



# Independent Desk Review of UNHCR's Global Strategy – Beyond Detention 2014–2019

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## Executive Summary

### Context and audience of this review

In 2014, and on the occasion of the 60th meeting of the Standing Committee, UNHCR launched its Global Strategy – Beyond Detention (GSBD). The strategy was in response to the increasing challenges and concerns surrounding immigration-related detention that UNHCR was observing around the world. The strategy was anchored in research demonstrating that stringent detention policies do not deter irregular migration. The aim of the GSBD was to support governments to end the detention of asylum-seekers and refugees. It is defined by strong international and human rights frameworks that stipulate that the detention, for immigration-related purposes, of asylum-seekers, refugees and stateless persons should, as far as possible, be avoided and be a measure of last resort.<sup>2</sup> It forms part of UNHCR's mandate to closely monitor the effective enjoyment of these rights by all persons of concern to UNHCR and to intervene with the relevant authorities where appropriate.

This report presents the findings of an independent desk review<sup>3</sup> of UNHCR's Global Strategy – Beyond Detention (GSBD). It is intended to generate an overview of achievements and lessons learned from UNHCR's implementation of the GSBD at global and regional level, with a view to making recommendations for mainstreaming good practices and approaches.<sup>4</sup>

The primary audience of the review is UNHCR's Division of International Protection (DIP), regional bureaux, the Division of External Relations (DER) and the Division of Resilience and Solutions (DRS) at Headquarters (HQ). Secondary audiences are envisaged as UNHCR regional and country offices, and partners engaging in GSBD.

### Key findings

#### In general, the GSBD is seen as useful and highly relevant

Given the global context of widespread and increasing use of immigration detention for asylum-seekers and other persons of concern to UNHCR, the GSBD is considered to be highly relevant. In addition, the link between UNHCR's mandate and the GSBD was evident, allowing the latter to swiftly become an institutional priority. Furthermore, and despite the wide-ranging and complex issues it addresses, its straightforward language and framing were understood by all stakeholders, irrespective of their profile.

The GSBD is broad enough to provide a global guiding framework for legal and operational engagement on detention, yet at the same time was flexible enough to allow for adaptation to national contexts. It recognizes the centrality of the state as the primary duty holder with respect to asylum-seekers and refugees, and civil society as a key driver of accountability. Furthermore, it offered frameworks and tools that were considered useful and relevant to many countries around the globe, and not only for the countries where the strategy was rolled out. Specifically, it was found that:

- The first objective of the GSBD offered a good entry point for its overall implementation, helped by the emerging international consensus that the detention of children should end. At the same time, and despite this global common understanding, state practice continued to lag behind – with a large number of States continuing to detain children because of their migratory status. UNHCR and its partners employed a

<sup>2</sup> The GSBD has three goals namely: i) end the detention of children; ii) ensure that alternatives to detention (ATDs) are available in law and implemented in practice; and iii) ensure that conditions of detention – where detention is necessary and unavoidable – meet the international standards by securing access to places of migration detention by UNHCR and/or its partners and by carrying out regular monitoring.

<sup>3</sup> The desk review included a literature review; a questionnaire that was sent to UNHCR focal points for the roll-out of the GSBD in the 20 countries where it was implemented; interviews with UNHCR staff involved in the roll-out at global and national level as well as relevant external stakeholders representing the governments of some of the countries where the strategy was implemented, NGOs, other UN organizations and bodies.

<sup>4</sup> The review does not constitute an evaluation of the commitment and effectiveness of UNHCR offices, governments and other stakeholders in implementing the GSBD at country level.

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combination of approaches to change state practice, including judicial engagement, technical support and hands-on operational support to countries with varying levels of impact.

- The strategy's second objective capitalized on the emerging interest by governments in finding alternatives to arbitrary summary detention and the lack of investment or capacity in non-custodial measures. Piloting alternatives to detention (ATDs) therefore offered a safe and manageable way for States to explore alternative solutions. UNHCR and its partners capitalized on these opportunities through providing relevant, hands-on support and expertise, while keeping up pressure through sustained monitoring, judicial engagement and advocacy.
- The third objective of the GSBD, which forms part and parcel of UNHCR's regular protection activities, allowed some offices and their partners to reprioritize the monitoring of detention facilities – shifting their focus to systemic issues (e.g. process conditions and treatment) rather than individual considerations.

Considering the complexity of the issues that the GSBD is tackling and its ambitious agenda, many key informants found the lifespan of the GSBD (five years) to be too short. Some felt that a 10-year framework would have been more realistic.

### **The value of building a wide alliance of partners has been essential to the GSBD**

The GSBD recognized the importance of developing and strengthening partnerships to increase the effectiveness and impact of the strategy. At the global level, UNHCR's drive to foster its partnerships with the plethora of relevant stakeholders, such as the International Detention Coalition (IDC), other civil society actors, UN agencies and the human rights monitoring system, was crucial for the success of the strategy and for creating a ripple effect that was felt throughout the human rights system. Locally, the GSBD prompted UNHCR offices to expand their partnerships to include new and sometimes non-traditional actors. It also put civil society at the forefront of the process. In many instances, this strengthened its relationship with existing NGOs and helped to forge new ones. The impact of the enhanced partnerships was particularly felt in the areas of judicial engagement, piloting ATDs and more regular monitoring of detention facilities.

In implementing the GSBD, UNHCR and its partners relied primarily on building a relationship of trust with the host governments: offering technical expertise while at the same time monitoring state practice with the purpose of holding the state accountable. Furthermore, they developed context-specific menus of options that involved multiple tracks of action such as monitoring state practice, gathering data, judicial engagement, quiet diplomacy, public advocacy and reporting.

At a more strategic level, however, although it was anchored in the international human rights law framework, the GSBD did not sufficiently capitalize on this to draw attention to the relevance of its tools and findings in efforts to address the detention of both migrants and refugees.

### **The political context in countries where the GSBD was rolled out is central to policy reform and improved practice**

In some roll-out countries, policy and practical advances in the area of immigration detention pre-date the GSBD and were already set in motion by the political climate, coupled with the intense advocacy of civil society. Where the implementation of the GSBD experienced significant setbacks, UNHCR was generally unable to reverse these. The country offices engaged in these roll-outs, however, appreciated that the GSBD was broad enough to provide direction, yet flexible enough to allow for adaptation to national contexts including the gaps they had identified and the areas open to potential political influence.

While the selection of the focus countries for the GSBD was based on a set of objective criteria, more thinking could have gone into the strategy that UNHCR would adopt with governments of countries that would not cooperate with the roll-out process or that would actively oppose it.

## Good engagement across the different levels of the organization but with scope for strengthening linkages

**Role of DIP in the GSBD:** Much of the progress made was owed to active and strong leadership by the Division of International Protection (DIP), which provided direction and support to UNHCR offices in the field as well as their partners. DIP provided much-appreciated support in the design and implementation of national strategies, advocacy at all levels, building capacity and mobilizing resources. It also developed a range of tools that were appreciated for their relevance and usefulness. As the small team in DIP was balancing multiple competing responsibilities, it was not always possible to fully support regional bureaux and country offices by analysing situations in such a way as to see the “bigger picture”. Some argue that regional bureaux should have assumed that responsibility in the first place. In addition, and while the issuance of a tool dedicated to the detention of stateless persons was appreciated, it was not used as regularly as it could have been.

**Role of country offices:** UNHCR country offices were found to have played a pivotal role in rolling out the GSBD. Implementation was strongly influenced by the degree to which UNHCR offices as a whole invested in the roll-out, particularly at the level of senior management. In some roll-out countries, pushback by the respective governments led some UNHCR country offices either to deprioritize the strategy or to pursue more “behind-the-scenes” and lower-profile approaches.

**Role of bureaux:** Regional bureaux, on the other hand, seemed to have been less engaged. This was a lost opportunity, as a more active engagement by the bureaux could have positively streamlined and harmonized the implementation of the GSBD in the respective regions.

## Further resourcing required to maintain momentum around the GSBD and related capacity-building

The GSBD provided a much-needed opportunity for UNHCR to increase the knowledge of its staff and its partners on key issues pertaining to the strategy, through the launch of specific learning programmes and training opportunities. The impact of these capacity-building events went beyond learning, as different actors often went on to forge concrete joint action plans, having gained a better understanding of their potential roles and functions.

The additional resources that UNHCR managed to obtain for the GSBD were vital for its implementation, particularly at country level. Even with these resources, the roll-out of the GSBD often put an additional strain on the limited human resources. Country offices and regional bureaux will need to sustain the momentum by identifying resources within their envelopes or will risk losing opportunities to leverage the GSBD.

Recommendations	UNHCR Entity responsible	Anticipated timeline
<p>1. UNHCR should continue to integrate the GSBD goals at global, regional and national levels.</p> <p>1.1 UNHCR country operations are encouraged to:</p> <ul style="list-style-type: none"> <li>a) mainstream the goals of the GSBD in protection planning and activities;</li> <li>b) identify detention focal points and make these known to relevant national partners;</li> <li>c) carry out a comprehensive analysis of their political and operational context as relevant to detention and alternatives, including existing governmental practices, protection gaps and opportunities for progress;</li> <li>d) continue to provide tangible support to ATDs, notably those that are set up in some countries where governments have dedicated few or no resources;</li> <li>e) undertake intensified work on the detention of stateless persons in relevant contexts, in particular on data collection and advocacy.</li> </ul>	UNHCR country operations, in coordination with DIP and the regional bureaux	1–12 months
<p>1.2. To this end, UNHCR’s regional bureaux are encouraged to assume a more active role in shaping and implementing protection work around detention from 2020. This requires ongoing assessment of</p>	UNHCR’s regional bureaux in coordination	1–3 months

<p>the protection environment and concerns on detention; the assignation of clear focal points in the bureaux and, where appropriate and possible, dedication of additional human resource and financial resources. Specific ways in which they could lead this work could include:</p> <ul style="list-style-type: none"> <li>a) maintaining a comprehensive overview of the practices, challenges and opportunities, including potentially by organizing regular stock-taking exercises with partners and UNHCR detention focal points in the region;</li> <li>b) encouraging and supporting country operations to focus on detention of stateless persons as a priority;</li> <li>c) facilitating discussions; exchange of good practices; and organization of study visits between States in one or more regions;</li> <li>d) conducting regional stock-taking exercises of the achievements, challenges and future opportunities for implementing detention-related actions;</li> <li>e) identifying and allocating resources where relevant and needed to the regional and national levels to improve the implementation of the strategy;</li> <li>f) encouraging and supporting country operations to use strategic judicial engagement on detention, with the focus on ensuring respect for refugee rights, access to asylum and the provision of ATDs.</li> </ul>	<p>with DIP and country operations</p>	
<p>1.3. In this context, and pursuant to its role of providing support and guidance to bureaux and field operations, DIP should continue to:</p> <ul style="list-style-type: none"> <li>a) lead in setting relevant standards and providing advice to UNHCR and relevant stakeholders, including States;</li> <li>b) keep updating and disseminating good practices and analysis among UNHCR staff and their partners potentially through a user-friendly community of practice; such a community of practice could also facilitate discussions between colleagues in different operations as well as cooperation between countries that face different challenges;</li> <li>c) provide further normative and operational guidance to UNHCR offices, as required, including potentially on how to better navigate the potential pitfalls of working on the third objective of improving detention conditions, without unintentionally compromising the overall objective of ending detention for asylum-seekers and refugees because of their migratory status;</li> <li>d) provide targeted support in particular to judicial engagement, and the use of international, regional and national human rights frameworks, including by intensified capacity-building efforts, for UNHCR staff and partners;</li> <li>e) where feasible, continue to undertake, support or encourage research on detention issues that are priorities for States, including potentially the relationship between detention and absconding; detention and return of failed asylum-seekers; determining identity and nationality, and others;</li> <li>f) support intensified work on the detention of stateless persons in relevant contexts, in particular in data collection and advocacy.</li> </ul>	<p>DIP in coordination with the regional bureaux, country operations and key partners</p>	<p>1–12 months</p>
<p>2. UNHCR should continue to support States in implementing the goals of the GSBG, particularly in the areas of sharing experiences, good practices and information between States, notably through:</p>	<p>UNHCR leadership, in coordination with key partners and regional bureaux</p>	<p>1–12 months</p>



<ul style="list-style-type: none"> <li>a) connecting more effectively States that are facing common challenges;</li> <li>b) encouraging or undertaking research on important detention-related issues of concern to states, e.g. the relationship between ATDs and absconding; successful ATD models; protection-sensitive case management; the return of failed asylum-seekers; identity and nationality determination; and how to involve host communities more closely in the design and implementation of ATDs;</li> <li>c) giving visibility to good State practice and achievements around detention and alternatives detention, especially from the Global South;</li> <li>d) engaging governments constructively on pilots and arrangements on the ATD spectrum (even if outside the ATD definition);</li> <li>e) continuing to provide tangible support to ATDs set up in some countries where governments have dedicated few or no resources.</li> </ul>	<p>and with support of DIP</p>	
<p>3. UNHCR should develop a robust global communication strategy on detention, including to support UNHCR operations in identifying communication audiences and objectives; defining key messages and media relations. Key messages can focus also on progress made, solutions adopted by governments and their positive impact, while highlighting that detention often does not work.</p>	<p>DER in coordination with DIP, regional bureaux, national offices and key partners</p>	
<p>4. UNHCR should continue to build the capacity of staff and partners, particularly through:</p> <ul style="list-style-type: none"> <li>a) supporting the roll-out of GSBBD training tools in interested regions/operations (including the Fundamentals of Immigration Detention e-Learning Course; Alternatives to Detention Self-Study Modules and the Immigration Detention Monitoring Self-Study Modules), including through translation and online options;</li> <li>b) organizing Training of Trainers (TOT) courses to maintain and build in-house expertise.</li> </ul>	<p>DIP and the GLDC in coordination with the regional bureaux and UNHCR national offices</p>	<p>1–12 months</p>
<p>5. UNHCR should expand and strengthen partnerships on detention, including with:</p> <ul style="list-style-type: none"> <li>a) civil society – building on their involvement in the GSBBD or general detention work, working closely to review and develop strategies where the context becomes more challenging;</li> <li>b) human rights mechanisms, including national and UN mechanisms responsible for human rights and with relevant mandates, including the Working Group on Arbitrary Detention;</li> <li>c) stakeholders with broader mandates relating to migration, development and human rights, to address common realities and risks facing migrants, asylum-seekers, refugees and stateless persons, including potentially through mixed movement coordination arrangements, the UN Migration Network and activities under the Migration Fund.</li> </ul>	<p>UNHCR leadership, DIP in coordination with DER; regional bureau and UNHCR national offices (at regional and country level respectively)</p>	<p>1–12 months</p>
<p>6. UNHCR should consider ways to measure and track impact of detention-related protection work, potentially through using standards and</p>	<p>DIP and DSPR in coordination with regional bureaux and UNHCR national offices</p>	<p>1–12 months</p>

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indicators (which could be adapted from the GSBD) and linked to UNHCR's RBM Framework.		
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## List of abbreviations

ATDs	alternatives to detention
CRRF	Comprehensive Refugee Response Framework
DER	Division of External Relations
DEVCO	Directorate-General for International Cooperation and Development of the EU
DPSM	Division of Programme Support and Management
DSPR	Division of Strategic Planning and Results
DRRM	Donor Relations and Resource Mobilization Service
GCR	Global Compact on Refugees
GCM	Global Compact on Safe, Orderly and Regular Migration
GLDC	Global Learning and Development Centre
GSBD	UNHCR's Global Strategy – Beyond Detention 2014–2019
HQ	Headquarters
IDC	International Detention Coalition
IOM	International Organization for Migration
KII	key informant interview
MENA	Middle East and North Africa
MOU	memorandum of understanding
PSP	private sector fundraising
SOPs	standard operating procedures
TORs	terms of reference
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

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## 1. Introduction and background to the Global Strategy

This report presents the findings and recommendations of an independent desk review of UNHCR's Global Strategy – Beyond Detention 2014–2019 (hereafter GSD). The review was commissioned by UNHCR's Division of International Protection (DIP) in June 2019 with the purpose of generating an overview of achievements and lessons learned from UNHCR's implementation of the strategy at global and regional levels, with a view to making recommendations for mainstreaming good practices and approaches.

