or bond is an ATD provided for in the domestic legislation of 10 of the 12 focus countries (all except Indonesia and Lithuania). In practice, release on bail or bond was commonly applied in conjunction with other measures, such as regular reporting, or directed residence. In the United Kingdom, for example, asylum-seekers could be released on bail with certain other restrictions: providing sureties (guarantors), reporting to the police or an immigration officer, living at a nominated address, attending bail renewal hearings and surrendering their passports (where appropriate).

In Hungary, bail was generally accompanied by both a designated place of residence and regular reporting obligations. In Malta, bail could result in provisional release, under such terms and conditions as the Immigration Appeals Board deemed fit, such as appearance before a relevant authority or provision of the name of a guarantor who could provide for their subsistence and accommodation.<sup>53</sup> In Thailand, bail was most often granted in relation to medical needs or specific vulnerabilities. The formula in the United States was similar to the other systems described: the individual paid a bond, in an amount determined by Immigration and Customs Enforcement and/or the immigration judge as a guarantee that he or she would show up for court and comply with any court orders. In Canada, release on cash bond, paid by a bondsperson, was provided in law and applied in practice. In the Greater Toronto region, the *Toronto Bail Program* acted as the "bondsperson" for those it selected and who had no family or other eligible guarantors to pay their bond, thus removing the financial discrimination inherent in other bail systems. The programme also required supervision after release. In Malaysia and Mexico, although bail was foreseen in national legislation, it was rarely implemented to the benefit of asylum-seekers.<sup>54</sup>

### Major challenges in implementation:

- Persons detained for immigration-related purposes were not always adequately informed of their right to request release on bail;
- Bail was not always applied consistently in the same country, since bail hearings were not always automatic;
- Guidance was either lacking or not made available to law enforcement officers or decision-makers on the conditions and factors to be taken into account to grant bail or to define the amount of bail;
- Specific requirements for guarantors were not always articulated or persons in detention were not adequately informed about these requirements;
- Bail could be set at very high and in some cases prohibitive amounts. Widely differing bail amounts have been observed as being applied in similar factual circumstances but also between the focus countries where this ATD was applied.<sup>55</sup>
- Access to legal representation and regular periodic reviews of the detention are important safeguards that ensure that bail is accessible, but they were not always in place or applied to detainees.

<sup>53</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR's position on the detention of asylum-seekers in Malta*, 18 September 2013, para. 52-54, available at: <http://www.refworld.org/pdfid/52498c424.pdf>.

<sup>54</sup> The law in Mexico provided that in order to achieve regular stay in the country, any foreigner subject to an administrative procedure had to, in order to be granted bail: grant the warranty established by the authorities, establish a domicile or place where he/she would remain, not leave such domicile without the authorities' prior permission, submit an application with a statement of responsibility signed by a Mexican citizen or social organization and periodically appear before the National Institute of Migration authorities.

<sup>55</sup> In Hungary, the amount varied between €500 and €5,000 as specified in law, however in practice, the minimum amount was usually set at a higher level; in Canada it varied between CAD \$5,000 and \$25,000; in Thailand it was THB 50,000; in Malta it was around €1,000. There was no fixed amount in the United Kingdom; it could range from free bail to anything over GBP 2,000.





On the day of this photograph in November 2012, 20 nationalities were present in Lyubimets detention centre in Bulgaria, including unaccompanied children from the Democratic Republic of Congo, Iraq, Mali, the Syrian Arab Republic and Rwanda. A lawyer was coming three times a week to help people make asylum claims. © UNHCR / G. Kotschy / November 2012.

## Reporting conditions

### DEFINITION:

*Periodic reporting to immigration or other authorities (for example, the police) may be a condition imposed on particular asylum-seekers during the status determination procedure. Such reporting could be periodic, or scheduled around asylum hearings and/or other official appointments. Reporting could also be to an NGO or private contractor with community supervision arrangements in place.*

Along with release on bail or bond, reporting conditions were also incorporated into the legal frameworks of 10 of the 12 focus countries (all except Indonesia and Malta). Reporting conditions were often associated with the bail system and were rarely applied as a standalone measure.<sup>56</sup>

### Major challenges in implementation:

- Frequency of reporting (depending on immigration history or perceived flight risk) was considered to be too high or reporting requirements were set at random or inconvenient times;
- Governments did not always cover the full cost of transportation to the reporting venue. In case of families with many family members, these costs could be prohibitive and affect compliance with reporting requirements;
- When the reporting was linked with the continuation of the bail, the reporting requirement to the authorities might have caused additional stress and concerns to the persons, including whether the bail would be cancelled or extended.

<sup>56</sup> In Zambia, report orders were implemented as a standalone measure; in Lithuania, reporting to territorial police was also a standalone measure but it had never been applied to asylum-seekers; only to persons subject to return procedures.

## Provision of a guarantor or surety

### DEFINITION:

---

*The guarantor or surety is to be understood as a person (an individual resident or citizen; usually a family member), an NGO or a community group, who is responsible for ensuring the attendance of asylum-seekers at official appointments and hearings, or otherwise to report as specified in any conditions of release. Failure to appear could lead to a penalty – most likely the forfeiture of a sum of money – being levied against the guarantor/surety.*

---

The provision of a guarantor or surety was enshrined in the national legislation of 8 focus countries (Canada, Israel, Lithuania, Malaysia, Mexico, Thailand, the United Kingdom and the United States) but its application varied widely amongst focus countries.<sup>57</sup>

Major challenges in implementation:

- As newcomers in host countries, asylum-seekers often lacked previous connections in the community and had limited families ties or networks to rely upon for resources;
- Guarantors may not always have been able to attend bail hearings if asylum-seekers were detained in a detention place located far away from where the guarantor lived.

