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

Alternatives to immigration detention: Fostering effective results

Practical guidance

REVISED DRAFT

INTERNAL NOTE

The aim of this document is exclusively to present the revised text of the Handbook and receive written comments before the 6th meeting of the CDDH-MIG (26-28 March 2019). The deadline for written comments is 7th March 2019.

The potential overall design of the Handbook and further visual images will be elaborated once the final draft of the text is established. A few images are still included in this document to give an indication of possible visual presentation.

For previous suggestions of design, please see this [link](#).

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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 (hereafter “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, the United Nations and the European Union. The CDDH-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 respect for human rights, compliance to migration procedures 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 synthesises certain key principles and findings into a concise and visual guide on implementing alternatives. Legal aspects are only briefly addressed as the central focus is on practical implementation. The 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](#). 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 could potentially be considered; and how might we make them work. Accordingly, the first chapter discusses briefly some central human rights standards pertaining to why alternatives in the context of migration are to be considered as well as their possible benefits; the second chapter outlines some potential types of alternatives; and the third chapter asks how alternatives become effective, delineating (a) essential elements of effectiveness, (b) key questions in specific national contexts, and (c) planning concrete steps for implementation.

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.

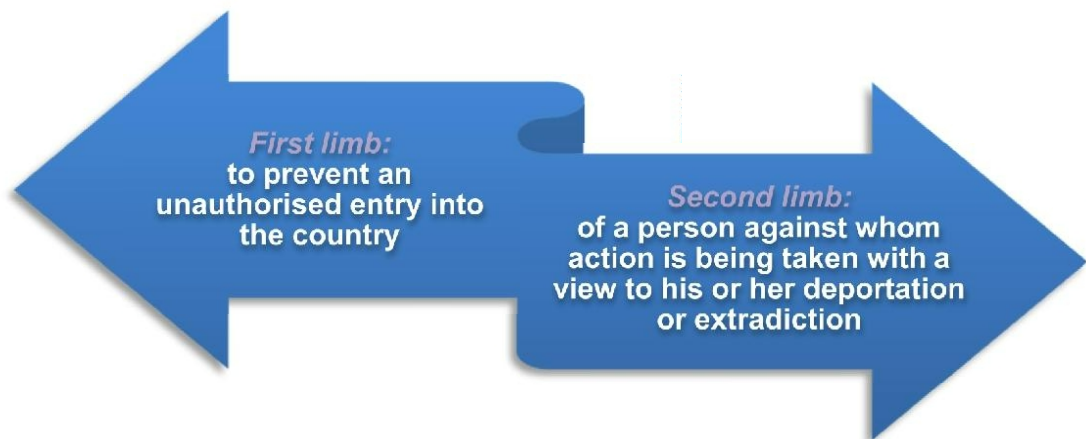
1. WHY ALTERNATIVES TO IMMIGRATION DETENTION?

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 what the European Court of Human Rights (hereafter “the Court”) defines as “arbitrary detention” (see 1.2 below).

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



The notion of deprivation of liberty is understood as contemplated by the relevant jurisprudence of the Court, the details of which are thoroughly explored in the aforementioned CDDH-Analysis. It follows from the Court’s case law in particular that different measures which, taken individually, restrict movement, can, when taken together, amount to deprivation of liberty and thus fall under Article 5 of the Convention.

1.2 Criteria for permissible exceptions to liberty

Overall, any deprivation of liberty in the context of migration must adhere to the general principles set out by the Convention and interpreted by the Court. If it is not to be deemed arbitrary, detention must be provided for in national law, carried out in good faith and closely connected to the aim pursued. The place and conditions of detention must be appropriate, and its length should not exceed that which is reasonably required for the purpose pursued. Proceedings should be carried out with due diligence and, in the case of the second limb of Article 5 § 1(f), there must be a realistic prospect of removal. Sufficient procedural safeguards must be in place, such as the provision of reasons for detention, access to legal assistance and representation, and effective remedies.