In 2014, and on occasion of the 60th meeting of the Standing Committee,<sup>5</sup> UNHCR launched the GSD. The aim was to support governments to end the detention of asylum-seekers and refugees. With this objective in mind, UNHCR addresses some of the challenges and concerns surrounding immigration-related detention policies and practices, such as the lack of reliable statistics and limited access to places of immigration detention.<sup>6</sup>

The GSD is firmly anchored in international and human rights standards that stipulate that the detention, for immigration-related purposes, of asylum-seekers, refugees and stateless persons should normally be avoided and be a measure of last resort. International law provides substantive safeguards against unlawful and arbitrary detention. Detention is only acceptable if it is necessary in each individual case, reasonable in all circumstances and proportionate to a legitimate purpose, and where less coercive or intrusive measures (alternatives to detention and other non-custodial measures) are considered ineffective in the individual case. Decisions to detain or to extend detention must be subject to minimum procedural safeguards, such as being informed at the time of arrest or detention of the reasons for their detention, being informed of the right to legal counsel and being promptly brought before a judicial or other independent authority to have the detention decision reviewed. Any detention must be challengeable in a court of law. Furthermore, children should not be detained for immigration-related purposes, irrespective of their legal/migratory status or that of their parents. Detention is never in a child's best interests. Appropriate care arrangements and community-based programmes need to be in place to ensure adequate reception of children and their families.<sup>7</sup>

Detaining asylum-seekers and refugees for the sole reason of having entered or stayed in a country without prior authorization runs counter to international law.<sup>8</sup> As seeking asylum is not an unlawful act, any restrictions on liberty imposed on persons exercising this right also needs to be provided for in law, carefully circumscribed and subject to prompt review. Detention can only be applied where it pursues a legitimate purpose and has been determined to be both necessary and proportionate in each individual case.<sup>9</sup>

The GSD is based on research that shows that not even the most stringent detention policies deter irregular migration,<sup>10</sup> and further, that there are workable alternatives to detention that can achieve governmental objectives

<sup>5</sup> Established in 1995, the UNHCR Standing Committee meets three times a year. It examines thematic issues included by the plenary in its work; reviews UNHCR's activities and programmes of work; reviews UNHCR's activities and programmes in the different regions; adopts decisions and conclusions, as it deems appropriate on issues included by the plenary in its programme of work; and discusses other issues that it deems of concern. (UNHCR, *Beyond Detention: Progress Report 2016*, August 2016, p.12, <https://www.refworld.org/docid/57b850dba.html>.)

<sup>6</sup> *Ibid.*, p.6

<sup>7</sup> UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the detention of asylum-seekers and Alternatives to Detention*, 2012, para. 54, <http://www.refworld.org/docid/503489533b8.html>

<sup>8</sup> *Ibid.*, para. 13.

<sup>9</sup> *Ibid.*, p.2.

<sup>10</sup> "There is no empirical evidence that the prospect of being detained deters irregular migration, or discourages persons from seeking asylum." A. Edwards, *Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR Legal and Protection Policy Research Series, PPLA/2011/01.Rev.1, April 2011, p. 1, available at: <http://www.unhcr.org/refworld/docid/4dc935fd2.html> as restated in F. Crépeau, *Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, A/HRC/20/24*, 2 April 2012, para. 8, available at: <http://www.unhcr.org/refworld/docid/502e0bb62.html>

of security, public order and the efficient processing of asylum applications. In addition, research has demonstrated that detention also has many negative lasting effects on individuals.<sup>11</sup>

The GSBD has three goals which are: 1. ending the detention of children; 2. ensuring that alternatives to detention (ATDs) are available in law and in practice; 3. ensuring that conditions of detention – where necessary and unavoidable – meet international standards.

In order to achieve each of these goals, UNHCR offices were expected to develop action plans at national and regional level, together with their partners.<sup>12</sup> The action plans could include additional objectives or sub-goals.<sup>13</sup> National plans were supposed to be designed in an inclusive and participatory manner, particularly involving relevant ministries and/or law enforcement agencies.<sup>14</sup>

Figure 1: Elements contained in a national action plan



In the first two years of the GSBD (2014–2016), it was rolled out to 12 countries selected on the basis of a set of criteria, including regional and thematic diversity, size and significance of the problem, likelihood of making an impact, as well as staffing and resources.<sup>15</sup> By the end of the five-year strategy period, it was rolled out to a total of 20 countries (hereafter “roll-out countries”).<sup>16</sup> In the spirit of transparency, UNHCR made the action plans that were developed for most of the roll-out countries and the progress reports publicly available on its website.

## 1.1. Ending the detention of children

The global trends of increased forced displacement have led to larger numbers of children fleeing their countries of origin and finding themselves at risk of detention. Available evidence has shown that the detention of children – irrespective of the length of detention – has a profound and negative impact on their development and health. The GSBD therefore reiterates UNHCR’s position that children – particularly unaccompanied or separated children (UASC) – should, in principle, not be detained at all.<sup>17</sup>

<sup>11</sup> See, for example, Jesuit Refugee Service, *Becoming Vulnerable in Detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union*, (The DEVAS Project), June 2010, available at: <http://detention-in-europe.org/>

<sup>12</sup> Action plans that were developed for roll-out countries can be found at: <https://www.unhcr.org/detention.html>

<sup>13</sup> UNHCR, *Beyond Detention 2014–2019: A Global Strategy to support governments to end the detention of asylum-seekers and refugees*, p.9, available at: <https://www.unhcr.org/protection/detention/53aa929f6/beyond-detention-global-strategy-support-governments-end-detention-asylum.html>

<sup>14</sup> *Ibid.*, p.9

<sup>15</sup> *Ibid.*, p.16

<sup>16</sup> These countries are: Belgium, Botswana, Bulgaria, Canada, Czechia, Hungary, Indonesia, Israel, Japan, Lithuania, Malaysia, Malta, Mexico, North Macedonia, South Africa, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Zambia and Zimbabwe.

<sup>17</sup> UNHCR, *Detention Guidelines*, Guideline 9.2, pp. 34-36.

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The GSBD reminds States that in accordance with Article 3 of the Convention on the Rights of the Child (CRC), the best interest principle should be taken into consideration in all actions affecting children, including the decision to detain, and irrespective of the legal status of the child. All efforts should therefore be made to prioritize the asylum processing of children, as well as family tracing and reunification, to provide access to age-appropriate information on asylum procedures, including how to contact UNHCR in child-friendly formats and to appoint a qualified guardian and legal representative for UASC.<sup>18</sup>

## 1.2. Ensuring that ATDs are available in law and in practice

UNHCR's Detention Guidelines underline the principle that detention should only be resorted to when it is determined to be necessary, reasonable in all circumstances and proportionate to a legitimate purpose.<sup>19</sup> They stipulate key safeguards that include the implementation of: a) procedures to assess these aforementioned elements in each individual case before resorting to detention; and b) screening and referral mechanisms<sup>20</sup> to ensure that asylum-seekers are referred to ATDs, and where this is the case, choosing the most appropriate ATD for each case.

UNHCR defines ATDs as “any legislation or practice that allows asylum seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement”. ATDs need to possess three key features; namely, they must:

- be subject to human rights standards;
- be governed by laws and regulations;
- be non-custodial – i.e. not to be used as an alternative form **of** detention; but rather than as an alternative **to** detention.<sup>21</sup>

The GSBD promotes ATDs that respect the principle of minimum intervention, comply with human rights standards and pay close attention to the situation of vulnerable groups. In this respect, living independently in the community should be the preferred approach, to allow asylum-seekers and others to lead as normal a life as possible.<sup>22</sup>

## 1.3. Ensuring that conditions of detention – where necessary and unavoidable – meet international standards

If detained, asylum-seekers and other persons of concern to UNHCR are entitled to minimum conditions of detention, which include: to be received in a humane and dignified manner and to have their basic necessities met. Those who have special needs and circumstances are entitled to have these taken into consideration in all the procedures affecting them – among others. In addition, they are entitled to a review of the initial decision to detain them within 24 to 48 hours; access to legal advice; and to be provided with the opportunity to challenge the legality of their detention before a court of law.

In order to ensure that systems of immigration detention comply with international legal principles, it is important that immigration detention centres are open to scrutiny and monitoring by independent national and international institutions and bodies, including UNHCR.<sup>23</sup> Under its protection mandate, UNHCR is tasked with closely monitoring the effective enjoyment of these rights by all persons of concern to UNHCR and intervenes with the relevant authorities where appropriate. Its obligation to do so is particularly relevant in situations where these rights are more

<sup>18</sup> UNHCR, *Beyond Detention: Progress Report mid-2016*, p. 27.

<sup>19</sup> UNHCR, *Detention Guidelines*, p. 21.

<sup>20</sup> Screening involves identity, security and health checks as well as the detection of specific vulnerabilities. For more 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/docic/55e8079f4.html>

<sup>21</sup> UNHCR, *Report UNHCR Annual Meeting on the UNHCR Global Strategy Beyond Detention 2014-2019*, Brussels, Belgium, p. 19.

<sup>22</sup> UNHCR, *Beyond Detention: Progress Report mid-2016*, p. 32.

<sup>23</sup> UNHCR, *Detention Guidelines*, p. 40.

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likely to be arbitrarily restricted – for example, during large-scale influxes or when States impose restrictions under the pretext of national security considerations during armed conflicts and other emergencies.

## **2. Approach to the desk review**

### **2.1. Objectives**

The purpose of the desk review is to “assess what progress has been made through the implementation of the Global Strategy (in terms of outcomes); what key lessons have been learned; and what are some of the positive results and achievements. The review will also seek to draw out lessons from what could have been done better and what unintended results (if any) came out during the implementation”.<sup>24</sup>

The primary audiences of this review are UNHCR’s Division of International Protection (DIP), regional bureaux, the Division of External Relations (DER) and the Division of Resilience and Solutions (DRS) at Headquarters (HQ). Secondary audiences are UNHCR regional and country offices.

### **2.2. Key areas of inquiry**

The review focused its efforts on answering the following four key questions:

1. Was the approach taken by the Global Strategy, as a normative framework, appropriate and useful to achieve the goals set?
2. Was the roll-out of the strategy by UNHCR HQ to country offices done in an effective manner and consistent with the goals of the Global Strategy?
3. What results have been achieved during the implementation of the strategy at global and country level?
4. Looking forward, how should the strategy continue to be implemented in the future, given the experience so far?

### **2.3. Methodology**

As a desk review, this report relied primarily on a close reading and analysis of secondary data. Interviews were used to complement and further elaborate on the findings and recommendations. It should be noted that this report is not an evaluation of individual UNHCR country office performances or government commitments to the roll-out of the GSBD. Nor does it does not seek to assess the extent to which States comply with international and regional human rights standards governing the detention of persons of concern to UNHCR.

Data sources for this report include:

- review of relevant documents such as: the GSBD document; national plans in the roll-out countries, progress reports; reports on capacity-building workshops conducted by UNHCR with its own staff or external stakeholders; reports of internal UNHCR focal point meetings, reports of roundtables with stakeholders;
- an online questionnaire that was shared with the 20 roll-out countries, in which the detention focal points were invited to reflect on the questions of the review;
- key informant interviews (KIIs) with staff from UNHCR, NGO partners and UN organizations at HQ level;
- KIIs with staff from governments, NGO partners and UNHCR who are involved in implementing the GSBD at national level.

<sup>24</sup> UNHCR, *Terms of Reference: Independent Desk Review of UNHCR’s Global Strategy, Beyond Detention: 2014–2019*.



As it was not possible to interview stakeholders in all 20 roll-out countries, it had been initially envisaged to focus on 8 of the 20 countries<sup>25</sup> selected according to a set of objective criteria.<sup>26</sup> The purpose of this exercise was to deepen the consultant's understanding of the outcome of the strategy at country level and to give an opportunity to non-UNHCR partners – who are also key actors in the GSBD – to participate in this review and offer opportunities for triangulating data. To guide the KIIs with UNHCR and non-UNHCR stakeholders, a uniform list of questions were drawn up that reflect the key questions that the review is trying to answer.

A total of 39 KIIs were carried out with the following breakdown:

Source for KIIs	Number of participants
Consultants working on the GSBD	5
Government representatives	3 (representing 2 governments)
IDC at global and regional levels	6
NGOs in roll-out countries	6 (working in 3 countries)
UNHCR staff at HQ and in the field	17
UN organizations and representatives	2

While the review was able to gather and analyse the majority of intended data, given the limited time frame there was a lower response rate from non-UNHCR stakeholders and from governments. Similarly, and due to competing priorities, it was not possible to interview the UNHCR focal points for detention in all of the eight roll-out countries.<sup>27</sup>

### 3. Key findings

#### 3.1. Usefulness as a normative framework

##### 3.1.1. Relevance at the global level

Almost all stakeholders interviewed consider the GSBD to be highly relevant to the global context. There has been a widespread and increasing use of immigration detention worldwide for asylum-seekers and other persons of concern to UNHCR. States are increasingly criminalizing the act of seeking asylum, with the objective of deterring irregular migration. This in turn affects the right and ability of persons in need of international protection to seek asylum and access open and humane reception arrangements. The link between the goals of the GSBD and UNHCR's mandate<sup>28</sup> was therefore clear as was the strategy's link to the broader human rights framework.<sup>29</sup> These two characteristics helped to elevate the GSBD to an institutional priority. Furthermore, the GSBD consisted of three simple and yet clearly articulated global goals that were easy for all stakeholders to understand and apply across the world.

