CDDH-MIG(2018)07

19/11/2018

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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DRAFTING GROUP ON MIGRATION AND HUMAN RIGHTS
(CDDH-MIG)

Alternatives to immigration detention:
Fostering effective results

Draft handbook

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PREFACE

The requirement to develop and use appropriate 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 (CDDH) published a comprehensive ***Analysis of the legal and practical aspects of alternatives to detention in the context of migration*** (hereafter "CDDH-Analysis"). The Analysis gives, *inter alia*, a thorough overview of the **applicable 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 (CoE), the United Nations (UN) and the European Union (EU). 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 alternatives to immigration detention effective in terms of **compliance to migration procedures, respect for human rights and cost efficiency**. Certain gaps that need to be addressed in order to materialize the benefits of alternatives to detention are also outlined.

This handbook is based on the insights offered in the CDDH-Analysis but it serves a different purpose: It synthesizes 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 CDDH-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 (see https://rm.coe.int/steering-committee-for-human-rights-cddh-analysis-of-the-legal-and-pra/1680780997). A number of international instances, civil society organizations and academics have greatly contributed to the field and produced important work that can be easily found when consulting the Analysis.

Obviously, there is **no "one size fits all"** in the field. Diverse national 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 are potentially available**;** 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. Looking beyond Europe, a couple of examples from Australia and Mexico respectively are cited.

The 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 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 **arbitrary detention**.
Article 5 § 1(f) of the Convention **permits deprivation of liberty** in two different situations in the context of migration:

FIRST LIMB:

> ➢ **to p*revent an unauthorized entry into the country***

SECOND LIMB:

> ➢ **of a person** *against whom action is being taken with a view to his or her deportation or extradition*

The notion of deprivation of liberty is understood as contemplated by the relevant jurisprudence of the European Court of Human Rights (hereafter "the Court"), the details of which are thoroughly explored in the aforementioned CDDH-Analysis.

1. 2   Criteria for permissible exceptions to liberty

Overall, any deprivation of liberty in the context of migration must adhere to the general criteria developed in the case law of the Court. It 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 its **length** should not exceed that which is **reasonably required** for the purpose pursued. Sufficient procedural safeguards must be in place, such as the **provision of reasons for detention**, access to **legal assistance** and representation, and **effective remedies**. In addition, as to Article 5 § 1 (f), proceedings should be carried out with **due diligence** and there should be a **realistic prospect of removal**.

1.3 Immigration detention - exceptional measure of last resort

While significant nuances exist on the matter, varied international instances have highlighted that immigration detention should be an **exceptional measure of last resort**. This entails that detention can only be justified if, **after a thorough and individual assessment of the particular circumstances in each case**, it has been established that **less coercive measures are insufficient**. 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 fundamental human rights and allow for individual options other than detention**. This can include a range of different practices that may be employed to avoid detention.

1.5 Human rights standards applicable to alternatives

The implementation of alternatives is, as such, subject to important human rights standards, including the **principle of proportionality and non-discrimination**. In addition, alternatives should:

- **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**. While identified categories of vulnerability can vary between different international instances, the following groupings 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.

> ➢ Vulnerable individuals/groups and/or persons in a vulnerable situation require **special protection.**
> ➢ This **narrows** both the **scope for detention** and the **State's margin of appreciation.**
> ➢ In such cases, detention will be unlawful if the aim pursued by detention can be **achieved by other less coercive measures**.
> ➢ **Alternatives must be thoroughly considered** and detention used as a last resort.
> ➢ **States should detect vulnerabilities** that may preclude detention by virtue of vulnerability assessment procedures.

As to children in particular, their **extreme vulnerability** takes precedence over their immigration status, and **their best interests** should be a **primary consideration in all actions** concerning them. This entails, *inter alia,* that alternatives **must** be sought. According to the Court's case law, detention can only be admissible in **exceptional circumstances** and for a **very short period**. Other international bodies have further concluded that immigration detention always contravenes the best interests of the child, maintaining that in this context children should **never be detained**.

