

ALTERNATIVES TO DETENTION

MODULE 4/2 – UNHCR BEYOND DETENTION TOOLKIT



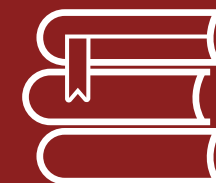
UNHCR
The UN Refugee Agency





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ALTERNATIVES
TO DETENTION

MODULE 4/A

GUIDING QUESTIONS FOR THE ASSESSMENT OF ALTERNATIVES TO DETENTION

Introduction

The promotion, development and support for the implementation of alternatives to detention (ATDs) is an important component of UNHCR's strategy to prevent unnecessary instances of detention (for immigration related purposes) of asylum-seekers, refugees and stateless persons.¹ It follows as well an increasing commitment from States to ensure that detention, in the immigration context, is truly used as a measure of last resort, recently reflected in the New York Declaration for Refugees and Migrants:²

Reaffirming that all individuals who have crossed or are seeking to cross international borders are entitled to due process in the assessment of their legal status, entry and stay, we will consider reviewing policies that criminalize cross-border movements. We will also pursue alternatives to detention while these assessments are under way. Furthermore, recognizing that detention for the purposes of determining migration status is seldom, if ever, in the best interest of the child, we will use it only as a measure of last resort, in the least restrictive setting, for the shortest possible period of time, under conditions that respect their human rights and in a manner that takes into account, as a primary consideration, the best interest of the child, and we will work towards the ending of this practice (New York Declaration, para. 33 "Commitments").

These guiding questions for the assessment of alternatives to detention have, therefore, been developed in the context of a growing interest from stakeholders about their legal framing and implementation in practice; in particular, considering the need to have more and better practical knowledge about their setup, benefits, costs, and in general how they can support the proper management of migration procedures without resorting to detention. The below guiding questions aims to help bridging that gap and ensuring increased consistency when assessing different forms of non-custodial measures in practice. communicating key messages.

¹ UNHCR Global Strategy – Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014-2019, June 2014, are available at: <http://www.unhcr.org/detention>.

² General Assembly, New York Declaration for Refugees and Migrants, A/RES/71/1, 19 Sept.2016, Para.33, available at: <http://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html>.



Purpose

This tool provides guidance to UNHCR's operations and partners on how to define, describe and assess **a number of** alternatives to detention and other non-custodial measures that apply at country level, whether implemented in law, policy or practice. It aims, as well, to provide an information framework to support the future design and implementation of alternatives by building upon existing models. The guiding questions that compose this assessment are focused **on the situation of** persons of concern to UNHCR but may be relevant for others, such as migrants in an irregular situation in general.³

The questionnaire can be used to provide a first assessment of the country practice (to establish base line information) and/or to, or over time, assess practical and policy developments regarding their implementation.

The user of these guiding questions may wish to reach out to a broad number of stakeholders (including national authorities, the judiciary, services providers and beneficiaries) to ensure that the information compiled fully reflects their impact at different levels.

It is recommended that this document is read in conjunction with UNHCR's tool, *Stateless Persons in Detention: A tool for their identification and enhanced protection* and other tools prepared by UNHCR under the framework of its Beyond Detention strategy.⁴

³These guiding question have benefited from the previous relevant work developed in the field by a number of partners and actors, such us: Jesuit Refugee Service, JRS Europe Policy Position on Alternatives to Detention, 4 October 2012, available at: <http://www.refworld.org/docid/50ac9c0f2.html>, International Detention Coalition, *There are Alternatives: A handbook for preventing unnecessary immigration detention* (revised edition), 2015 available at: <http://www.refworld.org/docid/57d022a24.html>, among others.

⁴ For further reference please visit: www.unhcr.org/detention.html



Definitions and terminology

Reception arrangements or alternatives to detention?

Respecting the right to seek and enjoy asylum involves establishing open and humane reception arrangements and ensuring safe and dignified treatment to all persons in need of international protection. Reception in such conditions is, as well, an important component of fair and effective asylum procedures. Therefore, it is UNHCR's position that reception in the community or in open or semi-open facilities should be the norm, and that these arrangements may or may not be subject to conditions or restrictions to freedom of movement.

Internationally-recognised rights taken together – the right to seek asylum, the non-penalisation for irregular entry or stay, and the rights to liberty and security of the person and freedom of movement – mean that the detention of asylum-seekers should be a measure of last resort with liberty being the default position.⁵ Consistent with international refugee and human rights law and standards, alternatives to detention should always be considered prior to resorting to detention.

