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STEERING COMMITTEE FOR HUMAN RIGHTS
COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME
(CDDH)

DRAFTING GROUP ON MIGRATION AND HUMAN RIGHTS
GROUPE DE REDACTION SUR LES DROITS DE L'HOMME ET LA MIGRATION
(CDDH-MIG)








**Alternatives to immigration detention:
Fostering effective results
Draft handbook**

**Alternatives à la rétention dans le contexte des migrations :
Favoriser l'efficacité en termes de résultats
Projet de manuel**

**Compilation of comments received
Compilation des commentaires reçus**

CDDH-MIG(2019)02

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**Belgian Immigration Service - International Relations Unit / Direction Générale
Office des étrangers - Bureau des relations internationales**

Point 1.5 : « [...] ne doivent jamais constituer une privation de liberté ou une restriction arbitraire de la liberté de mouvement » : nous sommes d'accord sur le principe général, mais il y a des situations où on pourrait considérer de limiter la liberté de mouvement. Les personnes en séjour irrégulier, qui ont purgé leur peine (ordre public grave ou risque de sécurité nationale), mais qui ne sont pas encore éloignables pour l'une ou l'autre raison, pourraient être soumises à une « assignation à résidence » (pour autant que la loi le prévoit) et des obligations supplémentaires (ne pas avoir des contacts avec des personnes du même milieu, des anciens co-perpétrants, ... ; se présenter aux autorités locales une fois par jour / par semaine / par quinzaine, ...) pourraient être prévues.

Point 1.6 : nous sommes d'accord qu'il faut prendre en considération la vulnérabilité de chaque personne qui pourrait faire l'objet d'une mesure de rétention. La vulnérabilité d'une personne ne veut cependant pas dire qu'une mesure de rétention est exclue. Mais il faut prévoir toutes les mesures nécessaires afin que la vulnérabilité soit prise en charge pendant la détention. Chaque dossier doit être évalué à titre individuel. La vulnérabilité doit être vue en combinaison avec le profil en général de la personne concernée (par exemple, les troubles à l'ordre public ou à la sécurité nationale nécessitent parfois des mesures plus restrictives, tout en tenant compte de l'organisation d'un accompagnement sur mesure en fonction de la vulnérabilité). Ceci dit, une détention (ou alternative à la détention) dans le contexte migratoire belge n'est possible que pour autant qu'un éloignement effectif serait réalisable. Ceci exclut automatiquement quelques catégories de personnes vulnérables (par exemple, étant donné leur maladie grave, leur grossesse avancée, ...).

Points 1.7.3 + 1.8 : il va de soi que le coût des alternatives à la détention est moins élevé que celui d'une détention, mais nous ne sommes pas convaincus qu'une réduction du nombre de centres de rétention va contribuer au succès des alternatives à la détention. Déjà nous sommes dans l'obligation légale de donner un délai à une personne lors de la délivrance d'une décision de retour, qui peut en plus varier et être prolongé en fonction de l'organisation d'un retour volontaire. Cette personne est aussi informée des possibilités de retour (volontaire), de préférence dans une langue qu'elle peut comprendre. Elle peut se faire consulter par des différentes organisations ou instances, qui sont liées par un réseau local et sont en contact direct avec l'agence fédérale responsable pour le retour volontaire (en Belgique : Fedasil) et avec les organisations internationales (OIM, Caritas international) qui prévoient l'implémentation pratique des programmes de réintégration. Pourtant nous constatons une diminution du nombre de retours volontaires assistés, ainsi que la diminution du nombre de retours forcés. Bien que ces deux procédures ne soient pas nécessairement liées, il y a quand même une certaine incidence. Si le retour forcé pour un certain pays d'origine est en baisse, nous constatons dans la plupart des cas aussi une diminution des retours volontaires (assistés ou non) pour les mêmes pays. Le « stimulant négatif » de risquer un retour forcé (après détention) n'est pas assez présent en fait que nombre de personnes ne sont pas intéressés de retourner volontairement. Et même si on prévoit plus d'alternatives de détention, nous ne sommes pas convaincus que – malgré un « input » (personnes susceptibles d'être mises dans une alternative) et « output » considérable (personnes utilisant les alternatives) – il y aurait aussi un « outcome » satisfaisant (départ dans leur pays d'origine – il y aura des départs, mais plutôt pour se soustraire des procédures de départ à l'étranger). Les personnes soumises à une décision de retour vont

peut-être être volontaires à utiliser les alternatives (afin d'éviter une détention), mais est-ce qu'elles vont vraiment s'inscrire dans un programme de retour volontaire et partir ? Nous n'en sommes pas sûr du tout.

Points 2.1.1+2.1.2 : l'inscription temporaire avec la délivrance d'une « carte d'enregistrement » ou un titre de séjour temporaire ne donne pas de garanties sur un départ ; au contraire elle peut ouvrir certains droits (ou inciter les personnes à obtenir certains droits), comme on voit arriver en Allemagne, où la non-éloignabilité ou les procédures temporaires ont donné la possibilité aux étrangers d'obtenir un support financier (à côté d'un support matériel – décision de la Cour Constitutionnelle). Les étrangers sont alors « stimulés » à entamer une procédure d'obtention d'un statut temporaire ou de protection, afin d'obtenir ce support financier, tout en sachant que le résultat de la procédure sera négatif (cf. les demandeurs d'asile du Balkan de l'Ouest qui sont arrivés en grands nombres en 2015 en Allemagne dans le sillage des demandeurs d'asile de la Syrie, de l'Irak, etc.). C'est de l'argent facilement gagné... Donc il faut des garanties que ces inscriptions temporaires n'ouvrent pas des droits supplémentaires, sinon cela sera un « pull facteur » pour venir en Europe. La déposition des documents de voyage et d'identité demande un processus logistique très lourd ; nous remarquons déjà que cela donne beaucoup de travail supplémentaire pour les documents déposés dans le cadre des procédures de protection internationale. Si nous devons faire cela aussi pour les personnes en séjour irrégulier, cela ne va pas faciliter les choses et il faudra bien penser sur le comment, le pourquoi, le stockage, le classement, ... et comment rendre les documents ainsi qu'à quel moment et par qui.

Point 2.1.3 : un suivi individualisé d'un dossier serait possible si tous les processus (aussi bien l'accueil, que les procédures consécutives, le suivi administratif, les possibilités de retour...) étaient gérés par un seul et unique service ou agence, ce qui n'est pas le cas en Belgique ni dans la plupart des autres états-membres. Il y a un certain « case management » en Suède, mais aussi avec des limitations. Etant donné la technicité des différentes procédures de protection, de migration, d'accueil et de retour, il n'est pas concevable qu'une seule et unique personne ou service soit le « case manager ». Même s'il s'agit seulement d'un suivi particulier de l'étranger pour qu'il s'y retrouve dans les différentes administrations et procédures, cela restera difficile à gérer pour un « case worker », étant donné qu'il ou elle devra toujours se référer à d'autres instances afin d'obtenir les informations nécessaires. Ce qui est beaucoup plus important est que l'étranger reçoive des informations claires et compréhensibles, qu'il sache à qui s'adresser pour quelle procédure et qu'à cette fin nous nous investissons plus dans la communication claire et uniforme (entre les différentes instances) envers les étrangers ; et là effectivement il y a encore du travail à faire. Un problème supplémentaire avec le « case management », c'est qu'il faut avoir un grand nombre de personnes qui font cet accompagnement, étant donné qu'un case manager ne peut s'investir que dans un nombre limité de personnes.

Même si le case manager sait accompagner environ 50 à 100 personnes par an, il faut – pour le cas Belge alors – avoir au minimum entre 250 et 500 case managers qui font le suivi de chaque personne ayant reçu une décision négative. Et, en principe, il faudrait aussi que le case manager fasse le suivi des personnes qui peuvent rester (intégration ; donc il faudra encore compter entre 50 et 100 personnes supplémentaires à suivre par case manager, vu qu'environ 50 % des demandeurs de protection reçoivent un statut).

Point 2.1.4 : la Belgique a cette infrastructure familiale dans la forme du « centre de retour ouvert » (placement de familles qui n'ont pas / plus droit au séjour en attendant l'organisation de leur retour ; sur base d'un jugement ou d'une décision administrative sur l'accueil) et des « lieux d'hébergement » (maisons qui servent comme alternative à la détention – mêmes

décisions administratives que pour la détention mais avec beaucoup plus de libertés (voir document en annexe à = « family units »)).

Point 2.1.5+2.1.6: la structure d'accueil existe pour les demandeurs d'asile, pour les victimes de la traite des êtres humains, pour les mineurs étrangers non accompagnés, pour les victimes de violence intrafamiliale, ... Cependant, la Belgique n'est pas favorable à créer un structure d'accueil « permanent » pour les étrangers en séjour irrégulier. Un accueil « temporaire » existe déjà pour les transmigrants (centre d'accueil « porte d'Ulysse » financé par la région bruxelloise), mais il ne s'agit pas d'une initiative fédérale. Il y a un risque que cela devient un « pull factor ». La Belgique ne veut pas faciliter la migration illégale vers d'autres états-membres ou pays tiers ; en accueillant ces personnes il pourrait subsister une perception auprès de nos partenaires internationales. Il faut plutôt investir dans la communication. Déjà dans les pays d'origine il faut faire des campagnes qui expliquent clairement les risques de ces formes de migration ; qu'il y a des canaux légaux pour venir en Belgique ou en UE. Et pour ceux qui sont déjà là, il faut les convaincre (en tout cas ceux et celles qui ont une forte chance d'obtenir un statut de protection) de faire les demandes nécessaires, afin d'obtenir un statut légal. La continuation de leur voyage contient beaucoup de risques. Pour les transmigrants endurcis, qui n'ont pas d'opportunité d'obtenir un statut de protection, il faut commencer un processus de retour. Etant donné que ces personnes ne vont jamais accepter de rester dans une alternative à la détention en vue de leur retour, la détention de ce groupe deviendra inévitable. Une structure semi-ouverte pourrait être envisageable pour certains catégories, mais ceci doit encore être étudié (ainsi que les conditions liées à l'utilisation de cette structure + la base légale).

Point 2.1.7+2.1.8 : le pointage régulier peut marcher pour un groupe limité de personnes, mais pas quand il y a plusieurs centaines, voire milliers de dossiers à gérer (étant donné que cela demande à nouveau un investissement supplémentaire de temps et de personnel alloué à cette tâche) ; elle peut servir en combinaison avec d'autres mesures contraignantes (par exemple, l'assignation à résidence). Même remarque pour l'assignation à résidence (qu'on pourrait utiliser pour le groupe spécifique de personnes ayant purgé leur peine mais qui sont susceptibles de commettre de nouveaux délits ou pourraient poser un problème pour la sécurité nationale). De nouveau, il faudra d'abord créer un cadre légal.