## Designated or directed residence

### DEFINITION:

---

*The use of a designated or directed residence as an alternative to detention requires asylum-seekers to reside at a specific address or within a particular administrative region. Release into open or semi-open reception or asylum centres with the condition to reside at that address is another form of directed residence.*

---

National frameworks in 7 of the 12 focus countries (all except Israel, Malaysia, Malta, the United States and Zambia) provided for directed or designated residence as an available ATD. In Lithuania for example, the Foreigners Registration Centre contained an accommodation facility where individuals could be assigned based on a court decision. Freedom of movement was generally respected, with individuals permitted to leave the centre for periods of up to 24 hours, after notifying the duty officer. In Hungary, legislation allowed for designated residence in private accommodations, a reception centre, a community shelter or the area of a designated county.

In 2008, Thailand adopted the *Anti-trafficking in Persons Act*, which provided for temporary protection and designated residence for those determined to be victims of trafficking. In Canada, individuals could be accommodated in shelters according to their specific vulnerabilities. In Indonesia, the State organised shelters for specific groups (namely, UASC and Rohingya).

In the United Kingdom, directed residence was associated with bail, temporary admission, and release on restrictions. Directed residence could be either accommodation found by the applicant or, where the individual was unable to find accommodation independently, provided by the authorities. In the case of the former, the individual had to inform the authorities of the residential address so that it could be recorded as the bail address. Where the individual subsequently changed accommodation, he or she had a duty to notify the authorities and have the bail conditions amended. Mexico had a provision for directed residence in its national legislation but did not implement it as an ATD in practice. In Zambia, though not foreseen in national legislation, a transit centre run by UNHCR's partner operated as a designated residence for vulnerable groups while their refugee claims were being processed.

---

<sup>57</sup> In Lithuania or Mexico, for example, it was never or rarely resorted to, whereas in the UK its application was more common.

## Deposit or surrender of documentation

### DEFINITION:

---

*Asylum-seekers may be required to deposit or surrender identity and/or travel documentation (such as passports). In such cases, individuals need to be issued with substitute documentation that authorises their stay in the territory and/or release into the community.*

---

In 2 focus countries (Canada and the United States), deposit or surrender of documentation was applied. In Canada, a condition of release for foreign nationals subject to a removal order could be the deposit of a completed application for a passport or travel document to the Canada Border Services Agency as a proof of their preparation to depart the country. In that case, any completed application provided by a foreign national who made a claim for refugee protection should not be divulged to government officials of their country of nationality or, if there was no country of nationality, their country of previous habitual residence, as long as the removal order to which the foreign national was subject was not enforceable.<sup>58</sup> In the United States, individuals released on an ATD were required to surrender their travel documents. As such, it was not a separate ATD, but rather a component of each of them, included in the corresponding regulations.

## Community supervision arrangements and case management

### DEFINITION:

---

*There are a range of options that can permit individuals and families to reside in the community with a degree of support and guidance (“supervision”) and/or case management. Living independently in the community in private accommodation is the preferred approach, to allow asylum-seekers and others to resume as far as possible “normal lives”. The type and degree of support and guidance takes into account the specific needs and vulnerabilities of each individual or family. These arrangements can vary greatly depending on the implementation context, yet best practice includes providing support for finding accommodation, accessing education and health services, providing referrals to legal representation, and support in finding work or other related opportunities, as applicable. Many community-based reception arrangements include a component of case management. Case management is a strategy for supporting and managing individuals while their asylum or other claims are being considered, with a focus on informed decision making, timely and fair status resolution and improved coping mechanisms and well-being.*

---

In 2013, only 3 of the 12 focus countries (Canada, Israel and the United States) had introduced community supervision arrangements. A pilot project of release to community-based support arrangements with intensive case management was being implemented in the United States by two NGOs (the Lutheran Immigration and Refugee Service, and the US Conference of Catholic Bishops) who ensured that individuals understood what was happening with their cases and supported them in finding, *inter alia*, housing, legal representation, medical care, psycho-social assistance and counselling while their cases were in progress. Referrals could be initiated by either the NGOs or ICE. Participants in the program included survivors of torture, children about to turn 18 and who would otherwise be detained, individuals that identified as lesbian, gay, bisexual, transgender or intersex persons, individuals who had primary responsibility for children, and pregnant or nursing mothers, as well as those pursuing an asylum application or other forms of protection. Those subject to mandatory detention<sup>59</sup> under United States immigration law were excluded from the program. When first identified by ICE, the individual was obliged to give his or her consent to the program and sign a privacy waiver. He or she was then referred to NGOs who also conducted an independent assessment for participation in the program, taking into account existing housing capacities and the specific needs and vulnerabilities of the individual. ICE retained the final decision regarding enrolment of individuals in the community-based program. In Israel,

---

<sup>58</sup> Immigration and Refugee Protection Act Regulations, SOR/2002-227, Section 250 and 251, Last updated 15 September 2015, Minister of Justice, available at: <http://goo.gl/EEdlIL>

<sup>59</sup> See footnote 37.

community supervision was only relevant for UASC, who were released from detention and placed under the supervision of a custodian/guardian in the community. In addition, asylum-seekers who were recognized as victims of trafficking by the State and for whom there was no room at a state-run shelter could be released to the care of a specific individual in the community, but without specific support from the State.

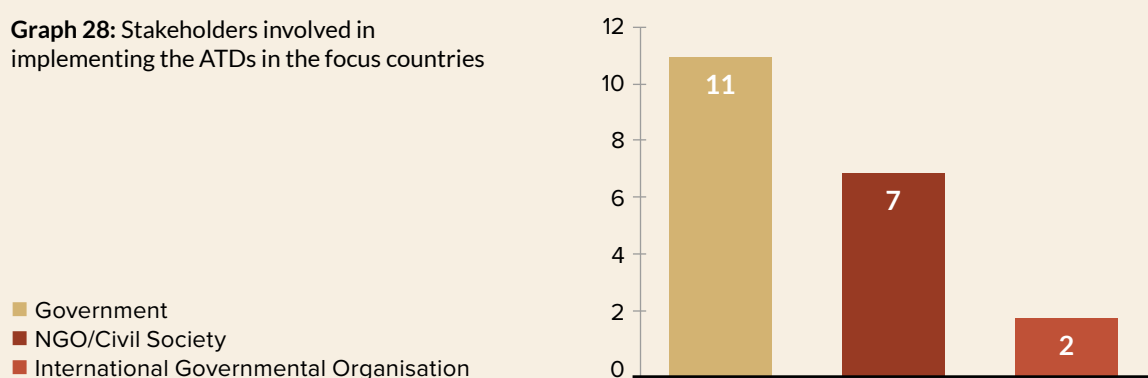
## Success factors of ATDs

The following elements have been widely found to contribute to the success of alternatives to detention:

