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STEERING COMMITTEE FOR HUMAN RIGHTS
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Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results

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PREFACE

The requirement to consider and use alternatives to immigration detention is well established in European and international legal frameworks. Recent years have seen growing attention to the question of how alternatives can enable states to manage migration without over-reliance on depriving people of their liberty. Despite increased interest, however, alternatives are not yet widely applied, and there has been relatively limited practical guidance on the process of developing and implementing alternatives effectively. This Handbook aims to provide such guidance in a user-friendly manner.

In 2018, the Council of Europe Steering Committee for Human Rights (hereafter "the CDDH") published a comprehensive *Analysis of the legal and practical aspects of alternatives to detention in the context of migration* (hereafter "the Analysis"). The Analysis gives, *inter alia*, a thorough overview of the applicable European and international human rights standards in the field, highlighting critical themes as well as clarifying both the similarities and the differences between varied bodies of the Council of Europe, the United Nations and the European Union. The Analysis also provides a non-exhaustive list of different types of alternatives, explaining their central features as well as potential benefits and drawbacks. Simultaneously, it identifies essential elements that can render the implementation of alternatives to immigration detention effective in terms of respect for human rights, compliance with migration procedures and cost efficiency. Certain gaps that need to be addressed in order to realise the benefits of alternatives to detention are also outlined.

This Handbook is based on the insights offered in the Analysis but it serves a different purpose: It synthesises certain key principles and findings into a concise and visual guide on implementing alternatives. Legal aspects are only briefly addressed as the central focus is on practical implementation. The Analysis is referred to throughout the Handbook, but for specific references, sources and details – including a comprehensive examination of the jurisprudence of the European Court of Human Rights – the Analysis should be consulted directly, available both in printed form and online. A number of international institutions, civil society organisations and academics have greatly contributed to the field and produced important work that can be easily found when consulting the Analysis. In addition, a comprehensive bibliography has been compiled in conjunction with this Handbook which can be found online.

Obviously, there is no "one size fits all" in the field. Diverse national and individual circumstances inevitably call for context-specific actions and tailor-made approaches. The Handbook therefore aims above all to highlight some crucial principles, elements and questions that may help in the process of implementation in multiple settings. Each chapter addresses a single question respectively: Why, what, how? Why should we apply alternatives; what types of alternatives could potentially be considered; and how might we make them work. Accordingly, the first chapter discusses briefly some central human rights standards pertaining to why alternatives in the context of migration are to be considered as well as their possible benefits; the second chapter outlines some potential types of alternatives; and the third chapter asks how alternatives become effective, delineating (a) essential elements of effectiveness, (b) key questions in specific national contexts, and (c) planning concrete steps for implementation.

This Handbook is neither exhaustive nor definitive, but if the material put forth can inspire ideas and suggestions in a useful manner then this would already be a constructive step forward.

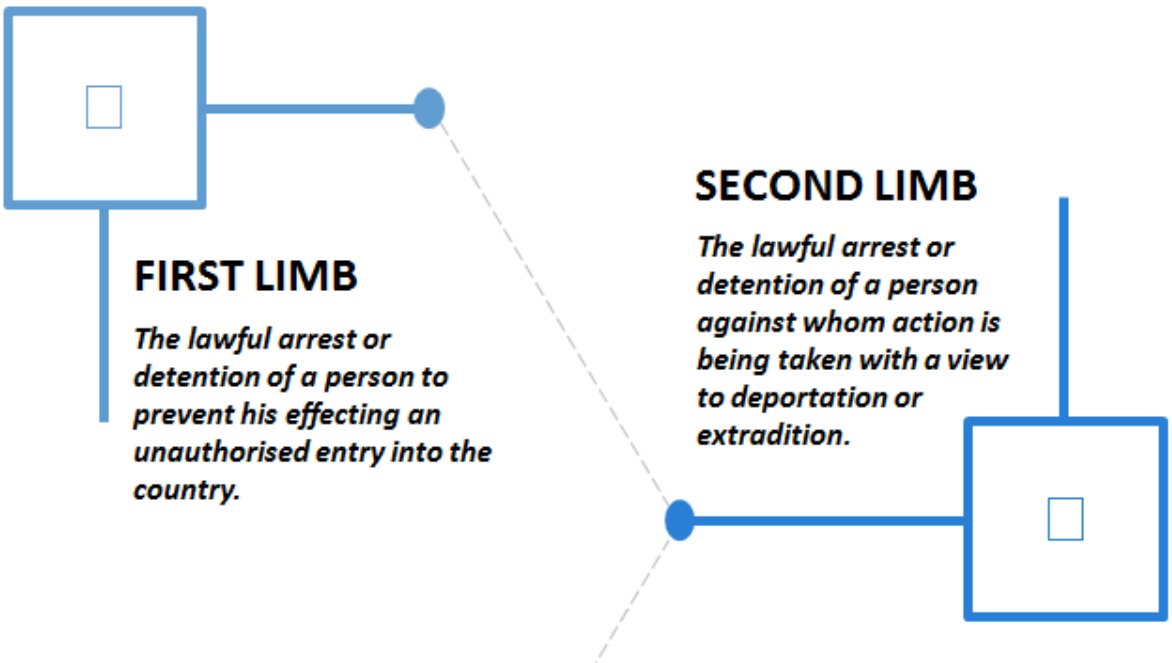
1. WHY ALTERNATIVES TO IMMIGRATION DETENTION?

1.1 The right to liberty

The consideration of alternatives to detention derives from the right to liberty and security of person that is enshrined in all core European and international human rights instruments.

At the Council of Europe level, deprivation of liberty is lawful only when it falls within the exhaustive list of permissible exceptions under Article 5 of the European Convention on Human Rights (hereafter "the Convention"). The central aim of Article 5 of the Convention is to protect all individuals within the jurisdiction of Member States from what the European Court of Human Rights (hereafter "the Court") defines as "arbitrary detention" (see 1.2 below).

Article 5 § 1(f) of the Convention authorises the deprivation of liberty in only two different situations in the context of migration. These are:



The notion of deprivation of liberty is understood as interpreted by the relevant jurisprudence of the Court, the details of which are thoroughly explored in the aforementioned Analysis (see in particular §§ 10-15). It notably follows from the Court's case law that different individual measures that restrict movement can amount to deprivation of liberty when taken cumulatively and thus fall under Article 5 of the Convention.