In the asylum context then, *reception arrangements* refer to a set of measures related to the treatment of asylum-seekers from the time they arrive in the country, while their asylum claims are being determined and until a final decision is taken **as regards** the substance of the claims. These measures range from adequate reception conditions upon arrival at the border, access to legal counselling, freedom of movement, accommodation, and adequate means of subsistence, to access to education, medical care and employment, as well as special arrangements to cover the specific needs of persons in situations of vulnerability and risk.⁶

On the other hand, while there is no internationally agreed definition of the term alternatives to detention and it is not a legal **term in itself**, UNHCR defines alternatives to detention as *any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. As some alternatives to detention also involve various restrictions on movement or liberty (and some can be classified as forms of detention), they are also subject to human rights standards.*⁷

⁵UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guideline 2, para.14, p.13, available at: <http://www.refworld.org/docid/503489533b8.html>.

⁶While there is no one definition of reception arrangements, useful references to the term and practice might be found in UNHCR's publication The 10 Point Plan in Action: <http://www.refworld.org/10pointplaninaction2016update.html>

⁷Ibid 4, para.8.



While *reception arrangements* and *alternatives to detention* may share common characteristics and look the same in practice, there is a critical legal distinction between them. The use of alternatives to detention for asylum-seekers will be only relevant where there is a legitimate purpose (or ground) to impose a detention measure in the individual case, in the first place. Otherwise, the imposition of such alternative measures would become arbitrary. Alternatives to detention should not be used as alternative *forms* of detention; nor should alternatives to detention become alternatives to release; nor should become substitutes for open reception arrangements that may or may not involve conditions or restrictions on the freedom of movement of asylum-seekers.⁸

This approach, however, may differ from that taken by other organisations and NGOs in the case of *irregular migrants*, which follows a broader approach and conceptualisation: alternatives will be any mechanisms to support and manage individuals in the community without the use of detention. This being basically because, unlike asylum-seekers and refugees, *irregular migrants* lack the protection from specialised international and national legal frameworks that prevent them from being, among other things, penalised for the way in which they entered the country of asylum.

Asylum-seekers in situation of vulnerability or at risk

The consideration of alternatives to detention is part of an overall assessment of the necessity, reasonableness and proportionality of detention. It must be shown that **in light of** the asylum-seeker's particular circumstances, there were not less invasive or coercive means of achieving the same ends. Such consideration ensures that detention of asylum-seekers is a measure of last, rather than first resort. Such assessment of whether there are less restrictive or coercive measures that can be applied is even more relevant for asylum-seekers in situation of vulnerability or at risk.

Refugee and migrant children: non-custodial measures

Regarding refugee and migrant children in the immigration context, UNHCR's position is that children should not be detained for immigration-related purposes, irrespective of their legal/migratory status or that of their parents, and that detention is never in their best interests.⁹ In this context, it is fundamental that appropriate care arrangements and community-based programmes are in place to ensure adequate reception of children and their families.

⁸Ibid 4, Guideline 4.1, paras. 21-30 and Guideline 4.3 paras. 37-39.

⁹UN High Commissioner for Refugees (UNHCR), UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, available at: <http://www.refworld.org/docid/5885c2434.html>.





In this context, the term “care arrangements” or “non-custodial measures” are preferred to the term “alternative to detention”, as the former emphasizes that any reception arrangement for children (unaccompanied, separated or in family) needs to consider the vulnerability of the child first, and ensure that appropriate care is provided. As per their international obligations (UN Convention on the Rights of the Child), States should ensure that care arrangements are available for all non-national children, irrespective of their migration status. Because every child’s circumstances are unique, the best care arrangement for each child will be based on an individual assessment and may vary accordingly. Setting up appropriate care arrangements for children calls for the competent child protection authorities to be involved in finding solutions for this vulnerable group.

In the recent Joint General Comment on the Human Rights of Children in the Context of International Migration, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) and the Committee on the Rights of the Child (CRC) have also made it clear that children should never be detained for reasons related to their or their parents’ migration status. The Committees states that the possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, is not

applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.¹⁰ The Committees further call States to expeditiously and completely cease or eradicate the immigration detention of children, following that any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.¹¹ According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment not only is child immigration detention a violation of child rights, it also exceeds the requirement of necessity, is grossly disproportionate and also constitutes cruel, inhuman or degrading treatment.

Under this framework, using the language of “alternatives to detention” for children, as understood by UNHCR, is incorrect both from a policy and a literal interpretation of the term. It is improper to refer to these reception measures as alternatives to detention for children, because children should not be detained for immigration related purposes. Children should always be referred to appropriate care arrangements as their deprivation of liberty would be contrary to international law.