- Treating asylum-seekers (and migrants) with dignity, humanity and respect throughout the relevant asylum or migration procedure;
- Providing clear and concise information about rights and duties under the alternative to detention and the consequences of non-compliance;
- Providing asylum-seekers with legal advice, including on their asylum applications and options available to them should their asylum claim be rejected. Such advice is most effective when made available at the outset of and continuing throughout relevant procedures;
- Providing access to adequate material support, accommodation and other reception conditions;
- Offering individualized “coaching” or case management services.<sup>60</sup>

Successful alternatives also frequently involve joint government and civil society collaboration. Clear delineation of roles and responsibilities is essential, especially between those involved in the case management, the guidance and service provision functions and any compliance or enforcement aspects.

**Graph 28:** Stakeholders involved in implementing the ATDs in the focus countries

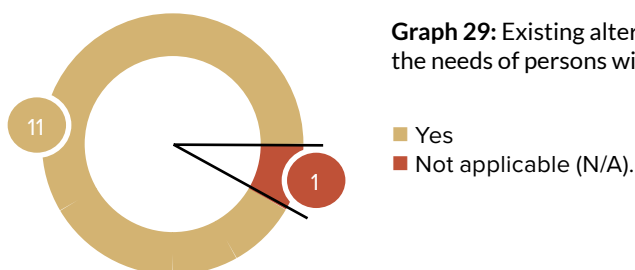


In the 11 focus countries implementing ATDs (all except Mexico), the existing alternatives were generally implemented by the government. In 7 of 12 focus countries, NGOs or civil society actors also provided important contributions to the functioning of alternatives (Canada, Indonesia, Malaysia, Thailand, United Kingdom, United States, and Zambia). In 2 of the 12 focus countries (Indonesia and Zambia), international organisations were also actively participating in the application of ATDs.

<sup>60</sup> See the definition of case management, in the related section above.

## ALTERNATIVES TO DETENTION TAKE INTO CONSIDERATION THE NEEDS OF PERSONS WITH SPECIAL NEEDS OR VULNERABILITIES

In 2013, the 11 focus countries where ATDs were implemented<sup>61</sup> reported that these ATDs took into consideration the needs of persons with special needs or vulnerabilities. Many examples existed across the focus countries. In Canada, for example, various ATDs were organised by private and public actors. Specific services such as individual support, psychosocial counselling, medical care, crisis intervention, information and referral services or group activities, were available to persons with specific needs released from detention such as women in difficulty, UASC and men without resource.



### Goal 2. Detention checklist – Average compliance score globally

Similarly to Goal 1, 10 indicators related to Goal 2 have been identified and included in the detention checklist,<sup>62</sup> based on UNHCR *Detention Guidelines*, with the same consideration in relation to weight.<sup>63</sup> A counting of the score for each indicator divided by 12 – which is the number of focus countries engaged in the Global Strategy – reveals that end 2013, the average score for the 10 indicators related to goal 2 was 6.91.

This score (6.91 out of 10) was positively influenced by the fact that, end 2013 already, the national legislation of all focus countries had provisions for alternatives to detention for the following groups: UASC, children with families and adults. 2 other indicators revealed to be positively assessed in almost all focus countries: the indicator related to the implementation in practice of ATDs and the indicator which enquires about the consideration of these ATDs of the needs of persons with special needs or vulnerabilities. The success of the assessments for indicators also tells us that a more detailed analysis will be needed in the coming years, in relation especially to the evaluation criteria of these ATDs and their implementation. One of the major impediments though, to a higher average compliance score for Goal 2, end 2013, was the negative assessment given by a majority of focus countries to the indicators “Were procedures in place to assess the necessity, reasonableness and proportionality of detention in each individual case before resorting to detention”. In the coming years, these 10 indicators will be measured again, to measure any improvements in the ATD situation.

<sup>61</sup> The use of “N/A” in the pie graph denotes the situation in Mexico where no ATD was implemented in 2013.

<sup>62</sup> See annex.

<sup>63</sup> To measure the progress made under goal 2, 3 potential scores have been allocated to the indicators: 1 (if the assessment was positive), 0.5 (where the assessment revealed to be partially acceptable) and zero (where the situation was negatively assessed). Situation where the indicator was considered not applicable (marked as N/A in the table in the annex) were not included in the calculation.

# ENSURE THAT CONDITIONS OF DETENTION, WHERE DETENTION IS NECESSARY AND UNAVOIDABLE, MEET INTERNATIONAL STANDARDS

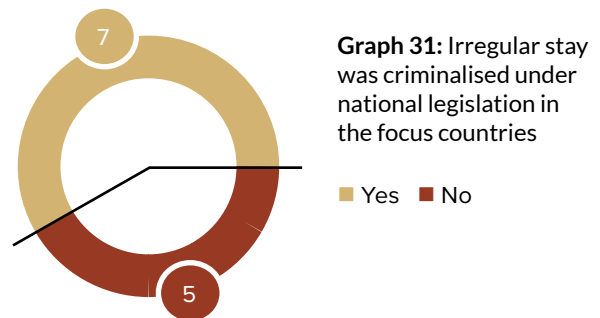
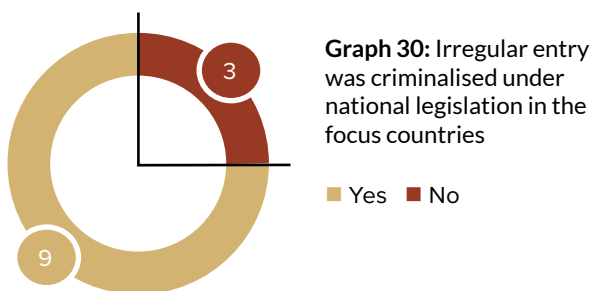
SUB-GOAL 1:

## LEGAL AND POLICY FRAMEWORKS RELATED TO DETENTION ARE IN ACCORDANCE WITH INTERNATIONAL STANDARDS

A wide range of provisions were established in law or in the policy frameworks of the focus countries in an effort to meet international standards on detention. Given the number of safeguards and international standards in existence (see UNHCR *Detention Guidelines*), this report selects several for analysis in this last section dedicated to Goal 3 of the Strategy.