1.2 Criteria for permissible exceptions to liberty

Overall, any deprivation of liberty in the context of migration must adhere to the general principles set out by the Convention and interpreted by the Court. If it is not to be deemed arbitrary, detention must be provided for in national law, carried out in good faith and closely

connected to the aim pursued. The place and conditions of detention must be appropriate and linked to the grounds of detention. The length of detention should not exceed that which is reasonably required for the purpose pursued. Proceedings should be carried out with due diligence and, in the case of the second limb of Article 5 § 1(f), there must be a realistic prospect of removal. Sufficient procedural safeguards must be in place, such as the provision of reasons for detention, access to legal assistance and representation, and effective remedies.

1.3 Immigration detention - exceptional measure of last resort

Varied international bodies have highlighted that immigration detention should always be an exceptional measure used as a last resort. This entails that detention can only be justified on an existing legal ground and if, after a thorough and individual assessment of the necessity of deprivation of liberty in the particular case, it has been established that less coercive measures are not effective in the specific case. According to the general principle of proportionality, States are obliged to examine alternatives to detention before any decision to detain is made.

1.4 Alternatives to immigration detention

There is broad consensus that alternatives to immigration detention are non-custodial measures that respect human rights and fundamental freedoms while allowing for individual options other than detention. This can include a range of different measures that may be employed to avoid detention. Alternatives to detention should be applied *instead of* detention and must never be used as an alternative *form of* detention.

1.5 Human rights standards applicable to alternatives

Similar safeguards applicable to immigration detention should also be applied to alternatives to detention: these must be in line with international human rights standards. To meet this requirement, alternatives to immigration detention should, *inter alia*:

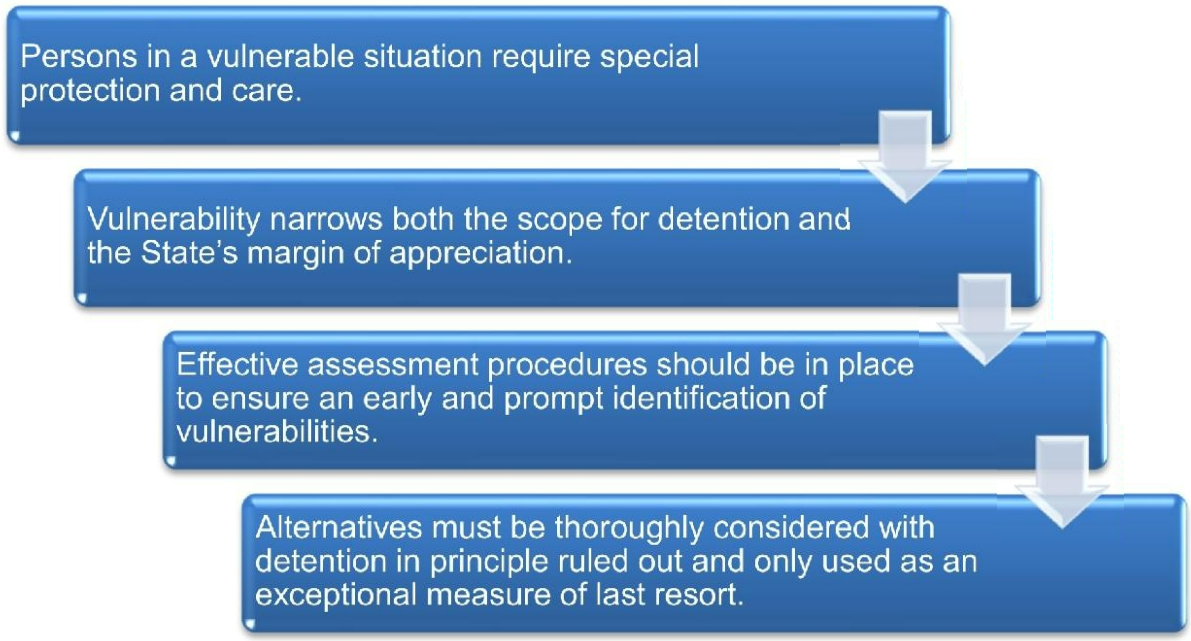
- respect the principle of necessity, proportionality and non-discrimination;
- never amount to deprivation of liberty or arbitrary restrictions on freedom of movement;
- always rely upon the least restrictive measure possible;
- be established in law and subject to judicial review;
- ensure human dignity and respect for other fundamental rights.

1.6 Vulnerability – special needs and protection

The necessity of examining alternatives is of particular importance as regards persons in a vulnerable situation. Due consideration must be given to the special needs of persons concerned, ensuring that they have access to appropriate protection and care. The following groups have been specifically addressed by one or more international bodies in non-exhaustive, indicative listings:

- children;
- asylum seekers;
- stateless persons;
- persons with serious health conditions (including mental health);
- victims of human trafficking;
- victims of torture, ill-treatment and domestic violence;

- pregnant women and nursing mothers;
- LGBTI persons;
- the elderly;
- persons with disabilities.



As to children in particular, their extreme vulnerability takes precedence over their immigration status, and their best interests shall be a primary consideration in all actions concerning them. States should take appropriate measures to ensure that all children are protected. The Court has set stringent criteria regarding the immigration detention of children which may only be admissible in exceptional circumstances as a measure of last resort and for a very short period of time. All appropriate conditions must be fulfilled and it must be concretely established that no alternative can be applied. In the case of families, the best interests of the child taken together with the right to respect for family life require, as a general rule, that children are not separated from their parents and that alternatives should be implemented for the entire family. Failure to examine alternatives when children are involved will, in itself, result in a violation of the Convention. Other international bodies, including the UN Committee on the Rights of the Child, have concluded that immigration detention constitutes a child rights violation and always contravenes the best interests of the child, maintaining that in this context children should never be detained. This rationale is, *inter alia*, reflected in the Parliamentary Assembly of the Council of Europe and its *Campaign to End Immigration Detention of Children*.

1.7 Alternatives should be for all

In this context, it is important to note that alternatives to detention should be available to all, including persons who are not deemed vulnerable. A number of persons may be fully capable and likely to comply with procedures outside of detention without having been identified with specific vulnerabilities or special needs. The development of a wide range of alternatives may increase the number of persons who fully comply to procedures on tailor-made measures, contributing to reductions in unnecessary detention and overall cost-efficiency, as well as reducing the risk of persons becoming vulnerable in detention.