¹⁰Para. 10 of the *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families* and No. 23 (2017) of the *Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, available at: <http://www.refworld.org/docid/5a12942a2b.html>, which clarifies that Article 37 (b) of the *Convention of the Rights of the Child* is not applicable in the immigration context.

¹¹Ibid 10, para. 5.



GUIDING QUESTIONS FOR THE ASSESSMENT
OF ALTERNATIVES TO DETENTION

Guiding questions for the assessment of alternatives to detention

The below questionnaire is divided into three distinct sections:

Part A - Addresses the existing framework on alternatives to detention and will help users to conceptualise and assess if alternatives are properly set within the existing legal framework.

Part B - Focuses **on the situation of** specific population groups (children).

Part C - Focuses on the analysis of different types of alternatives to detention.

Users may complete one or more sections **in order to** finalise the assessment, and not all questions will be applicable to a single type of alternative to detention.



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MODULE 4/A

PART A. GUIDANCE RELATED TO THE GENERAL FRAMEWORK ON ALTERNATIVES TO DETENTION

A. General overview of the reception process for asylum-seekers and refugees and different alternatives to detention available in law, policies and implemented in practice

Provide a short overview of how the reception process of asylum-seekers and refugees is managed in the country. **In particular, highlight** whether there are any arrangements for asylum-seekers, refugees and stateless persons to reside in the community (community-based placement or open or semi-open reception arrangements):

- Provide the number (or estimate) of asylum-seekers living in the community during a specific year (new asylum-seekers for that year, excluding those living in the community since the year before).
- Provide the number (or estimate) of asylum-seekers in detention during a specific year.
- Provide the number (or estimate) of asylum-seekers subject to alternatives to detention (any form) during a specific year.

- Describe the alternatives to detention available in law or policy, their legal basis, and their respective implementation modalities.
- If alternatives to detention are not implemented in practice but one or more provision(s) is/are available in law or in practice, explain reasons or constraints which may have impeded their / its implementation so far. Include some recommendations to explore future implementation of these ATDs that are not yet implemented though foreseen in law.
- If alternatives to detention are implemented in practice, provide a percentage of persons in all ATDs for a specific year (new persons subject to ATDs for that year, excluding persons subject to ATDs from previous years), out of the total number of persons subject to detention or reception that same year.



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B. Qualitative description and main quantitative data

In this section you may wish to focus on one or more types of alternatives to detention as applicable in your country. Each of the following points should be answered on an individual basis, focusing on one **particular type of alternative** to detention (as applicable) at a time.

- In a short narrative, provide a description of the alternative(s) to detention, **in particular explain:** legal provisions regulating this ATD, budget, start date of implementation and main stakeholders involved in the implementation (decision-making and services provided as well as oversight mechanisms).

- If applicable, describe UNHCR's role or the role of other stakeholders (such as national authorities, NGOs, or other international organisations) in the set-up, implementation, facilitation, monitoring or oversight of this alternative to detention.
- Analyse the different categories of persons subject to this ATD and the stage of the asylum or migration process at which they are referred to this ATD. Provide data based on the following categories:

Personal situation	Stage for referral to the ATD
(i) Single adults,	(i) Apprehension at the border (irregular entry),
(ii) Families with children,	(ii) Interception on the territory without valid documentation (irregular presence/ stay),
(iii) Unaccompanied or separated children	(iii) During asylum or statelessness determination procedure or other international protection claim (for EU countries, mention whether Dublin cases are concerned),
(iv) Persons with specific needs (victims of trauma or torture, pregnant women or nursing mothers, victims or potential victims of trafficking, stateless persons, age-disputed individuals, persons with disabilities, elderly persons, LGBTI persons).	(iv) Removal and return process - including forced return.
	(v) Any other stage.





- If applicable, provide the total capacity of the ATD (places, facilities or in case of a non-residential mechanism, the human resources needed for the running of the ATD mechanism – for example if you are assessing a mechanism such as reporting or bail).
- Provide data related to the average period of time persons usually stay in this ATD (in days, month and years). If there is no limit in time to remain in this ATD, indicate so. If available, provide disaggregated data for the above groups. Identify whether this “ATD” is a transitional solution or a definitive one, where persons can stay indefinitely. To be a real alternative to detention, any ATD should only be applied until status is resolved or grounds for detention cease to exist.
- If available, provide the compliance rate¹² for this ATD. If available, provide disaggregated data for the compliance rate of the above groups. Where compliance or engagement rate is low, analyse reasons and formulate remedial actions for increased compliance. Where compliance rate is not available, discuss with authorities whether they consider this ATD being successful in terms of engagement of the persons in the asylum or migration process.