### Criminalisation of irregular entry or stay

Only in 3 of the 12 focus countries, national legislation did not criminalize irregular entry<sup>64</sup> (Canada, Malta and Mexico). All the other focus countries did criminalize the irregular entry of asylum-seekers under national legislation, in contravention of the *1951 Refugee Convention*<sup>65</sup>. Irregular stay was also criminalized in most of the focus countries (with the exception of Canada, Indonesia, Malta, Mexico and the United States). In Lithuania, irregular entry or stay were both criminalised in national legislation, but the legislation provided for exemptions with respect to foreigners seeking asylum. In practice however, penalties were often applied to asylum-seekers for their irregular entry in 2013.



<sup>64</sup> For the purpose of this report, we consider that focus countries do “criminalise” irregular entry or stay when the fact of entering or residing irregularly in the country is considered as a criminal offense (as opposed to an administrative offense), punishable under the existing penal code or legislation.

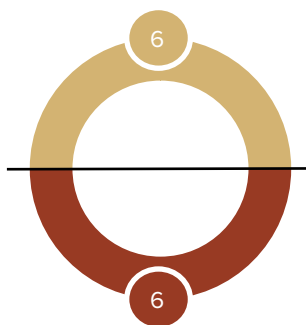
<sup>65</sup> Art. 31 of the *1951 Refugee Convention* provides that asylum-seekers shall not be penalised for their illegal entry or stay, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence.



Somali asylum-seekers leaving the migration holding centre in Managua, Nicaragua. © UNHCR / C. Mateos / January 2008.

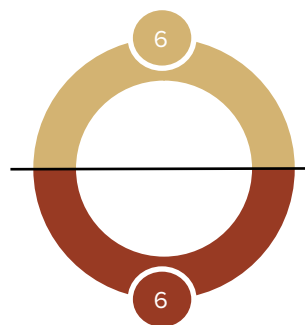
## Initial detention decision confirmed

International standards require that national legislation provides for a prompt review of the initial decision to detain, ideally automatically and in the first instance, within 24-48 hours of the initial decision to detain the asylum-seeker.<sup>66</sup> The reviewing body must be independent of the initial authority and possess the power to order release or to vary any conditions of release. This important safeguard was present in the legal framework of half of the focus countries<sup>67</sup> (Canada, Hungary, Israel, Lithuania, Thailand, and Zambia). The practice in these 6 countries was in accordance with their legislation: the initial detention decision was generally followed by a judicial or independent administrative authority decision to release or continue to detain.



**Graph 32:** National legislation in the focus countries provided for the initial detention decision to be systematically followed by a judicial or independent administrative authority decision to release or detain

■ Yes ■ No



**Graph 33:** In practice, in the focus countries, the initial detention decision was systematically followed by a judicial or independent administrative authority decision to release or detain

■ Yes ■ No

### UNHCR Detention Guidelines

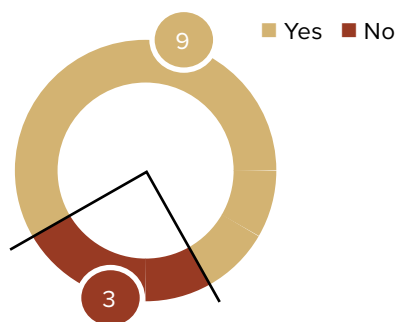
*If faced with the prospect of being detained, as well as during detention, asylum-seekers are entitled to be brought promptly before a judicial or other independent authority to have the detention decision reviewed. This review should ideally be automatic, and take place in the first instance within 24-48 hours of the initial decision to hold the asylum-seeker. (Guideline 7)*

<sup>66</sup> See UNHCR *Detention Guidelines*, Guideline No. 7.

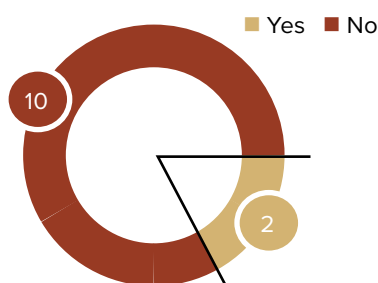
<sup>67</sup> It is important to note that not all of these countries complied with the timeframe of 24-28 hours for the initial review of the decision to detain set in the international standards. In Israel, for example, the *Law for the Prevention of Infiltration (Offenses and Jurisdictions) (Amendment No. 4 and Temporary Order)*, 2013 called for a review of the initial detention decision by an independent reviewing body within 10 days of the first day of detention (Article 30E(1)(a)).

## Access to legal advice

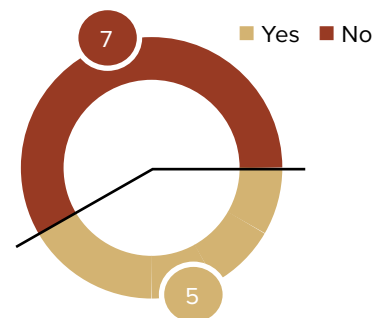
The right to access legal advice was provided for in law in 9 of the 12 focus countries (Canada, Hungary, Lithuania, Malaysia, Mexico, Thailand, the United Kingdom, the United States and Zambia). In practice, however, access was provided in only 2 of the 12 focus countries (the United Kingdom and Indonesia). It is of concern to note that in only 5 focus countries (Canada, Lithuania, United Kingdom, United States and Zambia) detainees were informed of their right to legal advice.



