



CONFERENCE OF INGOs
OF THE COUNCIL OF EUROPE

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CONSEIL DE L'EUROPE

**Migration Committee on the rights of migrant persons
Access to fundamental rights for migrants, refugees and asylum seekers**

**Migrants, refugees, asylum seekers
Access to fundamental rights**



The Challenge presented in a Nutshell

The following chapters focus on access of refugees and migrants to fundamental rights and to services provided by civil society organisations in this context. The document attempts to make a realistic analysis of issues, based on field experience of both international NGOs and local ones, leading to proposals, suggestions and the re-statement of guiding principles, which under the pressure of time and sheer numbers sometimes get overwhelmed or brushed aside in the ways our society deals with refugees and migrants. The basic challenge is to uphold our values and societal principles and simultaneously safeguard our society from being dislodged, in the knowledge that migration issues are not about to go away and may even become more pressing in a not so distant future.

In this light, the Committee echoes suggestions and recommendations from its members as to possible responses to migration related issues considered to be of fundamental importance in specific areas: education, health and safety and security.

Education, particularly of children, and health are fundamental rights for every individual human being, regardless his sojourn status or any other criterion. The link between services of education and health and the challenges of integration is obvious. Still, the principle of accessibility of education and health services does not automatically imply a right of sojourn, which depends on circumstances and motives of migration, with the distinction between refugees and economic migrants as one of the basic factors to be counted with. In any circumstance, though, it should go without saying that the right of education and health belong to the core of our societal values, and it is in this spirit that the Committee raises a series of questions, answers and suggestions.

Apart from education and health, the Committee also focuses its work on issues of safety and security, which may constitute an even more complex terrain, as it contains a dual dimension: on one hand, the physical and mental safety of the individual person on the move, and, on the other hand, the security of the collective society in which the individual refugee or migrant has arrived. Both dimensions are important and cannot but be viewed as the two sides of a coin. The suggestion is made that adequate policies can serve both purposes at the same time and that it is very well possible to shape and implement policies which ban detention of children and substantially reduce freedom deprivation of adults, without endangering the collective security of society, and to the contrary even enhancing it. Careful and well-thought Humanitarian Corridor operations are for instance a powerful way to bring our society principles into practice and saving individual lives. A win-win outcome is for example also to be found in improved and intensified policies to combat our society's growing scourge of human trafficking, to which refugees and migrants frequently fall victim.

As an overall conclusion, and through the present document, civil society connected to the INGO Conference and its Committee on Migration reaches out to its peer organisations and to policy makers in the various other bodies within the Council of Europe, to join forces even more closely than in the past, in order to take on the enormous challenges posed by the refugee phenomenon and migration as a whole, in an orderly way, with a realistic and objective approach, with solutions and policies which effectively recognise the fundamental rights of refugees and migrants and simultaneously strengthen our society and safeguard it from being dislodged.



INTRODUCTION & FRAMEWORK

1. Dealing concretely with the issue of migration and refugee flows requires prior consideration of the long term character of the phenomenon and attention for the need to combat causes of migration. In the absence of this approach, all policy is bound to remain ineffectual and inadequate, dealing only with the often dramatic symptoms, but leaving unattended the root causes of the issue.

Migration is as old as humankind. In need of water and food, better living conditions or due to war and social conflicts, people have since ever changed their place of living. Unstable political conditions or mere economic issues often turn living conditions of ordinary people into an insurmountable challenge. The underlying issues are often related to war, repression, corruption and State mismanagement at home, but often also go back onto our common colonial past and artificial borders drawn from a distance without involvement of local peoples. Also, economic systems created mainly by and for the benefit of the Global North, a geographical concept that does not only refer to Europe but also to North America and parts of Asia, erode economic chances in less developed countries, while decades of North-South development aid have largely remained ineffective for a multitude of reasons which are to be found on both the helping and the receiving side. The Global North's share of responsibility is nowadays acutely illustrated by the evolving climate change symptoms: those suffering the most from the consequences are the ones who contribute the least to the causes.