Point 2.1.9 : d'une certaine façon, nous utilisons déjà le système d'encadrement comme alternative à la détention. Des familles sont visitées à domicile, ou à la municipalité, ou sont invitées pour des entrevues après avoir reçu une décision de retour afin de leur expliquer les motifs de cette décision, les conséquences, et les possibilités de retour. Cependant, le résultat du suivi des quelques centaines de familles depuis 4 ans n'a pas été satisfaisant. Bien que presque toutes les familles ont effectivement accepté l'entrevue et ont respecté les conditions, presque aucune famille n'a effectivement utilisé la possibilité de retour volontaire assisté. Il faut aussi savoir que la capacité en personnel reste limitée pour encore faire plus en nombre de familles et en vue de multiplication des entrevues avec les familles.

Point 2.1.10 : l'accompagnement du retour est l'un des points forts du système belge. Il y a un grand réseau de partenaires promouvant l'assistance au retour et à la réintégration, ainsi qu'un grand nombre de personnes utilisant cette possibilité. L'assistance au retour volontaire est géré par Fedasil. Ses deux partenaires stratégiques dans les pays d'origine sont l'OIM et Caritas International. Il y naturellement toujours une amélioration possible afin d'atteindre plus de personnes qui pourraient être susceptibles de l'utiliser. Fedasil coopère aussi à un programme subventionné par l'UE, « ERRIN », qui essaie de trouver des partenaires stratégiques supplémentaires dans certains pays d'origine et de créer des programmes « sur mesure » pour des personnes susceptibles au retour. Ce programme ERRIN prévoit aussi la possibilité de donner un support de réintégration en cas

de retour forcé. A côté de cela, l'Office des Etrangers prévoit aussi la possibilité de donner un support de réintégration dans le cadre du retour forcé, surtout ciblé sur des cas vulnérables (particulièrement des personnes avec des problèmes physiques ou psychiques). Ce programme « special needs » (besoins spéciaux) prévoit aussi un soutien avant et pendant le retour.

Point 2.1.11 : ceci est similaire aux lieux d'hébergement (voir annexe et point 2.1.4).

Point 2.1.12 : le dépôt d'une garantie ou d'une caution est prévue dans la loi mais est difficile à implémenter, étant donné qu'il faut fixer des montants réalistes selon les possibilités financières des étrangers (et des personnes en séjour irrégulier n'ont dans la plupart des cas pas grand-chose). Puis il faudra décider à quel moment la caution est rendue et comment (avant le départ, après l'arrivée dans le pays tiers, ...). Au Royaume-Uni, il existe un système qui prévoit que la société civile puisse payer la caution pour l'étranger et donc prend aussi une partie de la responsabilité afin que l'étranger retourne dans son pays, sinon elle perd son argent. Mais est-ce qu'une ONG belge serait prête à prendre ce risque ?

Point 2.1.13 : la surveillance électronique serait envisageable pour un groupe cible (criminels ou personnes avec un profil de danger pour la sécurité nationale, qui ne sont pas rapatriables en ce moment et n'ayant pas droit au séjour), pour autant qu'un cadre légal soit prévu. Il faudra alors prévoir un monitoring (mais qui aura la responsabilité ; comment les tâches seront-elles divisées ; qui décide qui on peut mettre sous ce système). Ce système pourrait être combiné avec l'assignation à résidence et / ou le rapportage.

Point 3 : ce chapitre est très intéressant puisqu'il donne les étapes à suivre pour évaluer l'efficacité et l'opérabilité des différentes alternatives à la détention. Mais ceci implique qu'au niveau national, il faudra :

- Demander des rapports à des états partenaires qui utilisent déjà l'une ou l'autre alternative, dans lequel il y a eu une évaluation (efficacité, input, output, outcome, opérabilité, frais, investissement en personnel, ...), afin que nous ayons une base de comparaison pour décider si nous voulons utiliser d'autres alternatives et dans quelle mesure elles seront applicables en Belgique ;
- Faire une étude du cadre légal et juridique : quelles lois doivent être changées afin que l'une ou l'autre alternative puisse être implémentée en Belgique ? Le cadre juridique et légal a déjà été (en tout cas au niveau européen et international) étudié dans l'autre texte « analysis of the legal and practical aspects of effective alternatives to detention » ;
- Faire des estimations sur les « clients potentiels » pour lesquels les alternatives pourraient être utilisés et dans quel cadre / contexte (nombres, catégories, ...) ainsi que l'effet que cela aura sur l'organisation du travail (effectif en personnel, infrastructure, support technique, législation, procédures, encadrement, finances, ...)

Il est difficile de répondre plus précisément à ce point à ce stade.



CROATIA / CROATIE

[... page 6]

We welcome the publication of handbook *Alternatives to Immigration Detention: Forging Effective Results* and in general have no remarks except on the part concerning the vulnerable persons. In fact, LGBT persons, as referred in the Handbook, are not vulnerable persons pursuant to „Return Directive” that is Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals.



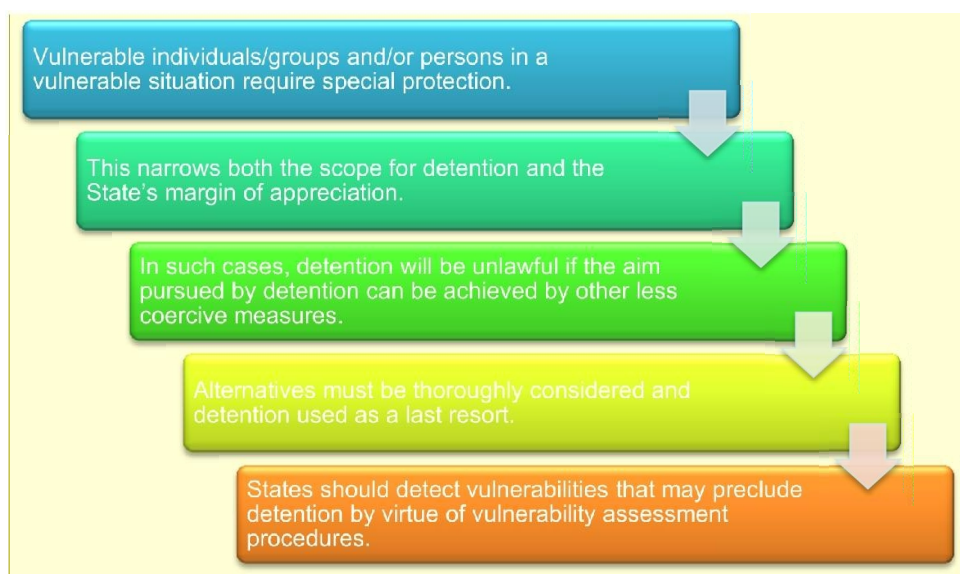
CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

[... page 5]

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.

Comment [KPM1]: It could be useful and handy for the reader of the Handbook to have a hyperlink to the Analysis added here in order not to have to scroll back to look for it.

[... page 7]



Comment [KPM2]: This visualisation may be a bit misleading. Especially the third item may create impression that alternatives should be applied only in “such cases”, i. e. in relation to vulnerable individuals, whereas they should be considered and applied, if possible, in relation to all as it is correctly stated in Chapter 1.8 *Alternatives may be for all*.

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.

[... page 9]

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.

[... page 16]

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 or in practice to a narrow typology which precludes development of engagement-based alternatives?

[... page 18]

i. To what extent are alternatives used in practice?

[...]

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 or situations?
- 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?

Comment [KPM3]:

It seems a bit vague and weak expression that does not correspond to the case-law of the Court. In *Bistieva and Others v. Poland* (no. 75157/14, 10 April 2018) judgment the Court held, inter alia:

" 78. (...) It can be seen from the Court's case-law that, where families are concerned, the authorities must, in assessing proportionality, take account of the child's best interests. In this connection, the Court would point out that there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (Popov v. France, §§ 139 and 140, with further references). It can also be seen from international reports that the protection of the child's best interests involves both keeping the family together, as far as possible, and considering alternatives so that the detention of minors is only a measure of last resort (ibid., § 141)."

It seems to follow that Article 8 of the Convention sets the threshold higher than only to "may require". There arguably may be situations where it is not in the best interests of the child to stay with his/her relatives but it is an exception not just one of multiple equal possibilities.

Therefore, I would suggest for example the following wording:

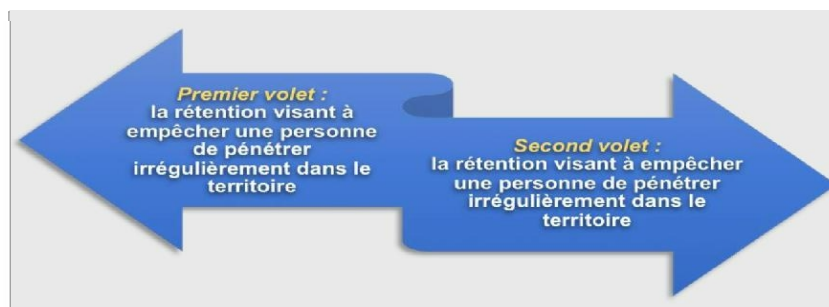
Accordingly, in the case of families, the best interests of the child taken together with the right to respect for family life may require, as a rule, that children are not separated from their parents and that alternatives should be implemented for the entire family.

Comment [KPM4]: Here again it could be useful and handy for the reader of the Handbook to have a hyperlink to the Analysis added here in order not to have to scroll back to look for it.

Comment [KPM5]: There may be situations and indeed there is such a situation in the Czech Republic where there are quite a large scale of alternatives embedded in law but in practice alternatives based on engagement are not used because of the general policy in the field and lack of will to make these alternatives available and effective also in practice. It is true that a similar question is included in Chapter 3.2.5 i, however, as it may be rather a question of policy it should be included here as well.

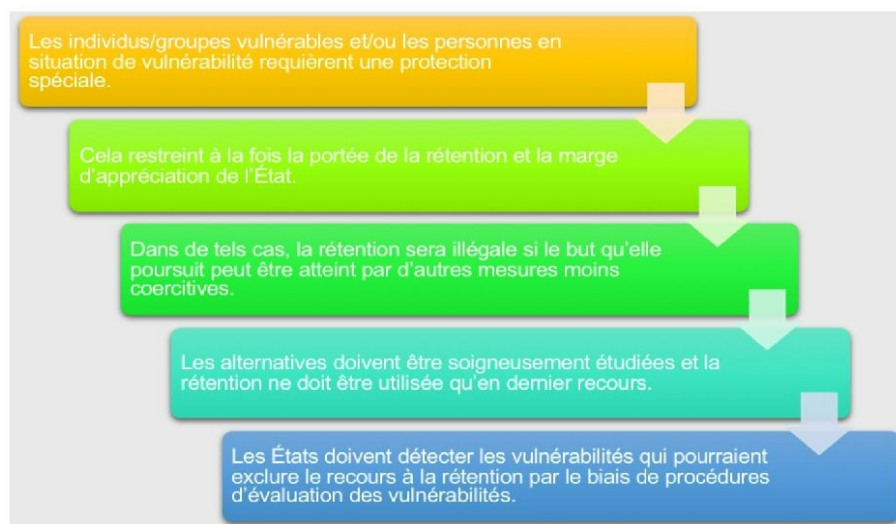
Comment [KPM6]: It may also be useful to ask this question. In the Czech republic there is a practice not to use or even consider alternatives after the decision on expulsion was taken.