**Graph 34:** National legislation in the focus countries enshrined the right to access legal advice while in detention



**Graph 35:** In practice, there was access to legal advice while in detention for all detainees in the focus countries



**Graph 36:** Persons in detention in the focus countries were informed of their right to legal advice

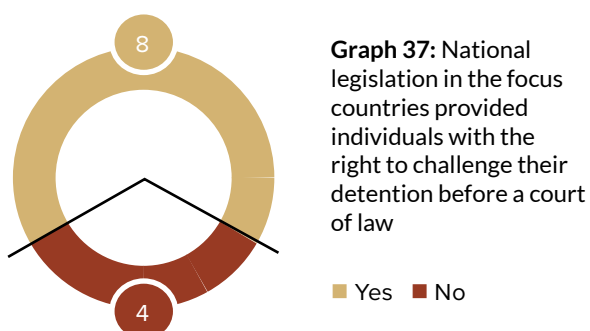
Main challenges related to access to legal advice included:

- Cooperation with all relevant actors (legal organisations, lawyers, detention staff, etc.) to ensure all detainees are informed of their right to access legal advice;
- Long travel distances to immigration detention places by service providers (NGO, bar association, lawyers, etc.) could impede access to legal advice;
- Lack or unavailability of lawyers to work on a pro bono basis;
- Lack of interpreters could hinder the work of lawyers.

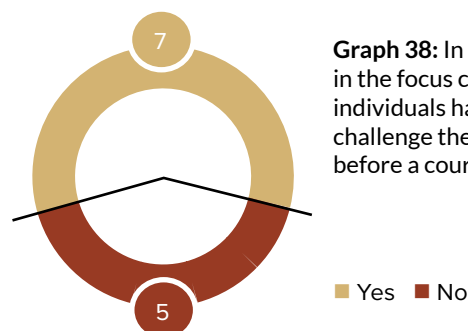
UNHCR Detention Guidelines

*Decisions to detain or to extend detention must be subject to minimum procedural safeguards. If faced with the prospect of being detained, as well as during detention, asylum-seekers are entitled to be informed of the right to legal counsel. Free legal assistance should be provided where it is also available to nationals similarly situated and should be available as soon as possible after arrest or detention to help the detainee understand his or her rights. (Guideline 7)*

## Right to challenge the legality of detention before a court of law (habeas corpus)



**Graph 37:** National legislation in the focus countries provided individuals with the right to challenge their detention before a court of law



**Graph 38:** In practice, in the focus countries, individuals had the right to challenge their detention before a court of law



In 7 of the 12 focus countries (all except for Hungary, Indonesia, Malaysia, Malta and Mexico<sup>68</sup>), both national legislation and practice allowed a person in detention to challenge his or her detention before a court of law. In Malta, the legal remedies available did not provide sufficient guarantees to prevent arbitrary detention of asylum-seekers because they were ineffective in terms of their accessibility, scope and speed. While it was possible to challenge the reasonableness of one's detention before the Immigration Appeals Board, a quasi-judicial body, several decisions of the European Court of Human Rights<sup>69</sup> have confirmed that this did not satisfy the requirement for a speedy review of the lawfulness of detention. In Malaysia, under the *Immigration Act 1959/63*, foreigners were able to challenge their detention only during the pre-trial stage but not at a post-trial stage as there was no provision for judicial review of any act done or any decision made by the Minister or Director General.<sup>70</sup> In Hungary, national law only provided for an "objection" to be submitted against the asylum detention order issued by the asylum authority within 72 hours. After that period, detention could only be upheld by the local district court, leaving the asylum-seeker without the possibility to challenge the legality of his or her detention before a court of law.

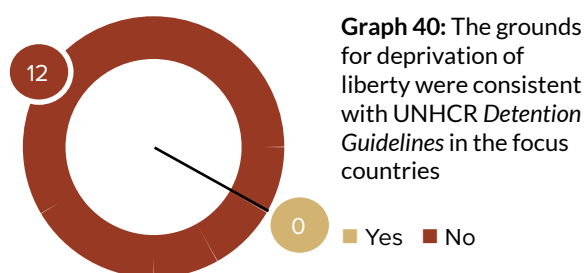
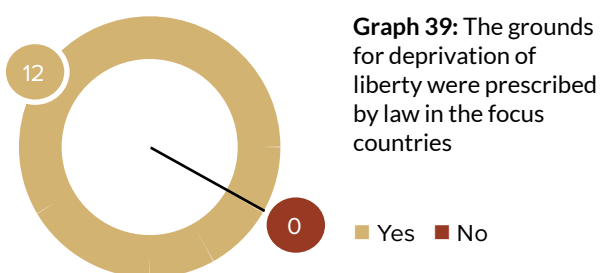
## Grounds for deprivation of liberty prescribed in national law

Detention should only be exceptionally resorted to for a legitimate purpose and, in order to meet the requirement of legal certainty, grounds for detention should be explicitly identified in national legislation and/or regulations. In the context of the detention of asylum-seekers, there are three purposes for which detention may be necessary in an individual case, and which are in line with international law, namely: public order, public health or national security.

*UNHCR Detention Guidelines*

*Detention must be in accordance with and authorised by law (Guideline 3)*

It is positive to note that all focus countries prescribed the grounds for deprivation of liberty in national law. However, in none of the focus countries were grounds consistent with *UNHCR Detention Guidelines*. The list of grounds in the national legal framework went beyond the three grounds authorized in international law.



*UNHCR Detention Guidelines*

*Detention is an exceptional measure and can only be justified for a legitimate purpose (Guideline 4.1)*

<sup>68</sup> In Mexico, while the right to challenge the detention before a court of law was provided by law, in practice, this provision was not implemented. In the other focus countries, this important provision was not provided – or not adequately provided – in national legislation, nor implemented in practice.

<sup>69</sup> European Court of Human Rights, *Suso Musa v. Malta* (application no. 42337/12), para. 56, 9/12/2013 ; European Court of Human Rights, *Aden Ahmed v. Malta* (application. No. 55352/12), para. 108.

<sup>70</sup> Malaysia: *Immigration Act, 1959-1963*, Section 51 (5)9b) (Section 59A), available at: <http://www.refworld.org/docid/3ae6b54c0.html>.