Non-violent solutions need to be found to resolve social and political conflict emerging from decreasing resources, such as living space, food and water, but also security and health services. Fundamentally, humanity needs to acknowledge that our planet's resources are under increasingly severe pressure because of excessive world population growth. On another level, action is required as well, though. Wars and proxy wars need to be prevented just as arms supply must be better controlled and prevented from prolonging conflicts for years, causing a lot of suffering and destruction.

In the short run, communication strategies exist but need to be made far more effective in toning down the overly attractive image, cultivated on social media and within migration prone communities, about the chances migrants and refugees may realistically and objectively expect at different destinations.

A world order which better considers different levels of economic strengths and possibilities, and especially also focuses on urgent policies to curb environmental challenges to our planet and our common basis of existence, will in the long run minimise migration causes and thus migration. Pending proper results in this context, our governments and societies in Europe will continue to be forced to deal with issues of refugees and socio-economic migrants, factually, humanely and ethically. Guided by human rights and the rule of law, they will need to step up their efforts to provide adequate responses, which will inevitably also imply policies of focused cooperation with source countries in the South, situation assessment regarding causes of migration, burden sharing among themselves, integration and inclusion. These responses and solutions will inevitably vary from case to case, also taking into consideration the motives for migration, which are obviously not the same for refugees and economic migrants. Said responses will also have to take into consideration the demographic tendencies of population ageing in the industrial North, the implications this is likely to have on the sustainability of growth, social security and societal prosperity in general, and the potential which economically active migration can represent as a contribution to alleviate those pressures on our societies.

2. At the outset, the Committee establishes its objectives, which are basically threefold:

- be a bridge to policy makers on behalf of NGOs in the field and inform the former of major concerns, based on NGO observation and work. The question 'what is happening now and where is this going?'
- establish policy recommendations to policy makers. The question 'what needs to happen in the future?'
- draw lessons and make recommendations accordingly for our own community of NGOs involved in one way or another in the refugee and migration sector.

These underlying insights and analyses developed hereunder and the proposals and suggestions which the Committee subsequently formulates are based on deep and long-standing field experience on the side of International NGOs and local NGOs alike.

3. In its work the Committee is guided by a number of elementary principles, which are for the most part laid down in Conventions and Charters of the Council of Europe and instruments of other international institutions. Reference is for instance made to the Recommendation CM/Rec(2016)3 on Human Rights and Enterprise made by the Council of Europe's Committee of Ministers to Member States on March 2nd, 2016, on the initiative of the INGO Conference.

- In this Migration context one of the most significant principles is that the rights of an individual are not of secondary importance in the face of what is, or is politically considered to be, the collective interest of society. Individual integrity and individual inalienable rights are not negotiable to accommodate policy preferences and public opinions of the collective society. This is the corner stone of our society, and it needs to apply for all people, including migrants and refugees, irrespective of their administrative status or whatever criterion.

- Establishing in Conventions and other international instruments that the fundamental rights of the individual are indivisible, implies that the migration issue requires a holistic approach, which goes well beyond a roof and a couple plates of food a day. The need for a holistic approach has led the Committee to identify three main focal areas: education, health (physical and mental) and safety (physical and mental). These three areas interact and recommendations in these fields must therefore converge.

Horizontal issues

HORIZONTAL ISSUES REGARDING ACCESS OF REFUGEES AND MIGRANTS TO SERVICES AND RIGHTS

1.1 Continuity and Stability of Public Policies.

In our societies governed by the rule of law and human rights, as laid down in the Conventions of the Council of Europe, responsibility for a dignified, humane and effective handling of migration issues lies in principle fully with public authorities, in a joint effort of countries of first entry and other countries which share the same values by their adherence to said Conventions. In this strict reasoning of principle, civil society organisations are called to play a role of monitoring concrete public policies and contributing to their smooth implementation, essentially offering their asset of a relationship of trust and proximity with migrants and refugees.