1.3 Immigration detention - exceptional measure of last resort

Varied international bodies have highlighted that immigration detention should 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 in the specific case. According to the general principle of proportionality, States are obliged to examine alternatives to detention before any decision to detain is made.

1.4 Alternatives to immigration detention

There is broad consensus that alternatives to immigration detention are non-custodial measures that respect human rights and fundamental freedoms while allowing for individual options other than detention. This can include a range of different measures that may be employed to avoid detention.











1.5 Human rights standards applicable to alternatives

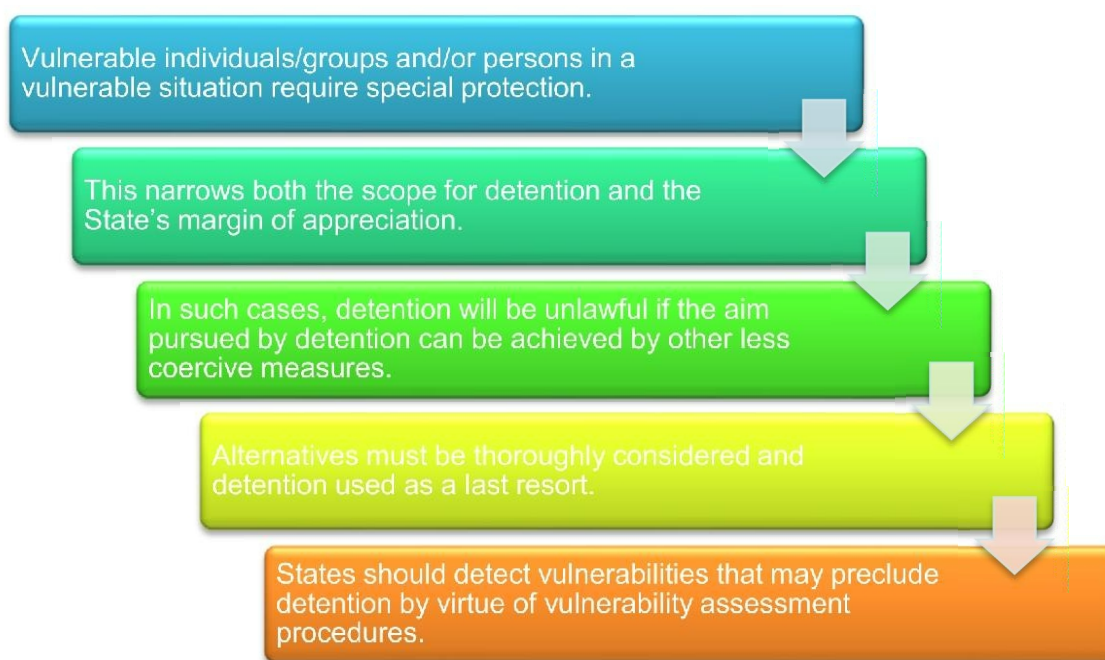
What is true for any detention equally applies to any alternative measure: it must be in line with international human rights standards. To meet this requirement, alternatives to immigration detention should, *inter alia*:

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

1.6 Vulnerability – special needs and protection

The necessity of examining alternatives is of particular importance as regards persons in a vulnerable situation. Due consideration must be given to the special needs of persons concerned, ensuring that they have access to appropriate protection and care. The following 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.



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. States should take appropriate measures to ensure that all children are protected. The Court has set stringent criteria regarding the immigration detention of children which may only be admissible in exceptional circumstances as a measure of last resort and for a very short period of time. All appropriate conditions must be fulfilled and it must be concretely established that no alternative can be applied. Accordingly, in the case of families, the best interests of the child taken together with the right to respect for family life may require that children are not separated from their parents and that alternatives should be implemented for the entire family. Other international bodies, including the Committee on the Rights of the Child, have concluded that immigration detention constitutes a child rights violation and always contravenes the best interests of the child, maintaining that in this context children should never be detained.