<sup>25</sup> The eight countries are: Canada, Hungary, Indonesia, Israel, Malaysia, Mexico, United Kingdom and Zambia.

<sup>26</sup> These countries were selected based on the criteria that they are representative of: a) the different geographic regions in which the ATD strategy was rolled out; b) the different kind of components that the roll-out of the strategy involved (such as capacity-building; technical assistance; etc.); c) the different types of persons of concern to UNHCR who would normally be detained; d) the kind of challenges and opportunities that the roll-out of the strategy encountered.

<sup>27</sup> Participation by UNHCR offices in the questionnaire was generally high yet it was not fully complete (92 per cent response rate).

<sup>28</sup> Article 31 of the 1951 Convention relating to the Status of Refugees specifically provides for the non-penalization of refugees (and asylum-seekers) who have entered or stayed irregularly, if they present themselves without delay and show good cause for their illegal entry or stay. It further provides that restrictions on movement shall not be applied to such refugees (or asylum-seekers) other than those that are necessary, and such restrictions shall only be applied until their status is regularized or until they gain admission to another country. Article 26 of the 1951 Convention further provides for the freedom of movement and choice of residence for refugees lawfully in the territory. Asylum-seekers are considered lawfully in the territory for the purposes of benefiting from this provision (UNHCR, *Detention Guidelines*, p. 13).

<sup>29</sup> The fundamental rights to liberty and security of person and freedom of movement are expressed in all the major international and regional human rights instruments and are essential components of legal systems built on the rule of law. These rights apply in principle to all human beings, regardless of their immigration, refugee, asylum-seeker or other status. (Ibid.)

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At the same time, and although the GSBD is firmly rooted in the international human rights law framework of which refugee law is a component, a number of interviewees observed that the GSBD did not sufficiently capitalize on the broader international human rights framework and position itself as equally relevant to managing the detention of both migrants and refugees. In many contexts, as acknowledged by UNHCR, refugees and migrants often move together. Those who move do so for a combination of reasons. In multiple cases, refugees and asylum-seekers opt for migration-related avenues rather than asylum.<sup>30</sup> While for many of the stakeholders interviewed, UNHCR's emphasis on the distinction between refugees and economic migrants is understandable from a mandate perspective,<sup>31</sup> some of the interviewees noted that UNHCR should have alluded more regularly to the common set of rights that all persons enjoy when it comes to the deprivation of liberty and restrictions on their freedom of movement, irrespective of whether they are of concern to UNHCR or not. They argue that such an approach would have been suited to the post-New York Declaration era, where the drive is to identify and address common areas between the Global Compact for Migration and the Global Compact for Refugees in a harmonized and streamlined manner.

Finally, given the complexity of the issues that the GSBD is tackling and its ambitious agenda, limiting the lifespan of the GSBD to five years was – in the view of many key informants – too short. The processes of building partnerships and collective strategies requires time. Bringing about measurable change – particularly in state practice – is also a medium- to long-term endeavour. The timespan is even shorter for those countries that joined the GSBD over the years. As such, many stakeholders were of the view that it would have been more effective and realistic for UNHCR to have adopted a 10-year timeline for the GSBD. The limited duration of the GSBD is partially attributed to the limited resources that UNHCR has for its implementation.

### 3.1.2. Appropriateness and relevance to the national context

The GSBD was broad enough to provide a global guiding framework for legal and operational engagement on detention; it was anchored in international law, yet at the same time flexible enough to allow for adaptation to national contexts, in line with the gaps, opportunities and priorities that were identified at national level. In many countries, including those that manage immigration mainly through a security lens, the objective of ending the detention of children was particularly well received.

Furthermore, and as pointed out in some of the KIIs, the strategy's objectives corresponded to the human rights obligations of countries. Commenting on the relevance of the GSBD to a specific EU country, the UNHCR stakeholder underlined the fact that since that country was a signatory of the 1951 Convention relating to the Status of Refugees, the EU *acquis*<sup>32</sup> on asylum and the regional human rights frameworks, the GSBD was already "in line" with its established responsibilities.

The GSBD offered frameworks and tools that were considered useful and relevant to a range of countries around the world, and not only to those that were formally roll-out countries. These helped to trigger important conversations between the respective governments, NGOs, UNHCR and other partners around the challenges that are collectively encountered in managing immigration detention. Stakeholders from countries that were not implementing the GSBD were able to attend regional meetings and roundtables. They also participated in regional training that was organized on different related topics. Furthermore, some UNHCR offices in these countries used the tools and the guidance documents published by DIP to develop their own national strategies and advocacy plans.

The decision to roll out the GSBD in the respective countries was made following a thorough analysis of the detention practices in any given country; the opportunities and challenges that the roll-out could face in a country; and the readiness of the concerned UNHCR office to take on the roll-out. For example, one country was added as a roll-out

<sup>30</sup> Key informant interview. See also B. Hovy, "Registration - A Sine Qua Non for Refugee Protection" in G. Hugo et al. (eds), *Demography of Refugee and Forced Migration*, (Springer 2018), p. 50.

<sup>31</sup> For example, UNHCR expressly stated that the Detention Guidelines do not specifically cover the situation of persons not found to be in need of international protection or other migrants (UNHCR, *Detention Guidelines*, p. 8).

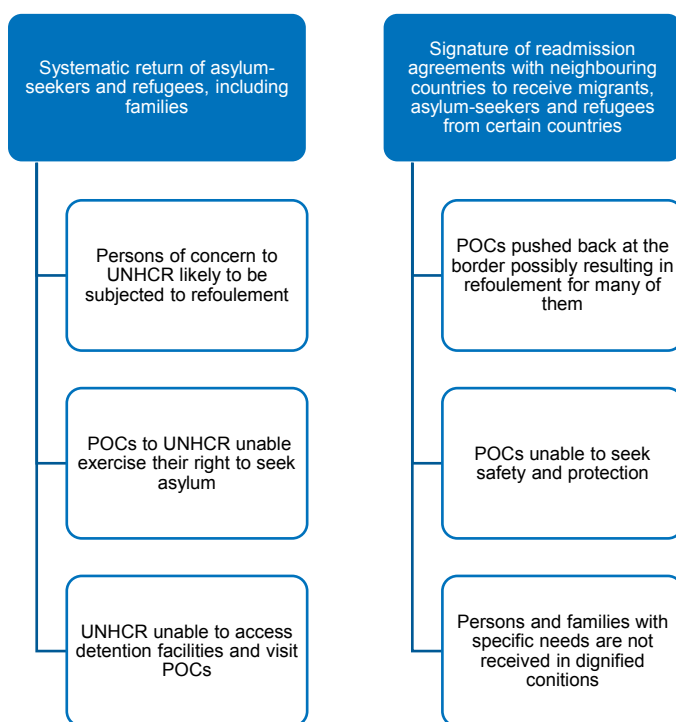
<sup>32</sup> The European Union's *acquis* is the body of common rights and obligations that are binding on all EU countries, as EU members. It is constantly evolving and comprises international agreements concluded by the European Union and those concluded by EU countries between themselves in the field of EU activities (available at: <https://eur-lex.europa.eu/summary/glossary/acquis.html>)

country despite having adopted policies since 2015 that were not protection-sensitive, including: curtailing the right of persons in need of international protection to seek asylum, pushbacks at the border, and a systematic curtailing of operational space for civil society organizations working with refugees, asylum-seekers and migrants. In addition, UNHCR's own relationship with the authorities had been difficult and tense. Today, and according to the relevant stakeholders interviewed for this review, the implementation of the GSBD in that country was not judged as successful. Moreover, in this particular case, as well as in some others, UNHCR discontinued the public update on the implementation of the GSBD. While it is positive that UNHCR did not shy away from selecting a country with such a complex political, operational and protection context, more thinking could have been devoted upfront to how UNHCR would deal with countries whose governments failed to cooperate with the roll-out or actively opposed it.

As the report will indicate later, the political climate, coupled with the intense advocacy of civil society, are key in bringing about positive outcomes in the area of immigration detention. In this sense they pre-date the GSBD and its roll-out. Where there were burgeoning positive processes, the GSBD appears to have built on this pre-existing momentum and to have contributed to these positive changes in the GSBD outlook.

At the same time, in those countries in which positive trends stopped or reversed during the lifespan of the GSBD, the strategy was unable to slow down these setbacks. In some instances, and despite challenging protection and operational environments, UNHCR was still able to maintain some forms of access to detention facilities and to persons of concern.

Figure 2: Examples of setbacks and their consequences for the protection and assistance of persons of concern (POCs) to UNHCR and to its activities



### 3.2. Constructive engagement of governments

The GSBD recognizes the centrality of the state as the primary duty holders when it comes to asylum seekers and refugees, and the role of civil society organizations as key drivers of accountability. This is articulated in the GSBD as: a) building a relationship of trust with the host governments and positioning UNHCR and its partners as actors that are relevant, equal actors and that have a lot to offer in terms of expertise, knowledge and insights; and b) conveying the fact that UNHCR and its partners were monitoring and taking note of state practice and the reality on the ground by gathering data, seeking clarifications and discussing their findings. According to one UNHCR

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stakeholder, the authorities in the country where the GSBD was being rolled out appreciated very much that the GSBD did not pretend to offer a “one-size-fits-all” model. The possibility to adjust the strategy to the needs in the country and the rhythm of the host government fostered feelings of trust and allowed for the authorities to be more forthcoming and to involve UNHCR in sensitive discussions. Hence, and as a demonstration of the authorities’ positive reaction to the GSBD, shortly after the roll-out commenced, UNHCR was invited by some governments to participate in inter-ministerial meetings dedicated to immigration management policies – in some cases as an observer.

Just as each roll-out was context-specific, so was the process of engaging governments. Rather than drawing up static, immobile strategies, UNHCR offices and their partners developed menus of options that were used interchangeably and/or in tandem depending on the need in a given situation. They included tactics such as:

- a) Engaging governments in reporting on data and progress made in rolling out the strategy. Hence, governments were invited to assist UNHCR offices in establishing the baseline on the detention of persons of concern to UNHCR. Relevant line ministries were asked for statistics and clarified inconsistencies. According to many stakeholders consulted for this review, this type of close and open engagement was appreciated by most governments and contributed to building trust.
- b) Reporting publicly on the progress made in implementing the GSBD. In the majority of the roll-out countries, the fact that reports were public encouraged governments to participate in the roll-out. It was important for them to be seen to be in charge, and to showcase progress in addressing problematic practice.
- c) Putting the issue of detention of asylum-seekers and refugees on the national agenda. UNHCR supported ongoing efforts made by different actors such as the media, civil society and others with facts and information about the consequences of detention and raised the issue in relevant policy forums and discussions.
- d) Providing comments on draft laws on foreigners and/or refugees, as well as proposed legal amendments. In some cases, these have been taken on board in part or in full.
- e) Supporting legal challenges to problematic practices by governments. UNHCR normally supported these efforts once other diplomatic avenues appear to have been exhausted.
- f) Pursuing discreet, bilateral means of advocacy capitalizing on the privileged position it enjoyed in those countries in accessing detention facilities and decision-making locations in a country. This approach was a double-edged sword. In some countries it helped to preserve the little protection and advocacy space that remained. In other instances, it significantly hindered the roll-out and led to a retreat from multi-stakeholder partnerships and actions.

### 3.3. Measurability and appropriateness of the objectives

One of the underlying premises of the GSDB is the importance of understanding the reasons behind States’ decisions to detain – who is detained, why and how – as well as the legal and policy frameworks and practices; this understanding is essential to identify the best ways to respond to the problem. The GSBD stressed the importance of collecting and managing reliable information as the first step in developing national action plans.<sup>33</sup> As such, UNHCR exerted significant efforts to establishing a good baseline on the legal framework governing immigration detention and the actual practice. Some UNHCR offices also invested in conducting and disseminating evidence-based research on the national asylum systems and practices.<sup>34</sup>

The roll-out exercise started in 2014 with a request to UNHCR operations in the first 12 roll-out countries to provide a snapshot of their respective situations at the end of 2013 and to measure progress towards the implementation of the GSBD goals. For that purpose, a detailed checklist was developed, using the 2012 UNHCR Detention Guidelines as a reference. Information obtained was more qualitative in nature, based on the dialogues that UNHCR had sustained with different stakeholders including immigration departments, civil society actors and national human rights institutions that monitored immigration detention.

Most of the UNHCR interviewees agreed that the plethora of indicators for the sub-groups were clear, appropriate and measurable. However, the process of covering all the items on the long checklist was time- and resource-intensive. It was particularly challenging given the lack of publicly available and reliable statistics. Nevertheless,

<sup>33</sup> UNHCR, *Beyond Detention 2014–2019*, p.9.

<sup>34</sup> UNHCR, *Beyond Detention: Progress Report mid-2016*, p.21.

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UNHCR offices recognized the value of investing in data collection and analysis, and that it was an important prerequisite for designing a credible strategy on detention issues, notwithstanding their resource limitations. Despite the challenges, many offices were able to adequately analyse and diagnose the situation in their respective countries.

Equally challenging for offices was that many of the objectives of the GSBD were not compatible with the indicators of the UNHCR Results Based Framework and its database (FOCUS). Initially, the GSBD strategy documents foresaw that the outputs and expected impact of the action plans should be measurable under FOCUS.<sup>35</sup> It was however, not possible to do this, making it harder for country offices to record the work and to fully demonstrate the way that resources have been used in detention-related work as well as its impact.

Quantifying success in the context of ATDs proved challenging to some UNHCR offices. There is no universally agreed definition of an ATD, with UNHCR and the International Detention Coalition (IDC) placing the emphasis on different aspects of the definition.<sup>36</sup> This element already complicates measurement of progress. Furthermore, UNHCR interviewees felt that the benchmarks for progress made on the use of ATDs could have been defined in more detail. In particular, none of the seven indicators on the use of ATDs addressed the quality and characteristics of ATDs (as opposed to only their type and the number of beneficiaries).<sup>37</sup> Available best practice shows that a number of elements contribute to improving the quality of an ATD, thereby rendering it more effective. For example: the adoption of a holistic approach; adequate funding; treatment of asylum-seekers with dignity, humanity and respect; provision of adequate material support; access to means of self-sufficiency.<sup>38</sup> The lack of relevant indicators on such issues and others means that opportunities to measure the quality of ATDs and document those of high quality are not fully exploited. Others also felt that it was also difficult to measure the impact that regular monitoring of detention conditions produced.