[... page 5]



Comment [NM7]: Modifier le second volet en reprenant ce qui est inscrit dans la version anglaise

[... page 7]



Comment [NM8]: Suggestion : remonter le 5^{ème} encadré en 2^{ème} position : la détection des vulnérabilités doit intervenir rapidement dans la procédure. C'est en fonction de la situation de vulnérabilité que découle le recours à des alternatives à la rétention.

[... page 9]

2.1.1 Inscription auprès des autorités

Lorsqu'une personne entre dans un pays sans les documents de voyage ou les visas nécessaires, il peut lui être demandé de s'inscrire auprès des autorités et un document temporaire peut lui être délivré, comme une « carte d'enregistrement d'étranger », qui l'empêche d'être arrêtée ou détenue. L'inscription peut avoir lieu à son arrivée, ou plus tard, à la mairie de son lieu de résidence, par exemple. Si nécessaire, il peut être demandé à la personne de déposer ses documents de voyage ou d'identité à condition que ceux-ci lui seront restitués ultérieurement.

Comment [NM9]: Remplacer « seront » par « soient »

[... page 11]

2.1.10 Accompagnement du retour

L'accompagnement du retour volontaire – qu'il soit considéré comme mesure alternative ou comme une composante additionnelle d'un programme de retour – permet à des personnes et à des familles d'être libérées ou de ne pas être placées en rétention de sorte qu'elles puissent explorer les possibilités de retour volontaire, normalement avec un soutien durable, voire des incitations financières, de la part de représentants de l'État ou d'organisations de la société civile. Il peut par exemple s'agir de conseils et d'assistance centrés sur des programmes formels de retour volontaire, qui fournissent une aide au départ, une assistance au transit, et un soutien après le retour de la personne, lors de son arrivée et dans le cadre de la réintégration dans son pays. Ces conseils peuvent calmer les inquiétudes des migrants craignant [l'indigence] à leur retour, ou l'interdiction de demander un visa de retour légal à l'avenir.

Comment [NM10]: Remplacer par :
« ou les inciter à demander un visa pour
revenir légalement à l'avenir »

[... page 12]

2.1.11 Maisons de retour

Les maisons de retour sont une alternative à la rétention qui combine le suivi individualisé et l'assignation à résidence en préparation au départ volontaire ou forcé. Les personnes en instance de retour et les demandeurs d'asile rejetés sont placés dans des structures ouvertes où des conseillers individuels les informent des possibilités qui s'offrent à elles et les aident à se préparer en vue de leur départ.

Comment [NM11]: Remplacer par :
« Les personnes déboutées de leur demande
d'asile »

[...]

2.1.13 Surveillance électronique

La surveillance électronique ou « *tagging* » est une forme de surveillance visant à contrôler ou à restreindre les mouvements d'une personne par des dispositifs comme des bracelets de poignet ou de cheville GPS. Elle est surtout utilisée dans le cadre de la répression pénale et de nombreuses instances ont estimé qu'elle est, dès lors, particulièrement inadéquate dans le contexte des migrations, car particulièrement dure et intrusive. Certaines instances considèrent même que la surveillance électronique dans le contexte des migrations ne devrait pas être considérée comme une alternative à la rétention tandis que d'autres ne l'excluent pas catégoriquement.

Comment [NM12]: Suggestion :
rajouter : « d'autant que la plupart des
instances ont constaté un coût
particulièrement élevé pour cette
alternative »

[... page 15]

v. Protection de la dignité et des droits de l'homme

La mise en place d'alternatives à la rétention sera inefficace si celles-ci ne protègent pas la dignité de la personne en n'accédant pas à ses besoins fondamentaux. La satisfaction des besoins essentiels est importante, non seulement parce qu'il s'agit d'un droit fondamental, mais aussi du fait que c'est une mesure pratique qui contribue à ce que la personne puisse se conformer aux exigences de la procédure d'immigration, notamment en vue de son retour. Le dénuement peut encourager les mouvements secondaires vers des pays tiers, et il sera difficile pour la personne d'envisager les options qui lui seront proposées, le retour inclus, de manière constructive. Au contraire, une personne logée dans des conditions lui offrant un accès à d'autres services à proximité, sera incitée à maintenir le contact avec les autorités.

Comment [NM13]: Remplacer par : et
si elle n'est pas en mesure d'accéder à

[... page 25]

Par ailleurs, pour une efficacité renforcée, le développement d'alternatives à la rétention doit être envisagé comme l'occasion de davantage mettre l'accent sur les mesures basées sur *l'engagement* plutôt que sur *le contrôle*. En effet, tabler sur l'engagement individuel peut éventuellement déboucher sur une meilleure mise en œuvre des politiques de gestion de la migration, et un bien meilleur respect des droits de l'homme. Les mouvements migratoires modernes sont composés d'individus très divers, dont les capacités, besoins et risques diffèrent fortement ; ainsi, combiner plusieurs approches plutôt que se cantonner à un type restreint de possibilités apparaît comme la voie à suivre.

Comment [NM14]: Remplacer par :
« De mettre d'avantage l'accent sur »



GREECE / GRÈCE

We would like to thank the Secretariat and the Rapporteur for producing a revised version of the Handbook.

At this stage, we would like to offer two general, “horizontal”, comments.

First of all, in Chapters 3.2 and 3.3, the term “Key steps” is used as a title, followed by a number of bullet points in boxes. In our view, the Handbook should not give the impression that it aims at setting out, in a prescriptive manner, specific tasks to be carried out by the competent state authorities. For this reason, we would prefer to describe the bullet points contained in the text as “Steps that could be envisaged, as appropriate”.

Furthermore, the text of the Handbook should avoid language which might convey the idea that cooperation with domestic immigration processes is an option to be considered by the foreign nationals concerned, as it clearly is an obligation, imposed and enforced in accordance with the relevant legislation (see for instance page 22, para. 3.3.5).

We will provide further comments during the forthcoming meeting of the CDDH-MIG.



NETHERLANDS / PAYS-BAS

[... page 6]

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.

Comment [J.15]: Is exceptional necessary? Wouldn't be measure of last resort enough?

Comment [J.16]: Not effective (cf EU regulations)

[... page 7]

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.

Comment [J.17]: Add that, if children are detained the detention must take place in a child friendly location, (and also that the fact that an individual belongs to a vulnerable group does not mean that detention is not a possibility. In detention a medical check should be executed very shortly after arrival in the detention facility.

[... page 8]

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).”

Comment [IR18]: We differ detention during the proceedings and for removal; in some cases return detention is the only possibility to effect return. How do you vision this if detention is not applicable for children?
We do not detain one of the parents given the right to family life.

Comment [J.19]: Is there any data available? Research we’ve seen is based on very small cases pilots.

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.

Comment [J.20]: Is the source available and is it a broader pilot that is still used?

[... page 10]

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.

Comment [J.21]: How would you see this as an alternative? Is it still asylum?

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

Comment [J.22]: How would this qualify as an alternative? It could still be possible to detain and use case management?

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.

Comment [J.23]: We know the possibility of detention shortly before removal as a last resort. Only possible if a family has absconded before; how would you solve that without detention?

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.

Comment [J.24]: What if a country already has this a standard?

[... page 11]

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.

Comment [IR25]: Could you please specify how semi-open centres are not detention?

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.

Comment [J.26]: How do you prevent fraud?

[... page 11]

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.

Comment [J.27]: During the procedure or afterwards or for the whole?

[... page 18]

3.2.5 Evaluating the availability and effectiveness of existing alternatives

[...]

ii. 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.

Comment [J.28]: This could be a definition question; case management could be used without it being seen as an alternative?

**SWITZERLAND / SUISSE**

[... page 5]

Au niveau du Conseil de l'Europe, la privation de liberté est légale seulement si elle se fonde sur la liste exhaustive d'exceptions permises figurant à l'article 5 de la Convention européenne des droits de l'homme (ci-après « la Convention »). Le principal objectif de l'article 5 de la Convention est de protéger tous les individus relevant de la **compétence juridiction** des États membres de ce que la Cour européenne des droits de l'homme (ci-après « la Cour ») définit comme une « détention arbitraire » (voir 1.2 ci-dessous).

[... page 6]

Divers organes internationaux ont souligné que la rétention dans le contexte des migrations doit toujours être une mesure exceptionnelle de dernier recours. Cela signifie que la rétention ne peut être justifiée que dans le cas où, après un examen minutieux et individuel

Comment [Suisse29]: Ce passage ne figure pas dans la version anglaise

des circonstances particulières dans chaque cas, il a été établi que des mesures moins coercitives sont insuffisantes dans le cas d'espèce. Conformément au principe général de proportionnalité, les États ont l'obligation d'examiner les alternatives à la rétention avant que toute décision de rétention ne soit prise.

[... page 8]

1.7.3 Le rapport coût-efficacité

Au vu des informations disponibles, le coût de la rétention est de deux à dix-sept fois plus élevé que celui des alternatives. Il convient cependant de noter que le recours plus fréquent à des mesures de ce type ne se révèle rentable économiquement avantageux uniquement si elles *remplacent* la rétention, c'est-à-dire si elles contribuent en fin de compte à réduire le nombre de centres de rétention. Si le recours accru aux alternatives s'accompagne du maintien, voire de l'accroissement, des capacités de rétention, il est inévitable qu'il se traduise par un alourdissement général des coûts. Cet « élargissement net » a été très critiqué dans le cadre de la justice pénale.

[... page 13]

3.1.1 Qu'entend-on par « efficacité » ?

[...]

L'objectif légitime des États d'assurer le respect des procédures d'immigration est clairement un aspect fondamental de l'efficacité des alternatives. Sans cet aspect crucial, les alternatives ne peuvent pas être efficaces. De même, les États sont plus à même de mettre en œuvre des alternatives au niveau nécessaire s'il est démontré qu'elles peuvent atteindre leurs objectifs légitimes de façon rentable avec un bon rapport coût-efficacité. Par ailleurs, les alternatives ne sauraient être qualifiées d'efficaces si elles ne respectent pas les droits de l'homme et la dignité. Mais comment assurer au mieux leur efficacité dans la pratique ?

Comment [Suisse30]: Les objectifs ont déjà été qualifiés de légitimes dans la phrase précédente

[... page 14]

- **Dignité et droits de l'homme** – Protéger la dignité de la personne et respecter ses droits de l'homme, en lui fournissant tout en s'assurant que ses besoins élémentaires puissent être couverts des conditions de vie décentes.