1.7 The benefits of effective alternatives

1.7.1 Respecting human rights and avoiding suffering

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

1.7.2 Compliance with immigration procedures

When implemented effectively, alternatives may improve migration governance by promoting compliance with immigration procedures. Alternatives have likewise been shown to help stabilise individuals who are in a vulnerable situation. 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).”

1.7.3 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

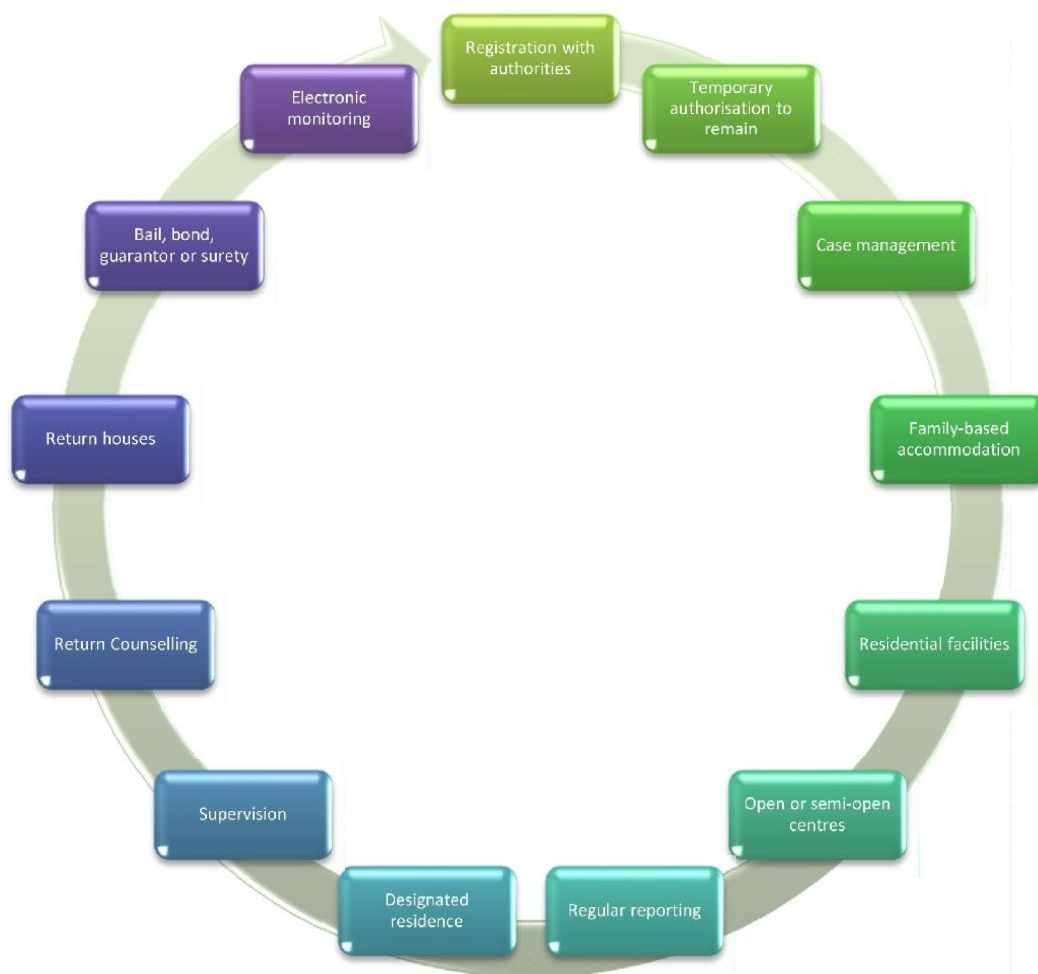
Overall, it is important to note that alternatives to detention may be successfully applied also to persons who are not deemed particularly vulnerable. A number of persons may be fully capable and likely to comply with procedures outside of detention without having been identified with special needs. 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 to cost-efficiency, as well as reducing the risk of persons becoming vulnerable in detention.