### 3.4. Ability to leverage partnerships

The GSBD recognized the fundamental importance of developing and strengthening partnerships, which multiply the effectiveness and impact of the various planned activities by: providing additional or different expertise, diversifying skill-enhancing resources and increasing political awareness.<sup>39</sup> Hence, the GSBD tried to leverage partnerships more effectively at global and national level. These partnerships were secured in a formal and informal manner and included measures such as: a) concluding formal memoranda of understanding (MOUs); b) building dialogue with governments, including through sharing good practices; c) establishing regional networks; d) establishing national or local/provincial consultative or advocacy groups; and e) engaging with the judicial and legal community.<sup>40</sup>

#### 3.4.1. Partnerships at the global level

Several MOUs were concluded at global level to further the collaborative work with both organizations to achieve the GSBD objectives. Chief among them were the partnership agreement with the IDC in 2013; and a partnership agreement that was signed in 2015 with the Association for the Prevention of Torture (ATP) to work jointly on technical cooperation, capacity-building, monitoring immigration detention and developing immigration detention workshops

<sup>35</sup> UNHCR, *Beyond Detention 2014–2019*, p.9.

<sup>36</sup> As pointed out by Mitchell, while UNHCR's definition of ATDs requires conditions or restrictions on liberty, other definitions, including that of the IDC, focus on mechanisms to support and manage individuals in the community without the use of detention. The IDC defines "alternatives to detention" as "any legislation, policy or practice, formal or informal, that ensures people are not detained for reasons relating to their migration status" (Mitchell, p. 5).

<sup>37</sup> It is understandable that the development of qualitative indicators would have been more challenging – particularly in the early years of the GSBD and its implementation.

<sup>38</sup> UNHCR, *Concept Note: Second Global Roundtable on Reception and Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons as part of UNHCR's Global Strategy – Beyond Detention 2014–19*, Toronto, Canada 20-22 April 2015, p.2., available at: <https://www.unhcr.org/uk/553f57e96.pdf>

<sup>39</sup> *Ibid.*, p.12.

<sup>40</sup> UNHCR, *Beyond Detention 2014–2019*, p.10.



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and training tools.<sup>41</sup> These proved to be instrumental for the success of the GSBD, and mutually beneficial to the organizations involved. For example, while UNHCR was able to benefit from the IDC's expertise and experience in the field of advocacy and ATD pilots, the partnership with UNHCR facilitated access to additional important stakeholders for IDC donors at national levels, allowing for sustained work to take place on a number of fronts. Both organizations contributed effectively to the development of the strategy, participated in advocacy efforts that happened at global level and in some specific countries, and supported the design of training materials and tools.

UNHCR's partnership with the Oak Foundation was also pivotal for shaping the GSBD. In April 2015, the Oak Foundation and the IDC supported UNHCR in convening the Second Global Roundtable on Reception and Alternatives to Detention in Toronto, Canada.<sup>42</sup> Building on the First Global Roundtable on Alternatives to Detention, held in Geneva, in May 2011, it aimed to provide opportunities for frank exchanges between governments and others on how to manage systems dealing with asylum-seekers and other migrants without, or with more limited, recourse to detention and through the use of alternatives to detention, as appropriate.<sup>43</sup>

At the same time, a plethora of informal partnerships were pursued which were as effective in furthering the objectives of the GSBD. During the negotiation and drafting of the Global Compact on Refugees and the Global Compact on Safe, Orderly and Regular Migration, UNHCR advocated that detention should only be used when it pursues a legitimate purpose and when it has been determined to be both necessary and proportionate in the individual case at hand. As a result of sustained advocacy efforts, both compacts recognize the best interests of the child as a primary consideration that should guide the action and follow-up on children in all situations. Article 13 of the GCM specifically commits to use migration detention as a measure of last resort and to work towards alternatives.<sup>44</sup>

In addition, UNHCR and its partners actively lobbied other parts of the UN system with relevant mandates to firmly place the objectives of the GSBD at the centre of their work. For example, it is currently co-leading thematic workstream No. 2 entitled "Alternatives to detention are promoted and utilized", which was established under the UN Network on Migration. The objectives of the working group are to support states in improving their capacities to develop alternatives to detention, including through improved identification, and to promote viable solutions that reduce the risks and vulnerabilities faced by migrants. It aims to do so by creating a comprehensive repository of good practices on human rights-based alternatives to detention; establishing a cross-regional peer learning platform; and facilitating government peer learnings. Though it is too early to assess the outcomes of the process, it is already positive that the use of ATDs is being mainstreamed into global conversations, moving it from the sphere of exceptional measures to a more likely measure that States could resort to in their immigration management.

UNHCR has also supported important relevant processes by the human rights monitoring system that echo the GSBD's assumptions and objectives. Key among these was the Global Study on Children Deprived of Liberty. The study matched UNHCR's position that detention of children in migratory contexts was never in the best interests of the child. The expert, Manfred Novak, recommended that States make all efforts to significantly reduce the number of children held in places of detention and to prevent the deprivation of liberty before it occurs. UNHCR was part of the task force that was established to support Mr. Novak, and participated in the three expert meetings that were organized. Through these processes, UNHCR provided data on national legislation and practices, as well as examples of good practices and innovative alternative approaches aiming to reduce the number of children deprived of liberty. It encouraged its country offices to follow up with their government counterparts to make sure that the latter cooperated with Mr. Novak's office.

UNHCR and other partners continued to effectively engage the support of other human rights mechanisms where opportunities arose. The latter reiterated the same principles as UNHCR governing the deprivation of liberty of

<sup>41</sup> The IDC is a leading global network of more than 300 civil society organizations and individuals in more than 70 countries that advocates for, undertakes research on, and provides direct services to refugees, asylum-seekers and migrants affected by immigration detention. (UNHCR, *Beyond Detention: Progress Report mid-2016*, p. 22).

<sup>42</sup> UNHCR, *Beyond Detention, Progress Report mid-2016*, p.12.

<sup>43</sup> UNHCR, *Concept Note: Second Global Roundtable on Reception and Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons as part of UNHCR's Global Strategy – Beyond Detention 2014–19*.

<sup>44</sup> UNHCR, *Beyond Detention, Progress Report 2018*, p.8.

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refugees and asylum-seekers, thereby strengthening the international position on this issue. For example, UNHCR worked together with the Working Group on Arbitrary Detention to revise its deliberation no. 5 on the deprivation of liberty of migrants, including persons of concern to UNHCR, with the twofold aim of consolidating the Working Group's existing practice regarding the deprivation of liberty of migrants and ensuring it is representative of its existing jurisprudence. In this respect, it reiterated rights such as the rights of migrants to seek asylum, to be protected against refoulement, their freedom from arbitrary detention, their right to challenge the legality of their detention and the exceptionality of detention in migration procedures. It also advocated for the use of ATDS to ensure that detention is resorted to as an exceptional measure.<sup>45</sup>

UNHCR similarly capitalized on the work of special rapporteurs of the "special procedure" of the UN system, i.e. those with a specific country or thematic mandate from the United Nations Human Rights Council. For example, UNHCR reached out to the UN Special Rapporteur on the sale and sexual exploitation of children to ensure that the issue of detention was also examined in her visits to the field, which included one or more roll-out countries.

### 3.4.2. Partnerships at the local level

NGOs and civil society were at the forefront of the implementation of the strategy at national level in a number of ways:

- leading the design and implementation of a judicial engagement strategy;
- advocating around the objectives of the GSBD;
- implementing actual or pilot ATDS;
- building capacity of state institutions and actors on international standards;
- sharing best practices with States on ATD, sound case management and vulnerability assessments. In this respect, the IDC's in-depth knowledge of ATDS around the world proved to be very useful in raising the awareness of States on the use of ATDS, as well as helping to answer their questions about the applicability of these.<sup>46</sup>

In some roll-out countries, UNHCR formalized and expanded existing relationships, for example, by signing MOUs with local organizations to carry out vital work, such as with national Red Cross movements to monitor detention holding centres and correction facilities where detainees are held. MOUs to define and formalize the partnerships were also signed with line ministries in some countries such as Directorates of Migration. In other instances, the GSBD catalysed the start of new mutually beneficial partnerships.

In some countries, UNHCR explored and pursued partnerships with UN agencies, NGOs and civil society actors with which it had not previously worked. For example, in one country, the Parliamentary Ombudsman Office and UNHCR conducted joint visits to detention and reception/ATD facilities. In another country, UNHCR strengthened its relationship with the National Commission for Human Rights, allowing for a more comprehensive monitoring of places where persons of concern to UNHCR had been detained, even if it did not have access. In a third roll-out country, UNHCR signed a multi-pronged MOU that focused on detention monitoring, capacity-building and judicial engagement.

UNHCR engaged more actively with other specialized NGOs and actors in devising joint litigation strategies, particularly on child detention, conditions of detention and the necessity to detain, including with bar associations and key judicial actors. Significant efforts were made to reach out to judges to make sure that they understood the needs of persons of concern to UNHCR and adopted a more rights-based approach when adjudicating on their cases. In addition, UNHCR reached out to lawyers in the different regions and countries with the purpose of building capacity and raising awareness of international human rights standards, refugee law with a special focus on asylum and refugee cases and immigration detention (e.g. the roundtable on judicial engagement for Southeast Asia held in

<sup>45</sup> Human Rights Council, *Report of the Working Group on Arbitrary Detention*, A/HRC/39/45, 2 July 2018, *Annex Revised deliberation No. 5 on deprivation of liberty of migrants*, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/196/69/PDF/G1819669.pdf?OpenElement>

<sup>46</sup> G. Mitchell, *Engaging Governments on Alternatives to Immigration Detention*, Global Detention Project, Working Paper No. 14, July 2016, p.5, available at: <https://www.globaldetentionproject.org/wp-content/uploads/2016/07/GDP-Mitchell-Paper-July-2016.pdf>

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Malaysia in December 2017 and funded by the EIDHR project).<sup>47</sup> Taken together, these efforts had resulted in some countries overturning practice that was not in line with international standards.

On the involvement of UN organizations, the results were mixed and were country- and region-specific. For example, in one region, UNICEF has been actively engaged in ending the detention of children. It has funded the positions of social workers in detention facilities. In another roll-out country, UNICEF committed itself to continue supporting a foster care pilot project that UNHCR had started.

Similarly, the International Organization for Migration (IOM) actively used the tools produced through the GSBD to guide its work in one region. Furthermore, and as witnessed in another country, IOM proactively increased spaces in shelter available to persons of concern to UNHCR who were released from detention, thereby contributing to the government's policy of not detaining asylum-seekers. In addition, the joint work done by UNHCR and IOM to improve the reception shelters in another roll-out country led to the government agreeing to use the shelters as ATDs. UNHCR and IOM have also undertaken joint training on mixed migration issues including those relating to detention and ATDs.

In a few isolated countries, the start of the GSBD did not have a marked influence in the way UNHCR conducted its partnerships. The space for partnerships on ATDs remained static or even diminished. Some of this tension was due to unmet expectations that NGOs had of UNHCR (and how it should deal with the government). In other situations, NGOs who had been leading the work on the reform of immigration detention management felt excluded by UNHCR when the GSBD was rolled out. In some situations, the working relationship between civil society and UNHCR became more distant. This was particularly the case in countries where the roll-out encountered resistance from the host government, or where the relationship between UNHCR and the host government was tense. In one example studied in the review, the partnership was reduced to the most essential elements (in this case support from UNHCR to the NGO to continue its important litigation work). Meetings became more sporadic and less public. The other parts of the GSBD implementation in that country were not discussed with that NGO.

#### 4. Role of DIP

DIP led the implementation of the GSDB inside UNHCR, and assumed the responsibility for coordinating with senior management, UNHCR bureaux and other support divisions. Across the sources consulted, DIP provided robust, hands-on and critical leadership and support in the implementation of the strategy. Despite the small size of the team at DIP that was responsible for the strategy (one to two dedicated staff), they provided timely, relevant and concrete advice and guidance to the different groups of stakeholders: governments, NGOs, other UN actors and UNHCR staff.

Examples of support provided include:

- support to roll-out countries in the design and implementation of their strategies;
- providing/strengthening technical knowledge and capacity-building for all stakeholders;
- providing tools and guidance, and facilitating good practice;
- mobilizing resources for the GSBD.

<sup>47</sup> UNHCR, *Concept Note: The kick-off Regional Roundtable on Judicial Engagement for Southeast Asia, Malaysia*, 6–7 December 2017, p.2.



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## 4.1. Support to roll-out countries in the design and implementation of their strategies

DIP closely accompanied country offices in rolling out the GSBD strategy at national level. In some cases, DIP participated in some of the “kick-off” meetings at country level with host governments and other stakeholders, conveying the corporate importance that the GSBD has for UNHCR. Its participation served the purpose of supporting the field office by making the link to stakeholders, including the host government, between the roll-out at national level and the GSBD process at global level.

From the outset, DIP impressed upon offices the importance of fact-finding, the analysis of the context and a mapping of relevant and influential stakeholders prior to designing their national strategies. DIP provided hands-on support in the review of draft legislation and in providing guidance on rolling out the strategy. The yearly stock-taking meetings organized from 2014 to 2018 were invaluable for UNHCR detention focal points in the different roll-out countries to review progress made and agree on the way forward. UNHCR detention focal points found it particularly useful to listen to the experiences and strategies employed by other offices. They were – in the words of one UNHCR interviewee – “eye-opening”.

At the same time, and due to the small size of the team, DIP was not able to carry out higher-level analysis of the information that it was receiving from the field, with the view to identifying the “bigger picture” in a given country or region; or to conduct in-depth reviews of a national strategy. Some UNHCR interviewees argued that such activities would normally fall under the purview of regional bureaux, which were not as engaged with the GSBD roll-out.

According to a number of UNHCR field colleagues in different roll-out countries where implementation was experiencing challenges at country level, DIP engaged permanent missions in Geneva and at regional levels. In these meetings, DIP amplified the messages given by UNHCR field offices, demonstrating an important alignment in the implementation of the GSBD. It also helped to further resolve differences between these governments and UNHCR.