1.7   The benefits of effective alternatives

1.7.1 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. The European Commission has, among others, noted that the benefits of alternatives to immigration detention "may include higher return rates (including voluntary departure), improved co-operation with returnees in obtaining necessary documentation, financial benefits (less cost for the State) and less human cost (avoidance of hardship related to detention)."

1.7.2 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. A place of detention is inherently a place of risk and the detention of vulnerable persons is particularly problematic. **The impact of detention on children may be extreme**, including long-term effects on their cognitive and emotional development.

1.7.3 Cost-effectiveness

In so far as information is publically 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 in lieu of detention**, i.e. help to reduce 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.**

1.8 Alternatives may be for all

Overall, it is important to note that alternatives to detention may be successfully applied also to persons who are not deemed particularly vulnerable. A number of persons may be fully **capable and likely to comply** with procedures outside of detention without having been identified with special needs. The development of a **wide range of alternatives** may increase the number of persons suited to particular alternatives, contributing to reductions in unnecessary detention and cost-efficiency.

2. WHAT TYPES OF ALTERNATIVES?

2.1 Indicative types – engagement and/or enforcement

Given varied national contexts and practices, there is no definitive or exhaustive list of types of alternative measures. A similar type of alternative may be coined by different terms in different contexts. Conversely, the same term may have different meanings and connotations in varied settings. Some types of alternatives involve **restrictions on the liberty** of individuals (enforcement based alternatives), while others emphasize **engagement** with individuals (engagement based alternatives). In practice, different types of alternatives are **often used together rather than as distinct options**.

Each type of alternative presented in this chapter may carry with it certain strengths and weaknesses depending on the context, indications of which can be consulted in the CDDH-Analysis. It is important to emphasize that all the types listed **may not necessarily be recognized 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 protects 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 surrender existing travel or identity documents.

2.1.2 Temporary residence permits

Temporary residence permits are a broad term covering any status granted or permits issued by a State that offer a right to legal stay. This might include "bridging visas", long-term visas, temporary humanitarian visas, or expired residence permits based on a still valid international protection status, among others. 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

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 or from civil society – responsible for

assisting the individual (or families) from initial claim until return or grant of status. The role of the case manager is likewise to facilitate access to information, legal aid and representation in relation to immigration procedures. 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 accommodation

Family-based accommodation is the general name for a range of 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 a 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 centres or semi-open centres

Open or semi-open centres 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. Once recognized as refugees, people may often remain in such centres for a transition period in order to arrange for more permanent accommodation.

2.1.7 Regular reporting

Reporting conditions are among the most frequently applied alternatives to immigration detention in Europe. They consist of an obligation to present oneself regularly 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 are also prevalent in Europe and 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 that 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

Voluntary return counselling allows individuals and families to be released from detention or not be detained in order to explore voluntary return, usually with intensive support, including financial incentives, from State representatives 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

Return houses combine case management support with the requirement to reside at a designated location in preparation for voluntary or enforced departure. Failed asylum seekers or 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" is rarely used in Europe and 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. Varied instances have strongly criticized electronic tagging in the context of migration, describing it as particularly harsh and intrusive. Some have gone so far as to claim that electronic monitoring should not be considered an alternative to immigration detention, while other instances view it as a legitimate measure.

2.2   Limitations and potential of each type

According to the principle of proportionality, action should always begin with the least intrusive or restrictive measure possible to meet legitimate aims. But given the different characteristics and consequences of the various types of alternatives, and the **diversity of 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 flows** and **individual circumstances.**

It is simultaneously significant to recognize the **inherent limitation** of thinking of success above all in terms of *types* of alternatives. Applying alternatives is not just about finding the right "type" or "combination of types" suited to the specific national context and/or individual needs and capabilities. Focusing on the **processes of individual engagement** when **identifying and applying** types of alternatives of detention is 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"?

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.

But **what does "effective" mean** in this context? 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 may be 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.**

The CDDH-Analysis identifies a broad consensus to evaluate the **effectiveness** of alternatives to immigration detention based on the following three criteria:

i. Ensuring **compliance** with immigration procedures, including:
- **Prompt and fair** case resolution
- Facilitating **voluntary and enforced returns**
- Reducing **absconding**
- Minimising any **risks of offending** during immigration processes;

ii. Respecting **human rights** and meeting basic needs;

iii. Promoting **cost-effectiveness**.