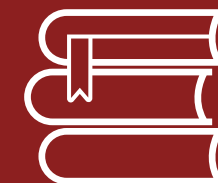
¹²The compliance rate should be understood as the ratio of persons who comply with the conditions or restrictions imposed through the alternative to detention and remain engaged in the asylum or migration process.



C. Strategic contribution of this alternative to detention to a non-detention system

The ultimate criteria for assessing the success or failure of alternatives on a given country will be measured against detention rates itself. The use of alternatives needs to contribute to the reduction in the number of persons detained and not represent an expansion of such practice through alternatives measures.

- Did this ATD contribute to a reduction in the number of asylum-seekers individuals detained for immigration-related purposes?
- How does this ATD contribute to the reduction in the number of individuals detained for immigration-related purposes? If possible, figures should be analysed with regards to the above groups to show the extent of this reduction.
- How does this ATD fit into the broader asylum system (taking into consideration whether there is access to asylum procedure while in ATD and if asylum claims are being processed while in ATDs)?
- Did this ATD contribute to end the detention of a specific groups (for example survivor of torture, children in families, etc.)?
- Is this ATD part of a pilot project which could lead to a broader long-term change in the detention policy or practice?
- Is this ATD recognised as an alternative to detention by the national authorities (immigration department / enforcement agencies); does it ensure protection against (re) arrest, are authorities supporting the implementation of this ATD, even if implemented by another actor?
- What is the cost per day per person for each ATD? If not available, provide an estimate of the cost per day (based on exchanges about this with relevant stakeholders). Compare this cost with cost/day/person in detention? Provide information on what the cost related to the ATD covers (staff, premises, support and services, etc.).
- Does this ATD contribute to better cooperation between the asylum-seeker or refugee and the authorities/the asylum process (take into consideration here the absconding/ appearance rate, whether the level of obligations and constraints are not overly onerous)? Explain your assessment.
- Are the restrictions on freedom of movement or conditions imposed by this ATD necessary, reasonable and proportionate to the aim pursued (level of restriction should not amount to deprivation of liberty)?



D. Decision-making process to make a referral to the alternative to detention and to review a placement

- Which authority/ies are involved in the decision(s) to refer to this alternative to detention?
- In case of referral of unaccompanied or separated children or children in family to a care arrangement, are child protection actors engaged in that decision-making process? How are they contributing to the decision?
- Do persons placed in this ATD have a legitimate ground to be detained?¹³ (Where there is no legitimate ground for detention, ATDs should indeed not be applied and the person should be released and be referred to open reception options or community-based placements).
- Is the decision to refer someone to an alternative to detention taken after an individualised assessment of the necessity to detain,¹⁴ in line with a legitimate purpose?
- How are special reception needs and vulnerabilities identified¹⁵ during the decision to detain or before referral to an alternatives to detention? How are these specific needs taken into consideration when a decision to refer to an alternative to detention is made?
- Did this individualised assessment include the consideration of the person's nationality status and/or (risk of) statelessness?¹⁶

- Is there any referral mechanism to refer vulnerable groups to community-based placements, open reception options and/or alternatives to detention? If so, for which groups? And how does this referral mechanism work in practice?
- Is the decision to place someone under alternative to detention regularly reviewed by an independent body? Such a review should ensure that the conditions imposed continue to meet the necessity, reasonableness and proportionality test (necessity: there is a legitimate purpose; reasonableness: the measure is reasonable in all circumstances; proportionality: a balance can be struck between the importance of respecting the rights to liberty and security of a person and freedom of movement, and the public policy objectives of limiting or denying these rights)? If so, by which authority? Is this regular review ex officio or at the request of the applicant (or both)?

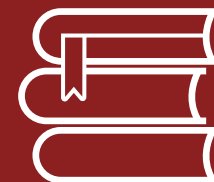
¹³This question refers to grounds that are stated in national legislation (specify if these grounds are not compliant with international standards). This question aims to assess whether the alternative do not become a *substitute for normal open reception arrangements that do not involve restrictions on the freedom of movement of asylum-seekers*.

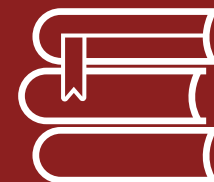
¹⁴There are three purposes for which detention may be necessary in an individual case, and which are generally in line with international law, namely public order, public health or national security. These grounds should be enshrined in law.