DIP co-organized regional meetings and roundtables such as the Roundtable on Reception and Alternatives to Detention in Toronto, Canada in 2015,<sup>48</sup> followed by the Roundtable on Reception and Care Arrangements for Asylum-Seeking Children in 2018 in Bangkok, Thailand.<sup>49</sup>

## 4.2. Providing/strengthening technical knowledge and capacity-building

The knowledge of UNHCR staff on the different issues that the strategy addressed was significantly enhanced, in particular on the relevance of international and regional human rights mechanisms and the use of judicial engagement as a tool for advocacy and protection. This knowledge was imparted through the annual meetings of the UNHCR detention focal points, as well as the design and launch of the e-learning and two blended programmes on immigration detention, namely:

- a) **The Fundamentals of Immigration Detention (FIDLP)** – an e-learning programme covering the prerequisite knowledge and concepts relating to the topic of detention;
- b) **Learning Programme on Immigration Detention Monitoring (IDMLP)** – a blended programme designed to equip UNHCR and partners with knowledge and skills for developing an immigration detention monitoring strategy and for carrying out monitoring in their national context;
- c) **The Learning Programme on Alternatives to Detention** – a blended programme aimed at increasing learners’ knowledge and skills in order to better advocate for, develop and implement alternatives to immigration detention in national contexts.<sup>50</sup>

<sup>48</sup> UNHCR, *Second Global Roundtable on Reception and Alternatives to Detention: Summary of deliberations*, August 2015, available at: <https://www.refworld.org/docid/55e8079f4.html>

<sup>49</sup> UNHCR, *Global Roundtable on Reception and Care-Arrangements for Asylum-Seeking Children, Summary of Discussions*, 10–11 October 2018, Bangkok, Thailand, December 2018, available at: <https://www.refworld.org/docid/5c17a6544.html>

<sup>50</sup> UNHCR, *Beyond Detention 2014–2019*, p.9.

These programmes, which became available through GLDC’s Learn and Connect Platform as of July 2018, were also translated into a number of local languages by field offices, maximizing outreach and impact. Finally, a special edition of the Facilitation of Learning Programmes was also developed which trained 19 staff to become trainers.

The content for the learning programmes was for the most part assessed to be very useful and relevant to their work.<sup>51</sup> DIP engaged experienced, knowledgeable consultants to develop the material and to co-deliver it. In terms of subject matter, the most challenging modules to develop were those around ATDs, given the lack of practical knowledge available to UNHCR at the time. Similarly, staff working with civil society and relevant national institutions and ministries gained valuable knowledge on the international standards governing immigration detention, and on the thinking and practice surrounding ATDs. Graduates of these training programmes who work in countries that were not signatories of the 1951 Convention and/or the 1967 Protocol found that the training strengthened their understanding of how they could use international and regional human rights instruments to further the protection of asylum-seekers and refugees including on detention-related matters. In this respect, the compilation of international human rights law and standards relating to immigration detention in the Learning Programme on Immigration Detention proved to be very useful.<sup>52</sup>

However, the review notes that some adjustments need to be introduced in the future to these learning programmes to ensure that they continue to be relevant and effective. These are summarized below:

Figure 3: Recommendations for improvements by graduates of learning programmes<sup>53</sup>



### The Global Technical Assistance and Capacity-Building Programme (EIDHR)

Much of the work that UNHCR has been able to do in the area of capacity-building has been made possible by the Global Technical Assistance and Capacity-Building Programme (EIDHR). UNHCR had introduced a project proposal to the European Instrument for Democracy and Human Rights (EIDHR) at the European Commission with the aim of further strengthening all stakeholders’ capacities in the area of ATDs and monitoring detention. The specific objectives of this project were to support the improvement of transparency and independent oversight of immigration detention and to create new care arrangements and community-based alternatives to detention for children and their families in Indonesia, Iraq, North Macedonia, Malaysia and Mexico.<sup>54</sup> These countries were selected according to a set of objective criteria.

DIP, the GLDC and the five operations involved implemented a set of tailored and country-specific activities, such as mapping and analysis of national law and policies; organizing awareness-raising workshops; capacity-building training; conferences; conducting monitoring visits to immigration detention facilities; advocacy interventions on non-custodial measures for asylum-seeking children and international and regional standards on immigration detention;

<sup>51</sup> Feedback on the learning programmes was obtained from the questionnaires and from the feedback reports on the learning programme from the 2018 cohort.

<sup>52</sup> Ibid., p.11.

<sup>53</sup> Ibid.

<sup>54</sup> UNHCR, *Final Narrative Report 1/ 11/ 2016 – 28/ 2/ 2019*, p.11.

developing materials for persons of concern to UNHCR; and supporting the creation of care arrangements for children and families. As such, and over a period of three years, a total of 208 workshops, conferences and awareness-raising sessions were organized, targeting more than 4,400 persons in five countries from partner organizations, law firms, judges, prosecutors and academics as well as staff belonging to international organizations and NGOs.<sup>55</sup>

Figure 4: Overview of the EIDHR project <sup>56</sup>



The regional roundtables organized by UNHCR and its partners over the years and dealing with specific issues also offered important avenues of learning and capacity-building. As noted in the KIIs and the survey, the newly acquired knowledge and tools prompted some partners to become allies or champions for the GSBD in their own organizations and institutions.

In some countries, the capacity-building events translated into concrete joint action as stakeholders understood how their role and functions could further grow and how other actors could support them in that regard. For example, following the implementation of capacity-building events for government officials in one country with EIDHR resources, the Ministry of Labour and Social Affairs of that country and UNHCR drafted an MOU on ATDs and the reception of children.

As for UNHCR and its partners, available reports and interviews point to the fact that they felt better equipped to negotiate access to immigration detention facilities; to prepare and conduct monitoring visits; and to undertake follow-up action. In a number of countries, the recently acquired knowledge has led to an increased number of visits to detention facilities.<sup>57</sup>

<sup>55</sup> The main selection criteria for the five countries implementing this action were: the access to immigration detention facilities by UNHCR; the willingness of the authorities to explore the creation of care arrangements for children and alternatives to detention; and the number of children detained for immigration-related purposes. Finally, the five countries selected are building their national asylum systems, which provides additional opportunities to support their policy response to develop appropriate reception mechanisms for asylum-seekers, and in particular for children. (Ibid.)

<sup>56</sup> Ibid.

<sup>57</sup> UNHCR Final Narrative Report 1/ 11/ 2016 – 28/ 2/ 2019, p.27.

### 4.3. Providing tools and guidance, and facilitating good practice

DIP developed a range of tools and guidance documents that UNHCR colleagues viewed as useful, operational and relevant to the implementation of the strategy.

One tool that was particularly valued by UNHCR offices was the tool on Stateless Persons<sup>58</sup> in Detention. According to the UNHCR Detention Guidelines, prolonging the detention of stateless persons beyond an initial reasonable period on the sole grounds that the individual has an undetermined nationality or identity is contrary to international standards and is considered arbitrary. The absence of proper mechanisms to verify identity or nationality can lead to prolonged or indefinite detention and may particularly affect stateless persons.<sup>59</sup> Despite the overall appreciation of offices for this tool, it was not used as regularly as it could have been by UNHCR offices in identifying stateless persons. A number of reasons serve to explain this reality such as: the tool and its use were not fully folded into the GSBD strategy and therefore were not subjected to the same stringent conditions of reporting. Moreover, States continue to find it difficult to identify stateless persons and to maintain disaggregated data on stateless persons in detention.

DIP has also been instrumental in facilitating the sharing of good practices adopted by States. The most significant representation of this work are the two options papers that UNHCR produced: Options Paper 1, Options for governments on alternative care for children and families;<sup>60</sup> and Options Paper 2, Options for governments on reception and alternatives to detention.<sup>61</sup> These two documents gather 35 examples of ATDs. As the IDC observed: “States are often responsive to reform efforts and policy developments already occurring in other countries”. Capitalizing on this interest, DIP – together with field offices and NGO partners, most notably the IDC – facilitated these exchanges through thematic meetings and study visits between relevant state institutions. The benefit of such an approach is that States can see it is possible to put in place policies whereby they can achieve migration governance objectives without jeopardizing fundamental rights.<sup>62</sup>

The participation of some governments in the different regional and global roundtables organized on the themes of the GSDB proved to be useful in increasing governments’ awareness of existing tools and good practices, as well as in providing opportunities for meaningful exchanges of views with all stakeholders, including representatives from other countries.

#### Box 1: From knowledge gained to action on the ground

In October 2018, representatives from two line ministries as well as local NGOs attended the Roundtable on Reception and Care Arrangements for Asylum-Seeking Children held in Bangkok, Thailand. The topics covered and ideas generated during the discussion fed into a national roundtable organized by the NGO dedicated to the issue of community-based care for children in the country.

Following that, UNHCR and the NGO embarked on a pilot project to develop and strengthen foster care arrangements in the refugee communities. They developed several manuals and handbooks aimed at building the capacity of foster care agencies and refugee families. The materials were made available online. Refugee community representatives and eight NGOs were sensitized in how to run foster care arrangements for the refugee community. Case managers from the national council for child welfare were also trained on case management for refugee children.

<sup>58</sup> A “stateless person” is defined as a person who is not considered as a national by any State under the operation of its law. In the absence of adequate mechanisms to identify stateless persons, individuals may be registered under categories such as “unknown nationality”, “undetermined citizenship” or “nationality to be confirmed” or under specific designations for particular stateless groups. While each country and institution will have a different understanding of who is registered under these categories, special attention should be paid to them as they could include stateless persons. (UNHCR, Final Background Document to the Conference “No Longer Locked in Limbo: Tools and Good Practices for Preventing and Ending the Immigration Detention of Stateless Persons”, 26 June 2019).

<sup>59</sup> UNHCR, *Stateless persons in detention*, p.7.

<sup>60</sup> UNHCR, *Options paper 1 – Options for Governments on care arrangements and alternatives to detention for children and families*, 2015, available at: <http://www.unhcr.org/5538e4e79.html>

<sup>61</sup> UNHCR, *Options Paper 2 – Options for Governments on reception and alternatives to detention*, 2015, available at: <http://www.unhcr.org/5538e53d9.html>

<sup>62</sup> G. Mitchell, *Engaging Governments on Alternatives to Immigration Detention*, p.5.

Despite an overall acceptance of the usefulness of the tools and guidance documents, some offices and stakeholders perceived DIP's definition of ATDs as impractical at times. The ATD definition put forward by DIP stresses that ATDs should not be confused with alternative forms of detention nor reception arrangements. From the perspective of UNHCR offices, this "neat" normative distinction was not always practical and feasible on the ground. By having to adhere to the UNHCR definition in their approach with governments, it was felt that UNHCR was limiting its scope for influencing these set-ups and future government practice.

#### 4.4. Resource mobilization

The GSBG acknowledges the need to have an adequate level of funding for its own successful implementation.<sup>63</sup> In the course of the roll-out, it became evident that some additional funds were needed to implement the range of ambitious activities foreseen for each objective, particularly global meetings with stakeholders, learning programmes for staff and government counterparts, and UNHCR partners. DIP therefore took the initiative of raising additional funds that could support the roll-out of the strategy. As such, it was able to tap into the DEVCO funds for promoting human rights through the EIDHR project. As mentioned, funds were also received from the Oak Foundation to organize the Second Global Roundtable in Toronto, Canada.

UNHCR offices that have benefited from the EIDHR project pointed out that many of the activities implemented in their host countries would not have been possible without these additional resources. Some offices that have not benefited from the extra funds from donors tried to redirect resources from their own existing budgets towards implementing the strategy or made do with what they had. The latter was challenging as offices were "expected to do more with less". UNHCR does not have a global overview of these processes and their impact. As such, it has not been possible to quantify the needs for resources for an effective implementation of the GSBG.

Moving forward, UNHCR operations and regional bureaux will have to continue to set aside resources for the mainstreaming of the GSBG. While the Private Sector Fundraising Section (PSP) of UNHCR's Donor Relations and Resource Mobilization Service (DRRM) is mapping the private foundations that may be interested in supporting work on detention issues, UNHCR will not be in a position to fundraise extensively for additional resources, given competing priorities, its programming cycles and budgeting structure.

#### Box 2: Key tools developed by DIP on the GSBG

- a) Vulnerability screening: The vulnerability screening tool launched in 2016 was appreciated for its application to refugees and migrants alike. It also put a spotlight on the importance of vulnerability assessments in informing decision-making relating to a particular person. Immigration departments in a number of countries were sensitized to the necessity of screening based on vulnerability.
- b) Detention monitoring: The 2015 policy on detention monitoring provided the much-needed guidance for UNHCR offices on building and strengthening capacities to monitor places where persons of concern to UNHCR were deprived of their liberty. The same applies to the *Monitoring Immigration Detention: Practical Manual*, developed by both the IDC and ATP, launched in 2014.
- c) Stateless Persons in Detention: This tool was issued in 2017 in response to stateless persons being especially at risk of arrest and repeated and prolonged detention. This is due to the fact that they do not possess identity documents or valid residence permits, and are often unable to return to their country of origin or habitual residence. The tool was found to be very useful by UNHCR offices and their IPs that work in countries with high stateless populations in detention. It aims at improving the identification of stateless persons during all stages of the migration and asylum process, and at supporting the achievement of solutions to their predicament. Though not officially part of the GSBG, the issuance of this tool in 2017 was considered as very useful for those countries where a high number of stateless persons are detained.
- d) ATDs: UNHCR developed two option papers: Option Paper 1 – Options for governments on care arrangements and detention for children and families, and Option Paper 2 – Options for governments on open reception alternatives to detention. They were developed to raise awareness among governments and other stakeholders of available reception and ATD options.

<sup>63</sup> UNHCR, *Beyond Detention 2014–2019*, p.16.



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## 5. Role of the regional bureaux

Given the direct and active involvement of DIP in designing and implementing the GSBD, regional bureaux were less engaged, occasionally sharing information about the GSBD with the countries under their purview. This reality, in the view of many key informants, led to a lost opportunity: engaging the bureaux is necessary to achieve consistency, streamlining and harmonization in the regions. Furthermore, no complementary additional regional plans were developed to achieve the global goals – a possible line of action available to bureaux and national offices under the GSBD strategy.<sup>64</sup>

## 6. Role of the country offices

The degree of proactive engagement by UNHCR offices with the GSBD significantly affected the outcomes of the roll-outs at country level. Country offices were entrusted with the responsibility of translating the GSBD into a national action plan. In doing so, they were permitted to determine the rhythm and approaches that were best suited to their context. A number of offices established more regular information-sharing mechanisms, dialogues and coordination mechanisms with stakeholders to discuss issues relating to immigration detention. Some of these discussions happened in bilateral or multilateral forums (e.g. joint task forces, protection working groups and regional platforms).

A few offices recognized the pivotal importance of public opinion and its impact on government policies on immigration detention. They therefore tried to engage the media and other actors with the objective of influencing that. To effectively engage these stakeholders, many UNHCR offices indicated that they would have needed more support from UNHCR HQ, particularly the Division of External Relations (DER), in developing appropriate communication strategies and key messages.<sup>65</sup>

Where UNHCR's senior management was engaged with the strategy at the highest level, and where the GSBD roll-out was prioritized in the work of the office, substantial advances were made. In one specific country office, the representative personally engaged with government counterparts and civil society. He regularly included talking points on immigration detention issues, both in his own meetings and in those of the High Commissioner and other senior members of UNHCR's senior management team with the host government. Furthermore, he adopted a hands-on approach to planning and strategizing with the detention focal points in his office.