2. WHAT TYPES OF ALTERNATIVES?

2.1 Indicative types

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 while others emphasise engagement with individuals. In practice, different types of alternatives are often used together rather than as distinct options. In this context, it is crucial to ensure that any measure – or any combination of measures – is an alternative *to* detention rather than an alternative *form of* detention.

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. The following measures are approximately and roughly listed in an order of the least to the most restrictive options consistent with the principle of minimum intervention. No attempt is made to create a typology of alternatives to immigration detention and it is recognised that it may often be appropriate and important to make use of multiple or overlapping models depending on the capacities, needs and risks associated with each individual case. It is important to emphasise that all the types listed may not necessarily be recognised by all stakeholders as an alternative to detention. For the benefit of open reflection, however, a wide spectrum of options is listed.



2.1.1 Registration with authorities

When individuals enter a country without proper travel or visa documents, they may be asked to register with authorities and thereafter be provided with a piece of temporary documentation such as an “alien registration card” that 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 deposit existing travel or identity documents on the condition that the documents will be returned to them at a later time.

2.1.2 Temporary authorisation to remain on the territory

Temporary authorisation to remain on the territory is a broad term covering permits issued by a State that offer a right to remain temporarily. This might, for example, include long or short-term visas, 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 (but not the decision maker in the migration or asylum case) 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 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 or semi-open centres

Open centres (allowing full freedom of movement) or semi-open centres (where some restrictions on movement, such as curfews, may be imposed), provide temporary accommodation for individuals and families. Individuals may be required to remain in these facilities until their claims are processed, making them a form of directed residence. Once recognised 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 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 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 – either considered as an alternative measure or as an additional component of a return programme – allows individuals and families to be released from detention or not be detained in order to explore 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” 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 criticised electronic tagging in the context of migration, describing it as particularly harsh and intrusive. Some claim that electronic monitoring should not be considered as an alternative to immigration detention, while other instances do not categorically exclude it.

2.2 Potential and limitations 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 circumstances and individuals concerned, there is no simple menu of options for governments and decision makers to choose from. Each application of alternative measures requires consideration attuned to the particularities of the domestic context, the nature of migration movements and individual circumstances.

It is simultaneously significant to recognise the inherent limitation of thinking of success above all in terms of *types* of alternatives. 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”?

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

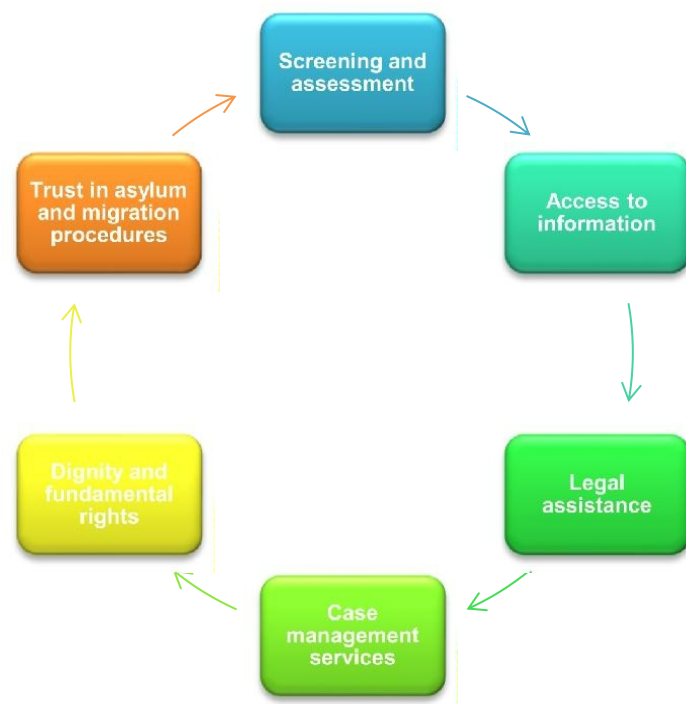
- i. Respecting human rights and meeting basic needs;
- ii. Ensuring compliance with immigration procedures, including:
 - Prompt and fair case resolution
 - Facilitating voluntary and enforced returns
 - Reducing absconding
- iii. Promoting cost-effectiveness.