However, from developments and events of recent years we draw once more the undisputable conclusion that much more than this basic involvement of civil society is in reality required. Gaps and inadequacies in policies, compounded by insufficient public capabilities to cope properly with continuous inflows of refugees and migrants, have led to situations in which services delivered by non-governmental organisations have become crucial and indispensable in order to foresee the basic needs and safety of refugees and migrants, and safeguard their rights. The challenge this implies for local and international NGOs is considerable, for instance in terms of financial requirements and budget allocations, internal organisation, planning of personnel recruitment and deployment, and a multitude of practical matters such as repositioning of vehicles and other technical equipment.

Obviously, as situations on the terrain evolve, there is a need for flexibility in the response and field actors must be able to adapt accordingly. However, it is and remains of utmost importance that public policy makers and project financing instances keep in mind that, for NGOs to be able to work efficiently, smoothly and without incurring unnecessary cost and disruption, continuity and stability in policy objectives, operational modalities, financing rules, etc. should be maximally safeguarded. Experience shows that this is not always the case.

Even more importantly, interruption and frequent fundamental reorientation of support programmes and schemes, for financial or other reasons, often have a deep and rather immediate impact on migrants and refugees in crucial areas such as housing, access to basic services, etc., destabilising them even further and making them even more vulnerable.

There is a certain level of concern on the side of civil society that this impact on the target population is not systematically and duly taken into consideration by policy shapers and policy makers.

1.2 Formal Identification and the Link to Access to Rights and Services

The Committee is set to focus its analysis and recommendations under Axis 2 on three priority areas: health, education and safety. However, specific considerations on these topics are in fact downstream from the issue of formal identification and the question to which degree this identification gives, and is supposed to give access to health care, education and safety related services.

Formal identification in itself is problematic in most of the countries receiving migrants and refugees, partly because of inadequate and inadequately organised first reception capacity, partly also because of deficient solidarity among countries which in principle share the same values of fundamental rights, human dignity and societal decency. In our deliberations we need to pinpoint the main issues causing delays and confusion in the formal identification process, and formulate recommendations as to remedies in terms of policy, with attention for the role we see for civil society.

Given the long and nearly always painstaking intervals between arrival, formal identification and a decision on granting or denying asylum or refugee status, it seems to be important to distinguish each of these stages in considering the accessibility of services of health, education and safety. In itself, making this distinction by necessity is already pointing at a fundamental deficiency of the existing situation : access to health care, education and safety should be considered as an intrinsic and basic human rights of each individual, regardless of his age, origin or any other criterion, and should definitely not depend on his/her specific sojourn status. In its external communication the Committee should state this as a basic principle, horizontally, i.e. beyond specific issues on health, education and safety.

1.3 Longer Term Thinking in Policy Measures

There can be no doubt in anybody's mind that the traumatic experience of being on the run, the uncertainties of the future and the subsequent difficulties and obstacles to resettle in a normal life context, leave scars and traces on the personality, psychology and concrete development opportunities of every single refugee and migrant, regardless of his/her talents, ethnicity, origins or beliefs. In other words, treatment of refugees and migrants today will inevitably have consequences for their future, individually, but also as citizens in tomorrow's society, regardless whether they will end up returning to their country of origin, be relocated somewhere else on our continent or stay in the country where they currently are.

Policy making processes at all public levels should therefore more actively and explicitly take into consideration also what projected policy options will imply in the longer run, rather than focusing more or less exclusively on short term priorities, preferences, needs, situations and consequences, as it happens all too often.

Moreover, efforts should be stepped up to specifically design policies responding to long term needs and requirements. This should actually go without saying when it comes to education, which is the direct gateway to integration and social inclusion, but it is also true and relevant in the areas of health and physical and mental safety. Our Committee will elaborate from this perspective on each of these priority issues.

We should keep in mind that the inclusion of a long term dimension in policy thinking is not only in the direct interest of individual refugees and migrants, but also in the interest of our collective society, maybe less concretely and more distantly in time, but therefore not less effective.