When the political context became more challenging in some countries, and governments pushed back, a select number of UNHCR offices did not formally adjust their national plans to reflect these new sets of challenges. In some countries, UNHCR country offices deprioritized the strategy or shifted gear to pursue "behind-the-scenes" discreet advocacy and dialogue with the host government in order to maintain the shrinking protection and operational space.

UNHCR country offices worked with DIP and the host governments to produce the three progress reports. The reports for all roll-out countries – with the exception of two – were made public. According to some UNHCR stakeholders, the process of discussing the content of the advocacy report improved the quality of the conversation that they were having with their governmental counterparts and the bilateral relationship; they felt that it improved the mutual understanding of each other's positions and interests. Governments felt reassured by the consultation process, and by the knowledge that their views were taken into consideration, according to those stakeholders.

The roll-out of the strategy put an additional strain on the limited human resources in many UNHCR operations. Most of the offices did not receive additional human resources and had to manage these additional responsibilities (of reporting, data collection, monitoring visits and engagement of actors) alongside other competing priorities. A UNHCR office in a roll-out country confirmed that it was able to work as intensively as it did on detention issues because it had hired a consultant dedicated to the roll-out. Since that position was lost due to the lack of resources, the office admitted that they could not prioritize work related to the GSBD. For example, when faced with prioritizing between providing information to persons of concern to UNHCR about the right to seek asylum on one hand and monitoring the actual conditions on the other, some offices understandably chose the former.

<sup>64</sup> Ibid., p.9

<sup>65</sup> UNHCR, *Report UNHCR Annual Meeting on the UNHCR Global Strategy Beyond Detention 2014–2019*, Brussels, Belgium, p.24.

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Some offices pointed to the geographical challenges that limited their ability to visit detention facilities as often as they wanted, such as the long distances between detention facilities and their offices, and their dispersion across different parts of the host country.

Other significant breakthroughs were achieved in those countries where UNHCR offices adopted a bold and creative approach to advocacy. This was preceded by evidence-based research and a thorough mapping and understanding of the key influencers in the political establishment, and of how their support could be leveraged. The complementary roles of all actors (UNHCR, civil society, experts, academic institutions, media) were acknowledged and steered towards achieving the goals of the GSBD. In some instances, it entailed a serious review of existing partnerships and the forging of new ones with actors that were more relevant, active and influential. In one roll-out country, UNHCR established a partnership with an organization that did not have a history of working on issues relating to migrants and refugees, but that was very well known to the public of that country and had a strong human rights record and excellent outreach. The engagement of this organization significantly increased the visibility of the issue of detention of migrants and refugees, and enhanced outreach significantly.

## 7. Progress towards achieving the goals of the Global Strategy – Beyond Detention

### 7.1. Ending the detention of children

Globally, a consensus is starting to emerge on the need to end the detention of children as an immigration practice. This has been bolstered in part by the Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and No. 22 (2017) of the Committee on the Rights of the Child on general principles regarding the human rights of children in the context of international migration.<sup>66</sup> The GSBD was able to capitalize on this positive international momentum in its work on its second objective of ending the detention of children. On the occasion of the 25th anniversary celebration of the Convention on the Rights of the Child (CRC) in 2014, the UN High Commissioner for Refugees took the opportunity to assert that “the practice of putting children in immigration detention is in violation of the CRC in many respects and it should be stopped”.<sup>67</sup> In 2017, UNHCR reiterated and further detailed its position that “children should not be detained for immigration related purposes irrespective of their legal/migratory status or that of their parents and that detention is never in their best interests”.<sup>68</sup>

Across eight of the roll-out countries assessed in depth for the review, there is a mixed set of positive and negative results. Constraining factors included a combination of a lack of political will and a lack of appropriate ATD resources. In four of the eight roll-out countries examined for this review, the objective on children was a good entry point for UNHCR and its partners to begin discussing immigration detention issues more closely. Given the atmosphere of increasing international agreement on the need to minimize the detention of children, this objective facilitated an important “opening” to begin implementing the strategy at national level. In addition, regional and national courts in recent years helped to solidify further the path to protecting children from immigration-related detention. In some countries and contexts, UNHCR and its partners increased their judicial engagement<sup>69</sup> on relevant cases, resulting in important emblematic decisions. In other countries, UNHCR and its partners provided operational solutions to the lack of space in shelters for children or the lack of guardians for unaccompanied minors.

<sup>66</sup> The objective of the General Comment was to provide authoritative guidance on legislative, policy and other appropriate measures that should be taken to ensure full compliance with the obligations under the Conventions to fully protect the rights of children in the context of international migration. The full comment is available at: [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1\\_Global/CMW\\_C\\_GC\\_3\\_CRC\\_C\\_GC\\_22\\_8363\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/CMW_C_GC_3_CRC_C_GC_22_8363_E.pdf)

<sup>67</sup> UNHCR, “UN Refugee Agency calls on States to end the immigration detention of children on the 25th anniversary of the Convention on the Rights of the Child”, Press release, November 2014, available at <http://www.unhcr.org/news/press/2014/11/546de88d9/un-refugee-agency-calls-states-end-immigration-detention-children-25th.html>

<sup>68</sup> UNHCR, “UNHCR’s position regarding the detention of refugee and migrant children in the migration context”, January 2017, p.2, available at: <https://www.refworld.org/pdfid/5885c2434.pdf>.

<sup>69</sup> Judicial engagement broadly encompasses a wide range of activities such as: building partnerships with the legal and judicial community; supporting professional development of lawyers and judges; ensuring legal aid and representation as well as access to courts. UNHCR may also support strategic litigation undertaken by others, and act as an intervener in court. (UNHCR, *Beyond Detention: Progress report mid-2016*, p.17).

For 2018, UNHCR registered a decline in the detention of children for migration-related purposes in three of the GSBD roll-out countries, and an increase in two others.<sup>70</sup> By 2019, at least 80 States around the world were depriving children of their liberty for immigration purposes. Only 24 States globally did not or claimed not to deprive children of their liberty for immigration-related purposes.<sup>71</sup> A decrease in the number of detained asylum-seeking children was also registered in at least four of the roll-out countries. An additional three adopted a policy of non-detention of children (though the policy did not always translate into practice).

To meet this objective, some countries had to address gaps in their national protection systems. In one roll-out country for example, the government realized the need for guardians. In another, while the law stipulated that UASCs should be placed in ATDs, this was not possible in practice because of a lack of specialized care facilities.

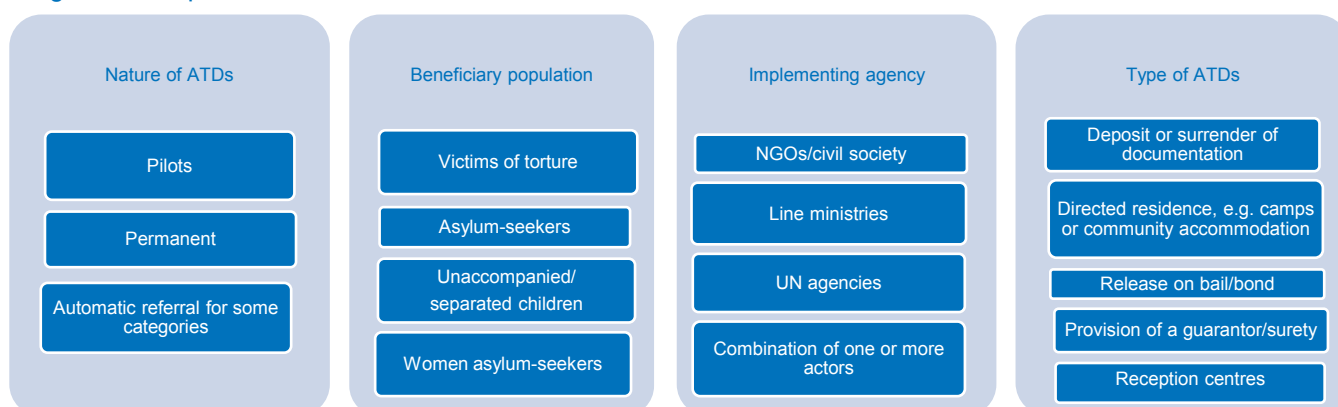
A handful of governments continued to be unconvinced by UNHCR's call for an absolute ban on the detention of children, pointing out that there were some cases where the detention of children was necessary. Moreover, in some sub-regions, the main group on the move were adolescents rather than children. As such, they did not feel that this objective or the work that UNHCR and its partners were doing addressed their particular challenges.

## 7.2. Ensuring that ATDs are available in law and implemented in practice

The increasing interest of States in ATDs was born of convenience and utility. Experience in some cases has shown that unnecessary, prolonged and mandatory detention practices were counterproductive to the objectives that governments had of wanting to achieve certain immigration outcomes, such as returns of failed asylum-seekers and/or migrants. Moreover, in a few countries governments did not have sufficient places to detain people and were unable to adequately deal with persons with specific vulnerabilities. ATDs seemed to hold the promise of a solution to some challenges: some research points to the fact that at least in some situations, individuals with a higher risk of absconding may be less likely to abscond when supported in alternative detention.

Piloting ATDs therefore offered an incremental model that encouraged States to consider thinking of and addressing asylum-seekers and refugees differently. It allowed governments to take calculated risks, while at the same time see positive results. In one roll-out country, a community-based ATD scheme that had proper case management and support structures in place reduced absconding significantly. This partially explains governments' continued curiosity and keen interest in knowing which models have worked well and which options were available to them. Pressure from an active civil society, independent reviews and court cases also helped to accelerate this search for alternatives. In one roll-out country, the piloting of ATDs for persons of concern to UNHCR led to the abolition of detention for asylum-seekers because of their migration status – a practice that used to be common prior to the GSDB. The host government concerned also issued a circular to that effect. In another roll-out country, refugees and asylum-seekers are referred to ATDs as a matter of principle.

Figure 5: Snapshot overview of ATDs in the 20 roll-out countries



<sup>70</sup> United Nations General Assembly, *The United Nations Global Study on Children Deprived of Liberty*, A/74/136, 11 July 2019, p.464, available at: <https://undocs.org/A/74/136>

<sup>71</sup> Ibid., p.455.



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UNHCR and its partners capitalized on this reality by offering this normative and practical guidance and information. It supported the piloting of ATDs in a number of countries.<sup>72</sup>

Good ATD examples were also showcased in multi-stakeholder thematic meetings. Even in countries where there was hesitation about establishing ATDs, UNHCR and its NGO partner took preparatory steps to establish a pilot. In one roll-out country, foster care arrangements in the refugee community were developed and strengthened. Relevant handbooks were also developed such as a manual on foster care for UASCs, and handbooks targeting foster care agencies, foster care parents and children in foster care.

### UNHCR's two-pronged approach to ATDs: judicial engagement and sustained advocacy

UNHCR and its partners used judicial engagement in some instances, with successful outcomes. In one roll-out country, a High Court for the first time recognized a shelter as an alternative to detention, basing its view on Article 22 of the CRC as well as the country's national Child Act. This particular decision served to underline further that the immigration detention of children should be a measure of last resort. In another country, the Supreme Administrative Court made it clear that conditions at ATD facilities must adequately meet the conditions of traumatized children. The same court also quashed the suitability of an ATD with respect to an 18-year-old based on the principle of family unity. As a result, the youth was accommodated at a reception facility together with his parents and siblings. UNHCR also structured litigation initiatives around Article 31 of the 1951 Convention and the principle of non-penalization for irregular entry.

In some countries, sustained advocacy bore fruit. In one roll-out country, the government changed its policy and stopped detaining asylum-seekers and refugees who were coming through its land border, preferring instead to refer them to ATDs. In other examples asylum-seekers were transferred to a refugee camp in the border area instead of into prisons; and a government, due to strategic litigation, suspended a royal decree that allowed for the detention of asylum-seeker families.

### Challenges of piloting ATDs

While the piloting of a number of different schemes was certainly positive, the review notes that offices did experience significant challenges. Interviewees described arrangements that States and others considered as ATDs did not meet UNHCR's definition of an ATD, which is characterized by some limitation on freedom of movement. In this respect, UNHCR's definition differs from that of the IDC where no limitations or restrictions on the freedom of movement of the asylum-seeker or refugee are necessary to qualify as an ATD.<sup>73</sup> The lack of a harmonized approach to ATDs between UNHCR and the IDC, and the freedom of movement conditions explicit in UNHCR's definition sometimes complicated effective engagement with governments. Many of the pilots could not reasonably meet UNHCR's definitions of ATDs. Many of these arrangements were effectively reception arrangements, or alternative forms of detention rather than ATDs. Nevertheless, some UNHCR offices argued for flexibility, as they realized that by insisting that an arrangement or pilot meet all of the elements of the UNHCR definition of an ATD, they would lose valuable opportunities to influence government policies and practices.

There were other practical challenges in setting up ATDs. In general, across the countries where ATDs are being piloted, the numbers of people benefiting from them are low. In some countries, the use of ATDs was not codified in the normative framework, thus continued to be an ad hoc and unpredictable mechanism with no firm prospects for sustainability. In one roll-out country, for example, some forms of ATD had been accounted for in the Aliens Act. A decree was still yet to be published to make them legally applicable. In another, there were no firm standard operating procedures (SOPs) for how asylum-seekers and refugees were transferred to shelters run by faith-based organizations. Referrals were highly discretionary and not done based on an objective set of criteria (e.g. vulnerability). In other countries the ATDs available were supported mainly by UNHCR and other non-state actors but did not enjoy government support. Finally, in at least one roll-out country, the government piloted an ATD without

<sup>72</sup> In one roll-out country, a small pilot was launched, whereby 100 victims of torture could be placed in ATDs. UNHCR and its partners were actively involved in the identification, assessment and referral of individuals during this pilot project, and participated actively in related inter-institutional meetings and discussions led by the respective government.

<sup>73</sup> The IDC defined ATDs to be "any legislation, policy or practice that allows for asylum-seekers and migrants to reside in the community with freedom of movement, while their migration status is being resolved". (UNHCR, *Report UNHCR Annual Meeting on the UNHCR Global Strategy Beyond Detention 2014–2019*, Brussels, Belgium, p.6).

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putting in place the measures critical to its success. The government concerned later claimed that asylum-seekers living in these ATDs were not fully committed to this arrangement.

While it is recognized that successful ATDs are premised on individuals engaging constructively with asylum and migration processes, rather than seeking to evade them,<sup>74</sup> only one UNHCR office in a roll-out country included a formal component to engage with persons of concern to UNHCR to try to increase their involvement and reduce rates of absconding.

