

Mexico

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

IN MEXICO, the number of asylum claims has increased in 2015 and 2016, as Guatemalans, Hondurans and Salvadorans continue to flee high rates of homicides and criminal violence. 3,423 asylum-seekers were registered in 2015, a 162% increase compared to 2013. Mexican legislation foresees mandatory detention in *estaciones migratorias* as a measure applicable to every adult person found to be in an irregular migratory situation in the country. In 2015, more than 190,000 persons were detained for immigration-related purposes, including at least 818 asylum-seekers and over 35,700 children. Alternatives to detention (ATDs) are provided in the law but only in a very limited set of circumstances, and are rarely used, in part due to practical and operational challenges; very few unaccompanied or separated children (UASC) – both migrants and asylum-seekers – benefit from alternative care arrangements.

The National Action Plan for Mexico was developed in consultation with partners such as the *Comisión Nacional de Derechos Humanos* (CNDH), the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos* (CMDPDH), the International Detention Coalition (IDC). UNHCR and its partners have also reached out to the relevant authorities, mainly the *Instituto Nacional de Migración* (INM), the *Comisión Mexicana de Ayuda a Refugiados* (COMAR) and the *Sistema Nacional para el Desarrollo Integral de la Familia* (DIF), in close coordination with the Human Rights and Democracy Division within the Ministry for Foreign Affairs, for designing and implementing actions in line with the Global Strategy.



KEY DEVELOPMENTS

- The *Regulations (Reglamento) for the Law on the Rights of Children*¹ came into force on December 3, 2015. The Regulations prohibit the immigration detention of children, both accompanied and unaccompanied,² establish the family welfare agency (DIF)'s responsibility to identify children in need of international protection and create a Child Protection Authority (*Procuraduría*), tasked, among others, with conducting Best Interest Determination procedures.
- Development and launch in June 2016 of a Protocol (standard operating procedures) by the Mexican Refugee Commission (COMAR), UNHCR and UNICEF for the identification of UASC in need of international protection by governmental authorities, particularly DIF and INM officials in the context of detention. UNHCR, COMAR and UNICEF have undertaken training of INM and DIF officials, including the *Procuraduría* for the implementation of the Protocol.

¹ *Ley general de los derechos de niñas, niños y adolescentes*, December 2014, available at: <http://goo.gl/al3VSD>; *Regulations for the Law on the Rights of Children*, December 2015, available at: <http://goo.gl/zl66O9>

² Art. 111 of the *Regulations for the Law on the Rights of Children* provides that migrant girls, boys or adolescents, whether or not traveling in the company of an adult person, shall at no time be deprived of their liberty in detention centres, nor in any other immigration detention facility.

- Launch in August 2015 of a pilot ATD project by the IDC and its national partners *Casa Alianza* and *Aldeas Infantiles*. This project proposed by the IDC to the Advisory Committee of the INM aimed to develop mechanisms of identification, referral and reception of detained asylum-seeking and migrant UASC. The initiative was adopted by INM and fits into the Mexican legal framework which foresees the possibility for the INM to resort to private accommodation when the transfer of a UASC to a lodging provided by the DIF is not possible.³ As planned and projected, this pilot project benefited 20 UASC in their release from detention, into specialized community-based care arrangements.

- Release of approximately 80 asylum-seekers by COMAR and INM in a separate pilot project, implemented from February to May 2016 in Mexico City. This group included mostly families with children headed by women. Results are yet to be published, but INM has publicly announced the plan to expand the project in 2016. UNHCR reiterated its willingness to support INM and has insisted on the immediate availability of alternatives for 200 asylum-seekers outside detention (mostly in community-based shelters).

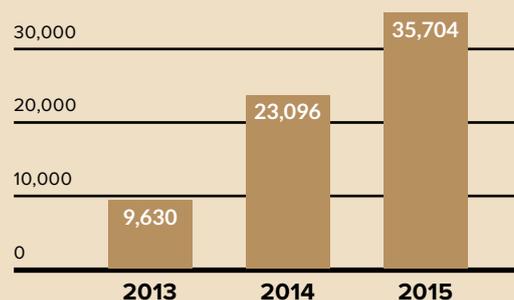
Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

With the adoption of the new *Law on the Rights of Children* in November 2014, which establishes the national family welfare agency (DIF)'s responsibility to identify children in need of international protection, and creates a Child Protection Authority tasked, among others, with conducting best interests determination procedures, UNHCR Mexico's efforts have focused on **strengthening the capacities** of these authorities to undertake their role. A **four-month capacity-building program** for 48 DIF staff members was developed jointly by UNHCR, DIF, CNDH, the IDC and World

³ Art. 176 of the *Migration Law Regulations* establishes that INM can refer children to private or public shelters other than DIF-run shelters on an exceptional basis. *Migration Law Regulations* available at: <http://goo.gl/faoeC>

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



These figures include the total number of children detained and not only asylum-seekers and refugees.

Source: *Secretaría de Gobernación, Unidad de Política Migratoria, Boletín estadístico anual 2013, 2014, 2015*, available at: <http://goo.gl/ffsd4a>, see in particular section III. *Extranjeros presentados y devueltos*.