The legitimate aim of States to ensure compliance with immigration procedures is clearly a fundamental part of the effectiveness of alternatives. Without this crucial aspect, alternatives cannot be deemed effective. Similarly, States 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. But how is effectiveness best ensured in practice?

3.1.2 Essential elements of effectiveness

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

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



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

Clearly, some of the essential elements 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 should continue at regular intervals throughout the asylum or migration process, and should be intensified in the context of detention given the heightened risk of harm.

ii. Access to information

Individuals need to be provided with clear, concise and accessible information about their rights and duties, the procedures at hand and the consequences of non-compliance. This information should be provided as early as possible and updated as needed. Information could be provided in multiple formats with checks to ensure that the person has understood. Translators and interpreters may be required – free of charge if necessary – together with translated written materials. Reliable provision of information enhances trust in the system as individuals are more likely to comply if they 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 all the legal options available. 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.

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

iv. Case management services

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

v. Safeguarding dignity and human rights

Practices in alternatives are liable to 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.

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 restrictive and conditions-based alternatives may undermine trust and encourage non-compliance, especially if complying is made unnecessarily complicated. Unnecessary or arbitrary detention obviously undermines trust in fair procedures. A further way to build trust may be through regular and meaningful

consultation with diverse stakeholders, including migrants and immigrant communities that may support individuals to engage with immigration processes.

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

3.2. Scoping your national context: Key questions

3.2.1 Understanding existing strengths, gaps and possibilities

Alternatives must address the specific national context of the State concerned whilst complying with international standards: good practice cannot simply be imported wholesale from elsewhere. In each State, there will be differences in legislative and policy frameworks. There will also be differences in the nature and scale of migration movements, and particular challenges in managing these. Likewise, there will be considerable variety in the scale and nature of existing infrastructure and resources available, both within government and on the part of civil society 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 is best 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 the national legal and policy framework against international standards

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

- *Is legislation compliant with international human rights standards?*
- *Does policy enable a broad consideration of alternatives by decision-makers?*
- *Are alternatives limited in law 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 should be identified from the start, and given the time required to change.

Key steps:

- Commission an internal or external review of legislation and policy and engage key partners and experts.
- Identify gaps in legislation, policy, procedures and training of staff.
- Analyse whether and what changes in legislation and policy are required.
- Identify practical opportunities to develop and implement alternatives at particular points in the asylum and migration process.
- Evaluate which, existing alternatives have proven effective in which circumstances, including any costs compared to detention.

3.2.3 Comprehending the scale, nature and vulnerabilities of migration movements

It is also vital to understand the nature of migration movements in a particular domestic context. This could *inter alia* include the proportion of asylum seekers and non-asylum claimants, transit populations, children and other vulnerable individuals or groups, longer-term residents who become irregular as well as stateless persons and/or people who cannot be returned. The approach called for will vary. This depends, for example, on whether there is a situation of 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 movements 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 movements in terms of key categories such as asylum seekers and other vulnerable persons, especially children.
- Identify key issues involved in the management of these movements, such as secondary movement, meeting the needs of vulnerable persons and resolving cases of refused asylum seekers including stateless persons or those who cannot be returned.
- Analyse specific challenges in the enforcement of asylum and immigration procedures.

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

i. To what extent are alternatives used in practice?

The development of alternatives 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 evidence base of effectiveness. Meeting the needs of vulnerable persons, including children, will require a relatively wide range of alternatives, including projects that can provide additional support and assistance focusing on engagement.

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

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 rates of non-compliance to immigration and asylum procedures on particular alternatives?
- Have alternatives been subject to human rights-based legal challenges or criticisms from civil society or international organisations?
- What is the cost of particular alternatives?

iii. Why are some alternatives more or less effective?

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

Key questions: Screening and assessment

- 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?
- Is screening and assessment based on international good practice?