[... page 15]

v. Protection de la dignité et des droits de l'homme

La mise en place d'alternatives à la rétention sera inefficace si celles-ci ne protègent pas la dignité de la personne en n'accédant pas à ne lui permettant pas de satisfaire ses besoins fondamentaux. La satisfaction des besoins essentiels est importante, non seulement parce qu'il s'agit d'un droit fondamental, mais aussi du fait que c'est une mesure pratique qui contribue à ce que la personne puisse se conformer aux exigences de la procédure d'immigration, notamment en vue de son retour. Le dénuement peut encourager les mouvements secondaires vers des pays tiers, et il sera difficile pour la personne d'envisager

les options qui lui seront proposées, le retour inclus, de manière constructive. Au contraire, une personne logée dans des conditions lui offrant un accès à d'autres services à proximité, sera incitée à maintenir le contact avec les autorités.

[... page 16]

vi. Susciter la confiance dans le traitement des demandes d'asile et d'immigration

Il est indispensable d'inspirer confiance et respect dans le processus de traitement des demandes d'asile ou d'immigration. Le recours à des alternatives à la rétention permet de faire régner un esprit d'équité et de coopération entre les parties impliquées et rend les migrants beaucoup plus enclins à coopérer. Les éléments susceptibles d'altérer le sentiment d'équité et de légitimité de la procédure sont par exemple les délais excessifs, un traitement et un mode de décision peu cohérents, si le fait de ne pas entendre les individus ~~sont entendus~~ dans le cadre d les procédures, ainsi que et la disponibilité des insuffisances en matière de l'information ou d'~~e~~ l'assistance juridique. De même, le recours excessif à des alternatives basées sur le contrôle et trop complexes et restrictives peut nuire à la confiance et encourager les migrants à ne pas respecter les procédures. La rétention superflue ou arbitraire contribue, de toute évidence, à faire douter de la légitimité des procédures.

[...]

3.2.2 Confronter Analyser le cadre juridique et politique national par rapport aux normes internationales

[...]

S'il existe des vides-lacunes ou des barrières juridiques restreignant le développement d'alternatives – par exemple, le placement automatique en rétention pour certains groupes – il convient de les identifier dès le début du processus et de prendre le temps nécessaire à leur modification.

[... page 20]

Protection de la dignité et des droits de l'homme

- Les options de placement disponibles permettent-elles de satisfaire les besoins de base et de garantir la dignité et les droits fondamentaux des personnes ?
- Les individus ont-ils accès à la protection sociale, à l'éducation et aux soins de santé ?
- Les besoins spécifiques des enfants et des personnes vulnérables sont-ils pris en compte, notamment s'agissant de l'éducation et des soins psychologiques ?
- Les personnes peuvent-elles être assistées en cas de retour ?
- Un hébergement au sein de la communauté où d'autres services sont accessibles, est-il proposé aux personnes, ou ces dernières sont-elles isolées et peu engagées livrées à elles-mêmes ?

[...]

3.2.6 Identifier les services existants et l'expertise déjà possédée disponible, et qui sont susceptibles d'être adaptés

[... page 21]

3.3.1 Entreprendre les changements nécessaires en matière législative et politique

Des changements législatifs peuvent être nécessaires lorsqu'une base juridique est requise pour la mise en œuvre de certaines alternatives (notamment celles limitant la liberté de mouvement~~libre circulation~~), et quand la législation en vigueur ne prend aucunement en considération les alternatives, ou limite celles-ci à quelques formes « traditionnelles » d'alternatives, basées sur le contrôle.

SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL ON MIGRATION AND REFUGEES / REPRÉSENTANT SPÉCIAL DU SECRÉTAIRE GÉNÉRAL SUR LES MIGRATIONS ET LES RÉFUGIÉS

GENERAL SUGGESTIONS

1. As the practical guidance is also part of the Action Plan on Protecting Refugee and Migrant Children, it would be good to mention this in its preface and to integrate child-sensitive aspects in the text, such as:

- a. section 1.3 could mention the mandatory examination of alternatives for children, failing which detention will most likely result in a violation of the Convention.
- b. section 3.1.2 and 3.2.5 with reference to procedural safeguards could include more child-sensitive aspects:
 - i. Screening and assessment – consideration for the child's best interests
 - ii. Access to information – child-friendly information (with a short reference to the handbook on child-friendly information)
 - iii. Legal assistance – a child's detention to be examined separately from the parent's, possibility to appeal separately; role of the guardian
 - iv. Case management services – to have a child-friendly approach, role of the guardian
 - v. Safeguarding dignity and human rights – role of the guardian
- c. it might appear sensible to emphasize that designing child-friendly alternatives, authorities need to have in view co-operation among several sectors (migration + childcare/social care, youth, education, for example).

2. The content of the guidance appears to be targeting more decision- and policy-makers, rather than professionals implementing alternatives into practice (who, in turn, may need guidance on the practical aspects of implementation, rather than of design). It might be helpful to address in the preface the group targeted by the publication. Are there any plans for another guidance at a more technical level?

3. The text has been cleaned from references and footnotes in the Analysis. To reinforce the legal core of the alternatives, it may be useful to list a few ECHR case-law references in Sections 1.2-1.6 and the actual source to UN CRC and European Commission where cited in the text.

[... page 5]

1.1 *The right to liberty*

[...]

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

[... page 5]

1.2 Criteria for permissible exceptions to liberty

Overall, any deprivation of liberty in the context of migration must adhere to the general principles set out by the Convention and interpreted by the Court. If it is not to be deemed arbitrary, detention must be provided for in national law, carried out in good faith and closely connected to the aim pursued. The place and conditions of detention must be appropriate and linked to the ground of detention, 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. A short reference to Articles 5 §§ 2 and 4 would not hurt.

Comment [HJ31]: It may facilitate understanding if the figure is more explicit that the two limbs are alternative (OR) and not cumulative (AND) grounds for detention.

Rewording of the first limb into “of a person to prevent....” could also help distinguish the two limbs as separate grounds for detention under 5-1-f.

[... page 6]

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.

Comment [HJ32]: It could be perhaps useful to reflect here that failure to examine alternatives in respect of children will result in a violation under ECHR.

[... page 7]

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.

On yellow, the text is very poorly visible.

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 [UN Committee on the Rights of the Child](#), have concluded that immigration detention constitutes a child rights violation and always contravenes the best interests of the child, maintaining that in this context children should never be detained.

[... page 7]

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.

Comment [HJ33]: A few examples how detention may make someone vulnerable could reinforce the credibility of the text.

[... page 8]

1.7.2 Compliance with immigration procedures

When implemented effectively, alternatives may improve migration governance by promoting [co-operation with the person concerned, and eventually?](#) 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).”

Comment [HJ34]: As this is a citation, it might be useful to provide the exact source.

[... page 9]

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

Comment [HJ35]: How can a card protect from arrest/detention?

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.

[... page 10]

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.

[... page 10]

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.

[... page 11]

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.

[...]

2.1.10 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, international or civil society organisations. This involves, for example, advice and support around formal voluntary return programmes, which may provide pre-departure assistance, transit assistance and post-return support for arrival and reintegration. Such advice can address people's fears, including destitution upon arrival or of being precluded from applying for a visa to return legally in the future.

Comment [HJ36]: This part seems to convey the idea that persons with valid international protection status may end up in immigration detention for the purpose of return if their residence permit is expired. And this is probably not the angle the guidance wishes to convey.

I have re-checked the Return handbook, which is cited in this respect in the analysis. The handbook notes that an expired residence permit is still entitlement to stay because the international protection status is still valid. It makes perfect sense in respect of return, but then it does not make sense in respect of alternatives to immigration detention. Refugees should not end up in detention in the first place and a person cannot be issued "an expired residence permit" as alternative to being placed in detention.

Comment [HJ37]: I like a lot the alternative title "or case worker support" from the Analysis because it is self-explanatory

Comment [HJ38]: This sentence is somehow misleading that alternatives to immigration detention are relevant to refugees.

[... page 13]

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:

Comment [HJ39]: The text on yellow is poorly visible.

[... page 14]

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.

See reference to child-friendly aspects in the general comments.

[... page 16]

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?*

Comment [HJ40]: For self-assessment, more concrete questions might be more efficient:

-Does legislation provide for mandatory analysis of alternatives?

Comment [HJ41]: Perhaps flip this into a positive wording:

-Does the law list an exhaustive list of alternatives?

-Does the law allow for the development of engagement-based alternatives?

-Are there any legal obstacles to such development?

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.

[... page 16]

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.
- Evaluate what resources are already available - facilities, trained staff, etc.?

[... page 17]

3.2.3 Comprehending the scale, nature and vulnerabilities of migration movements

[...]

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 stakeholders s 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 unaccompanied? 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.

[... page 18]

3.2.5 Evaluating the availability and effectiveness of existing alternatives

[...]

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 unaccompanied? 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.

[... page 19]

i. Why are some alternatives more or less effective?

[...]

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?
- Please see general comments concerning the child-friendly aspects.

[... page 20]

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-children 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.

[... page 21]

3.3.2 Building collaborative working relationships

[...]

Key steps:

- Hold roundtables and bilateral meetings with diverse stakeholders including civil society organisations, faith-based 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.

CHAIR OF THE AD HOC COMMITTEE FOR THE CHILDREN'S RIGHTS AND THE CHILDREN'S RIGHT DIVISION / PRÉSIDENT DU COMITÉ AD HOC POUR LES DROITS DE L'ENFANT ET DIVISION POUR LE DROITS DES ENFANTS (CAHENF)

[... page 6]

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. As regards children, stringent criteria have been set by the Court and it must be effectively established in each case that no alternatives can be applied.










[...]

1.6 Vulnerability – safeguards, 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;

-For children in general, article 3, para 1 of the UNCRC sets out the principle of best interests consideration: immigration detention has been specifically determined to go against this principle. Children in migration, particularly unaccompanied children, represent a highly vulnerable group of individuals, especially when additional factors of vulnerability are present.

-  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.

[... page 7]

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, whether accompanied by their parents or not. ~~The Court has set stringent criteria~~

Comment [CRD42]: Based on the example of children the handbook would benefit from having a few lines on the specific situation of other vulnerable persons. For each specific population, it would be good to give one or two elements of context referring to applicable standard. See above a proposed text regarding children

~~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.~~

~~This means that 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; the child's protection needs to apply to all the family in this framework, and excludes forced separation, unless separation is in the child's best interests to begin with.~~

~~Beyond the stringent criteria set by the Court in this situation, 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. This rationale is reflected in the Parliamentary Assembly of the Council of Europe's instruments and Campaign to End immigration detention of children. Likewise, the Council of Europe Action plan on Protecting Refugee and Migrant children in Europe (2017-2019) calls Member states to "avoid resorting to the deprivation of liberty of children on the sole grounds of their migration status".~~

[... page 8]

Comment [k43]: This has been raised by series of PACE Recommendations.