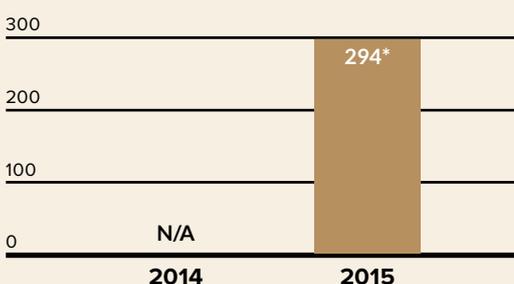
✔ Legal framework ensures that children are not detained.

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

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



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

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



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions			
Directed residence	☑	☑	☑
Residence at open/semi-open reception/asylum centres			
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety	☑	☑	☑
Community supervision arrangements			

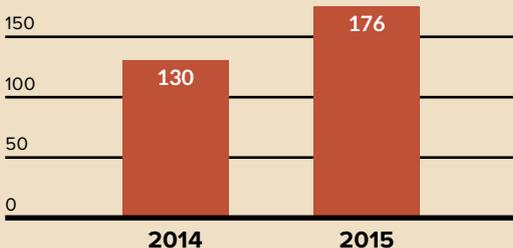
☑ available in legislation ☑ used in practice¹

¹ Rarely used.

- ☑ Mechanism allowing asylum-seekers to stay legally in the community.
- ☑ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance).
- ⊖ Partial Case management* tested in the ATD pilot project.

GOAL 3 Ensure that conditions of detention meet international standards

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



- ☑ Mexico is a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ☑ Yes ☒ No ⊖ Partially

N/A Not available U Unknown

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

* See UNHCR *Detention Guidelines*, p.44.

Vision. UNHCR provided **technical guidance for the implementation of BIA/BID** and formulated **recommendations on the conduct of child-sensitive interviews**. UNHCR also continued the **dissemination of age-appropriate and child-sensitive information materials on the asylum procedure** (a video⁴ and info-boards), developed at the end of 2013 in partnership with COMAR and the CNDH, and monitored the availability of this information and its accessibility in detention centres.

As part of its **detention monitoring program** and with a view to support **new open and protection-oriented care arrangements for children**, UNHCR conducted assessments of care conditions for UASC held in shelters in Southern Mexico. This led to the **improvement of reception conditions in shelters** in Oaxaca and Tabasco, in particular with regard to the right to education and recreational time, as well as improvements of material conditions. The office also **expanded the number of detention centres monitored** in the country, with the detention centres in Palenque, Tenosique, Tapachula and Villahermosa being monitored on a weekly basis. UNHCR's observations were shared with INM in December 2015. Finally, UNHCR also provided training on the UNHCR, APT and IDC *Monitoring Manual* to the CNDH who regularly visits detention centres, including on an unannounced basis.

In 2015-2016, UNHCR established **partnerships with organizations providing legal aid to detained asylum-seekers**, particularly in Mexico City. UNHCR also strengthened its partnership with the *Instituto Federal de Defensoría Pública* (IFDP) to expand the offer of professional and free legal aid to asylum-seekers in detention and with the CNDH, to ensure detained foreigners receive proper and timely information on how to access the asylum procedure, to facilitate access to legal advice and prevent and respond to instances of *refoulement*.

⁴ <https://goo.gl/CfAF1>



TRAININGS ORGANIZED IN MEXICO DURING THE REPORTING PERIOD

27 on Child
protection

6 on Detention
conditions standards

NUMBER OF PERSONS TRAINED IN MEXICO DURING THE REPORTING PERIOD

987 on Child
protection

89 on Detention
conditions standards

Gaps and challenges

Asylum-seekers generally remain under immigration detention for the entire duration of the asylum procedure, which contributes to claims being withdrawn. A national ATD plan, accompanied by a more robust capacity among civil society actors to absorb and ensure shelter and material assistance to those being eventually released, remain an enduring protection gap in Mexico, in particular to vulnerable groups of asylum-seekers such as families with children, LGBTI, survivors of violence, women at risk and UASC.

Although the legal framework establishes the prohibition of child immigration detention, most children remain in that situation and there is an absence of BID procedures on the ground. There is a lack of proper temporary reception options other than detention (mainly DIF-run shelters and only a few open-door civil society-run shelters for children), as well as the lack of legal representation for UASC.

Next steps

UNHCR will continue working closely with governmental authorities (i.e. COMAR, INM, DIF, and the Child Protection Authority), the IDC and other civil society partners in order to expand the pilot ATD projects conducted in 2015-2016 for UASC and families. UNHCR, together with the IDC, will promote coordination mechanisms for the development of a national ATD plan, particularly for vulnerable groups of asylum-seekers such as families with children, LGBTI, survivors of violence, women at risk and UASC.

UNHCR continues to call on migration authorities to take full advantage of existing available places among faith-based shelters that could serve as ATDs and will continue strengthening the capacity among civil society actors to ensure shelters and material assistance are available to those released from detention. UNHCR is also working with several community-based shelters in Chiapas, Tabasco and Mexico City to strengthen reception conditions for 217 asylum-seekers that have been jointly identified by INM and COMAR and are being, gradually and individually, considered by authorities for an alternative to detention. UNHCR will also continue engaging the CNDH, in particular to ensure access to asylum-seekers as well as to prevent and respond to potential instances of *refoulement*.

UNHCR is taking steps towards the establishment of further agreements with legal partners in order to ensure that an increasing number of asylum-seekers in detention have access to legal advice. This includes coordination with the IFDP and its network of regional offices providing free professional legal advice to asylum-seekers in detention.

For more information, please contact Jose Sieber Luz, Sieber@unhcr.org.

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