

NATIONAL ACTION PLAN

Hungary

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, UNHCR offices in focus countries have developed National Action Plans ('NAP'). This document is an external summary 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

In Hungary, the National Action Plan ('NAP') was developed through internal UNHCR discussions and external consultations with various stakeholders including the Parliamentary Commissioner for Fundamental Rights acting as the National Preventive Mechanism (NPM) under the UN Optional Protocol of the Convention Against Torture (OPCAT) and NGOs working on human rights and refugees. The outcome of these consultations informed the analysis of the current detention situation in the country and provided the basis for specific actions to be carried out within the roll-out period of the Global Strategy. UNHCR has briefed the Ministry of Interior, the Office of Immigration and Nationality as well as the Police on the Global Strategy and on the envisaged activities within the NAP.

The actions foreseen

Goal 1. End the detention of children

In order to comply with the commitment taken under Goal 1 of the Strategy, UNHCR has planned different activities focusing on the first four sub-goals of the Global Strategy. In particular, UNHCR aims to seek the removal from the national law of the possibility to detain families with children. To ensure that the principle of the best interests of the child is operational, Hungary's NAP calls for the establishment of a formal national best interests determination procedure in Hungary, as well as of an effective mechanism to trace family members of unaccompanied or separated children (UASC). The NAP also foresees the development of a multidisciplinary and uniform age assessment standard operating procedure to be implemented by the Hungarian authorities. UNHCR's further activities include establishing a national coordination platform to monitor and improve the situation of UASC in Hungary with the relevant child protection actors.

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

To ensure the implementation of Goal 2 on ATDs, UNHCR will increase the awareness of authorities and judiciary of the positive impacts of alternatives to detention through the following: a) UNHCR will map good practices related to ATDs in transit migratory contexts elsewhere and present the results to the authorities and judiciary; b) UNHCR will strengthen the capacities of Government officials and the judiciary involved in detention decisions through training activities; c) further, to support the work of the judiciary, UNHCR will develop user-friendly tools to assess the necessity, proportionality and reasonableness of detention in individual cases. These activities will build on the Council of Europe and UNHCR training seminar on alternatives to detention of asylum-seekers held in June 2015 for judges and law enforcement authorities in Budapest.

UNHCR Global Strategy

Beyond Detention 2014-2019

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



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

Under Goal 3 of the Global Strategy, UNHCR will improve the awareness of law enforcement authorities and the judiciary on international standards relevant to detention through training for stakeholders involved in detention monitoring, including the Public Prosecutor's Office. UNHCR will promote the tool it developed in conjunction with the Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC): *Monitoring Immigration Detention: Practical Manual*, 2014. In order to ensure the humane and dignified treatment of detainees, UNHCR will regularly monitor detention facilities and will discuss with the authorities ways to improve standards.

Detention overview

Law and practice on administrative detention in Hungary have gone through a continuous process of change during the last years, but detention often arbitrary. Deficiencies prevail in the law (e.g. lack of effective judicial remedy), and in its application (e.g. lack of individualized assessment of the necessity of detention). The Hungarian government uses administrative detention as a deterrent for irregular migrants as well as for those who try to leave Hungary without waiting for the outcome of the asylum procedure. The police run administrative detention facilities for irregular migrants and the Office of Immigration and Nationality is responsible for administrative detention of asylum-seekers. Moreover, due to the large numbers of arrivals in 2015, the Hungarian authorities have adopted a number of severely restrictive measures including criminalisation of irregular entry. Thus, as of 15 September 2015, all those entering Hungary without authorisation through the border control fence are considered to have committed a criminal offence which is punishable by an actual or suspended term of imprisonment of up to three years and mandatory expulsion. The law further criminalizes “damaging of the border fence” and “hampering the construction work of the border fence”. Furthermore, criminal procedures are not suspended by the court in the event that the individual submits an asylum application; which also has the effect of limiting and deterring access to asylum. This stands at variance with obligations under Article 31 of the 1951 Convention relating to the Status of Refugees, to which Hungary is a State party.

UNHCR and its partners regularly monitor and provide counselling to people in detention. Detainees mention communication, information about rights, interpretation services and access to adequate services as their main problems. In addition, the necessity and proportionality tests are not applied in practice when imposing detention, despite the requirement stipulated by law.

Good practices and alternatives to detention

Good policy and practice in Hungary includes unannounced monitoring visits to administrative detention facilities by the “Parliamentary Commissioner for Fundamental Rights” acting as the National Preventive Mechanism under the UN OPCAT. Another positive feature is that Hungarian law foresees three types of alternatives to detention, namely regular reporting, designated place of residence and asylum bail. (In practice, however, asylum bail is the only ATD applied. UNHCR would like the Government to introduce a case management system supporting ATDs whereby applicants receive individual support whilst their status is being resolved and which has proven successful in other countries). Furthermore, Hungary’s national law contains the prohibition of detention of unaccompanied children, although there concerns about age assessment.

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