3.1.2 Essential elements of effectiveness

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 providing 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;
- **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;
- **Case management services –** Supporting individuals through personalised case management services and advice;
- **Dignity and fundamental rights** – Safeguarding the dignity and fundamental rights of individuals, and ensuring their basic needs can be met.

Clearly, some of the essential elements to 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

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, migration status and health status, and identifying any indicators of vulnerability. On this basis, initial decisions can be taken and individuals can be assigned to **appropriate alternatives** that address their particular **potential, 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 may **continue at regular intervals** throughout the asylum or migration process, and can be intensified in the context of detention given the heightened risk of harm. The development of holistic and effective screening and assessment could, for example, be inspired by good

practice tools including the *Vulnerability Screening Tool* developed by UNHCR and the International Detention Coalition.

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. Information could be provided in multiple formats with checks to ensure that the person has understood. Reliable provision of information enhances trust in the system as individuals are **more likely to comply if they comprehend** 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, improving the **quality of decisions.**

iii. Legal assistance

Access to legal advice is invaluable in supporting compliance with immigration systems. It enables individuals to understand the **reasons for decisions** and to pursue legal options available. The most effective alternatives involve meaningful access to legal support **from the beginning and continuing** throughout relevant procedures. Well-informed persons have been found to be **more likely to accept voluntary return** if they are properly supported. Where possible, provision of legal advice could be free and automatic. Otherwise, non-governmental organisations, legal aid clinics or law firms working *pro bono* can potentially provide legal advice.

iv. Safeguarding dignity and fundamental rights

Alternatives may be liable to be 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 immigration systems, **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 easily 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 **returns 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.

v. Case management services

Case management focuses on supporting individuals to take decisions and **work constructively with the authorities** towards resolving their immigration cases. 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 accessing 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 flows, it may not be affordable to provide case management to all individuals throughout the process, so

prioritisation can be made *inter alia* on the basis of identified vulnerabilities and risks, including of absconding.

vi. Building trust in asylum and migration procedures

A central theme in effective processes is building trust in asylum and migration procedures. 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 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 in immigration and asylum systems may be through regular and meaningful **consultation** with migrants and migrant communities. If migrant communities are consulted they can be valuable sources of consent for migration management and can support individuals to engage with immigration processes.

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

3.2 Scoping your national context: Key questions

3.2.1 Understanding existing strengths, gaps and possibilities

Alternatives must address the **specific national context** of the State concerned: good practice cannot simply be imported wholesale from elsewhere. In each country there will be differences in legislative/policy frameworks and the nature of migration flows. There will also be context-specific challenges in managing these flows. 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 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 can be based on a **careful scoping of national realities, 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 national detention policy 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 legal norms?*
- *Does policy enable a broad consideration of alternatives by decision-makers?*
- *Are alternatives limited in law to a narrow typology which precludes development of engagement-based alternatives?*

Where there are **legislative gaps or barriers** to the development of alternatives – for example, automatic detention of certain groups – these could be **identified from the start** and given the **time required** to change.

i. Example from outside Europe: Australia´s Palmer Report

In 2005, the Australian Government commissioned the Palmer Report into a case of unlawful detention, with terms of reference enabling recommendations addressing improvements to systems and processes. The Palmer Report made a series of findings with regards to organisational culture, governance and training within the Department of Immigration and Citizenship. These insights led to a substantial culture change and a shift towards alternatives to detention for migrants in mainland Australia, in the context of a legal framework requiring that anyone reasonably suspected of being an unlawful non-citizen be detained indefinitely until removal.

Legislative changes allowed the creation of a series of alternatives to detention programmes run by civil society organisations. Legislation in 2005 granted the Minister discretion to determine what defined a place of detention, thus allowing for residence in a designated location with freedom of movement

'Removal Pending Bridging Visas' are now widely granted on a discretionary basis to migrants already living in the community (e.g. visa over stayers) or on release from detention, where there are barriers to removal. They allow the persons concerned to live in the community pending the resolution of their cases.