Safety of the individual and security of the collective society should not be confused with one another, they are distinct objectives of different order. Yet, the link between the two is obvious, even if it does not appear from policy options taken. Both physical and mental health require a holistic approach, oriented to the physical integrity, mental health and perspectives in life for the individual. Failing to provide this holistic content of care jeopardises in a direct way the physical and mental health of the individual refugee or migrant. But it also provokes developments in individuals and groups which in the longer run are bound to pose a threat to our collective society, also in terms of security.

1.4 Introspection on Behaviour, Reliability, Effectiveness and Continuity of NGO Action

As already stated above, handling the migrant and refugee phenomenon within the boundaries of rule of law and human rights commitments, is fundamentally the responsibility of government, be it local, regional, national, international or supranational. Still, civil society has an important role to fulfil as well, on the basis of ethics, humane solidarity and societal values. Hence, the need to safeguard proper access of NGOs to refugees and migrants, which the Committee highlights under Axis 1 of its work.

However, it is equally important to look into the matter under Axis 2, from the angle of refugees and migrants themselves: the issue of trust and confidence, the perception – righteous or not – of repression by public authorities, the go-between function of NGOs and the ethical and other limits hereto. Opening this discussion in sincerity requires at the outset an introspection on the side of the civil society sector itself regarding the perception refugees and migrants have – also righteously or not – of NGO behaviour, reliability and continuity of action.

At this stage of gearing up the Committee's deliberations under Axis 2, some important issues can be identified in order to establish guidelines and recommendations in this regard: are the actions proposed or deployed by an NGO relevant and do they respond to a real need? Is the NGO able and willing to guarantee the continuation of its actions, if the terrain situation requires so, also if –expectedly or not – external funding is downscaled or terminated? How can international NGOs best respond to needs of migrants and refugees in smooth non-disruptive articulation with local NGOs which usually dispose of more local, in-depth terrain knowledge but fewer financial means and perhaps also more limited operational capabilities?

Formulating adequate recommendations as to these and possibly other similar questions, and bringing these recommendations into practice, is bound to give an additional boost to the trust and confidence relationship between the community of civil society organisations and migrants and refugees. Moreover, it also holds the potential to help tackle in a constructive way the rightly controversial issue of compulsory NGO registration in various migrant and refugee receiving countries.

1.5 State Performance Monitoring

Individual rights need to be more than declarations, individual rights must be made effectively implementable for all, also for migrants and refugees and the implementation should be independently monitored. State performance regarding migration and refugee issues therefore needs to be included more clearly and explicitly in existing or new monitoring mechanisms of the Council of Europe.



2. First Focal Area : Education

2.1 2.1 Initial Remarks

Our Committee uses the term "Migration" for three different populations : migrants themselves (who are unlikely to return to their countries of origin), refugees and asylum seekers. Some of our analyses and proposals will probably have to be differentiated according to these 3 populations.

To address the issue of migrant education, it will probably be necessary to take into account at least two criteria:

- On the one hand, the age of migrants. With 4 categories: adults (over 18 years old), accompanied minors, unaccompanied minors, young children in pre-school.
- On the other hand, their physical situation :
 - Some cannot move and educators must go to them : migrants gathered in camps or places of detention.
 - Those who can move and who can therefore go to the educational institutions existing in the country where they are located.

Our thinking should not only focus on the education of migrants. We must also turn our attention to the education of Europeans about migration: to better understand what it is, its causes, the cultural and religious differences of migrants, etc. This applies in particular to teachers and trainers who have migrants among their pupils.

2.2 Learning Language and Culture

Naturally, and regardless of the age of the migrants, the priority of education is to learn the language of the country, if they do not command it yet. All Council of Europe documents on migration and education have a strong focus on language teaching. This is particularly the case for various resolutions and recommendations of the Council of Ministers and the Parliamentary Assembly. Perhaps it will be useful to study all these texts in order to make comments, even suggestions, on what might be missing, in particular on the role of NGOs in this language learning.

In fairly direct connection with the learning of the language, there is the teaching relating to the understanding of the culture of the country, its organisation, its institutional framework, etc. This is undoubtedly an area where our NGOs can do a lot, especially for migrants in camps or places of detention.