1.8 The benefits of alternatives

1.8.1 Respecting human rights and avoiding suffering

The use of alternatives to immigration detention is necessary to meet international human rights standards in particular cases. These standards require that special attention be given to vulnerable individuals and groups, particularly children. At the individual level, alternatives can prevent the serious consequences that detention can have on physical and psychological health and well-being. The impact of detention on children may be extreme, including long-term effects on their cognitive and emotional development. A place of detention is inherently a place of risk and the detention of vulnerable persons is particularly problematic.

1.8.2 Compliance with immigration procedures

When implemented effectively, alternatives may improve migration governance by promoting compliance with immigration procedures. Alternatives have likewise been shown to help stabilise individuals who are in a vulnerable situation. Various actors, including the European Commission and the UNHCR, have noted that alternatives to detention have a number of benefits such as the avoidance of individual hardship related to detention, financial advantages for state authorities as compared to detention, higher return rates including voluntary departure, and enhanced cooperation in obtaining necessary documentation.

1.8.3 Cost-effectiveness

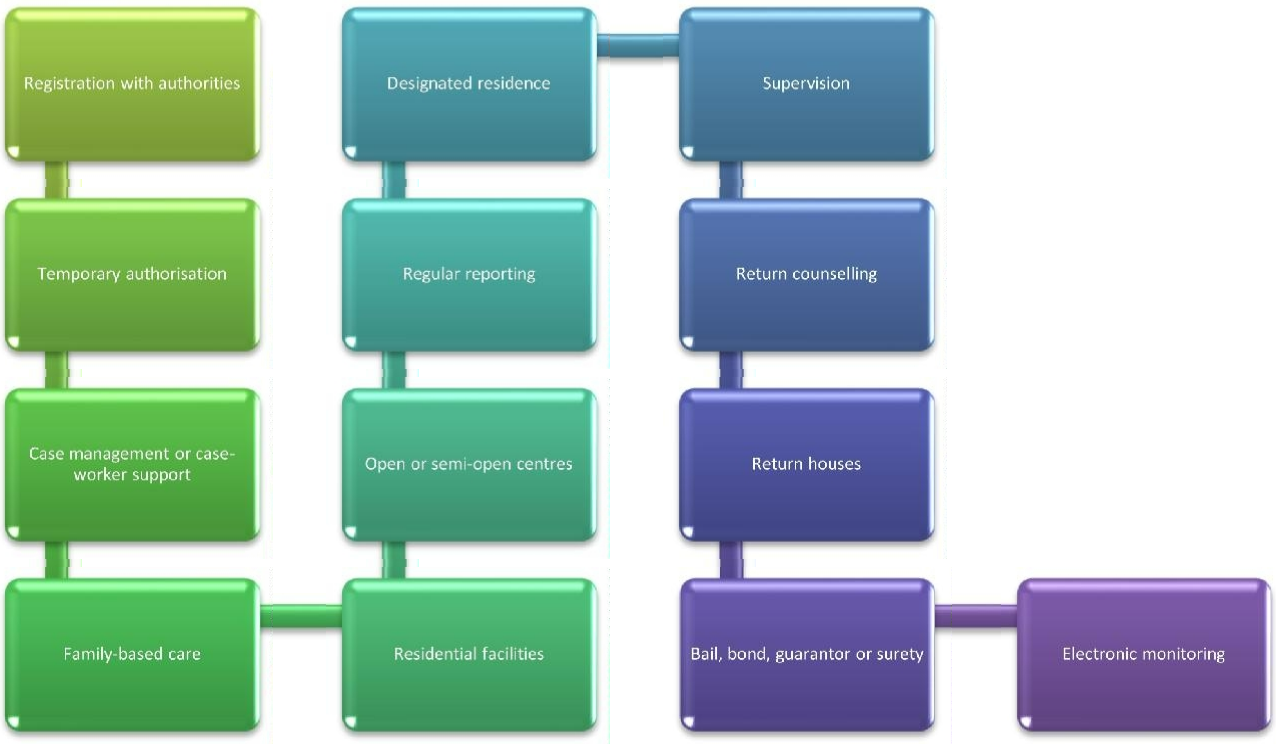
In so far as information is publicly available, detention has been shown to be twice and up to seventeen times more expensive than alternatives. Clearly, cost-benefits can only be realised if alternatives are used *instead* of detention, i.e. help reducing the overall detention estate. If alternatives are merely expanded *in addition* to maintaining or even increasing the existing immigration detention capacity of States, they will unavoidably increase overall costs. Such “net widening” has been roundly criticised within the criminal justice sector.

2. WHAT TYPES OF ALTERNATIVES?

2.1 Indicative types

Given varied national contexts and practices, there is no definitive or exhaustive list of alternative measures. A similar type of alternative may be known by different terms in different contexts. Conversely, the same term may have different meanings and implications in varied settings. Some types of alternatives involve restrictions on the liberty of individuals while others emphasise engagement with individuals. In practice, different types of alternatives are often used together rather than as distinct options. In this context, it is crucial to ensure that any measure – or any combination of measures – is an alternative *to* detention rather than an alternative *form of* detention.

Depending on national and individual circumstances, each type of alternative presented in this chapter may carry with it certain advantages and disadvantages, indications of which can be consulted in the Analysis (see in particular §§ 207-230). The following measures are approximately and roughly listed in an order of the least to the most restrictive options consistent with the principle of minimum intervention. No attempt is made to create a typology of alternatives to immigration detention. It is recognised that it may often be appropriate to make use of multiple or overlapping models depending on the capacities, needs and risks associated with each individual case. It is important to emphasise that all the types listed may not necessarily be recognised by all stakeholders as an alternative to detention. For the benefit of open reflection, however, a wide spectrum of options is listed.



2.1.1 Registration with authorities

When individuals enter a country without proper travel or visa documents, they may be asked to register with authorities and thereafter be provided with a piece of temporary documentation such as an “alien registration card” that can protect them from arrest or detention. Registration may be conducted upon arrival, or later, at the municipality of their residence for example. If deemed necessary, individuals may be asked to deposit existing travel or identity documents on the condition that the documents will be returned to them at a later time – which itself could be considered as another alternative measure.

2.1.2 Temporary authorisation

Temporary authorisation is a broad term covering permits issued by a State that offer a right to remain temporarily. This might, for example, include long or short-term visas or temporary humanitarian visas. Such documents can be granted for the duration of the period that an individual is engaged in an on-going asylum or migration process, or during preparation for return, and can be periodically renewed.