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. For children in particular, the cost-effectiveness of alternatives to detention has been consistently demonstrated and at very high ratios. A meta-analysis of 25 years of research on the question in the United States estimates the positive benefit-cost ratio / return of between \$27.33 and \$44.91 for every \$1 invested

Comment [CRD44]: Mentioning cost-effectiveness at all is strategically problematic + all these calculations can be faulted, as this is a very imprecise field where oversimplifications abound.

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 even if they are not identified as particularly vulnerable~~. 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.

Comment [CRD45]: alternative drafting to clarify the text, "special needs" terminology is usually understood differently

[... page 9]

2.1.1 Registration with authorities

When ~~individuals~~ persons 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

Comment [CRD46]: There is no consistency in the document between "person(s)" and "individual(s)" and "people". We propose to use "person(s)" throughout.

travel or identity documents on the condition that the documents will be returned to them at a later time.

[... page 10]

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.

Given their specific protection needs, case management is a particularly useful tool for children. A specific case management methodology for children in migration is proposed in Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors.

[... page 10]

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.

In line with Committee of Ministers Rec(2005)5 on the rights of children living in residential institutions and the UN Guidelines on the Rights of Children in Alternative Care, the Council of Europe promotes the de-institutionalisation of care of children, in particular of children under the age of three and/or children in large-scale residential institutions.

Comment [CRD47]: Mention of specific concerns for children in residential care (institutions), esp children under the age of 3

[... page 11]

2.1.7 Regular reporting

Reporting conditions consist of an obligation to present oneself at set intervals 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.

When defining regular reporting procedures, attention should be paid to the inherent needs connected to some vulnerability situations so as to ensure accessibility of information and services to all (pregnancy, persons with disabilities, children).

Comment [CRD48]: This section should include a sentence to reflect modified measures for regular reporting for persons with vulnerabilities (pregnant women, disabled persons). Please see below a proposed text.

Comment [CRD49]: Reporting usually requires a migration or law enforcement role that CPS typically don't have. We'd be interested to know of cases where regular reporting is done to CPS/Child welfare agencies as opposed to migration or law enforcement authorities”?

[... page 14]

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, age, security screening, 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. Pending age assessment, all persons claiming to be minors should be treated as such, and receive the corresponding information and protection, notably through the referral to the child protection authority and designation of a guardian

Comment [CRD50]: Security screening is missing, although this is also applied

[... page 14]

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. For children, information must be adapted to their age, maturity, language, gender and culture, which requires the information provider to adjust the information and complexity of their communication according to each individual child's situation right up to the age of 18¹. Special care should be given to providing child-friendly information to children in migration, through appropriate means including effective guardianship.

Comment [CRD51]: It is suggested to introduce a link to the latest Handbook on child friendly information in the footnote. <https://rm.coe.int/how-to-convey-child-friendly-information-to-children-in-migration-a-ha/1680902f91>

Translators and interpreters may be required – free of charge if necessary – together with translated written materials.

Comment [CRD52]: Eurocef?

-Reliable provision of information enhances trust in the system as individuals are more likely to participate and 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.

[... page 15]

iii. Access to legal advice, assistance and representation 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.

Comment [CRD53]: Terminology consistency

¹

The most effective alternatives involve meaningful access to legal advice and support from the beginning and continuing throughout the relevant asylum and immigration procedures, including interpretation. 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.

Comment [CRD54]: The fair and timely case resolution dimension is missing here.

[... page 18]

3.2.5 Evaluating the availability and effectiveness of existing alternatives

[...]

i. To what extent are alternatives used in practice?

[...]

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 different categories of vulnerable persons, including children?
- Are there people currently detained who could be managed in the community if more effective alternatives were available?

[... page 19]

i. **Why are some alternatives more or less effective?**

[...]

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, age, health issues and vulnerabilities?
- Does screening involve face-to-face, confidential 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?
- While a person's situation and vulnerability is being assessed, is the person provisionally granted the care and rights that he or she can have access to in line with the specific type of vulnerability they claim?
- Does assessment take place at regular intervals, in particular for individuals in detention?
- Are there remedies in place to solve possible conflicts between the results of the assessment process and the claims of the persons being assessed? Are the persons informed of these remedies and can they effectively access them?
- Is screening and assessment based on international good practice?

Comment [CRD55]: These should be understood as 2 separate processes

[...]

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?

Comment [CRD56]: Here adapted?

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES / HAUT COMMISSARIAT DES NATIONS UNIES POUR LES REFUGIÉS (UNHCR)

[... page 5]

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.

[...]

Article 5 § 1(f) of the Convention permits the lawful arrest or detention of a person ~~deprivation~~ of liberty in two different situations in the context of migration:

[... page 5]

The notion of deprivation of liberty is understood as ~~contemplated-defined~~ 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.

[... page 6]

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.

Comment [DL57]: UNHCR kindly suggests to include in this part that the consideration of alternatives also derives from the ECtHR case-law (in particular regarding articles 3 and 8 ECHR), with reference to the relevant § of the CDDH analysis.

Comment [CC58]: This para and the second limb in the right arrow (below) should be reformulated as suggested as it does not correspond, as it stands, to a situation (starting with "of a person")

Comment [CC59]: It is understood that the wording of the handbook is simplified to be accessible to a broader range of readers but the reference to "effective remedies" in the context of Art. 5 is misleading and somehow incorrect as it suggest Art. 13 is applicable in conjunction with Art. 5 while the judicial review of detention is governed by a *lex specialis*, namely Art. 5(4)

Comment [AR60]: According to UNHCR; alternatives to detention need to be applied *in place of detention* and not be used as *alternative forms of detention*. This means that alternatives are only legitimate when there is a legitimate ground to detain the person in the first place. Otherwise, asylum seekers should be released into the community and are entitled by EU Law to appropriate *reception* with or without restrictions to freedom of movement. We see in no place this argument developed, but perhaps it is worth adding for clarity.

Comment [DL61]: Please see comment above. Perhaps important to clarify that alternatives (which imply some level of conditions or restrictions) are not to be confused with reception procedures.

[... page 6]

1.6 Vulnerability – special needs and protection

[...]

- 👤 children;
- 👤 asylum seekers;
- 👤 [refugees](#)
- 👤 [internally displaced persons](#)
- 👤 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.

[... page 7]

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.

Comment [DL62]: •UNHCR's and UNICEF's institutional position is that *"Children should not be detained for immigration related purposes, as detention is never in their best interests. This applies whether the child is accompanied or unaccompanied or separated, and irrespective of their legal/migratory status or that of their parents."*

For UNHCR we cannot talk about ATDs for children, as alternatives only apply when there is a legitimate ground to detain. See [UNHCR's position from 2017 and 2018 Joint General comment 4 CMW/CRC](#).

Comment [DL63]: Children and families should rapidly be screened so that they can be placed in appropriate care arrangements (non-custodial measures) and not into alternatives to detention.

Comment [AR64]: Source of quote not referenced.

Comment [DL65]: Please refer also to UNHCR's findings on the benefits for alternatives to immigration detention such as the 2010 UNHCR-commissioned study of 13 alternatives to detention implemented in different countries around the world which found that the rate of absconding was between 1 and 20 per cent, with 10 of the 13 projects enjoying cooperation rates above 94 per cent.

Source: Executive Committee of the High Commissioner's Programme, Alternatives to Detention, EC/66/SC/CRP.12, 3 June 2015; Standing Committee Alice Edwards, Back to basics: the right to liberty and security of person and 'alternatives to detention' of refugees, asylum-seekers, stateless persons and other migrants, UNHCR Legal and Protection Policy Research Series, PPLA/2011/01.Rev.1, April 2011

[... page 8]

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)."

[... page 8]

1.8 Alternatives may be for all

Overall, it is important to note that alternatives to detention ~~may be successfully~~ should be applied also to persons who are not deemed particularly vulnerable for all. 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.

2.1 Indicative types

[... page 10]

2.1.2 Temporary authorisation to remain on the territory

2.1.3 Case management

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.

[... page 11]

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 care management, 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.

[... page 12]

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.

Comment [DL66]: In designing alternatives to detention, according to UNHCR it is important that State observe the principle of minimum intervention, see UNHCR Detention guidelines, §39

Comment [AR67]: This does not look like an ATD, it is more like the type of authorization or documentation under which they are permitted to remain. It is documentation not alternatives. Asylum-seekers who are not placed under ATD will nonetheless receive some form of documentation that enables them to remain and access rights while their cases are assessed.

Comment [AR68]: Same as above, case management is a valid and valuable *complementary measure* to reception and alternatives, but it is not a form of ATD in itself. We have set this clear in the 2012 DG (see annex) and has come out of international practice since, the conclusions of the 2015 Toronto Roundtable are a clear example of this point. What’s described here is akin to a form of “supervision” or “reporting” if we talk in terms of ATDs, both already addressed in this section.

Comment [AR69]: We call this “care arrangements” in line with international standards and not “family-based accommodation”. Following the above argument on non-detention of children we might suggest this be a separate section entitled “care arrangements” where the procedure for placement of children unaccompanied or in families is described, but out of the context of alternatives to detention.

Comment [DL70]: UNHCR suggests to delete this part given its criminal connotation

[... page 13]

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.

Comment [CC71]: The compliance of alternatives to detention with human rights standards is not a condition of effectiveness but of lawfulness as, in the same way as detention itself, alternatives to detention, are expected to respect a set of fundamental safeguards

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?

Comment [DL72]: In the same way as detention, alternatives are subject to human rights standards. We suggest rewording this part.

[...]

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

Comment [CC73]: As highlighted above, this formulation should be strengthened as it refers to specific procedural safeguards which should be met to ensure the legality of these alternatives (including access to the asylum procedure rather than trust in such procedure). See UNHCR Guidelines 4.3. para. 37 at <https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>

[... page 14]

- **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;
- **Access to the asylum procedure – Ensuring individuals have access to effective and realistic asylum 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.~~

[...]

ii. Access to information

Comment [AR74]: Suggest to include a link to the new CoE Handbook – <https://www.coe.int/en/web/children/-/council-of-europe-launches-handbook-on-child-friendly-information-for-children-in-migration>

[... page 15]

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. [Legal aid should be provided by independent entities.](#)

[...]

v. Safeguarding dignity and human rights

Practices in alternatives are liable to be ~~ineffective-unlawful~~ if individuals are unable to maintain their dignity by accessing their fundamental needs in the community.

[... page 16]

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 [Law and](#) policy enable a broad consideration of alternatives by decision-makers?*

[... page 18]

Key questions:

- [What alternatives are available in law?](#)
- [Who decides on the application of an alternative to detention?](#)
- [Are effective complaints mechanisms and remedies available?](#)
- [How are alternatives to detention monitored and supervised?](#)
-
- 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?

[... page 18]

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?
- How do those involved in the implementation of alternatives evaluate the system?
- - How do beneficiaries of alternatives evaluate the system and conditions they are placed under?
- 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?

[... page 19]

Key questions: Screening and assessment

[... page 20]

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.