Lampedusa, Italy. © UNHCR / F. Malavolta / April 2015

SUB-GOAL 2:

---

**IN PRACTICE, UNHCR AND OTHER INDEPENDENT NATIONAL AND INTERNATIONAL MONITORING BODIES ARE GRANTED ACCESS TO PLACES OF IMMIGRATION DETENTION FOR THE PURPOSE OF REGULAR MONITORING.**

In all of the 12 focus countries, UNHCR gathered information about the presence of persons of concern in detention, either directly through on-site visits or through its partners. In line with UNHCR's *Policy*<sup>71</sup>, regular visits of immigration detention facilities aim to ensure that detainees have access to asylum procedures and assess whether detention conditions meet international standards.

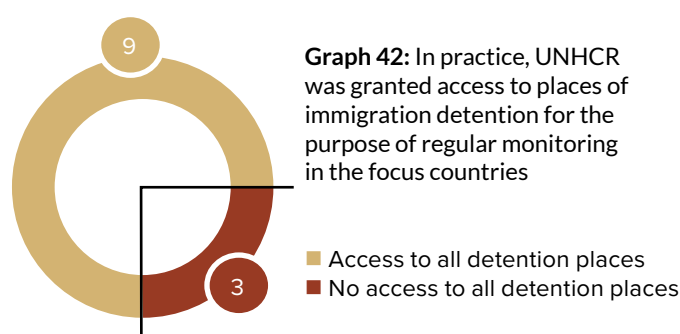
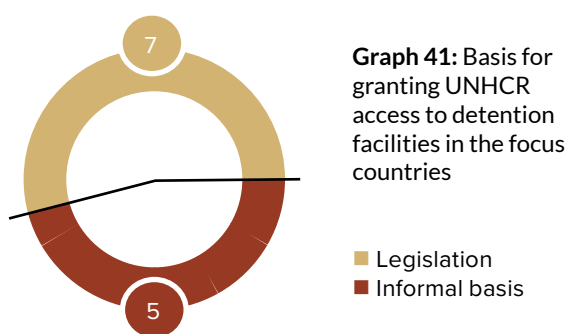
---

<sup>71</sup> UN High Commissioner for Refugees (UNHCR), *Policy on detention monitoring*, UNHCR/HCP/2015/7, 3 December 2015, available at: <http://www.refworld.org/docid/564199b54.html>

## UNHCR access to immigration detention facilities

The basis for granting UNHCR access was enshrined in national legislation or regulations in 7 of the 12 focus countries (Hungary<sup>72</sup>, Indonesia, Israel, Lithuania, Malta<sup>73</sup>, Mexico and the United Kingdom). In 5 of the 12 countries (Canada<sup>74</sup>, Malaysia, Thailand, the United States and Zambia) access was only granted on an informal basis.

In 9 of the 12 focus countries (Canada, Hungary, Indonesia, Lithuania, Malaysia<sup>75</sup>, Malta, Mexico<sup>76</sup>, the United Kingdom and the United States), UNHCR had access to all detention places on the territory. In 3 of the 12 focus countries (Israel, Thailand and Zambia) this access was limited to certain places of immigration detention; this was the case, for example, in Thailand and Israel where access was allowed to immigration detention places but not to the transit zone at the airport(s).



## OPCAT and National Preventive Mechanism

In 2013, only 4 focus countries (Hungary, Malta, Mexico and the United Kingdom) were a party to the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT)<sup>77</sup> and 1 (Zambia) was a signatory of the Optional Protocol. The 4 focus countries that were a party to the Optional protocol had also designated the National Preventive Mechanism, as required.

Mexico, for example, was a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and had designated its National Preventive Mechanism in the *Comisión Nacional de los Derechos Humanos (CNDH)*. In the context of the Global Strategy, UNHCR engaged with the CNDH on training and capacity building activities to support its monitoring activities in immigration detention places.

<sup>72</sup> In Hungary, access to asylum-seekers was ensured in national law, whereas access to persons who may be in need of international protection but did not apply for asylum was granted on informal basis to UNHCR.

<sup>73</sup> In Malta, this access was also enshrined in the country agreement between UNHCR and the government of Malta.

<sup>74</sup> Access in Canada was granted based on Articles 31 and 35 of the *1951 Refugee Convention*.

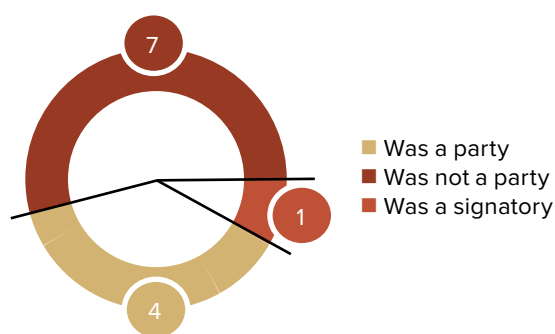
<sup>75</sup> In Malaysia, UNHCR routinely visited those detention places located in Peninsula Malaysia, but access to detention places in other parts of the territory (Sabah and Sarawak) had not been sought in 2013.

<sup>76</sup> In Mexico, end 2013, UNHCR faced difficulties to access all parts of certain detention facilities, which was problematic to ensure appropriate monitoring of detention conditions.

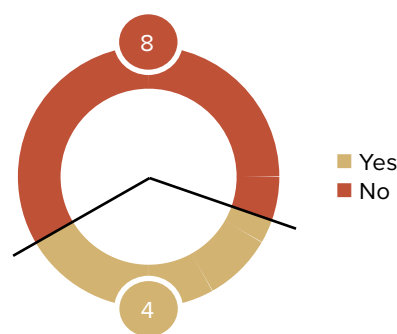
<sup>77</sup> UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (OPCAT), 9 January 2003, A/RES/57/199, available at: <http://www.refworld.org/docid/3de6490b9.html>

The three last sub-goals of the strategies under Goal 3<sup>78</sup> are difficult to report on globally, since they relate to awareness and implementation of international standards by authorities, the treatment of persons in detention and their alignment with international standards and specific measures taken by authorities to address the needs of persons in situation of vulnerability or at risk. These elements were often specific to each detention centre and were being followed at national level through the monitoring activities and reports.