Many people on bridging visas receive support from government-funded or NGO-run alternative to detention programmes. Persons in a situation of vulnerability who may have more complex needs receive support through the Status Resolution Support Services (SRSS). The aim of the SRSS is to involve participants in identifying and addressing their own needs and building on their own strengths. The SRSS provides additional support to enable individuals to engage with the immigration authorities and live in the community.

Participants are required to observe certain conditions, including cooperating with the authorities to resolve their cases. The programmes provide early intervention and support, seeking to understand people´s circumstances and work with them to resolve their immigration cases. Case managers, employed by civil society organisations, are meant to ensure that people have suitable access to necessary assistance, legal support and advice on voluntary return. Participants may also receive financial assistance, housing, healthcare and English lessons. Children have access to schooling, and unaccompanied minors receive residential care.

The service is based on a pilot project with a group of individuals with high welfare needs and long residence in Australia. The pilot had a compliance rate of 93%, with 60% of those not granted a visa returning voluntarily. Only 7% absconded.

The programme cost around $AU38 per day compared to around $AU125 per day for detention.

Key steps:

- Commission an internal or external review of legislation and policy and engage key partners/experts.
- Identify gaps in legislation, policy, procedures and training of staff.
- Analyse what changes in legislation and policy are required.
- Identify practical opportunities to develop and implement alternatives at particular points in the migration process.

3.2.3 Comprehending the scale, nature and vulnerabilities of migration flows

For progress to be made, it is vital to understand the **nature of migration flows** in a particular domestic context. This should *inter alia* include the proportion of asylum-seekers and non-asylum claimants, transit populations, vulnerable persons including children, longer-term residents who become irregular, as well as stateless persons and/or people who cannot be sent back. **The approach called for will vary.** This depends, for example, on whether there is a crisis situation of mass arrivals, 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 flows are not static and change over time. Consequently, it is important to consult with a range of stakeholder with a deep understanding of the migrant populations concerned.

Key steps:

- Map the nature of migration flows in terms of key categories such as asylum-seekers and other vulnerable groups including children.
- Identify key issues involved in 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.

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, challenges and legal frameworks. Neighbouring States often face comparable challenges, and can usefully share lessons learnt and good practices. Equally, particular challenges such as those of transit populations can affect States across the world.

Key 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 learning visits.

3.2.5 Evaluating the availability and effectiveness of existing alternatives

In order to develop effective alternatives it is critical to understand and identify the current domestic realities in the field. Only then can the national/regional 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 needs to **start 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 strong evidence base of effectiveness. Meeting the needs of vulnerable persons, including children, may require a relatively wide range of alternatives, including projects that can provide additional support and assistance focusing on engagement.

Key questions:

- What alternatives are available in law?
- How far are they implemented in practice? Is the scale 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**. Criteria of effectiveness already laid out in this handbook could help enable assessment of **the extent to which** current alternatives are effective. Subject to available data, **existing alternatives and processes can be assessed** in broadly **quantitative terms**. It may also be helpful to **compare outcomes with neighbouring states** with varying use of alternatives and processes.

Key questions:

- What are the case resolution rates of individuals 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 offending rates on particular alternatives?
- Have alternatives been subject to human rights-based legal challenges or criticisms from civil society and/or international organisations?
- What is the cost of particular alternatives?

iii.   Why are some alternatives more or less effective?

In order to identify **opportunities for development**, it is important to analyse **the strengths and weaknesses** of current use of alternatives. 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.

Key questions:

Screening and assessment

- Is screening and assessment based on international good practice?
- 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, health issues and vulnerabilities?
- Does screening involve face-to-face communication with individuals, in order to identify hidden vulnerabilities and disabilities, or is there strong reliance on indicators such as nationality?
- Does assessment involve structured and transparent evaluation of an individual's particular circumstances, including risks, needs, potential and vulnerability factors identified during screening?
- Does assessment take place at regular intervals, in particular for individuals in detention?