2.1.3 Case management or case-worker support

Case management is an individualised support mechanism for persons undergoing immigration procedures with the objective of achieving case resolution. A common feature is the presence of a case manager – who can either be a civil servant (but not the decision maker in the migration or asylum case) or from civil society – responsible for assisting the individual (or families) from the beginning and throughout the asylum and/or migration procedures. The role of the case manager is to facilitate access to information, legal assistance and representation in relation to immigration procedures, as well as other basic services. Case management is usually comprised of three key components: (a) individual assessment to identify the needs and risks of the individual; (b) development of case plans to effectively address these needs; (c) referral involving continuous monitoring to ensure that any changes are properly addressed.

2.1.4 Family-based care

Family-based care is the general term for a range of alternative care options for unaccompanied and/or separated children that may include either formal or informal settings. Such arrangements help ensure that children are with the support and protection of a guardian or other recognised responsible adult or competent public body at all times. *Kinship care* has been defined as family-based care within the child’s extended family or with close friends of the family known to the child, whether formal or informal in nature. This can include care provided by blood relations, legal kin or fictive kin. *Foster care* includes placement in the domestic environment of a family (other than the children’s own family) that has been selected, qualified, approved and supervised by a competent authority for providing such care. *Other family-like care settings* include any short or long-term arrangements where the carers have been selected and prepared to provide such care, and may receive financial or other support or compensation for doing so.

2.1.5 Residential facilities

Residential facilities are generally expected to take on a temporary care role while efforts are made to identify more stable community-based or family-based arrangements. These are small group living arrangements in specially designed or designated facilities typically organised to resemble a family or small-group situation. These can, for example, include places of safety for emergency care, transit centres in emergency situations, and all other short and long-term residential care facilities, including group homes. Shelters are a particular form of residential accommodation that may include heightened security due to the

safety and/or security of the inhabitants - for example in the case of trafficking victims or domestic workers fleeing abuse.

2.1.6 Open or semi-open centres

Open centres (allowing full freedom of movement) or semi-open centres (where some restrictions on movement, such as curfews, may be imposed), provide temporary accommodation for individuals and families. Individuals may be required to remain in these facilities until their claims are processed, making them a form of directed residence. If granted protection status, people may remain in such centres for a transition period in order to arrange for more permanent accommodation.

2.1.7 Regular reporting

Reporting conditions consist of an obligation to present oneself at set intervals to the competent authorities such as police, immigration officers or other contracted agencies, including child protection or welfare agencies. Reporting can also be undertaken by telephone ("telephonic reporting"). The frequency of reporting can vary from daily to monthly (or less) and can also be scheduled to coincide with other immigration appointments so as to lessen the reporting burden on those concerned.

2.1.8 Designated residence

Residence requirements entail the authorities designating a particular region or location where the individual is required to live. This measure may take various forms, including residence within a particular geographical area in the country, at a private address or at an open or semi-open centre, in a State-funded or State-run facility. In some cases, curfews may be in place or overnight absences may only be permitted with prior approval of the migration authority, while other regimes allow for more flexibility and self-selection of stay. Designated residence should be distinguished from registration with the authorities which imposes no restrictions on where an individual may reside so long as he/she remains in good standing with the authorities.

2.1.9 Supervision

Community supervision arrangements involve the individual being allowed to reside freely in the community subject to supervision by the State or a designated representative, such as a non-governmental organisation, community or religious organisation. The supervision may take place via periodic home visits or check-ins by the supervisor, and may also include providing support for access to work, accommodation, education, legal assistance, and other services or direct provision of goods. Supervision should be distinguished from reporting obligations, where the responsibility is on the individual to report to a designated State agency.

2.1.10 Return counselling

Return counselling – either considered as an alternative measure or as an additional component of a return programme – allows individuals and families to be released from detention or not be detained in order to explore independent or voluntary return, usually with intensive support, including financial incentives, from State representatives, international or civil society organisations. This involves, for example, advice and support around formal voluntary return programmes, which may provide pre-departure assistance, transit assistance and post-return support for arrival and reintegration. Such advice can address people's fears, including destitution upon arrival or of being precluded from applying for a visa to return legally in the future.

2.1.11 Return houses

So-called “return houses” combine case management support with the requirement to reside at a designated location in preparation for voluntary or enforced departure. People in return procedures are placed in open facilities and provided with individual counsellors to inform and advise them about their options and to help prepare them for departure.

2.1.12 Bail, bond, guarantor or surety

The provision of bail, bond or the provision of a guarantor or surety allows persons to be released from detention either on (a) payment of a financial deposit by themselves or a guarantor; (b) a written agreement between the authorities and the individual, often alongside a deposit of financial surety; (c) a guarantee provided by a third person vouching that the individual will comply with the procedure. Any financial surety provided is forfeited in case of absconding or non-compliance. Release could be to a family member, another individual, non-governmental organisation and/or religious or community organisation.

2.1.13 Electronic monitoring

Electronic monitoring or “tagging” refers to a form of surveillance meant to monitor or restrict a person’s movements based on technology, such as GPS-enabled wrist or ankle bracelets. Electronic monitoring has primarily been used in the context of criminal law. Some organisations have strongly criticised electronic tagging in the context of migration, describing it as a particularly harsh and intrusive measure. Some assert that electronic monitoring should not be considered as an alternative to immigration detention, while its use may not be categorically excluded by others.

2.2 Potential and limitations of each type

The widest possible range of alternatives to detention should be made available by States. According to the principle of proportionality, action should always begin with the least intrusive or restrictive measure possible to meet legitimate aims in the individual case. It follows from this that the consequences of non-compliance with an alternative to detention should not automatically amount to detention. Given the different characteristics and consequences of the various measures, and the diversity of circumstances and individuals concerned, there is no simple menu of options for governments and decision makers to choose from. Each application of alternative measures requires consideration attuned to the particularities of the domestic context, the nature of migration movements and individual circumstances.

It is simultaneously significant to recognise the inherent limitation of thinking of success above all in terms of *types* of alternatives. Implementing alternatives is not just about finding the right “type” or “combination of types” suited to the specific national and individual circumstances. Focusing on the processes of individual engagement when identifying and applying types of alternatives of detention is also critical to achieving results. This is discussed in the following chapter.

3. HOW TO MAKE ALTERNATIVES EFFECTIVE?

3.1 Pursuing essential elements of effectiveness

3.1.1 What is meant by "effective"?

There is a broad consensus to evaluate the effectiveness of alternatives to immigration detention based on the following three criteria:

i. Respecting human rights and meeting basic needs;
ii. Ensuring compliance with immigration procedures, including:
   - Prompt and fair case resolution
   - Facilitating voluntary and enforced returns
   - Reducing absconding
iii. Promoting cost-effectiveness.