### **7.3. Ensuring that conditions of detention – where detention is necessary and unavoidable – meet international standards**

Similarly to ATDs, the impetus for improving detention conditions in some countries pre-dated the GSBD or originated from other actors. In one country, the high number of deaths of migrants and refugees in jails as well as critical media reports and court cases led the government to improve the detention conditions.

Although monitoring<sup>75</sup> places of detention is part of UNHCR's supervisory responsibilities, it was thanks to the GSBD that a number of UNHCR offices and their partners moved to prioritize it in their regular protection work. In some countries, UNHCR maximized the access that it and its partners had to detention facilities to record observations and pass them on to host governments with recommendations for improvement. In a few roll-out countries, monitoring led to the drafting of SOPs for better case management or systemic improvements in material conditions for detainees. In other countries, UNHCR had limited access, or was unable to set aside sufficient time to monitor detention facilities. It therefore relied primarily on the access that some of its implementing partners had, and the information that they were able to collect. The GSBD provided clarity as to which aspects pertaining to detention conditions were being monitored and for what purpose. As one UNHCR interviewee stated: "In the past we would be focusing on the detainee and his or her condition, rather than systematic monitoring. For example, whether he had access to a doctor, rather than the state of health services in a detention facility per se".

There is evidence that findings from monitoring missions in some cases led to successful judicial litigation at national and regional level. Collective advocacy efforts by UNHCR and other partners have resulted in substantial improvements in the conditions of detention in a number of countries. In one roll-out country, a separate unit for asylum-seekers with special needs, such as single mothers, became operational in early 2019.

According to NGO and UNHCR stakeholders, the third objective sometimes represented a dilemma. On one hand, they had to advocate with host governments to end detention that was neither in line with international norms nor a last resort, but on the other hand, they were also discussing the improvement of detention conditions with those same governments. Some host governments also explicitly requested that offices contribute to improving the material detention conditions for persons of concern to UNHCR, which may be wrongly perceived as accepting that a particular detention is unavoidable and necessary, even when this was not the case. UNHCR offices also found it challenging to delineate their exact role without appearing to be supporting the government's policies on detention.

Finally, this review notes the concern of UNHCR offices and their partner organizations regarding the psychological toll that work on this objective had on their staff. This is not unsurprising given the nature of the work – bearing witness to the poor detention conditions in which many men, women and children were kept for long periods of time and without a solution in sight.

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<sup>74</sup> UNHCR, *Second Global Roundtable on Reception and Alternatives to Detention: Summary deliberations*, 20–22 April 2015, Toronto, Canada, p.3.

<sup>75</sup> Monitoring "describes the process over time, of periodic or regular examination, whether announced in advance or spontaneous, through on-site visits of places of immigration detention" (UNHCR, *Beyond Detention 2014–2019*, p.12).

## 8. Recommendations

As the GSBD as a stand-alone programme has come to an end, and in order to facilitate its mainstreaming into UNHCR's regular protection work, the review presents a set of recommendations on the way forward.

Recommendations	UNHCR Entity responsible	Anticipated timeline
<p>1. UNHCR should continue to integrate the GSBD goals at global, regional and national level.</p> <p>1.1 UNHCR country operations are encouraged to:</p> <ul style="list-style-type: none"> <li>a) mainstream the goals of the GSBD in protection planning and activities;</li> <li>b) identify detention focal points and make these known to relevant national partners;</li> <li>c) carry out a comprehensive analysis of their political and operational context as relevant to detention and alternatives, including existing governmental practices, protection gaps and opportunities for progress;</li> <li>d) continue to provide tangible support to ATDs, notably those that are set up in some countries where governments have dedicated few or no resources;</li> <li>e) undertake intensified work on the detention of stateless persons in relevant contexts, in particular on data collection and advocacy.</li> </ul>	<p>UNHCR country operations, in coordination with DIP and the regional bureaux</p>	<p>1–12 months</p>
<p>1.2 To this end, UNHCR's regional bureaux are encouraged to assume a more active role in shaping and implementing protection work around detention from 2020. This requires ongoing assessment of the protection environment and concerns on detention; the assignation of clear focal points in the bureau; and, where appropriate and possible, dedication of additional human resource and financial resources. Specific ways in which they could lead this work could include:</p> <ul style="list-style-type: none"> <li>a) maintaining a comprehensive overview of the practices, challenges and opportunities, including potentially by organizing regular stock-taking exercises with partners and UNHCR detention focal points in the region;</li> <li>b) encouraging and supporting country operations to focus on detention of stateless persons as a priority;</li> <li>c) facilitating discussions; exchange of good practices; and organization of study visits between States in one or more regions;</li> <li>d) conducting regional stock-taking exercises of the achievements, challenges and future opportunities for implementing detention-related actions;</li> <li>e) identifying and allocating resources where relevant and needed to the regional and national level to improve the implementation of the strategy;</li> <li>f) encouraging and supporting country operations to use strategic judicial engagement on detention, with the focus on ensuring respect for refugee rights, access to asylum and the provision of ATDs.</li> </ul>	<p>UNHCR's regional bureaux in coordination with DIP and country operations</p>	<p>1–3 months</p>
<p>1.3. In this context, and pursuant to its role of providing support and guidance to bureaux and field operations, DIP should continue to:</p> <ul style="list-style-type: none"> <li>a) lead in setting relevant standards and providing advice to UNHCR and relevant stakeholders, including States;</li> </ul>	<p>DIP in coordination with the regional bureaux, country</p>	<p>1–12 months</p>

<ul style="list-style-type: none"> <li>b) keep updating and disseminating good practices and analysis among UNHCR staff and their partners, potentially through user-friendly communities of practice; such a community of practice could also facilitate discussions between colleagues in different operations as well as cooperation between countries that face different challenges;</li> <li>c) provide further normative and operational guidance to UNHCR offices, as required, including potentially on how to better navigate the potential pitfalls of working on the third objective of improving detention conditions, without unintentionally compromising on the overall objective of ending detention for asylum-seekers and refugees because of their migratory status;</li> <li>d) provide targeted support in particular to judicial engagement, and the use of international, regional and national human rights frameworks, including by intensified capacity-building efforts, for UNHCR staff and partners;</li> <li>e) where feasible, continue to undertake, support or encourage research on detention issues that are priorities for States, including potentially the relationship between detention and absconding; detention and return of failed asylum-seekers; determining identity and nationality, and others;</li> <li>f) support intensified work on the detention of stateless persons in relevant contexts, in particular on data collection and advocacy.</li> </ul>	<p>operations and key partners</p>	
<p>2. UNHCR should continue to support States in implementing the goals of the GSD, particularly in the areas of sharing experiences, good practices and information between States, notably through:</p> <ul style="list-style-type: none"> <li>a) connecting more effectively States that are facing common challenges;</li> <li>b) encouraging or undertaking research on important detention-related issues of concern to States, e.g. the relationship between ATDs and absconding; successful ATD models; protection-sensitive case management; the return of failed asylum-seekers; identity and nationality determination; and how to involve host communities more closely in the design and implementation of ATDs;</li> <li>c) giving visibility to good state practice and achievements around detention and alternatives to detention, especially from the Global South;</li> <li>d) engaging governments constructively on pilots and arrangements on the ATD spectrum (even if outside the ATD definition);</li> <li>e) continuing to provide tangible support to ATDs set up in some countries where governments have dedicated few or no resources.</li> </ul>	<p>UNHCR leadership, in coordination with key partners and regional bureaux, and with the support of DIP</p>	<p>1–12 months</p>
<p>3. UNHCR should develop a robust global communication strategy on detention, including to support UNHCR operations in identifying communication audiences and objectives, and to define key messages and media relations. Key messages can focus also on progress made, solutions adopted by governments and their positive impact, while highlighting that detention often does not work.</p>	<p>DER in coordination with DIP, regional bureaux, national offices, and key partners</p>	
<p>4. UNHCR should continue to build the capacity of staff and partners, particularly through:</p> <ul style="list-style-type: none"> <li>a) supporting the roll-out of GSD training tools in interested regions/operations (including the Fundamentals of Immigration Detention e-Learning Course; Alternatives to Detention Self-Study</li> </ul>	<p>DIP and the GLDC in coordination with the regional bureaux and</p>	<p>1–12 months</p>

<p>Modules and the Immigration Detention Monitoring Self-Study Modules), as well as through translation and online options;</p> <p>b) organizing Training of Trainers (TOT) courses to maintain and build in-house expertise.</p>	<p>UNHCR national offices</p>	
<p>5. UNHCR should expand and strengthen partnerships on detention, including with:</p> <p>a) civil society – building on their involvement in the GSBD or general detention work, working closely to review and develop strategies where the context becomes more challenging;</p> <p>b) human rights mechanisms, including national and UN mechanisms responsible for human rights and with relevant mandates, including the Working Group on Arbitrary Detention;</p> <p>c) stakeholders with broader mandates relating to migration, development and human rights, to address common realities and risks facing migrants, asylum-seekers, refugees and stateless persons, including potentially through mixed movement coordination arrangements, the UN Migration Network and activities under the Migration Fund.</p>	<p>UNHCR leadership, DIP in coordination with DER</p>	<p>1–12 months</p>
<p>6. UNHCR should consider ways to measure and track impact of detention-related protection work, potentially through using standards and indicators (which could be adapted from the GSBD) and linked to UNHCR’s RBM Framework.</p>	<p>DIP and DPSM in coordination with regional bureaux and UNHCR national offices</p>	<p>1–12 months</p>

## Annex 1: TORs of the desk review



### TERMS OF REFERENCE INDEPENDENT DESK REVIEW OF UNHCR'S GLOBAL STRATEGY - BEYOND DETENTION 2014-2019

Title:	Independent Desk Review of UNHCR's Global Strategy- Beyond Detention 2014-2019
Proposed Countries:	Multiple
Time - frame covered:	2014-2019
Type:	Independent Desk Review
Commissioned by:	UNHCR Division of International Protection
Location:	Home – based with some travel to Geneva
Time - frame of assignment:	June – October 2019
Contract type:	Individual consultancy

#### 1. Introduction

This independent desk review is being commissioned by UNHCR's Division of International Protection (DIP) and is intended to generate an overview of achievements and lessons learned from UNHCR's implementation of the Global Strategy at country and regional levels, with a view to making recommendations for mainstreaming good practices and approaches.

#### 2. Background

The detention of asylum-seekers, refugees and migrants represents a growing human rights challenge, despite only being permitted for exceptional reasons and as a matter of last resort where it is necessary, reasonable, and proportionate to a legitimate purpose, and then only after less coercive alternatives to detention have been considered in each individual case.<sup>76,77</sup> As a result, asylum-seekers and migrants are often subjected to arbitrary or unlawful detention and are in a position of particular vulnerability with regard to immigration detention. Globally, immigration detention remains far less regulated, reviewed and monitored than criminal or other forms of administrative detention, and many countries are using a one-size-fits-all immigration detention model, where people are detained regardless of individual circumstances, age, protection needs or particular vulnerabilities. Many human rights violations can and do occur in these circumstances and the physical and psychological impacts of even very limited immigration detention are well documented. Women and children are especially vulnerable to

*See UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, paras. 18 to 42, available at : <https://www.refworld.org/docid/503489533b8.html>*



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violence and abuse in places of immigration detention, and studies have shown that even short periods of immigration detention can have life-long mental and physical health impacts.

UNHCR remains deeply concerned about this worrying trend, in particular, when it affects asylum-seekers and refugees as well as stateless persons and, in some cases, others of concern. Seeking asylum is not an unlawful act; on the contrary, it entails the right to access open and humane reception arrangements.

Unfortunately, putting numbers to this situation remains extremely challenging for various reasons, including because States often do not record immigration detention cases or do not consider asylum-seekers or migrants deprived of liberty for immigration related purposes as detained. However, it is estimated that hundreds of thousands of asylum-seekers and migrants are unlawfully or arbitrarily deprived of liberty for immigration-related purposes every year.

To address this situation, UNHCR has been actively developing tools and partnerships in the field of immigration detention and alternatives to detention over the last few years. Notably:

- [Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-seekers and Alternatives to Detention](#) (2012), clarifying UNHCR's legal position on the detention of asylum-seekers and the standards to which it expects States to adhere.
- [Memorandum of Understanding](#) with International Detention Coalition (IDC) (2013), to strengthen the partnership of the two organizations, out of which many fruitful joint initiatives have been developed at global, regional and national levels since.
- [Memorandum of Understanding](#) with the Association for the Prevention of Torture (APT) (2014), to continue developing our partnership in the field of detention monitoring worldwide.
- Launch of the joint [Monitoring Immigration Detention: Practical Manual](#) (2014)
- Launch of UNHCR's five-year [Global Strategy – Beyond Detention](#) to support governments to end the detention of asylum-seekers and refugees (2014).

The Global Strategy has three main goals: i) end the detention of children; ii) ensure that alternatives to detention are available in law and implemented in practice; and (iii) 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.

The Strategy covers a five-year period of time (2014-2019), during which UNHCR prioritizes its work with governments and other relevant stakeholders to address some of the main challenges and concerns around detention policies and practices as well as to build-up internal policy and advocacy guidance on this topic. At the operational level, the Global Strategy provides a framework to guide UNHCR interventions in this area. Since its roll-out, 20 UNHCR Offices (in 20 focus countries) <sup>78</sup> have engaged in the Strategy by developing specific national plans of action (NAPs), to tackle one or more goals of the strategy, and designed and implemented these agreed actions in close coordination with our main civil society counterparts at country level and with the relevant national authorities. Tools and guidance produced at HQ by DIP, including in some cases in collaboration with partners, before and since the launch of the Strategy, are various and varied (in line with the different goals) and can be found at the repository

<sup>78</sup> Botswana, Southern Africa, Zambia, Zimbabwe, Canada, Mexico, United States of America Indonesia, Japan, Malaysia, Thailand, Belgium, Bulgaria, Czech Republic, FYR, Macedonia, Hungary, Lithuania, Malta, United Kingdom, Israel.