Safeguarding dignity and fundamental rights

- Are adequate placement options available to meet basic needs and safeguard dignity and fundamental rights?
- Are individuals able to access essential welfare, education and healthcare?
- 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?
- Is accommodation in areas where other services are accessible, or does it leave people isolated and disengaged?

Access to information

- Do people have access to information on their rights, duties and the consequences of non-compliance, throughout the asylum or migration process?
- Are people informed of the reasons why they are detained and/or subjected to restrictions on a particular alternatives scheme?
- Is this information available in translation, through interpreters and multiple formats?
- Is advice and support available for vulnerable persons who might otherwise struggle to understand the information provided?

Access to legal advice

- Do people have access to legal advice throughout the asylum or migration process, either through free statutory provision, legal clinics or non-governmental organisations?

Case management support

- Do people receive individualised case management support to promote constructive engagement with immigration procedures early on?
- Is any such case management tailored to individual needs and vulnerabilities?

Building trust

- Does the process build trust in asylum and immigration procedures, including through early engagement from the start of the process?
- Do persons concerned perceive the process to be fair and legitimate even when their applications are refused?
- Are migrant communities consulted about procedures that affect them?

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 for minors and children's homes – can correspond to gaps in migration management systems. Similarly, services may 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.

Key steps:

- Identify and map existing services that could be adapted to correspond to identified gaps in 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 for different cohorts

Cost-effectiveness is a significant element of effective alternatives so rigorous assessment is necessary of the likely costs involved. Costs will likely be greater for alternatives involving engagement, in particular for vulnerable persons. However, **the benefits may be greater** as engagement-based alternatives have a track record of **supporting reduction** in the use of detention, a prerequisite for overall cost-efficiency. Engagement with key stakeholders around **adapting services** may likewise both clarify and reduce likely costs.

Key steps:

- Involve relevant government services and other key stakeholders as to 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 groups.
- Analyse how reduction in the overall use of detention can be realised alongside the strengthening of effective alternatives.

3.3   Planning progress: Potential steps

3.3.1 Undertaking necessary changes to legislation and policy

It may **not be necessary** to set out in legislation the range of alternatives to be developed. However, legislative amendments may be needed where a legal basis is necessary for the application of certain alternatives (such as those restricting freedom of movement), and/or where existing legislation makes no provision for 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 service-delivery organisations, international instances and immigrant communities may be a valuable source of advice and insight into how to address needs and build trust to ensure compliance. These instances may also already operate certain services that could potentially be developed to become alternatives to detention.

Key steps:

> - Hold workshops 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.

3.3.3 Testing different approaches

Small pilot projects may be an opportunity to test different approaches with particular and clearly-defined categories of migration flows. 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 could 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 the **needs of such vulnerable people,** and to **support them to engage with immigration processes,** including potential return. Similarly, some victims of trafficking may be at high risk of absconding due to the influence of their traffickers and lack of trust in the system, so specialist support is **crucial both for protecting individual rights and effective migration management**. Ex-offenders may pose specific risks to public protection, which can be exacerbated by protracted immigration detention after finishing detention sentences. Such risks may be managed by organisations with expertise in post-detention rehabilitation, which can support migrants 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. For example, people who consider themselves to be in **transit to other countries** may be associated with **high levels of absconding** and widespread recourse to detention. However, detention and fast return of all such persons may be impossible so alternatives can play an important role. **Effective individualised 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. This can enable people to reflect and make decisions about whether to attempt to continue their journeys or to comply with domestic processes in light of clear information and options laid out. If support structures are strengthened within the context of alternatives to detention, resolving cases in the country of current stay can become seen as the most realistic option.

Key steps:

> - Identify specialist services and expertise that can address and engage particular migration flows.
> - Determine categories and locations of persons suitable to be involved in a pilot project on alternatives to detention, including engagement-based alternatives.