The legitimate aim of States to ensure compliance with immigration procedures is clearly a fundamental part of the effectiveness of alternatives. Without this crucial aspect, alternatives cannot be deemed effective. Similarly, States are more likely to implement alternatives on the scale necessary if they can be shown to meet their objectives in a cost-effective way. By the same token, alternatives cannot be deemed effective if they do not respect human rights and dignity. But how is effectiveness best ensured in practice?

3.1.2 Essential elements of effectiveness

The ways in which alternatives are implemented may well determine the outcome of alternative measures to a greater degree than the specific type of alternative chosen. How certain processes are upheld or neglected in the application of any type(s) of alternative is significant. These processes have been identified as "essential elements" of effective alternatives to detention.

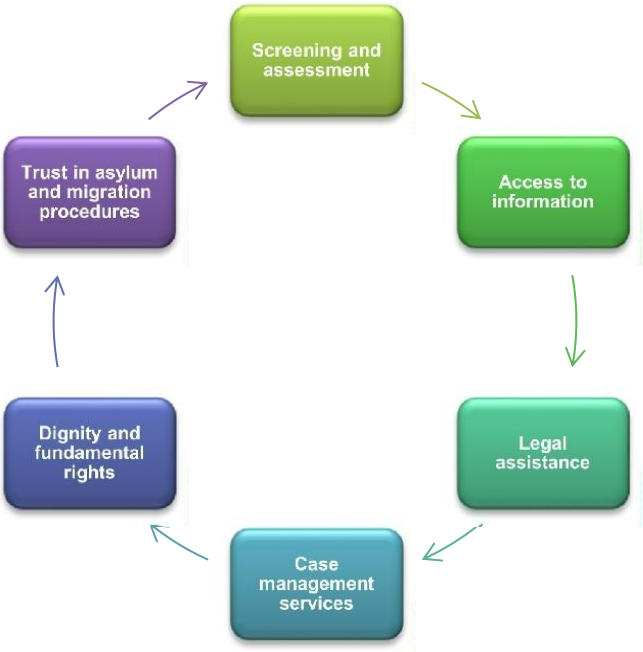
In brief, effective alternative programmes encapsulate the following essential elements:

- **Screening and assessment –** Understanding the individual circumstances and using screening and assessment to make informed decisions about management and placement options;
- **Access to information –** Ensuring individuals are well-informed and provided with clear, concise and accessible information about their rights, duties and consequences of non-compliance;
- **Legal assistance –** Providing meaningful access to legal advice and support from the beginning and continuing throughout relevant procedures;
- **Case management services –** Supporting individuals through personalised case management services and advice;
- **Dignity and human rights –** Safeguarding the dignity and human rights of individuals, and ensuring their basic needs can be met;
- **Trust in asylum and migration procedures –** Building trust and respect through a spirit of fairness and cooperation, rather than an exclusive focus on control or punishment.

Clearly, some of the essential elements of effectiveness are in and of themselves international human rights standards. Making alternatives effective, therefore, is partly the art of pursuing proper procedures. But in order to address all of the essential elements and promote compliance, it is advisable to develop a range of diverse alternatives that can flexibly address particular circumstances.

i. Screening and assessment

Screening and assessment procedures are considered “fundamental” elements of effective alternatives to immigration detention because they assist decision makers in understanding the individual circumstances of each person for whom alternatives to detention are being considered. Effective use of alternatives is impossible without adequate screening and



assessment.

Screening should take place at an early stage, before a decision is made on detention. It should ideally involve face-to-face communication with individuals, so that hidden vulnerabilities can be identified. Screening may involve collecting basic personal information including identity, nationality, age, migration and health status, as well as identifying any indicators of vulnerability or risk. On this basis, initial decisions can be taken and individuals can be assigned to appropriate alternatives that address their particular needs and risks.

Assessment may involve more in-depth consideration of individual circumstances, including risks, needs and vulnerability factors identified at the screening stage. It should continue at regular intervals throughout the asylum or migration process, and should be intensified in the context of detention given the heightened risk of harm.

ii. Access to information

Individuals need to be provided with clear, concise and accessible information about their rights and duties, the procedures at hand and the consequences of non-compliance. This information should be provided as early as possible and updated as needed throughout the asylum and migration procedures. Information should be provided in multiple formats and in a manner that is easily accessible with checks to ensure that the person has understood. Interpreters may be required – free of charge if necessary – together with translated written materials. Reliable provision of information enhances trust in the system as individuals are more likely to comply if they understand the process in which they find themselves. It can also improve communication with decision-makers, who then are more likely to be informed of issues and developments in the person's circumstances, thus improving the quality of decisions.

iii. Legal assistance

Access to legal advice is invaluable in supporting compliance with migration procedures. It enables individuals to understand the reasons for decisions and to pursue all the legal options available. Where possible, provision of legal advice should be free and automatic. Non-governmental organisations, legal aid services or law firms working *pro bono* can potentially provide legal advice.

The most effective alternatives involve meaningful access to legal advice and support from the beginning and continuing throughout the relevant asylum and immigration procedures. Well-informed persons have been found to be more likely to return voluntarily if they are properly supported.

iv. Case management services

Case management focuses on supporting individuals to take decisions and work constructively with the authorities towards resolving their immigration cases in a timely manner. Case managers work on a one-to-one basis with individuals and/or families, ideally from start to finish of the procedures, and help them to access information, services and legal advice. Case managers can be either state or civil society representatives, but ideally they are not the decision-makers on the immigration case. In the context of significant migration movements, it may not be affordable to provide case management to all individuals throughout the process, so prioritisation may be made *inter alia* on the basis of identified vulnerabilities and risks, including of absconding.

v. Safeguarding dignity and human rights

Practices in alternatives are liable to not only be unlawful but also ineffective if individuals are

unable to maintain their dignity by accessing their fundamental needs in the community. Basic subsistence is not only a fundamental right, but also enables individuals to be stabilised enough to comply with migration procedures, including preparing for return. Homelessness may encourage secondary movement to third countries and make it difficult for individuals to constructively consider their future options, including return. Housing people where other services are accessible in the area facilitates more engagement with procedures than isolating circumstances.