Comment [AR75]: Suggest to link and add reference to recent UNHCR materials:
 - UNHCR and IDC (2016), Vulnerability Screening Tool - Identifying and addressing vulnerability: a tool for asylum and migration systems, 2016, available at: <https://www.refworld.org/docid/57f21f6b4.html>
 - UNHCR Stateless Persons in Detention: A tool for their identification and enhanced protection, June 2017, available at: <https://www.refworld.org/docid/598adac4.html>

Comment [DL76]: We suggest to clarify this part and precise if the comparison between costs for alternatives are compared to detention or if it compares the costs of alternatives to detention that include an engagement element with those that do not.

**PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE /
ASSEMBLÉE PARLEMENTAIRE DU CONSEIL DE L'EUROPE**

[... page 7]

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. In its Resolution 2020 (2014), the Parliamentary Assembly of the Council of Europe (PACE) called on the member States to introduce legislation prohibiting the detention of children for immigration reasons and ensure its implementation in practice as well as adopt alternatives to detention that meet the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved. Since 2015, the PACE Committee on Migration, Refugees and Displaced Persons has been leading the Parliamentary Campaign to End Immigration Detention of Children.

EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS / RESEAU EUROPEEN DES INSTITUTIONS NATIONALES DES DROITS DE L'HOMME (ENNHRI) ASYLUM AND MIGRATION WORKING GROUP

[... page 4] - 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.

[... page 6]

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.

[...]

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.

Comment [ENNHRI77]:

ENNHRI's A&M WG notes with great concern that, in general and in some European countries in particular, immigration detention has become the norm rather than the exception. Even when not labelled as immigration detention, different measures of *de facto* detention may be contrary to human rights standards. With this context in mind, the A&M WG welcomes the CDDH-MIG initiative in taking this draft forward and believes the Guidance will be instrumental in assisting public authorities and stakeholders to create a bridge from theory to practice regarding alternatives to detention.

Comment [ENNHRI78]:

We note with concern that migrants, including people in need of international protection, are increasingly detained due to a "risk of absconding" without respect to the applicable legal standards. Detention of migrants should not be used as a deterrent measure.

Comment [ENNHRI79]:

The A&M WG stresses that depriving migrants of their liberty solely on account of their status as migrants is not in line with human rights standards. The use of administrative detention of migrants is subject to strict legal safeguards under international law. It follows from these well-established standards that the administrative detention of migrants should always be a measure of last resort, should be avoided by any means and be carried out in full compliance with States' international obligations. Therefore, alternatives to detention in the context of migration should not be an afterthought – rather, it should always be a primary consideration.

Comment [ENNHRI80]:

The A&M WG welcomes the reference to the need to duly take into account the special needs of persons in a vulnerable situation when considering alternatives. However, we are of the view that gender-specific considerations could be further highlighted, particularly when there is a lack of separate places for women or for families with children.

Comment [ENNHRI81]:

The A&M WG also suggests that the draft should attend to the specific rights pertaining to [stateless persons](#) under international law and the heightened risk they face of [arbitrary detention](#), emphasising the need to establish and facilitate referral to a dedicated procedure to identify and determine statelessness that provides for the possibility to grant a stateless person protection under the 1954 UN Convention on Statelessness.

[... page 7]

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.

Comment [ENNHRI82]: The duty to consider alternatives to detention for children and their family also follows from States' obligation to assess and respect the best interest of the child, their right to non-discrimination and right to be heard. Special attention should be paid to unaccompanied and/or separated children, who should never be detained due to their enhanced vulnerability.

[... page 8]

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.

Comment [ENNHRI83]: The A&M WG would like to stress the importance of using alternatives to detention also in relation to asylum applicants who irregularly entered or stayed in the territory – this alone should not give the authority an automatic power to detain or restrict freedom of movement. Detention that is imposed solely in order to deter asylum applicants is inconsistent with international norms and standards.

Comment [ENNHRI84]: It should be emphasised in the Guidance that whilst governments may need to detain an individual who presents a threat to national security, special attention should be paid to ensure that detention in such cases also complies with human rights law, particularly that detention should be proportionate to the threat, non-discriminatory and subjected to judicial oversight.

1. 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.

Comment [ENNHRI85]: The A&M WG recommends that the Guidance emphasises further that any suggested alternatives to detention must comply with regional and international human rights standards. Although we understand that this Guidance does not deal with the legal aspects of detention, we stress that deprivation of liberty through other means cannot be seen as “alternatives to detention”.

[... page 12]

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.

Comment [ENNHRI86]: The A&M WG raises strong concerns regarding the inclusion of “electronic monitoring” as an alternative to detention. We are concerned that this measure constitutes a violation of migrants' right to privacy under Article 8 ECHR, particularly where the legal safeguards are unclear or insufficient. It may also violate the right to freedom of movement.

Therefore, we strongly advocate against including this measure as an alternative to detention, since it could inadvertently promote a practice in contravention of international standards.

[... page 14]

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.

Comment [ENNHRI87]: The A&M WG suggest that the draft should pay more attention to the detention of asylum applicants, who are very often in a situation of vulnerability due to their need for international protection, journey or challenges in fulfilling their human rights in practice.

[... page 15]

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.

Comment [ENNHRI88]: In addition, we are concerned that detaining migrants often creates perceptions of criminality among the public, and that migrants often become vulnerable after or during detention.

[... page 16]

3.1. Scoping your national context: Key questions

[...]

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.

Comment [ENNHRI89]: The A&M WG would like to emphasise that, where possible in the national context, migrants should have access to free, quality legal aid. This is an essential feature of an effective and human rights-compliant policy of alternatives to immigration detention. This is particularly the case where free legal assistance and representation is necessary to ensure migrants' enjoyment of their right to an effective remedy, including during the deportation process.

Comment [ENNHRI90]: The A&M WG believes that the role of NHRIs could be further mainstreamed in the Guidance, particularly under "3.2. Scoping your national context: key questions". NHRIs are in a unique position to provide expertise, information and support given their mandate as independent national bodies that promote and protect human rights, as well as the fact that many NHRIs also hold the role of National Preventative Mechanisms and therefore are responsible for monitoring and reporting on detention conditions. Many European NHRIs already work together with national authorities on implementing policies for alternatives to immigration detention.

[... page 17]

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.

Comment [ENNHRI91]: National Human Rights Institutions (NHRIs) are ideally placed to support national government in reviewing the national legal and policy framework against international standards. This function falls squarely into NHRIs' mandate as defined by the Paris Principles.

Comment [ENNHRI92]: NHRIs can also assist States in this regard.

[... page 18]

3.2.5 Evaluating the availability and effectiveness of existing alternatives

[... page 19]

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?

[... page 23]

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.

[...]

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.

[... page 24] - CONCLUDING REMARKS

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.

Comment [ENNHRI93]: NHRIs can also assist States in this regard.

Comment [ENNHRI94]: Access to legal assistance should be provided in practice, not only on paper. This is particularly the case where free legal assistance and representation is necessary to ensure migrants' enjoyment of their right to an effective remedy, including during the deportation process. This assistance should be of high-quality and provided in a language that the person concerned understands. Ad-hoc provision of legal support by NGOs cannot excuse States from their obligation with regard to provision of legal assistance and access to justice.

Comment [ENNHRI95]: For this purpose, it is also necessary to provide detailed instructions and appropriate training for judges and other public servants, such as police, border and immigration officers to ensure the systematic use of alternative measures.

Comment [ENNHRI96]: The A&M WG suggests that the Guidance should better address the lack of information regarding if and how States use alternatives to immigration detention and with what frequency they implement them. A better collection and sharing of data would allow States to evaluate the results of alternatives to detention, and it would contribute to the accountability of national authorities' compliance with human rights standards.

Comment [ENNHRI97]: ENNHRI's Asylum and Migration Working Group welcomes the inclusion of NHRIs as relevant actors for monitoring and evaluating the effectiveness of alternatives to immigration detention. We call on European States to duly consider the involvement and expertise of NHRIs when establishing, revising or evaluating policies or legislation related to alternatives to immigration detention.

Comment [ENNHRI98]: The A&M WG welcomes the CDDH-MIG initiative in taking this draft forward and believes the Guidance will be instrumental in assisting public authorities and stakeholders to create a bridge from theory to practice regarding alternatives to detention.

We call on European States to duly consider the involvement and expertise of NHRIs when establishing, revising or evaluating policies or legislation related to alternatives to immigration detention.

ENNHRI stands ready to provide further input and dialogue to CDDH-MIG's work on the draft Guidance in order to achieve a comprehensive approach, based on human rights standards, in relation to alternatives to detention of migrants.

INTERNATIONAL DETENTION COALITION (IDC)

[... page 10]

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 build a trust relationship, support and empower the client to engage fully with immigration procedures, by facilitating ~~to~~ access to information, legal aid and representation advice in relation to immigration procedures and other support mechanisms where needed. 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.

Comment [RS99]: Does ‘civil society’ include sub-contracted service providers?

Comment [RS100]: We would usually argue for a form of case management that is broader in scope and that attends to the whole of a person’s situation, not just the immigration procedures. This is because other issues, such as homelessness, will impact immigration outcomes and because case management is part of building trust in the system.

2.1.4 Family-based accommodation

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

Comment [J101]: Suggest following wording to reflect broader scope of case management as described in the CDDH-MIG Analysis of ATD:

“The role of the case manager is to build a trust relationship, support and empower the client to work towards resolving their migration case, by facilitating access to information, legal advice and other support mechanisms where needed. Case management assists individuals to explore all migration options while addressing issues related to every day practicalities and broader psychosocial well-being, so that they can engage fully with immigration procedures.”

Suggest “support mechanism” rather than “services” because these can include informal community support, activities such as sports clubs etc.

Alternatively, the following sentence could be inserted from the CDDH-MIG Analysis (para 210) “This can also entail basic survival mechanisms such as facilitating access to welfare services, health care, work or education.”

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.

Comment [J102]: Mainstream child protection settings use the term ‘alternative care’ for placement outside of parental care. Suggest including the term in this section for integration with these systems of care.

[... page 11]

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.

Comment [RS103]: Not sure why these terms are bold when this is not used consistently in the other sections.

Comment [RS104]: Worth noting that reporting should take into account the individual’s situation to ensure it is actually gauging non-compliance intentions, rather than reflecting overly onerous reporting requirements (i.e. being required to travel long distances without the funds for transportation)

[... page 11]

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.

[...]

2.1.10 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 independent or 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.

Comment [RS105]: IDC favours the term 'independent return' because it reflects departure without physical coercion in circumstances when the individual has no right to remain in the country and is threatened with negative consequences if they do not leave the country.

[... page 12]

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-assert~~ that electronic monitoring should not be considered as an alternative to immigration detention, while other instances do not categorically exclude it.

Comment [J106]: Suggest assert rather than claim

[... page 14]

- **Screening and assessment** – Understanding the individual circumstances and ~~use~~ using screening and assessment to make informed decisions about management and placement options;
- **Access to information** – Ensuring individuals are well-informed and ~~provide~~ 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;
- **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~~ ensuring their basic needs can be met;
- **Trust in asylum and migration procedures** – Building trust and respect through a spirit of fairness and cooperation, rather than an exclusive focus on control or punishment.