2.3 Schooling of Children, Whether or Not Accompanied

Education is a human right and in particular a child right. It is not respected today in a number of European countries. The majority of statistics available relate only to the countries of the European Union. It is also known that the enrolment rate is higher for boys than for girls. It should be noted that some migrant children have never been to school in their country of origin.

The "Action Plan on the Protection of Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025)" adopted by the Council of Ministers of the Council of Europe in May 2021, promotes in particular "the support for refugee children in their access to education and for young refugees in their transition to adulthood".

With regard to this action plan, our Committee is to study it in detail, even beyond education, and make comments and suggestions. Finally, beyond the priority of learning the language, our NGOs can undoubtedly help unaccompanied children, especially for school enrolment in the host country.

2.4 Pre-Schooling

Learning of children begins at very young age. We must therefore pay attention to this pre-school learning for the children of migrants. This also implies the participation and education of the mothers of these young children.

2.5 Vocational Training

The education of children must be continued through training that prepares them to find paid work that can support them. Similarly, adult migrants need to have access to employment, either on the basis of a pre-existing qualification which needs to be recognised in the host country or as they acquire a qualification there. Here again, it will be useful to read the many Resolutions and Recommendations of the Council of Europe institutions on this issue and to make proposals on subjects that seem to us to be insufficiently addressed.

One of the difficulties encountered is the recognition of qualifications, degrees and training certificates issued in the country of origin. Moreover, migrants often do not carry with them the documents proving their degrees or training.

2.6 Teachers and Trainers

Reflection should also focus on the need for teachers and trainers to be better prepared to welcome migrants, minors or adults, into their classrooms. It is a continuation of a better understanding of the "intercultural dialogue" dear to the Council of Europe and our Conference of NGOs. It is in this spirit that, within the European Union, the "Sirius" network promotes exchanges of teachers (and researchers) on the education of migrants.

In conclusion, our work on this issue as on other issues should be enriched by the feedback of our NGOs present on the ground : they often play an essential role in promoting education, cultural learning and access to work for migrants.



3. Second Focal Area : Health

Health is defined by the WHO as a fundamental right to which every human being should have access. The right to health includes "timely access to acceptable health care of satisfactory quality and affordability". This access must also respect certain important principles, such as the ones of "non-discrimination, availability, accessibility, acceptability, quality and universality" of the services offered. In practice, however, these principles are not always respected and the poorest populations are likely to suffer the most from this. The WHO states indeed that "vulnerable and marginalized groups tend to bear a disproportionately high share of health problems. This tendency was especially obvious during the Covid-19 pandemic, when such people in vulnerable situations were even less accessible.

Exiles and displaced persons are among those individuals in a vulnerable situation, and may suffer from various health problems, whether due to the violence and dangers of their journey or not. The repressive and restrictive migration policies of European countries, as well as the sometimes problematic reception conditions in Europe, only accentuate the difficulties of access to vital care for these people. In fact, these policies "expose exiles to extremely precarious living conditions", and often lead to a lack of respect for some of their fundamental rights or their dignity".

The Migration Committee thus defends the need to move from a security paradigm to a humanitarian one, considering exiles as victims of insecurity, rather than sources of it. The right to asylum must be a reality. In the same way, the Committee aims to contribute, through its work, to the reduction of barriers to access to health care in Europe for exiles and displaced populations, particularly unaccompanied minors. To this end, our Committee has identified 4 main lines of action related to the health sub-theme.

3.1 Vaccination Policies and Challenges

The prevention of sanitary risks - in particular through vaccination of the population - is essential to guarantee public health. Vaccination coverage would first protect the people concerned, and then avoid the spread of epidemics that can propagate very quickly. Moreover, it is both a moral and political obligation to protect exiles from the health risks they are exposed to when they arrive in Europe. Therefore, European migration policies should be designed to ensure effective and equitable access to health care - including vaccination - for all persons concerned. Similarly, national health policies providing health care services - including vaccination - should, in the Committee's view, cover all persons on the territory of a State, regardless of their administrative status.