**Graph 43:** Focus countries that were a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*



**Graph 44:** Focus countries that had designated the National Preventive Mechanism



UNHCR Detention Guidelines

Detention should be subject to independent monitoring and inspection (Guideline 10)

### Goal 3. Detention checklist – Average compliance score globally

Similarly to the analysis made in the last sections related to Goal 1 and 2,<sup>79</sup> a calculation of the focus countries average compliance score for the indicators corresponding to Goal 3 in the detention checklist was made for Goal 3. The average score for the 18 indicators related to goal 3 end 2013 was 8.62.

This middle score (8.62 out of 18) was certainly influenced by the fact that in none of the focus countries, the detention grounds set in national legislation were consistent with UNHCR *Detention Guidelines* and most of the focus countries did criminalise irregular entry (9 focus countries out of 12). The fact that more than half of the focus countries (7 out of 12) were not a party to the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhumane or degrading Treatment or Punishment*, hence, had not nominated a National Preventive Mechanism, also contributed to lower this average and reveal important challenges to be taken up in the upcoming years.

<sup>78</sup> Sub-goal 3 – Authorities responsible for places of immigration detention are aware of and implement international standards regarding conditions of detention and treatment of detainees ; Sub-goal 4 – Detainees are treated in a humane and dignified manner, in accordance with these international standards ; Sub-goal 5 – Specific measures are taken to address the needs of persons in situation of vulnerability or at risk.

<sup>79</sup> To measure the progress made under goal 2, 3 potential scores have been allocated to the indicators: 1 (if the assessment was positive), 0.5 (where the assessment revealed to be partially acceptable) and zero (where the situation was negatively assessed). Situation where the indicator was considered not applicable (marked as N/A in the table in the annex) were not included in the calculation.

# ANNEX - DETENTION CHECKLIST

LEGEND:	
✓	Positive assessment
✗	Negative assessment
●	Partially
●	Implementation
N/A	Not applicable

GOAL 1: End the detention of children												
2013 detention baseline – UNHCR Global Strategy – Beyond Detention 2014-2019	Canada	Hungary	Indonesia	Israel	Lithuania	Malaysia	Malta	Mexico	Thailand	United Kingdom	United States	Zambia
<b>SUB-GOAL 1: Legal and policy frameworks ensure that children are not detained, except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period.</b>												
Did the legal framework ensure that children are not detained, except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period?	✓	✓	✗	✗	✗	✗	✗	✗	✗	✓	✗	✗
Did the policy framework ensure that children are not detained, except in exceptional circumstances, as a measure of last resort, for a legitimate purpose and for the shortest possible period?	✓	✓	✗	✗	✗	✗	✗	✗	✗	✓	✗	✗
In practice, were unaccompanied or separated children not detained?	✗	✗	✗	✓	✓	✗	✗	✗	✗	✗	✗	✗
In practice, were children in families not detained?	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
<b>SUB-GOAL 2: Best interests of the child prevail: prioritisation of asylum processing and/or family tracing/reunification; access to age-appropriate information (e.g. picture books) on asylum procedures (including how to contact UNHCR); guardians and/or legal representatives for children are appointed, in particular when unaccompanied or separated.</b>												
Did the decision to detain include a best interests assessment / determination of the child?	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Did detained children have access to prioritisation in asylum processing, in order to accelerate their release and placement in other forms of appropriate accommodation?	✓	●	✓	N/A	✓	✓	✗	✗	✓	N/A	✗	✓
Did UASC have access to family tracing / reunification?	●	●	✓	✓	●	✓	✓	✗	✓	✓	✓	✓
Did UASC have access to age-appropriate information (e.g. picture books) on asylum procedures, including how to contact UNHCR?	✗	✗	✓	✗	✗	✗	✗	✗	✗	✓	✗	✗
Were UASC appointed a qualified guardian?	✗	✓	✗	✗	✓	✗	✓	✗	✗	✓	✗	✗
Were UASC appointed a legal representative?	●	✗	✗	●	✓	✗	✗	✗	✗	✓	✗	✗
<b>SUB-GOAL 3: Alternative reception/care arrangements are available and appropriate: examples include foster care, community supervision/support, age appropriate open reception centres with proper supervision, etc.</b>												
Did UASC have access to temporary/alternative care arrangements (incl. accommodation) as available to national children or any other specific arrangements dedicated to (non-national) UASC children?	✓	✓	✓	✓	✓	●	✓	✗	●	✓	✓	✗
Did families with children have access to temporary/alternative care arrangements?	✓	✓	✓	✗	✓	✗	✓	✗	✗	✓	✗	✓
<b>SUB-GOAL 4: Child-sensitive screening and referral procedures are in place in order to refer them to relevant child protection institutions or organisations without delay and ensure they receive necessary services and assistance (e.g. through Best Interests Assessment or Determination Procedures and care arrangements).</b>												
Were child-sensitive screening in place (inside immigration detention places and also outside detention, e.g. at the borders)?	●	✗	✓	✗	✗	✗	✓	✗	●	✓	●	✗
Were child-sensitive referral procedures in place (inside immigration detention places and also outside detention, e.g. at the borders)?	✓	✗	✓	✗	✗	✗	✗	✗	●	✓	●	✓
<b>SUB-GOAL 5: Immediate release of children from detention and their placement in other forms of appropriate accommodation is coordinated amongst national agencies and, as appropriate, with UNHCR</b>												
Was there a coordination mechanism amongst national agencies and/or as appropriate, with UNHCR for immediate release of children and placement in appropriate accommodation?	●	●	✓	✗	✗	✗	✓	✗	✗	✓	✓	✗