Comment [J107]: Some editing suggestions in this para

[... page 14]

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.

Comment [RS108]: Interpreters for oral communication, translators for written communication

[... page 15]

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, to explore all migration options and address issues related to everyday practicalities and psychosocial wellbeing, so they can engage fully with immigration processes. Case managers help clients to access information, services support mechanisms and legal advice, while providing a link between the individual the authorities and the community. Case managers can be either state or civil society representatives, but ideally they are not the decision-makers on the immigration case. Through its coordinating role, case management promotes improved communication, timely information-sharing and informed decision-making among actors involved in an individual's migration case. In the context of significant migration movements, it may not be affordable to provide in-depth 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.

Comment [J109]: Suggest this wording to better reflect nature/elements of effective case management:

“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 – to explore all migration options and address issues related to everyday practicalities and psychosocial wellbeing, so they can engage fully with immigration processes. Case managers help clients to access information, support mechanisms and legal advice, while providing a link between the individual the authorities and the community. Case managers can be either state or civil society representatives, but ideally they are not the decision-makers on the immigration case. Through its coordinating role, case management promotes improved communication, timely information-sharing and informed decision-making among actors involved in an individual's migration case. In the context of significant migration movements, it may not be affordable to provide in-depth 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.

Comment [RS110]: Could add that this capacity can include residence in housing in the community (not just accommodation centres, which are expensive to build and operate and hard to repurpose when no longer required).

[... page 15]

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-reducing 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.

[... page 17]

3.2.3 Comprehending the scale, nature and vulnerabilities of migration movements

It is also vital to understand the nature of migration movements in a particular domestic context. This could *inter alia* include the proportion of asylum seekers and non-asylum claimants, transit populations, children and other vulnerable individuals or groups, short-stay visitors and longer-term residents who become irregular as well as stateless persons and/or people who cannot be returned. The approach called for will vary. This depends, for example, on whether there is a situation of 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.

Comment [J111]: Often the biggest group of migrants without valid visa or status are short-stay visitors who overstay the period of their visa, or who contravene a visa requirement.

[... page 20]

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.

Comment [RS112]: Note there are several hidden costs of detention not reported in the per-person per-day cost, including the investment in the infrastructure

Comment [RS113]: Can also reduce other costs (such as enforced departure and deportation).

[... page 21/22]

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.

Comment [RS114]: Does this mean after a prison sentence resulting from being convicted of a crime?

[... page 23]

3.3.8 Monitoring results and sharing outcomes

A structured qualitative and quantitative monitoring and evaluation framework could be introduced for existing programmes and established from the start with regards to new practices. This provides an opportunity for learning that can assist in building effective and humane systems.

Key performance indicators could address effectiveness in terms of human rights protection, compliance and cost-effectiveness. Quantitative indicators, such as reduced absconding rates and increased rates of case resolution, including voluntary return, could capture immediate and concrete progress. The overall reduction of the use of detention would also be a significant performance indicator.

~~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 q~~Qualitative indicators could measure of longer-term shifts such as trust in immigration systems, the 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, as well as longer-term shifts such as trust in immigration systems. Evaluation should ideally take into account that some changes – such as greater trust in procedures – usually take place over the medium to long-term.

Comment [J115]: Important to frame M&E as an opportunity for learning that can assist in building effective and humane systems and to avoid language that implies if the evaluation finds an ATD is not meeting anticipated indicators it should be shut down.

Suggest rewording: “A structured qualitative and quantitative monitoring and evaluation framework could be introduced for existing programmes and established from the start with regards to new practices. This provides an opportunity for learning that can assist in building effective and humane systems.”

Comment [J116]: Some of these are not necessarily longer term impacts, so suggest rearranging the sentence a bit to reflect this.

Comment [J117]: Suggest wording:

“Qualitative indicators could measure the quality of case management in terms of frequency, regularity of contact, trust relationships established, and improved ability of people to engage with and comply to immigration processes, as well as longer-term shifts such as trust in immigration systems. Evaluation should ideally take into account that some changes – such as greater trust in procedures – usually take place over the medium to long-term.”

Comment [J118]: Suggest approaches rather than structures

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 structuresapproaches.

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) / COMITÉ INTERNATIONAL DE LA CROIX ROUGE (CICR)

Overarching suggestions:

- The essential elements of effectiveness constitute the true strength of the Handbook. Therefore, we believe that these could be further systematically incorporated throughout the document.
- As discussed during our previous participation to the meetings of the CDDH-MIG, we would suggest to refer to “alternatives to detention implemented in an effective way” rather than “effective alternatives to detention”. We have included a number of suggestions in that sense, and believe that this could be further reflected throughout the Handbook.

[... page 4] - 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 European and international human rights standards in the field, highlighting critical themes as well as clarifying both the similarities and the differences between varied bodies of the Council of Europe, the United Nations and the European Union. The 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 the implementation of 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~~ realize the benefits of alternatives to detention are also outlined.

Comment [ICRC 119]: We would respectfully suggest “Analysis” are both “CDDH-Analysis” and “Analysis” are used in the document.

Comment [ICRC 120]: We would respectfully suggest to add “*and ultimately reduce the number of people in immigration detention*”.

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 ~~and instances,~~ civil society organizations ~~as well as~~ 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 and individual circumstances inevitably call for context-specific actions and tailor-made approaches. The Handbook therefore aims above all to highlight some crucial principles, elements and

questions that may help in the process of implementation in multiple settings. Each chapter addresses a single question respectively: Why, what, how? Why should we apply alternatives; what types of alternatives could potentially be considered; and how might we make them work. Accordingly, the first chapter discusses briefly some central human rights standards pertaining to why alternatives in the context of migration are to be considered as well as their possible benefits; the second chapter outlines some potential types of alternatives; and the third chapter asks how alternatives become effective, delineating (a) essential elements of effectiveness, (b) key questions in specific national contexts, and (c) planning concrete steps for implementation.

[... page 5]

Article 5 § 1(f) of the Convention ~~permits~~authorises the 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 notably follows from the Court's case law ~~in particular that different measures which restrict movement when, taken individually, restrict movement, can, when taken together,~~ amount to deprivation of liberty when taken cumulatively and thus fall under Article 5 of the Convention.

Comment [ICRC 121]: We believe that it might be helpful for the practitioners/readers to be provided with section references in the Analysis – at least for key elements like this one.

[... page 6]

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 in the presence of an existing legal ground to deprive someone of liberty and 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

~~¶In the absence of a universally-agreed legal definition of “alternatives to 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 detentionsubject to a number of conditions or restrictions on freedom of movement.~~ 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~~Similar safeguards applicable to immigration detention should also be applied to alternatives to detention: #these must be in line with international human rights standards. To meet this requirement, alternatives to immigration detention should, *inter alia*:

- respect the principle of necessity, proportionality and non-discrimination;

- never amount to deprivation of liberty or arbitrary restrictions on freedom of movement;
- always rely upon the least restrictive measure possible;
- be ~~established in~~ prescribed by 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~~ If there are grounds for deprivation of liberty, alternatives to detention should be considered first. This 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:

[... page 7]



Comment [ICRC 122]: We are not sure about the added-value of layer number 2. In addition, we believe that layers number 3 and 4 refer to principles which must also be more broadly applied to people who are not in a vulnerable situation. In this graphic, the focus should rather be on the need for specific screening procedures to ensure the early and prompt identification of persons in a vulnerable situation.

[... page 7]

As to children in particular, their extreme vulnerability takes precedence over their immigration status, and their best interests ~~should~~ shall be a primary consideration in all actions concerning them. States should take appropriate measures to ensure that all children are protected. The Court has set stringent criteria regarding the immigration detention of children which may only be admissible in exceptional circumstances as a measure of last resort and for a very short period of time. All appropriate conditions must be fulfilled, and it must be concretely established that no alternative can be applied. 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.

[... page 7]

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, ~~including to preserve the right to liberty and security of person in particular cases, especially in the context of migration, where breaches of migration law should be treated as administrative infractions.~~ 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. ~~Moreover, persons may also become vulnerable in detention.~~ 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.~~

[... page 8]

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 ~~non-custodial arrangements~~ alternatives are used ~~alternatively to 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.

Comment [ICRC 123]: We fully understand the focus on return procedures. Nonetheless, we believe that it might be important to include a reference to the fact that it also increases the likelihood of migrants cooperating with immigration officials, while also facilitating their potential integration into their host society.

Comment [ICRC 124]: We would respectfully suggest to put this section at the very beginning of the section on alternatives to detention. The emphasis on vulnerable migrants is crucial, but generally speaking, alternatives to detention should be the first solution considered by the authorities – after liberty – when they are grounds for detention in the migration context.

Comment [ICRC 125]: In line with our previous comment, we would respectfully suggest to delete this sentence.

Comment [ICRC 126]: For this sentence, we respectfully suggest to reverse the logic. For example: “A wide range of alternatives should be available in order to avoid detention for the largest number of people, should there be grounds to justify not allowing them to remain at liberty.”

Comment [ICRC 127]: Beyond these three important elements, we believe that it might be important too to underline that there is growing recognition about the fact that the use of immigration detention may lead to widespread violations of human rights, while noting the consequences on migrants’ physical and psychological health.

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~~known by different terms in different contexts. Conversely, the same term may have different meanings and ~~connotations~~implications in varied settings. Some types of alternatives involve restrictions on the liberty of individuals while others emphasise engagement with individuals. In practice, different types of alternatives are often used together rather than as distinct options. ~~In this context~~At all times, 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.

Comment [ICRC 128]: We would respectfully suggest not using the terms “types” (or “models”) in the document, rather referring to “measures”, “practices” – or simply “alternatives”.

[... page 9]

Each type of alternative presented in this chapter may carry with it certain ~~strengths and weaknesses~~advantages and disadvantages depending on the ~~context~~national and individual circumstances, 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.

Comment [ICRC 129]: We believe that it might be worth here to recall what it means in practice, i.e. with a reference to the Analysis as follows “*Measures labelled as ‘alternatives to detention’ can, in effect, amount to a deprivation of liberty if the aggregated impact, degree and intensity of the actions taken constitute severe restrictions on a person’s liberty. This is especially important in the context of restrictions or conditions-based alternatives, as some restrictions on liberty of movement, either by themselves or in combination with other measures, may either amount to arbitrary restrictions on freedom of movement or to an arbitrary deprivation of liberty.*”.

[...]

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 – which itself could be considered as another alternative measure.

Comment [ICRC 130]: For the graphic below, we would respectfully suggest to not use a circle (especially with the arrow). We believe that it might be confusing by implying that one goes back from electronic monitoring to registration with authorities. To this end, a visual spectrum might be more accurate.

[... page 10]

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 on its territory. 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.

[... page 10]

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 family~~ies~~) ~~from initial claim until return or grant of status~~ throughout the asylum and migration procedures. 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.