- Partner with stakeholders who have specialist expertise in implementing pilots and/or in addressing specific needs and potential.
- 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 sureties and the issuing of temporary residence permits, **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 compared with those of detention. The scale and nature of needs as well as financial resources secured and allocated are essential factors.

i. Example from outside Europe: Mexico

Mexico has recently developed a more formal use of alternatives characterised by strong cooperation with civil society organisations and legal requirements prohibiting immigration detention of children. The two government departments responsible for asylum and migration – the National Institute for Migration (INM) and the Mexican Commission for Refugee Assistance (COMAR) – have developed protocols and systems that have enabled more than 1,000 asylum-seekers to be released to alternatives to detention run by civil society organisations, with technical support and funding of UNHCR.

The formal use of alternatives for children, upheld by a series of legislative and policy changes, was initiated by a small pilot for 20 unaccompanied children in Mexico City, coordinated by the International Detention Coalition and implemented by Casa Alianza and SOS Children's Villages. The pilots were based on the 'Model for Unaccompanied Migrant Children in Mexico', developed by the International Detention Coalition on the basis of its Child-Sensitive Community Assessment and Placement Model.

During pilot development, which took place under the auspices of the INM Citizen's Council, the General Law for the Rights of Children and Adolescents of 2014 passed, which introduced a National System for the Holistic Protection of the Rights of Children and Adolescents. This was followed in December 2015 by a regulation which prohibited explicitly that children, unaccompanied or not, be deprived of liberty in detention centres. In late 2016 the government department responsible for child protection opened the first open shelter specifically for migrant children.

On the basis of the successful implementation of alternatives for children, the INM and COMAR worked with UNHCR to extend the good practices in order to release adults and families seeking asylum to a range of civil society shelters, despite the absence of a legislative requirement to release them. UNHCR funded a series of alternative spaces that enabled asylum-seekers to be released and pursue their claims in the community. Asylum-seekers were released with temporary immigration status, enabling them to work.

The INM identified the following as good practices: (a) the ability to support especially vulnerable asylum seekers outside of detention; (b) compliance with legal obligations to not detain children; (c) the possibility to issue documents with temporary immigration status.

Key steps:

- Develop joint working practices with relevant government departments.
- Produce an implementation plan with timescales and budgets.
- Identify alternatives that can be introduced simply through changes in policy.
- Plan for alternatives involving engagement and case management, building on existing good practice and pilot projects where possible.
- Seek specialised knowledge and expertise domestically and internationally.

3.3.7 Recruiting and training staff

Changes to policy and practice may need to be embedded through a structured programme of **training of decision-makers and other relevant officials**, particularly in new areas of work. 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** evaluation framework could be established from the start with regards to new practices. Key **performance indicators** could address effectiveness in terms of compliance, human rights protection 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 could also be a significant performance indicator.

Evaluation should ideally take into account that some changes – such as greater trust in procedures – usually take place over the **medium to long-term**. Therefore, it may be important to identify and measure **qualitative indicators** of longer-term shifts such as trust in immigration systems, and quality of case management measured in terms of frequency, regularity of contact, trust relationships established, and improved ability of people to **engage with and comply** to immigration processes.

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 lessons and experiences with other States** undertaking comparable initiatives. International interest can likewise contribute to growing domestic confidence in new practices.

4. CONCLUDING REMARKS

This handbook has attempted to put forth in a visual and straightforward manner some of the key principles, insights 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 diversity 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 recognize that applying alternatives to immigration detention effectively is bound to still be an on-going learning process for most stakeholders. One important step forward is understanding not only the legal obligations in the field but the diverse types of alternatives available for consideration, as well as the essential elements of their effective application. Getting these elements right may be more important even than 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 of migration flows and existing services – is a significant ingredient to 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, the expansion of scale of alternatives across a sufficiently broad and/or diverse range of options may be important for sustainable success.

In the field at large there may be an opportunity to focus more on *engagement* rather than *enforcement* as a key aspect of effective alternatives. Compliance, benefits and enforcement may in the end be more likely to follow practices that engage effectively with persons concerned from the outset. Modern migration flows are made up of diverse individuals with differing capacity, needs and risks, so a combination of approaches rather than a narrow typology may successfully expand what is possible.

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 is in the making.