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, subjected to restrictions or placed on a particular alternatives scheme?
- Do people on alternative measures receive information on their rights, duties and the consequences of non-compliance with the measure in place?
- 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 assistance

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

Case management services

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

Safeguarding dignity and human rights

- Are adequate placement options available to meet basic needs and safeguard dignity and fundamental rights?
- Do individuals have access to essential welfare, education and 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, where it may have the greatest impact on willingness to engage with case resolution?
- Is accommodation in areas where other services are accessible, or does it leave people isolated and disengaged?

Building trust

- Does the process build trust in asylum and immigration procedures, including through early engagement from the start of the process?
- Do individuals concerned perceive the process to be fair and legitimate, even when their applications are refused?
- Are knowledgeable stakeholders consulted in the process?

3.2.6 Identifying existing services and expertise that can be adapted

Alternatives can often build on existing services and expertise, avoiding the need to develop provision from scratch. Established practices elsewhere in society – for example guardianship 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

Cost-effectiveness is an important element of effective alternatives so a rigorous assessment of the likely costs involved is necessary. Costs will be greater for alternatives involving engagement, in particular for vulnerable persons. However, the benefits of engagement may be greater as engagement-based alternatives have a track record of supporting a 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 persons.
- Identify cost-saving opportunities in the process of implementation.
- 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**

Legislative amendments may be needed where a legal basis is necessary for the application of certain alternatives (especially those restricting freedom of movement), 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 bodies and immigrant communities may be a valuable source of advice and insight into how to address needs and build trust with migrants to ensure compliance. They may also already operate certain services that could potentially be developed to become alternatives to detention.

Key steps:

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

3.3.3 Testing different approaches

Small pilot projects may be an opportunity to test different approaches with particular and clearly-defined categories of migration movements. Pilots are a cost-effective way to reduce any risks that may be associated with a grander development of alternatives. If not already in operation, eventual large-scale roll-out can be based on the learning from what worked on a smaller scale. Successful pilots can build relationships and strengthen the confidence of stakeholders in the process. They can also provide opportunities for problems, hindrances and concerns to be addressed at an early stage.

3.3.4 Utilising specialised expertise

Specialised expertise may be needed to address specific needs and risks. For example, particularly vulnerable individuals such as survivors of torture coping with mental health issues, may be at increased risk of absconding, 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, so specialist support is crucial both for protecting individual rights and effective migration management. Persons who have committed an offence in the host state may pose specific risks. There might be a temptation to face this risk by ordering immigration detention once the person has completed his or her sentence. Such risks may however best 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. Effective screening is crucial to identify individuals who would consider engaging with procedures if provided with the right support. In the context of false or unrealistic information provided elsewhere, access to reliable and understandable information and legal advice can be crucial to promote compliance. It can enable people to reflect and make decisions about whether to attempt to continue their journeys or to cooperate with domestic processes in light of clear information and exploration of options laid out.

Key steps:

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

3.3.6 Developing an implementation plan

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

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

There may also be scope to introduce a wider range of “traditional” alternatives through simple changes to policy. For example, the requirement to register with authorities, designated residence, bail sureties and the issuing of a temporary authorisation to remain, 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, of the scale and nature of needs, as well as financial resources secured and allocated.

Key steps:

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

3.3.7 Recruiting and training staff

Changes to policy and practice may need to be embedded through a structured programme of training of decision-makers and other relevant officials, particularly on 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 human rights protection, compliance and cost-effectiveness. Quantitative indicators, such as reduced absconding rates and increased rates of case resolution, including voluntary return, could capture immediate and concrete progress. The overall reduction of the use of detention would also be a significant performance indicator.

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

Key steps:

- Develop criteria and/or mechanisms to monitor and evaluate the effectiveness of alternatives to immigration detention. Ensure that national human rights institutions, civil society and international organisations are included when developing these criteria and any foreseen follow-up.
- Share learning with all relevant stakeholders in order to improve existing structures.

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 diverse range of actors.

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

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. Practices based on individual engagement may, ultimately, lead to better enforcement of migration management policies and be profoundly more apt to upholding human rights. Modern migration movements are made up of diverse individuals with differing 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.