Comment [ICRC 131]: Since case management is cross-cutting and does not involve any restrictions, we would respectfully suggest to put it first, or at least adding a sentence emphasising that case management can – and should – be applied alongside any of the other alternative measures.

[... page 11]

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 granted a protection status, applicants~~ 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, ~~which that~~ imposes no restrictions on where an individual may reside so long as he/she remains in good standing with the authorities.

Comment [ICRC 132]: We would respectfully suggest to place “Designated residence” next to current 2.1.6 “Open or semi-open centres”.

[...]

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

Comment [ICRC 133]: We were only wondering whether this reference should not (also) appear in section 2.1.1 “Registration with authorities”?

Comment [ICRC 134]: We would respectfully suggest to merge this section with the below-section 2.1.11 “Return houses”. We believe that return counselling should not be characterised as an alternative to detention, since information, advice and support provided should be available to all people in a return procedure.

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.

[... page 12]

2.1.11 Return houses

~~So-called "Return houses"~~ combine case management support with the requirement to reside at a designated location in preparation for voluntary or enforced departure. ~~Failed asylum seekers or people~~ 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.

[...]

2.1.13 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~~ A number of organisations have strongly criticised electronic tagging in the context of migration, describing it as particularly harsh and the most intrusive of alternative measures. 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 in an individual case. But given the different characteristics and consequences of the various ~~types of alternatives measures~~, and the diversity of circumstances and individuals concerned, there is no simple menu of options for governments and decision makers to choose from. Each application of alternative measures requires consideration attuned to the particularities of the domestic context, ~~the nature of migration movements~~ and, most importantly, individual circumstances.

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

Comment [ICRC 135]: We would respectfully suggest an additional sentence emphasising that the widest possible range of alternatives to detention should be made available by States.

[... page 13]

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:

[... page 13]

The legitimate aim of States to ensure compliance with immigration procedures is clearly a fundamental part of the effectiveness of alternatives. Without this crucial aspect, alternatives cannot be deemed effective. Similarly, States ~~are 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 ~~is likely to 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.

[... page 14]

- **Access to information** – Ensuring individuals are well-informed and provided ~~d~~ with clear, concise and accessible information about their rights, duties and consequences of non-compliance;

[...]

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. 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. On this basis, initial decisions can be taken and individuals can be assigned to appropriate alternatives that address their particular potential, needs and risks.

Comment [ICRC 136]: Effectiveness relies on the good implementation of the measure at the individual level. Therefore, we would here respectfully suggest to quote the text of the Analysis as follows: “Screening and assessment procedures are considered ‘fundamental’ elements of effective alternatives to immigration detention because they assist decision makers in understanding the individual circumstances of each person for whom alternatives to detention are being considered”.

ii. Access to information

Individuals need to be provided with clear, concise and accessible information about their rights and duties, the procedures at hand and the consequences of non-compliance. This information should be provided as early as possible and updated as needed throughout the asylum and migration procedures. Information ~~could~~ should be provided in multiple formats and in a manner that is easily accessible 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~~ understand the process in which they find themselves. It can also improve communication with decision-makers, who then are more likely to be informed of issues and developments in the person’s circumstances, improving the quality of decisions.

Comment [ICRC 137]: As a very general comment, we were only wondering whether it should be mentioned in the Handbook that the consequence of non-compliance with an alternative to detention should not automatically amount to detention? Such reference could also potentially be included in VI. “Building trust in asylum and migration procedures” when it notes that “Unnecessary or arbitrary detention obviously undermines trust in fair procedures”. See for instance as a basis, §197 (P.98) of the Analysis.

[... page 15]

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, n~~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 and empowering individuals to take decisions and encouraging them to engagework 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 early~~ stages 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, including an adequate standard of living and access to other rights, such as health, education and family life. 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 as relevant. 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 cross-cutting element for the effective implementation of alternatives to detention lies in~~ building trust in asylum and migration procedures through a spirit of fairness and mutual cooperation. The ~~use of alternatives to detention~~ application of the essential elements through an alternative 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

Comment [ICRC 138]: As a very general comment, we were only wondering whether this sentence should not be included above into ii. "Access to information"?

Comment [ICRC 139]: We would respectfully suggest the following rephrasing for this section iii. "Legal assistance":

"The most effective alternatives involve meaningful access to legal advice and support from the beginning and continuing throughout the relevant asylum and immigration procedures. This enables individuals to understand the reasons for decisions and to pursue all the legal options available – and guarantee the respect of the right to an effective remedy. Where possible, provision of legal advice could be free and automatic. Non-governmental organisations, legal aid clinics or law firms working pro bono can also potentially provide legal advice."

Access to legal advice is invaluable in supporting compliance with immigration systems. For example, persons who believe their process has been fair and efficient, including exploration of all options to remain in the country legally, are more likely to accept and comply with a negative decision".

Comment [ICRC 140]: As a very general comment, we were only wondering whether a paragraph should be added here to explain similarities/differences/relationship with "Case management" as an alternative to detention above in 2.1.3?

Comment [ICRC 141]: In line with IDC's conception of "holistic" case management, we believe that this sentence could go a step forward, by mentioning that it is also about linking people to the social and other national services they need access to in order to live while asylum and migration procedures are ongoing.

Comment [ICRC 142]: We are not sure to understand here the link between case management and the risk of absconding.

Comment [ICRC 143]: We would respectfully suggest to rephrase this sentence, as follows: "Should a return order be issued, it is important that the essential elements of alternatives remain in place, in order to support people to continue engaging at this crucial stage..."

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.

Comment [ICRC 144]: We believe that early engagement should be brought up to underpin the entire section on essential elements of effectiveness.

[... page 16]

3.2.1 Understanding existing strengths, gaps and possibilities

The widest range of alternatives should be available, in order to best respond to the circumstances of a given individual in a given country. 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~~ must be based on a good knowledge of the national reception and immigration detention systems, as well as a careful scoping of national realities, existing services and 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

- *Is legislation compliant with international human rights standards? Which treaties, most relevant to the treatment of refugees, asylum seekers and migrants, has the country signed and/or ratified?*
- *Does policy enable a broad consideration of alternatives by decision-makers?*
- *Are alternatives ~~limited in provided by law to a narrow~~ with a broad typology which ~~precludes~~ allows the 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.

Comment [ICRC 145]: As a general comment, we were only wondering whether this is the right example to provide here, since the automatic detention of certain groups would be illegal in practice?

[... page 17]

3.2.3 Comprehending the scale, nature and vulnerabilities of migration movements

~~Before analysing what happens in immigration detention,~~ it is also vital to understand the ~~nature of more general~~ migration ~~trends and~~ movements in a particular domestic context. This could *inter alia* include the proportion of ~~irregular migrants, possibly including~~ asylum seekers and ~~refugees non-asylum claimants;~~ ~~whether the country is a country of transit or destination,~~ ~~or a combination of both;~~ ~~transit populations,~~ categories of age and gender, as well as particular vulnerabilities, including children ~~and other or members of other~~ vulnerable individuals ~~or~~ groups; longer-term residents who become irregular; as well as stateless persons and/or ~~others people~~ who cannot be returned. The approach called for will vary. ~~This~~ It depends, for example, on whether there is a situation of ~~mass increasing~~ 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 ~~trends and~~ 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 ~~trends and~~ movements in terms of key categories such as asylum seekers and other vulnerable persons, especially children.
- Identify key issues ~~involved in arising from~~ 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.

[... page 18]

i. To what extent are alternatives used in practice?

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

Comment [ICRC 146]: To balance this sentence, we would respectfully suggest to recall the fact that case management is one of the essential elements for the effective implementation of any alternative measure.

[... page 18]

Key questions:

- What alternatives are available in law?
How far are they implemented in practice? Is the scale and range of available alternatives sufficient to meet the needs of diverse individuals and effective migration management? Do options address the specific needs of vulnerable persons, including children?
- 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?

Comment [ICRC 147]: We believe that this point repeats the second question above.

[... page 19]

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

[...]

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 certain information 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?

Comment [ICRC 148]: We would respectfully suggest to add the following question: "Are there procedures in place to re-direct someone from immigration detention to an alternative arrangement (or release) if an assessment warrants it?"

Access to information

- Do people have receive and 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 a language and manner they understand, notably through-in translation, through interpreters and multiple formats?
- Is advice and support available for vulnerable persons who might otherwise struggle to understand the information provided?

Comment [ICRC 149]: We believe that this point repeats the first question above.

[... page 20]

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 also available to people in the return process, where it may ~~have the greatest~~ continue to have a significant 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?

[...]

3.2.6 Identifying existing services and expertise that can be adapted

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

Comment [ICRC 150]: E.g. when it comes to attending appointments related to the asylum and migration procedures, etc.

[...]

3.2.8 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~~ While the engagement and support required as essential elements of any alternative will have a cost, the benefits of engagement ~~will~~ may be greater as engagement-based alternatives have a track record of ~~being less costly than detention for States and host societies~~ 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.

Comment [ICRC 151]: Beyond the immediate/short-term costs of the alternative measure, we believe that long-term costs should also be considered here. For instance, compromising the health and development of children through detention or family separation can lead to lasting health problems that require significant support from the society. Detention can thus have costly long-term effects for States having to integrate migrants and provide them with health and social services.

[... page 21]

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 ~~will~~ can be realised alongside the strengthening of effective alternatives

[... page 21]

3.3.3 Testing different approaches

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

[...]

... 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. With respect to persons who have committed an offence in the host sState, may pose specific risks. There might be a temptation to face this risk by ordering immigration detention for return purposes 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 Building on 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.

Comment [ICRC 152]: In light of the other sections above, we are not sure about the added-value of this paragraph. We believe that the key steps listed here are broad enough to be included under 3.3.3 "Testing different approaches".

[... page 21]

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.

Comment [ICRC 153]: We believe that this component should be further emphasised, since it goes beyond policy changes in a longer-term perspective, i.e. how does a State make sure that the essential elements of an alternative to detention are in place, for any alternative measures?

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.

[... page 23]

Key steps:

- Plan for alternatives involving all essential elements, including case management, building on pilots and existing good practice where possible.
- Seek specialised knowledge and expertise domestically and internationally.

[...]

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.

Comment [ICRC 154]: If deemed relevant, we believe that the people’s own perceptions of the process could also be included into these indicators.

There is a growing interest around the world in ~~the effectiveness~~ making use 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.

[... page 24] - CONCLUDING REMARKS

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 ~~foref~~ 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~~not been seen as ~~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~~Overall, there may be an opportunity to focus more on engagement rather than enforcement as a key aspect of ~~effective~~ alternatives to detention. Practices based on individual engagement may, ultimately, lead to better enforcement of migration management policies and be profoundly more apt to upholding human rights. Modern migration movements are made up of diverse individuals with differing capacity, needs and risks, so a combination of approaches rather than a narrow typology may successfully expand what is possible to the benefit of all concerned.

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