3.2 Link between Housing and Access to Health

People in situations of exile are often isolated. Due to the lack of reception policies, many of them are forced to live in non-decent accommodation, or even in places of deprivation of liberty, where they are deprived of their fundamental rights. Thus, they are particularly exposed to precariousness due to the living conditions in which they are forced to evolve once they arrive in Europe. This precariousness implies the lack of access to certain services, such as drinking water or consulting a doctor, which are fundamental determinants of health. The recent tragedy of the Moria camp (Greece) confirms this analysis. The flames left many people homeless, some of them confirmed cases of Covid-19.

Therefore, the right to stay, to housing and to a dignified reception must be seen as a determinant of health and effective access to care for migrant populations. The Committee calls for exiles and displaced persons to be offered decent housing and access to hygiene and health care services of satisfactory quality, regardless of their administrative situation.

3.3 Children with Health Problems

Children and unaccompanied minors in general are particularly vulnerable to the various health risks to which they are exposed throughout their journey and upon arrival in Europe, and this even more than other parts of the population. They are more exposed to certain diseases or to the development of certain psychological syndromes. This is particularly true when these young people are unaccompanied minors.

They must then benefit unconditionally from physical, psychological and sexual care services, as soon as they are identified, with respect for their dignity and in their best interests. They must also benefit from certain specific measures, since the obligation of non-discrimination "requires the application of specific health standards to certain groups of the population, such as women, children or the disabled" according to the Office of the United Nations High Commissioner for Human Rights.

3.4 Mental Health Protection

European migration policies too often forget the human dimension of migration by aiming to control borders without considering the physical and psychological suffering generated by the migration and exile processes. Such a security approach sometimes leads to the criminalization of exiles. However, the traumas, somatic and psychic sufferings which result from it - even less visible than the physical ones - are rarely taken into account.

The Committee therefore recommends that people in situations of migration and asylum benefit from specific measures that consider physical suffering and post-traumatic stress. The Committee also recalls the need to broadcast knowledge on health rights to migrants and exiles and to better train the nursing staff on the various mental pathologies and psychic consequences of the traumas experienced by these people.

Apart from these 4 main lines of action related to the health sub-theme, the Committee also draws attention, hoping for a policy response in principle and practice,

- to the need of eliminating the lack of adequate communication among service providing actors, which to a considerable extent leads to de facto non-access of refugees and migrants to existing health care mechanisms and structures;
- to the importance of health care units which respond to the specific needs of refugees and migrants, in terms of language and understanding of the precarious situation they experience;
- to the fact that migrants and refugees to whom asylum has been refused, routinely remain without health coverage pending their repatriation.



Third Focal Area :

Safety and Security

4.1 Detention of Migrants

When discussing the security of migrants, it is essential to consider the issue of their right to liberty and security and thus the conditions under which they may be deprived of their liberty.

The standards of the European Committee for the Prevention of Torture (CPT) explain that "a foreign national may be deprived of his/her liberty following a(n) (alleged) violation of the legislation related to aliens, such as illegal entry, illegal residence, etc.". Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms specifies in its subparagraph f) that such detention, or retention, can only take place against " a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition". Thus, the detention of irregular migrants cannot be automatic and must remain exceptional and proportionate. It is therefore a measure of last resort that should only be used after an individual and thorough examination and in the absence of applicable alternative measures.

When administrative detention is used, and since it is not a sanction, it must take place under certain conditions and therefore cannot take place in a prison. The CPT explains that such detention can only be accompanied by very limited restrictions and that persons in detention must be able to move as freely as possible within these establishments and have access to a range of activities and contacts with the outside world.

These principles are all the more true and strict when children are detained, as they are particularly vulnerable. Indeed, according to the fundamental principle of the best interests of the child, the detention of children with their parents should be a last resort and should be kept as short as possible and in places suitable for them. The detention of unaccompanied minors should be completely prohibited. The Special Rapporteur on the human rights of migrants even argued in his 2020 report that there is " an international momentum towards eliminating immigration detention of children". This is especially because of the impact that detention can have on a child's development and physical and mental well-being, even when it is short.

