

NATIONAL ACTION PLAN

Canada

What is the UNHCR Global Strategy - Beyond Detention?

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 improve conditions of detention, where detention is necessary and unavoidable, to meet international standards. To support the implementation of the Global Strategy, focus countries have developed National Action Plans ('NAP'). This document is a summary and public version of the NAP.

All documents relating to the Global Strategy - Beyond Detention 2014-2019 are available at: <http://www.unhcr.org/detention>

The process of developing the National Action Plan

Following the launch of the Global Strategy-Beyond Detention in June 2014, the UNHCR Canada office drafted its National Action Plan ('NAP') in broad consultation with Government (Canada Border Services Agency (CBSA), Citizenship and Immigration (CIC), Immigration and Refugee Board (IRB) and Correctional Service), the legal and advocacy community and non-governmental organizations ('NGOs') across the country. These consultations took place in Toronto, Ottawa, Montreal, Vancouver and served two purposes: (i) to provide an overview of the Strategy to all key stakeholders; and (ii) to jointly identify and agree on key issues and activities that would become part of the NAP. Following these consultations, the NAP was finalized and officially launched on 11 December 2014 in Montreal. UNHCR also established three regional working groups in Toronto, Montreal and Vancouver (covering Central, Eastern and Western provinces of Canada) with key partners including NGOs, provincial government authorities, advocacy organizations and mental health institutions. These groups support the implementation of the Global Strategy and NAP and will meet three times a year. Bilateral meetings between UNHCR and Government focal points will take place biannually. Terms of Reference for the regional working groups have been developed and a division of labor in respect of the NAP activities for the three regional working groups is in place.

The actions foreseen

Goal 1. End the detention of children

Ending the detention of children is a key priority of the NAP with several actions listed under four sub-goals of (i) legal and policy framework are in place to ensure that children are not detained, (ii) best interests of the child prevails, (iii) appropriate alternative reception and care arrangements are available and (iv) child sensitive screening and referral procedures in place to refer them to relevant child protection institutions or organizations. Activities related to these sub-goals include: the development of a protocol for child-sensitive screening and best interests determination, awareness sessions on detention and its impact on children for government and detaining authorities, the development of a training manual for frontline officers and decision-makers on best interests of the child principle and on ending the detention of children, processing prioritization of child asylum claims, obtaining and promotion of a Designated Representative throughout the asylum process, and the obtaining of complete statistics on children in detention. Other actions will include efforts to promote the definition of a child to align with the 1989 United Nations Convention on the Rights of the Child.

Goal 2. Ensure that alternatives to detention are available in law and implemented in practice

Under Goal 2 of the Global Strategy, Canada's NAP calls for the implementation of a comprehensive ATD policy, which takes into account the special circumstances and needs of asylum-seekers. UNHCR will support the inclusion of alternatives in Government policy manuals and help develop training manuals on ATDs. Other activities will include: working with Government and civil society in order to develop a national ATD mechanism with various options including release to the community and voice recognition reporting, increased co-ordination between the IRB, CBSA and counsel to establish identity and thus enable release to an ATD, advocating with IRB decision-makers to

UNHCR Global Strategy

Beyond Detention 2014-2019

A global strategy to support Governments to end the detention of asylum-seekers and refugees



systematically review the availability of ATD in each case and in this regard, developing a protocol for the systematic consideration of ATDs prior to decision to maintain detention, developing a screening mechanism for mental health and other vulnerabilities, and promoting the appointment of third party counsellors/psychologists at all detention facilities where persons of concern are detained.

Goal 3. Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards

Under this Goal, UNHCR Canada updated its monitoring templates in line with the UNHCR, Association for the Prevention of Torture and the International Detention Coalition's *Manual on Monitoring Immigration Detention* and has engaged an NGO partner in Vancouver for regular detention monitoring under an implementing partner agreement. Other projected activities include: research and review of jurisprudence and the existing policy on detention, promotion of an independent complaint or oversight mechanism for asylum-seekers held in detention, ensuring access to services and resources in all CBSA and provincial corrections detention facilities and advocacy to eliminate the co-mingling of asylum-seekers in correctional facilities, promotion of a detention liaison function to cover all detention facilities, development of information and training materials for detaining authorities on detention standards, and the development of guidelines for the use of restraining measures during transportation.

Detention overview

In Canada, UNHCR has full access to all detention centres where persons of concern are detained and enjoys a strong and open working relationship with CBSA, the Correctional Service, and the IRB. The ability to monitor the various detention centres has enabled UNHCR to identify some important issues related to detention throughout the country and to help the authorities resolve them. Five key issues of concern to UNHCR include: the comingling of non-criminals with criminals, the lack of a national policy on transfers to correctional facilities from CBSA holding centres, the lack of implementation of ATD nationally resulting in cases of prolonged detention, the detention of asylum-seekers without criminal antecedents in correctional facilities, and children being detained in detention facilities with their parents. According to statistical data for 2013, 198 children were detained with their parents and 23 unaccompanied or separated children were detained. For the period September 2014 to June 2015, 151 children were detained with their parents and 19 unaccompanied or separated children were detained. In general, Canadian legislation recognizes that the detention of any minor is ordered only as a measure of last resort and that there are a certain number of factors to be considered, including the best interests of the child. In spite of this legal framework, in practice, the best interests of the child are not necessarily given primacy throughout the detention procedures. Child-sensitive screening such as a best interests determination and relevant training tools need to be developed for frontline Government staff and for raising awareness with detaining authorities on the impact of detention of children. Since the age of minority is not standardized across the provinces in Canada to meet the definition of a child pursuant to the UN's Convention on the Rights of the Child, compliance with this Convention will be promoted. Additionally there is need for detention liaison officers to provide support to detainees in detention facilities and to co-ordinate access to legal and other resources. Practical challenges to improving the overall detention situation principally include budget, human resources and Government engagement.

Good practices and alternatives to detention

The Immigration and Refugee Protection Act gives the IRB's Immigration Division the discretion to order the release of a foreign national and to impose any conditions that it deems necessary. The Canadian legislation also provides that a child should be detained only as a measure of last resort and that Immigration Division Members should consider a number of factors when determining whether to continue detention or to order release of a child, including his or her best interests. UNHCR continues to have full access to all detention facilities. CBSA is in the process of drafting a national detention policy as well as a Third Party Risk Management Program which outlines options for finding alternatives to detention in the community and UNHCR was invited to provide its comments and support. As one important alternative to detention offered in Canada, the Toronto Bail Program (TBP), has proven to be effective in terms of high rates of cooperation/low rates of absconding and significant cost savings in comparison to detention. Individuals released to TBP are provided with assistance and advice on how to navigate the Canadian asylum, immigration and social services systems. The TBP assists individuals to find housing and to access healthcare, social welfare and work (where permitted), or to file necessary paperwork, including applications for asylum and work permits. The TBP has recently engaged specialised staff in mental health and addiction matters. UNHCR hopes that this will lead to an increase in such persons being released to TBP although it is clear that supervision of this kind will not be suitable for all persons, hence the necessity to develop other community-based forms of alternatives to detention in co-ordination with NGOs and other civil society partners and in regions outside Ontario.

For more information, please contact Rana Khan, khanr@unhcr.org

UNHCR Canada, October 2015