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of documentation for the Strategy and UNHCR's detention work in general at: <https://www.refworld.org/detention.html>. These include but are not limited to, for example:

- [Summary of Deliberations](#) of second Global Roundtable on Reception and Alternatives to detention for asylum-seekers, refugees, migrants and stateless persons (2015);
- Options Papers on [Alternatives for Detention](#) and on [Care Arrangements for children](#) (2015);
- [HC's Policy on Detention Monitoring](#) (2015);
- [IDC/UNHCR Vulnerability Screening Tool](#) (2016);
- [Baseline and Progress Reports](#) of the Global Strategy (2016);
- [Detention Checklist](#) (2017);
- [Stateless Persons in Detention Tool](#)(2017);
- [Policy position](#) on the detention of children in the immigration context (2017);
- [Alternatives to Detention Assessment Tool](#) (2018);
- [Summary of Discussions](#) of the Bangkok Global Roundtable on Reception and Care-arrangements for asylum-seeking children (2018);
- E-learning courses on immigration detention (2018);

Reporting under the Global Strategy is done periodically, both at a formal level (through the development of Progress Reports – which are public) and at country specific level by the follow-up to NAPs done by the expert consultant for the strategy implementation. These reports represent a first measure of implementation progress towards achievement of the strategic goals. UNHCR has also had a practice of maintaining an annual (or biannual) global coordination workshop for all countries participating in the strategy; representing an opportunity for the operations to update each other on good practices, learn from invited experts of specific topics, share challenges and concerns and, in general, support cross-fertilization efforts towards the implementation of their NAPs.

### 3. Purpose and scope

This independent desk review is intended to assess what progress has been made through the implementation of the Global Strategy (in terms of outcomes), what key lessons have been learned and what are some of the positive results and achievements. The review will also seek to draw out lessons from what could have been done better and what unintended results (if any) came out during the implementation. The review will include all aspects of work related to the progressive achievement of the three goals of the Global Strategy, from the setting of the strategic objectives and outcomes components to the level of consistency through which these are implemented at country level.

The primary audience for this review includes UNHCR HQ, specifically the Division of International Protection (DIP), Regional Bureaux and at country level, UNHCR staff and managers participating in activities related to its implementation. The report will also be of specific interest to UNHCR partners and donors. The final report and standalone Executive Summary will be published on the UNHCR website.

Specifically, the review will:

- Review and assess the Global Strategy and supporting guidance; considering coherence and appropriateness of approach (including about the tools and materials developed) in relation to desired results and outcomes;
- Provide a review of how coordination mechanisms between HQ and the Field Operations were envisaged and supported as well as seek lessons learned;
- Explore the factors that contributed or constrained the implementation and progress of the goals set;



- Offer forward-looking recommendations on potential areas for organizational investment and adaptation with a view to ensure mainstreaming of the work done under this strategic approach.

#### 4. Review Approach

The review will draw on existing UNHCR documentation and data held in the field and at UNHCR HQ, as well as on relevant published literature from external agencies and stakeholders. In addition, targeted primary data collection through remotely conducted interviews or surveys with key UNHCR stakeholders is envisaged. Inception and validation visits to UNHCR HQ in Geneva is foreseen.

#### 5. Key questions and lines of inquiry

Preliminary documentation review should consider how the following proposed lines of inquiry will inform a final set of review questions to be agreed with the UNHCR Evaluation Service in a brief approach paper.

##### **Question 1: Was the approach taken by the Global Strategy, as a normative framework, appropriate and useful to achieve the goals set?**

Possible sub-questions:

1. Did the strategy provide a clear framework to guide key interventions and prioritization at global, regional and national levels?
2. Did the strategy set out clear, appropriate and measurable objectives?
3. How relevant is the strategy to global and country-level contexts of implementation?
4. To what extent is the strategy consistent with global frameworks and commitments?

##### **Question 2: Was the roll-out of the strategy from HQ to Country Offices done in an effective manner and consistent with its goals?**

Possible sub-questions:

1. What was the role of HQ (DIP/PPLA), Regional Bureaux and Country Offices in implementing the strategy?
2. How useful/appropriate were the guidance and guiding tools produced by HQ for the actual implementation of the strategy?
3. What support, advice and accompanying guidance was offered, and how useful and accessible was the support and guidance?
4. How did monitoring of the strategy implementation take place?
5. How was the engagement (at field level) with the strategy reflected (or incorporated) into country operations plan?
6. What human and financial resources were made available at field level, and how was management's commitment and support to implementing the strategy?
7. How has the implementation of the strategy strengthened partnerships?

### Question 3: What results have been achieved during the implementation of the strategy?

Possible sub-questions:

1. What results were achieved in countries where the strategy was rolled out?
2. What has worked/not worked and what lessons can be learned out of this?
3. Were the NAPs further developed and adapted during the course of the strategy to address developments, opportunities and challenges?

### Question 4: Looking forward, how can the work developed at HQ and country level be mainstreamed?

Possible sub-questions:

1. How has the strategy contributed to policy development at global level?
2. How did the strategy facilitate work across different protection priorities (e.g. child protection, statelessness, monitoring, strategic litigation)?

## ORGANIZATION AND MANAGEMENT OF THE DESK REVIEW

The review will be undertaken by an individual qualified independent consultant. An individual contract will be issued to the selected consultant. Payment will be lumpsum based on deliverables and guided by UNHCR's Policy on Individual Consultancies. The Division of International Protection, PPLA section, in close coordination with the Evaluation Service, will designate a focal point for the desk review, who will (i) support with the day to day aspects of the review process; (ii) act as the main interlocutor with the consultant conducting the review; (iii) provide the consultant with required data – with the support of focal points in the concerned Divisions and country operations; (iv) facilitate communication with stakeholders; (v) review all interim deliverables and final reports to ensure accuracy and quality.

### Expected Deliverables and Timeline

- A brief methods paper including a final set of review questions and a description of how the proposed approach will address these;
- A maximum 25-page final report that responds to the final review questions, with an additional maximum 10-page standalone Executive Summary; and,
- A power-point presentation summarizing key findings and broad recommendations for validation and discussion, with an update after finalization to be used for internal communication;

An indicative timeline is set out below for interested parties to consider.

Indicative date	Deliverable
June	Consultant is contracted
June/July	Briefings with DIP and the Evaluation Service and Initial desk review
July	Brief approach paper for DIP with quality assurance review by the Evaluation Service
July/August/September	In-depth desk review and data collections (interviews)
Early September	Draft report circulated
October	Final report circulated

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## 6. Consultant Profiles

### Skills and Experience:

Minimum qualifications required:

- A post-graduate University degree (preferred), a Master's degree (required) in social science, development studies, or international law/relations;
- Minimum of 15 years of relevant professional experience ideally refugee response operations, particularly in areas related to human rights, international protection standards and immigration processes, as well as at least 5 years' experience with conducting or managing evaluations and/or larger research projects, preferably at the strategic and policy levels;
- Institutional knowledge of UNHCR's mandate and modus operandi;
- Extensive experience with various data collection and analytical methods and techniques used in research and evaluations, as well as clear and compelling presentation skills;
- Experience in generating useful and action-oriented recommendations to management, protection and programming staff;
- Excellent analytical skills and demonstrated understanding and analysis of the practical application of complex global level policies or strategies; Excellent English drafting skills (to publication standard).

### Guidelines for submission of proposals

UNHCR is seeking individual applications for the position of Consultant with the composition of skills and experience as outlined in the 'Skills and Experience' above. Applicants are requested to submit a motivation letter.

Interested applicants are required to submit a completed P11 and motivation letter (maximum 2 pages), which includes but is not necessarily limited to:

- Details of how they meet the 'Essential Skills and Experience', including description of past professional experience and evidence of their capacity meet the objectives of this consultancy.
- At least two recent samples (within the last 24 months) of other EQA design that they have participated in.
- Contact details for three references. UNHCR's Evaluation Service will contact referees for feedback on services provided by the consultants.

Consultants may be asked to provide additional information during the assessment and selection process.

### Duration

This is a 4-month individual consultancy, with the possibility of extension. Payment will be lumpsum based on deliverables and guided by UNHCR's Policy on Individual Consultancies.

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### Awarding the contract and payment

Proposals will be assessed on the quality and relevance of consultant qualifications. Short-listed applicants may be requested to participate in a telephone interview, or supply additional references and/or samples of work.

#### To Apply:

Interested applicants should submit their, completed P11 and motivation letter with the subject 'Last, First Name, Evaluation EQA Consultancy' to the UNHCR Evaluation Service email address [hqevaser@unhcr.org](mailto:hqevaser@unhcr.org)

DEADLINE FOR SUBMISSIONS is Monday 17 June 2019

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Annex 2: Questionnaire format

**QUESTIONNAIRE TO ALL COUNTRIES WHERE THE GLOBAL STRATEGY – BEYOND DETENTION WAS ROLLED OUT**

**APPROACH TO IMPLEMENTATION**

Please review the following statements and select the option which in your view best applies:

**The approach taken by the Global Strategy, as a normative framework, was appropriate and useful to achieve the goals set.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

**The strategy provided a clear framework for actors working in the field of immigration detention to guide key interventions and prioritization at global, regional and national levels.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

**The strategy set out clear, appropriate and measurable objectives for these actors.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

**The strategy is relevant to the global context and consistent with the global framework and commitments (e.g. UNHCR’s mandate, the international protection and human rights commitments of States).**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

**The Global Strategy is relevant to the country-level context of implementation.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

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**The Global Strategy addresses the specific related needs and priorities in that country.**

Strongly agree   Agree                      Somewhat agree                      Don't agree                      Strongly don't agree

Please explain your answer, providing at least one concrete example that justifies your choice.

#### **SUPPORT FROM HQ AND BUREAUX**

**The roll-out of the strategy by UNHCR HQ to country offices was done in an effective manner.**

Strongly agree   Agree                      Somewhat agree                      Don't agree                      Strongly don't agree

Please explain your answer, providing at least one concrete example that justifies your choice.

**The roles of HQ (DIP/PPLA), regional bureaux and country offices in implementing the strategy, were harmonized and coordinated.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

**The guidance for internal and external stakeholders produced by HQ (specific guidance, support and guidance tool) regarding the implementation of the strategy was useful.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

#### **COUNTRY-LEVEL IMPLEMENTATION**

**The strategy at the national level met the goals that it set for itself at the global level.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

**The specific context and developments in the country where the strategy was implemented had the following overall impact on the results obtained:**

Very positive   Positive                      Negative                      Very negative                      No impact                      Mixed bag

Please explain your answer, providing at least one concrete example that justifies your choice.

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**Partnerships were sufficiently leveraged for the implementation of the strategy.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

**MONITORING**

**There are effective monitoring mechanisms in place at national, regional and HQ level.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

**The findings from the monitoring mechanisms were fed back into the implementation of the strategy and contributed to its adjustments.**

Strongly agree   Agree                      Somewhat agree                      Disagree                      Strongly disagree

Please explain your answer, providing at least one concrete example that justifies your choice.

**LOOKING FORWARD**

Please answer all of the following questions. Please try to be specific in your answers and as detailed as possible.

**What are the lessons learned and best practices that have been acquired from the implementation of the strategy at global and national level?**



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### Annex 3: List of questions and sub-questions of the review used for KII's

#### **1. Was the approach taken by the Global Strategy, as a normative framework, appropriate and useful to achieve the goals set?**

##### Agreed sub-questions:

- (a) Did the strategy provide a clear framework for actors working in the field of immigration detention to guide key interventions and prioritization at global, regional and national levels?
- (b) Did the strategy set out clear, appropriate and measurable objectives for these actors?
- (c) How relevant is the strategy to the global context and consistent with the global framework and commitments (e.g. UNHCR's mandate, the international protection and human rights commitments of States)?
- (d) How relevant is the strategy to the country-level context of implementation and to what extent does it address the specific related needs and priorities in that country?

#### **2. Was the roll-out of the strategy by UNHCR HQ to country offices done in an effective manner and consistent with the goals of the Global Strategy?**

##### Agreed sub-questions:

- (a) What was the role of HQ (DIP/PPLA), regional bureaux and country offices in implementing the strategy, and to what extent were they harmonized and coordinated?
- (b) How useful was the guidance for internal and external stakeholders produced by HQ (specific guidance, support, and guidance tool) regarding the implementation of the strategy?
- (c) What monitoring and mechanisms are in place at national, regional and HQ level and how did the findings contribute to the implementation of the strategy?
- (d) How was the strategy tailored/adjusted to the specific context and needs of the country operation?
- (e) Were partnerships sufficiently leveraged for the implementation of the strategy?

#### **3. What results have been achieved during the implementation of the strategy and global and country level?**

##### Agreed sub-questions:

- (a) Did the strategy meet the goals it set for itself at the global level, and if so how?
- (b) What results were achieved in the countries where the strategy was rolled out and to what extent did they meet the goals of the strategy?
- (c) How did specific developments in the countries where the strategy was implemented – including opportunities and challenges that its roll-out encountered – affect the results obtained?

#### **4. Looking forward, how should the strategy continue to be implemented in the future, given the experience made so far?**

##### Agreed sub-questions:

- (a) What are the lessons learned and best practices that have been acquired from the implementation of the strategy at global and national level?
- (b) How can the gains made so far from the implementation of the strategy be sustained in the future?
- (c) What aspects of the implementation need to be adjusted to maximize gains made so far?

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## Annex 4: List of persons with whom KIIs were conducted

### **KIIs at global level**

#### **IDC (current or former employees)**

Benjamin Lewis  
Grant Mitchell  
Jem Stevens  
Jerome Phelps  
Junita Calder  
Vivienne Chew

#### **UN agencies and entities**

Georges Younes, Global Study on Children Deprived of Liberty  
Kristina Touzenis, IOM

#### **UNHCR consultants (current and former)**

Eiri Ohtani, GLDC  
Elina Steinerte, GLDC  
Jyothi Kanics, DIP  
Maciej Fagasinski, DIP  
Marie Huberlant, DIP

#### **UNHCR HQ**

Andrea Vonkeman (formerly Bureau for Europe)  
Ariel Riva, DIP  
Carole Dahan, DIP  
Daniel Sziebert, GLDC  
David Wellin, MENA Bureau  
Kabi Bernander, Africa Bureau  
Michele Cavinato, DIP  
Radha Govil, DIP  
Tatiana Villaceros, PSP  
Veronica Buget, DRRM

### **KIIs in roll-out countries**

#### **Belgium**

Mieke Verrelst, UNHCR

#### **Canada**

Greg Kipling, Immigration and Refugee Board  
Lori Simpson, Immigration and Refugee Board  
Rana Khan, UNHCR Canada

#### **Hungary**

Andreas Kovats, Menedek  
Daniel Begaremi, Cordelia Foundation  
Grusa Matevzik, Hungarian Helsinki Committee  
Lilla Hardy, Cordelia Foundation

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**Israel**

Rachel Peled, UNHCR

Sigal Rozen, The Hotline for Refugees and Migrants

**Malaysia**

Anderson Selvasegaram, SUKA Society

Shobna Sivaraman, UNHCR Malaysia

Winsome Yusup, UNHCR Malaysia

**United Kingdom**

Alison Wary, Home Office, UK Government

Gonzalo Vargas Llosa, former UNHCR Representative to the UK

Peter Grady, UNHCR

## CONTACT US

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