Despite this framework of international and regional norms and standards, the detention of migrants in general and minors in particular remains problematic within the Council of Europe. In practice, the Special Rapporteur on the human rights of migrants noted that "detention of migrant children often occurs in appalling physical and grossly inadequate conditions, without proper oversight or regulation".

It is therefore essential that all Council of Europe member states strictly regulate the use of detention against migrants and prohibit entirely the detention of minors, alone or accompanied, in the context of migration. Member States are thus invited to develop and implement alternative measures in accordance with the actions identified under Pillar 1 of the Council of Europe Action Plan on the protection of vulnerable persons in the context of migration and asylum in Europe (2021-2025). Indeed, one of the actions identified is "Support the practical implementation and piloting of alternatives to immigration detention including through co-operation programmes and awareness-raising". In this perspective, the 2020 report of the Special Rapporteur on the human rights of migrants identifies a wide range of measures that could be a starting point for exchanges of good practices.



4.2 In Search of Alternatives for Detention

The principle of the best interest of the child (art. 3 of the UN Convention on the Rights of the Child) is meant to be a primary consideration both in law and policy and in the individual context of each young person. As immigration related detention is entirely contrary to this best interest, it must be prohibited by law and abolished in policy and practice. The reasoning for children is thus quite simple: as there can under no circumstance be a justification for detention of children, alternatives have to be sought in the direction of models of care, which are centred around a few basic principles, valid with respect to all children, regardless whether they are migrants, refugees or local:

- care must be holistic, and cover more than just food and shelter. It must also imply health care, both physically and mentally, education and attention for individual personality development;
- care must be provided on an individualised fundament, which excludes large units of 'shelter', of which past experience has amply demonstrated the non-workability and even the often disastrous results if the situation lasts. Instead, an answer rather lies in small-scale models of care in which children are welcomed in a genuinely protective and caring environment;
- care for refugee and migrant children must be seen as part of an integration process, in which they are brought into spontaneous contact with other children, which have not been exposed to the same type of migration related problems. Children usually have a natural capacity and openness to reach out to other children and it is in the interest of both migrant and refugee children individually and of the society in which their treacherous voyage has landed them, to turn this capacity and openness into an asset for integration. This objective too can only be reached through small-scale models of care.

Although not in big numbers, models of small group care for migrant and refugee children do exist and they can serve as guiding examples. They may be comparatively expensive and are beyond any doubt statistically much less spectacular in terms of political visibility than large 'shelters', but they are far more effective and successful and, not in the least, they genuinely respond to basic children rights and the fundamental values which we consider to be the cornerstones of our societies.

It be also reminded that on the basis of a preliminary study, the Council of Europe's CDDH proposes a good practice guide on "Fostering Unaccompanied and Separated Children" (CDDH-MIG(2021)R8Add), in which the above mentioned basic principles are in substance fully reflected. The good practice guide aims at promoting effective systems of protection for these children and identifies foster care as preferred option. It contains proposals for integrated protection systems which duly address the specific needs of children - in full recognition of the fact that they are above all children, rather than refugees, migrants or asylum seekers – and secure optimal support in achieving their goals of best interest.

A high number of unaccompanied and separated children and young people arrive in Europe after enduring difficult and potentially traumatic situations either during their journey, or at home before leaving, or both. Although still not at sufficient level and in sufficient numbers, foster care has been making progress in recent years and has proved to be an effective solution in terms of protection. Special protection and assistance should be provided with priority given to family and community care.

As to adult refugees and migrants, an important way to scale down the issue of detention is among other things to be sought in asylum demand procedures to be concluded more swiftly and more efficiently, in policies of integration for those who are legally granted sojourn permits and in more effective and faster return procedures, accompanied by measures facilitating re-establishment in the home country, for those to whom access has been denied.