It may be necessary to develop and expand accommodation capacity to ensure that basic needs can be met in the community. This is particularly urgent for children and people in a vulnerable situation. The return process is a vital period for work with individuals on case resolution, so it is important that all elements of alternatives support people to engage at this stage instead of abandoning the process. Forcing people to leave their accommodation at point of refusal of their claims may, for example, remove an incentive to keep in touch with the authorities by complying with conditions such as reporting.

vi. Building trust in asylum and migration procedures

A central cross-cutting element for the effective implementation of alternatives to detention is building trust in asylum and migration procedures through a spirit of fairness and mutual cooperation. The use of alternatives to detention can enable official processes to be perceived as fair and legitimate by people going through them, who may therefore be more likely to comply. Factors affecting the perception of fairness can include delays, inconsistent treatment and decision-making, whether individuals are heard in procedures, and availability of information and legal advice. Overuse of onerous restrictive and conditions-based alternatives may undermine trust and encourage non-compliance, especially if complying is made unnecessarily complicated. Unnecessary or arbitrary detention obviously undermines trust in fair procedures. A further way to build trust may be through regular and meaningful consultation with diverse stakeholders, including immigrant communities that may support individuals to engage with migration processes.

Overall, early engagement with individuals is a key factor in the effective implementation of alternatives to immigration detention and runs like a red thread through success.

3.2 Scoping your national context: Key questions

This section explores some key questions and potential steps that authorities may consider in order to enhance the effective implementation of alternatives to detention. This should not be interpreted as obligatory or prescriptive. Rather, the section highlights possible approaches that relevant stakeholders may wish to contemplate in the process of designing, implementing and evaluating alternatives.

3.2.1 Understanding existing strengths, gaps and possibilities

Alternatives must address the specific national context of the State concerned whilst complying with international standards: good practice cannot simply be imported wholesale from elsewhere. In each State, there will be differences in legislative and policy frameworks. There will also be differences in the nature and scale of migration movements, and particular challenges in managing these. Likewise, there will be considerable variety in the scale and nature of existing infrastructure and resources available, both within government and on the part of civil society, national human rights institutions and other key stakeholders. Efficient development requires that alternatives build on existing strengths of the national context while addressing specific migration management challenges.

The design and implementation of alternatives should be based on a careful scoping of national realities, existing services, needs and potential. Where possible, it is advisable to

consult and involve a range of diverse actors from the beginning in order to deepen the mapping of opportunities and build valuable working relationships.

3.2.2 Analysing the national legal and policy framework against international standards

Firstly, it is important to analyse the national legal framework, policy and practice. Certain key questions include:

- *Is legislation compliant with international human rights standards?*
- *Does policy enable a broad consideration of alternatives by decision-makers?*
- *Are alternatives limited in law and/or in practice to a narrow typology which precludes the development of engagement-based alternatives?*

Where there are legislative gaps or barriers to the development of alternatives, these should be identified from the start and given the time required to change.

Potential steps:

- Commission an internal or external review of legislation and policy and engage key partners and experts.
- Identify gaps in legislation, policy, procedures and training of staff.
- Analyse whether and what changes in legislation and policy are required.
- Identify practical opportunities to implement alternatives and estimate what resources are already available.
- Evaluate which existing alternatives have proven effective in which circumstances, including any costs compared to detention.

3.2.3 Comprehending the scale, nature and vulnerabilities of migration movements

It is also vital to understand the nature of migration movements in a particular domestic context. This could *inter alia* include the proportion of asylum seekers and non-asylum claimants, transit populations, children and other vulnerable individuals or groups, short-stay visitors and longer-term residents who become irregular as well as stateless persons and/or people who cannot be returned. The approach called for will vary. This depends, for example, on whether there is a situation of a large influx requiring urgent provision of accommodation and support, or at the other extreme, whether the small number of arrivals poses challenges in terms of the development of appropriate services including interpretation. Populations who may have been living in the country for many years, with or without lawful residence, may likely require a different approach again.

It is, of course, important to recognise the contingency of any such analysis as migration trends and movements are not static and change over time. Consequently, it is important to consult with a range of stakeholders with a deep understanding of the migrant populations concerned.

Potential steps:

- Map the nature of migration trends and movements in terms of key categories such as asylum seekers and other vulnerable persons, especially children.
- Identify key issues arising from the management of these flows, such as secondary movement, meeting the needs of vulnerable persons and resolving cases of refused asylum seekers including stateless persons or those who cannot be returned.
- Analyse specific challenges in the enforcement of asylum and immigration procedures.

- Ensure a comprehensive approach by consulting relevant stakeholders such as national human rights institutions, civil society and international organisations in the process of mapping and addressing challenges.

3.2.4 Identifying relevant domestic, regional and international good practice

While every national context is different, it is important to learn from the extensive and growing regional and international experience, particularly where there are similarities in issues, practices and legal frameworks. Neighbouring States often face comparable challenges, and can usefully share lessons learnt and good examples. Equally, particular challenges such as those of transit populations can affect States across the world.

Potential steps:

- Identify relevant examples of good practice from the region or around the world through engaging with other State partners, human rights structures, intergovernmental bodies, international organisations and civil society.
- Arrange for sharing of learning and experiences, for example through peer-to-peer exchanges and study visits.

3.2.5 Evaluating the availability and effectiveness of existing alternatives

In order to develop effective alternatives in a specific national context, it is critical to understand and identify the current realities in the field. Only then can the system be strengthened and existing resources adapted to ensure progress. Some of the critical questions in this regard are the following:

i. To what extent are alternatives used in practice?

The development of alternatives inevitably starts from present practice, so it is important to identify where alternatives are currently used, and where there are gaps and possibilities, particularly for vulnerable people and children. Taking a wider view of alternatives can highlight potential areas for development. “Traditional” alternatives such as reporting requirements and designated residence are used to a much greater extent throughout Europe than engagement-based measures. For example, alternatives involving case management have been developed much more rarely despite their evidence base of effectiveness. Meeting the needs of vulnerable persons, including children, will require a relatively wide range of alternatives, including projects that can provide additional support and assistance focusing on engagement.

Potential questions:

- What alternatives are available in law?
- How far are they implemented in practice?
- Is the scale and range of available alternatives sufficient to meet the needs of diverse individuals and effective migration management?
- Are engagement-based alternatives available in practice or is the approach exclusively enforcement oriented?
- Is early, individual engagement pursued when implementing alternatives?
- Are alternatives available to the full range of persons concerned or only to specific groups?
- Do options address the specific needs of vulnerable persons, including children?

- Are there people currently detained who could be managed in the community if more effective alternatives were available?

ii. How effective are current alternatives?