## GOAL 2: Ensure that alternatives to detention are available in law and implemented in practice

2013 detention baseline – UNHCR Global Strategy – Beyond Detention 2014-2019		Canada	Hungary	Indonesia	Israel	Lithuania	Malaysia	Malta	Mexico	Thailand	United Kingdom	United States	Zambia
<b>SUB-GOAL 1: Legal and policy frameworks include alternative(s) to immigration detention.</b>													
National legislation provided for alternatives to detention for:	Unaccompanied and separated children	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Children with families	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Adults	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
What types of alternatives to detention were provided in national legislation?	Deposit or surrender of documentation	•										•	
	Reporting conditions	•	•		•	•	•		•	•	•	•	•
	Directed residence	•	•	•		•			•	•	•		
	Residence at open or semi-open reception or asylum centres	•	•	•		•	•			•			•
	Release on bail/bond	•	•		•		•	•	•	•	•	•	•
	Provision of a guarantor/surety	•			•	•	•		•	•	•	•	
	Community supervision arrangements	•			•							•	
<b>SUB-GOAL 2: Procedures are in place to assess and review the necessity, reasonableness and proportionality of detention in each individual case</b>													
Were procedures in place to assess the necessity, reasonableness and proportionality of detention in each individual case before resorting to detention?		✓	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗	✓
Did the authorities examine alternatives to detention in each individual case before resorting to detention?	Systematically	✓											
	In most cases		✓								✓		
	Rarely			✗		✗	✗			✗		✗	✗
	Never				✗			✗	✗				
Did national legislation provide that the detention decision is subject to periodic review?		✓	✓	✗	✓	✓	✗	✗	✗	✓	✓	✗	✓
In practice, was the detention decision subject to periodic review?		✓	✓	✗	✓	✓	✗	✗	✗	✗	✓	✗	✓
<b>SUB-GOAL 3: Screening and referral mechanisms exist to ensure that asylum-seekers are referred to alternatives to detention.</b>													
Were there screening and referral mechanisms in place (e.g. at the border, upon disembarkation, prior or while in detention) to ensure that asylum-seekers are referred to alternatives to detention?		✓	✗	✓	✗	✓	✗	✓	✗	✗	•	•	✓
<b>SUB-GOAL 4: A variety of alternatives to detention are available (e.g. from reporting conditions to community placement)</b>													
Were there alternatives implemented in practice?		✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓
Who was involved in implementing the ATDs?	Government	•	•	•	•	•	•	•		•	•	•	•
	NGO/Civil Society	•		•			•			•	•	•	•
	International Governmental Organisation			•									•
<b>SUB-GOAL 5: Alternative(s) to detention take(s) into consideration the needs of persons with special needs or vulnerabilities. Community reception arrangements, in particular for children and families, are prioritised.</b>													
Did the existing alternative(s) to detention take into consideration the needs of persons with special needs or vulnerabilities?		✓	✓	✓	✓	✓	✓	✓	N/A	✓	✓	✓	✓

**GOAL3: Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards**

2013 detention baseline – UNHCR Global Strategy – Beyond Detention 2014-2019		Canada	Hungary	Indonesia	Israel	Lithuania	Malaysia	Malta	Mexico	Thailand	United Kingdom	United States	Zambia
<b>SUB-GOAL 1: Legal and policy frameworks related to detention are in accordance with international standards and in particular provide for access to places of immigration detention to UNHCR and other independent national or international monitoring bodies.</b>													
Was irregular entry not criminalised under national legislation?		✓	✗	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Was irregular stay not criminalised under national legislation?		✓	✗	✓	✗	✗	✗	✓	✓	✗	✗	✓	✗
Were the grounds for deprivation of liberty prescribed by law?		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗
Were these grounds consistent with UNHCR <i>Detention Guidelines</i> ?		✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Did the authorities use appropriate screening or assessment tools to inform their decision to detain?		✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Did national legislation enshrine the right to access legal advice while in detention?		✓	✓	✗	✗	✓	✓	✗	✓	✓	✓	✓	✓
In practice, was there access to legal advice while in detention for all detainees?		✗	✗	✓	✗	✗	✗	✗	✗	✗	✓	✗	✗
Were people detained informed of their right to legal advice?		✓	✗	✗	✗	✓	✗	✗	✗	✗	✓	✓	✓
Did national legislation provide for the initial decision to detain to be systematically followed by a judicial or independent administrative authority decision to release or detain?		✓	✓	✗	✓	✓	✗	✗	✗	✓	✗	✗	✓
In practice, was the initial detention to detain systematically followed by a judicial or independent administrative authority decision to release or detain?		✓	✓	✗	✓	✓	✗	✗	✗	✓	✗	✗	✓
Did national legislation provide for individuals to have the right to challenge their detention before a court of law?		✓	✗	✗	✓	✓	✗	✗	✓	✓	✓	✓	✓
In practice, did individuals have the right to challenge their detention before a court of law?		✓	✗	✗	✓	✓	✗	✗	✗	✓	✓	✓	✓
Was there access given to asylum procedures to persons detained for immigration-related purposes?		✓	✓	✓	✓	✗	●	✓	●	●	✓	✓	✗
Was there a maximum period for immigration detention set by law?		✗	✓	✓	✗	✓	✗	✓	●	✗	✗	●	✓
Were UNHCR persons of concern not detained with persons suspected or convicted of a crime?		✗	✗	✓	✓	✗	✗	✓	✓	✗	✗	✗	✗
<b>SUB-GOAL 2: In practice, UNHCR and other independent national and international monitoring bodies are granted access to places of immigration detention for the purpose of regular monitoring.</b>													
In practice, UNHCR was granted access to all places of immigration detention for the purpose of regular monitoring		✓	✓	✓	✗	✓	✓	✓	✓	✗	✓	✓	✗
Modalities of access	Legislation		●	●	●	●		●	●		●		
	Agreement (MoU)												
	Informal basis	●					●			●		●	●
<b>Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</b>													
Was the focus country a party to the <i>Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</i>		✗	✓	✗	✗	✗	✗	✓	✓	✗	✓	✗	●
Had the focus country designated the National Preventive Mechanism?		✗	✓	✗	✗	✗	✗	✓	✓	✗	✓	✗	✗



**UNHCR**  
The UN Refugee Agency

**United Nations High  
Commissioner for Refugees**  
Case Postale 2500  
Geneva 2 1211  
Switzerland  
[www.unhcr.org](http://www.unhcr.org)