4.3 Vulnerable People among Refugees and Migrants

Refugees and migrants are by definition vulnerable people, but to varying degrees. Children in general, accompanied or not as well as people with health issues are among the most vulnerable categories. Overwhelmed public and non-governmental instances in the stages of first reception and screening, difficulties of communication, cultural differences and particularities and emotional obstacles can be counted as the main causes why high degree vulnerabilities are not detected and identified in a timely way. The Committee pleads for setting up 24/7 mechanisms for the early identification of high degree vulnerabilities, at least in children, triggering adequate response to their needs in terms of safe living accommodation and holistic services, in a cooperation between governmental entities (from asylum services to police and the judicial) and civil society working in the field.

Since several years refugee families from Iraq and Syria have been successfully relocated into the safety of certain European countries through a process of Humanitarian Corridors. So-called Humanitarian Corridors make it possible for groups of refugees in specific, acute situations to be welcomed in European countries in all regularity, within a proper legal framework, and – maybe above all – in an orderly and safe way. NGOs duly and selectively examine the legitimacy of applications in situ, eventually mediate in order for participating governments to confirm the acceptance of each separate application, and finally take the lead in organising air transport and setting up a welcome structure in the country of destination. This welcome structure usually consists of matching each of the incoming refugee families with a foster family for an initial period of, for instance, a year, enrolling children into education and guiding the newly arrived family through an overall integration process. Whereas Humanitarian Corridors are obviously not a modus operandi to be generalised, the Committee highlights the concept's proven feasibility and the successful conclusion of a number of such operations. It therefore calls upon both governments and NGOs to actively consider Humanitarian Corridors as a solution to particular situations of high risk for life and safety.

4.4 Safety of Migrants who are Victims of Trafficking

Migrants who are victims of trafficking for “sexual exploitation; forced labour or services; slavery and practices similar to slavery; servitude and the removal of organs” (def. Council of Europe Convention on Action against Trafficking in Human Beings) should have access to protection in and by the state in which they are identified as migrants.

GRETA (Council of Europe Group of Experts on Action against Trafficking in Human Beings) has issued Guidance Note (GRETA (2020)06) on the entitlement of victims of trafficking and persons at risk of being trafficked, to international protection. “A person who has been trafficked to another country may be at risk in their own country should they be compelled to return there” (GRETA 2020-06 (3)) These risks include:- revenge or retribution (especially where the victim has given evidence against the traffickers) ; re-trafficking to a third country; or discrimination and ostracism by family or the community in the home country. These risks are particularly problematic for women who have been the victims of trafficking for sexual exploitation. The principle of non-refoulement (article 33 of the Convention relating to the Status of Refugees 1951 (1)) may be applicable for these individuals. In the return and repatriation of victims of trafficking there must be “effective implementation of pre-removal risk assessment, and the principle of safe and preferably voluntary return” (Convention Article 16).

The Convention on Action against Trafficking in Human Beings (“the Convention”) stipulates if competent authorities think a person is a victim of trafficking, they should not be removed from the territory until the processes of identification of victimhood are complete (Article 10(2)) and no expulsion order should be enforced during a periods of recovery and reflection.(Article 13). During this time the victims should have protection to ensure their safety from the traffickers and appropriate medical and psychological support to aid their recovery. It should be ensured that “ trafficked persons are not, in any circumstances, held in immigration detention, or other forms of custody” (OHCHR May 2002) In this regard authorities should work with and support NGOs with experience and expertise in helping such victims.

Many victims of trafficking are compelled to carry out acts which violate national laws. This can be especially the case where victims are forced into illegal work, such as cannabis growing, begging etc. Convention Article 26 “ each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent to which they have been compelled to do so.” Authorities should be aware of these possibilities and ensure that such victims are identified as victims and not prosecuted.

Migrants who leave their home countries voluntarily may still become victims of trafficking on their journeys. This has been noted by the International Office for Migration in Niger, that many fall victims to slave markets in Libya (OSCE report 2017). It has also been reported by NGOs working in the field, that many women and children arriving by boat in mainland Europe are picked up by members of organised crime and later are found to be trafficked for sexual exploitation. Border forces should be aware of this and take steps to ensure the safety and security of those arriving on the shores of Europe.