It is likewise important to assess how far current alternatives are meeting their legitimate objectives. The criteria of effectiveness already laid out in this Handbook could be used to help assess the extent to which current alternatives are effective. Existing alternatives can to a certain extent be assessed in broadly quantitative terms, subject to available data, but qualitative assessments are crucial as well. In this respect, it may be helpful to compare outcomes with neighbouring states with varying use of alternatives.

Potential questions:

- What are the case resolution rates on particular alternatives, including grants of stay, take-up of voluntary return and enforced returns?
- What are the absconding rates on particular alternatives?
- What are the rates of non-compliance to procedures on particular alternatives?
- Have alternatives been subject to human rights based legal challenges or criticisms from civil society or international organisations?
- What is the cost of particular alternatives?
- How do those involved in the system evaluate the effectiveness of alternatives?

iii. Why is the implementation of some alternatives more or less effective?

It is important to analyse the strengths and weaknesses of the current use of alternatives in order to identify opportunities for development. Such qualitative analysis could be assisted by the use of tools developed by international institutions and organisations, including the UNHCR and the International Detention Coalition.

Potential questions:

<u>Screening and assessment</u>

- Does screening take place promptly, in particular before a decision is taken on detention?
- Is screening effective in obtaining basic information such as identity, nationality, age, health issues and vulnerabilities?
- Does screening involve face-to-face communication in order to identify hidden vulnerabilities and/or disabilities, or is there strong reliance on indicators such as nationality?
- Does assessment involve structured and transparent evaluation of an individual's particular circumstances, risks, needs, potential and vulnerability factors identified during screening?
- Does assessment take place at regular intervals, in particular for individuals in detention?
- Are there procedures in place to redirect persons from detention to an alternative arrangement or release if an assessment warrants it?
- Is screening and assessment based on international good practice?

<u>Access to information</u>

- Do people receive and have access to information on their rights, duties and the consequences of non-compliance, throughout immigration procedures?

- Are people informed of the reasons why they are detained, subjected to restrictions or placed on a particular alternatives scheme?
- Is this information available in a language and manner people understand, notably through translation, interpretation and multiple formats?
- Is advice and support available for vulnerable persons who might otherwise struggle to understand the information provided?

Legal assistance

- Do people have access to legal assistance in practice throughout the asylum or migration process, either through free statutory provision or through for example non-governmental organisations or legal services?

Case management services

- Do people receive individualised case management support to promote constructive engagement with immigration procedures as early as possible, ensuring access to information and legal advice?
- Is any such case management tailored to individual needs and vulnerabilities?

Safeguarding dignity and fundamental rights

- Are adequate placement options available to meet basic needs and safeguard dignity and fundamental rights?
- Do individuals have access to essential welfare, education and health care?
- Are the specific needs of children and vulnerable people met, including with regards to education and mental health care?
- Is support available to people in the return process, where it may have great impact on case resolution?
- Is accommodation in areas where other services are accessible, or does it leave people isolated and disengaged?

Building trust

- Does the process build trust in asylum and migration procedures, including through early engagement from the start of the process?
- Do individuals concerned perceive the process to be fair and legitimate, even when their applications are refused?
- Are knowledgeable stakeholders including national human rights institutions, civil society and international organisations consulted in the process?

3.2.6 Identifying existing services and expertise that can be adapted

Alternatives can often build on existing services and expertise, avoiding the need to develop provision from scratch. Established practices elsewhere in society – for example guardianship schemes, foster care and children's homes – may address gaps in migration management systems. Similarly, services may already be available at one stage of the asylum or migration process but not at others. For example, support services and legal advice for asylum seekers are often withdrawn once individuals enter the return process.

Potential steps:

- Identify and map existing services that could be adapted to correspond to identified gaps in the implementation of alternatives.

- Consult with all relevant stakeholders involved in delivering such services to pinpoint strengths, gaps and potential.
- Assess how far it would be possible to adapt and scale up existing services and what actors would need to be involved.

3.2.7 Calculating costs of alternatives

Cost-effectiveness is an important element of effective alternatives so a rigorous assessment of the likely costs involved is necessary. Costs will be greater for alternatives involving engagement, in particular for vulnerable persons. But while the engagement and support required for effectiveness will have a cost, the benefits of engagement are likely to be greater as engagement-based alternatives have a track record of being less costly than detention. Reducing the use of detention is a prerequisite for overall cost-efficiency, and the active involvement of key stakeholders in adapting existing services may both clarify and reduce overall costs.

Potential steps:

- Involve relevant government services and other key stakeholders in evaluating the costs of existing services and likely costs of adaptation of alternatives.
- Calculate likely costs of a range of possible alternatives for the full range of categories of migrants, including vulnerable persons.
- Identify cost-saving opportunities in the process of implementation.
- In order to reduce costs, analyse how decreasing the overall use of detention will be realised while effectively implementing alternatives.

3.3 Planning progress: Potential steps

3.3.1 Undertaking necessary changes to legislation and policy

Legislative amendments may be needed where existing legislation makes no provision for the consideration of alternatives or limits it to a narrow typology of “traditional” enforcement-based models.

3.3.2 Building collaborative working relationships

Existing actors and services, including national human rights structures, civil society, international organisations and immigrant communities may be a valuable source of advice and insight into how to address needs and build trust with individuals to ensure compliance. They may also already operate certain services that could potentially be developed to become alternatives to detention.

Potential steps:

- Hold roundtables and bilateral meetings with diverse stakeholders including civil society organisations and community groups at an early stage in the process.
- Involve key partners willing to engage constructively in working groups to guide ways forward.
- Design awareness raising activities with objectives, concrete actions and timeframe for implementation.

3.3.3 Testing different approaches

Small pilot projects incorporating the essential elements of effectiveness listed above may be an opportunity to test different approaches with particular and clearly-defined categories of migration movements. Pilots are a cost-effective way to reduce any risks that may be

associated with a grander development of alternatives. If not already in operation, eventual large-scale roll-out can be based on the learning from what worked on a smaller scale. Successful pilots can build relationships and strengthen the confidence of stakeholders in the process. They can also provide opportunities for problems, hindrances and concerns to be addressed at an early stage.

3.3.4 Utilising specialised expertise

Specialised expertise may be needed to address specific needs and risks. For example, particularly vulnerable individuals such as survivors of torture coping with mental health issues, may be at increased risk of absconding, especially if their vulnerabilities make it more difficult for them to engage with procedures and comply with conditions. Stakeholders with access to counselling and other specialist expertise may be best placed both to meet their needs, and to support them to engage with immigration processes. Similarly, some victims of trafficking may be at risk of absconding due to the influence of their traffickers, so specialist support is crucial both for protecting individual rights and effective migration management. As another example, persons who have committed an offence in the host state may pose specific risks. There might be a temptation to face this risk by ordering immigration detention once the person has completed his or her sentence. Such risks may however be managed by organisations with expertise in post-detention rehabilitation, which can support people to avoid reoffending and comply with conditions.

3.3.5 Addressing specific challenges

Approaches can likewise be tested for categories of people posing particular challenges to domestic migration governance. Effective screening is crucial to identify individuals who would consider engaging with procedures if provided with the right support. In the context of false or unrealistic information provided elsewhere, access to reliable and understandable information and legal advice can be crucial to promote compliance. It can enable people to cooperate better with domestic processes in light of clear information and exploration of options laid out.

Potential steps:

- Estimate the scope for and nature of potential pilots involving case management.
- Identify categories and locations of individuals suitable to be involved in a pilot.
- Partner with stakeholders who have specialist expertise able to implement pilots with focus on engagement.
- Evaluate the process throughout to capture strengths, weaknesses and learning.

3.3.6 Developing an implementation plan

Alongside any potential pilot projects, a plan could be developed for a larger-scale implementation of alternatives. This may set out a timeline for developing and implementing a range of alternatives, alongside reductions in the use of detention, and identify key external actors that need to be engaged in different areas.

All relevant governmental departments and agencies with needed expertise should, of course, be involved in the process. Work within and between relevant departments can ensure a joined-up system that avoids inefficient duplication of services.

There may also be scope to introduce a wider range of “traditional” alternatives through simple changes to policy. For example, the requirement to register with authorities, designated residence, bail and sureties require little or no physical infrastructure or specialist human resources. Nevertheless, it is important that clear policy guidance be issued to staff, ideally alongside training, to ensure that such alternatives are used effectively in practice.

Other alternatives may require more substantial investment, particularly those that involve provision of accommodation or case management. Budgets should be drawn up based on assessment of the cost of alternatives, the scale and nature of needs as well as financial resources secured and allocated.

Potential steps:

- Develop joint working practices with relevant government departments to avoid duplication and ensure synergies.
- Foster cooperation with civil society and other stakeholders with intimate knowledge and experience in the field.
- Produce an implementation plan with timescales and budgets.
- Identify alternatives that can be introduced simply through changes in policy.
- Plan for alternatives involving all essential elements, including case management, building on pilots and existing good practice where possible.
- Seek specialised knowledge and expertise domestically and internationally.

3.3.7 Recruiting and training staff

Changes to policy and practice, particularly on new areas of work, may need to be embedded through a structured programme of training of decision-makers and other relevant officials including judges, police, border and immigration officers etc. Where necessary, appropriately qualified new staff could be recruited for any new roles created under the implementation plan.

3.3.8 Monitoring results and sharing outcomes

A structured qualitative and quantitative monitoring and evaluation framework could be introduced for existing programmes and established from the start with regards to new practices. This provides an opportunity for learning that can assist in building effective and humane systems. Key performance indicators could address effectiveness in terms of human rights protection, compliance and cost-effectiveness. Quantitative indicators, such as reduced absconding rates and increased rates of case resolution, including voluntary return, could capture immediate and concrete progress. The overall reduction of the use of detention would also be a significant performance indicator. Qualitative indicators could measure the quality of case management in terms of frequency, regularity of contact, trust relationships established, and improved ability of people to engage with and comply to immigration processes, as well as longer-term shifts such as trust in immigration systems. Evaluation should ideally take into account that some changes – such as greater trust in procedures – usually take place over the medium to long-term

There is a growing interest around the world in the effectiveness of alternatives to detention. Thorough monitoring and evaluation can enable achievements and lessons learnt to be more widely understood and disseminated at national, regional and international level. This can facilitate increased understanding of and confidence in emerging good practices, including through sharing experiences with other States undertaking comparable initiatives. International interest can likewise contribute to growing domestic confidence in new practices.

Potential steps:

- Develop criteria and/or mechanisms to monitor and evaluate the effectiveness of alternatives to immigration detention.
- Ensure that national human rights institutions, civil society and international organisations are included when developing these criteria and any foreseen follow-up.

- Collect data and share learning with all relevant stakeholders in order to improve existing approaches.

4. CONCLUDING REMARKS

This Handbook has attempted to put forth in a visual and straightforward manner some of the key principles, insights, processes and questions that are at the heart of a successful implementation of alternatives to detention in the context of migration. It is appropriate to conclude this Handbook by again referring to the *Analysis of the legal and practical aspects of alternatives to detention in the context of migration* for further insights into the topic, and the comprehensive references to be found there to other significant work in the field by a diverse range of actors.

The wide use of immigration detention as a response to the arrivals of refugees, asylum seekers and migrants raises serious issues of compliance with international human rights standards. The detention of persons in a vulnerable situation remains an issue of particularly grave concern, not only in Europe but across continents. In this context, it is important to recognise that for most stakeholders applying alternatives to immigration detention effectively is bound to still be an on-going learning process. One important step forward is understanding not only the legal obligations in the field but also the diverse types of alternatives available for consideration, as well as the essential elements for their effective implementation. Getting these elements right may be more important than even the type or model of alternatives used, or the financial resources committed. Similarly, mapping and comprehending your specific national context in the overall provision of alternatives – including the characteristics, scale and specific challenges of migration movements as well as existing services – is a significant step towards progress. Small-scale pilot projects as well as solid training of decision-makers and other relevant stakeholders may be a promising way forward, in particular where alternatives are not widely used or have proven ineffective. In the long term, expanding the scale of alternatives across a sufficiently broad and/or diverse range of options is important for sustainable success.

Overall, there may be an opportunity to focus more on *engagement* rather than *enforcement* as a key aspect of effective alternatives to detention. Practices based on individual engagement may, ultimately, lead to better enforcement of migration management policies and be profoundly more apt to upholding human rights. Modern migration movements are made up of diverse individuals with differing capacities, needs and risks, so a combination of approaches rather than a narrow typology may successfully expand what is possible to the benefit of all concerned.

If this Handbook can spur greater interest in the lessons learnt so far – and lead to other existing materials by diverse stakeholders being consulted in the process of implementation – then a step forward has been taken.