¹⁵For further guidance see: UNHCR and IDC, *Vulnerability Screening Tool - Identifying and addressing vulnerability: a tool for asylum and migration systems*, 2016, available at:

<http://www.refworld.org/docid/57f21f6b4.html>

UN High Commissioner for Refugees (UNHCR), *Stateless Persons in Detention: A tool for their identification and enhanced protection*, June 2017, available at: <http://www.refworld.org/docid/598adacd4.html>.





- Does the individual have access to legal assistance to challenge the placement decision as well as to request a review of the placement? If yes, under what conditions? Is legal assistance effectively provided in practice?
- If reasons for placing a person in an alternative to detention cease to exist, do the conditions or restrictions associated with that measure also cease to be applicable? Or is the individual subject to other measures that restrict or conditions their freedom of movement?

E. Assessment of success factors for this ATD

- Does this ATD provide for an adequate standard of living (compared to the situation of other non-detained asylum-seekers, refugees, etc.)? Please describe what support or material reception conditions are provided (housing, food, cash allowance or allowances in kind, etc.). Assess whether this ATD enables access to the following basic rights: right to education, right to family life, right to psychosocial or medical assistance, non-food items, legal advice, and right to work.
- Are persons subject to the ATD provided with appropriate documentation (identity document and legal residence status), that ensure they are not subject to re-detention?
- Are persons subject to the ATD provided with legal advice including advice on all legal avenues to stay and possible voluntary return options when in this ATD?
- Are persons subject to this ATD provided with clear and concise information about rights and duties under the alternative to detention and consequences of non-compliance?
- Is case management or individualised coaching available? Please describe how it is organised, in **particular expose** specific role of case manager and how this individualised coaching relates with immigration proceedings.
- Is there any complaint mechanism in place to protect the human rights of the person under this ATD? Please describe.
- Is there any independent monitoring mechanism or body or oversight to regularly monitor and evaluate this ATD? Is it subject to regular evaluation? Does UNHCR or civil society actors have access to monitor the ATD? How does the responsible authority monitor its own services/the ATD? Are participatory assessments carried out regularly to evaluate the ATD from the perspective of the beneficiaries? Please describe main actors and scope for this monitoring/evaluation (including frequency).



PART B. GUIDANCE RELATED TO SPECIFIC POPULATION GROUPS

Care arrangements for children (unaccompanied, separated or in families).

- Is there a mechanism/methodology/standard operating procedure to ensure that the best interests of the child is a primary consideration in decision-making throughout the reception process, from identification to the achievement of a durable solution for the child (and, if applicable, his family)?
- Are asylum claims of UASC and children in families prioritised when they are in alternative care arrangements?
- Do children (UASC and those in families) have access to the following basic rights: right to education, right to family life, right to practice their religion, right to psychosocial and medical assistance, adequate material support (accommodation, food, clothing, non-food items), legal advice?
- When they are in this ATD or care arrangements, are children provided with documentation (identity document and legal residence status), if accompanied, alongside their parents or caregiver during the processing of their asylum claim?
- Is effective oversight of this ATD or care arrangement organised by the national child protection agency/ombudsman/court or any other body, including review of placement, supervision of staff and independent inspections?



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Care arrangements for unaccompanied or separated children

- Are UASC and age disputed individuals appointed a qualified guardian¹⁷ in a timely manner as soon as possible after identification?
 - Are UASC appointed with a qualified legal representative¹⁸? Is it free of charge? At what stage of the process is this legal representation provided (provision of legal aid up front, during reception, only at the appeal stages)?
 - Are small group care or family-based care prioritized over institutional or residential care?
 - Are care placements made based on an individualised assessment of the child's best interests?
 - When assessed not to endanger the child or his/her family and when in the best interests of the child, is family tracing carried out as soon as possible and until the time when the child can be reunited with family members?
 - Are UASC informed of their rights (including on how to contact UNHCR) language they understand and in a child-friendly manner?
 - Do UASC have access to the following basic rights: right to education, right to family life, right to practice their religion, right to psychosocial or medical assistance, adequate material support (accommodation, food, clothing, non-food items), legal advice?
- Are UASC provided with documentation (identity document and legal residence status) during the processing of their asylum claim?
 - Is effective oversight of this care arrangement organised by the national child protection agency/ ombudsman/Court or other body including review of placement, supervision of staff and independent inspections? NB: Effective oversight could cover e.g. review of child's placement, inspections of the child care arrangement, vetting, training and supervision of staff.
 - Have children in care arrangements the right to make requests and / or to complain about their conditions, treatment and care through mechanisms that are easily accessible, child-sensitive, effective and safe?¹⁹

¹⁷"Guardian" refers to an independent person with specialized skills who looks after the child's best interests and general well-being. Procedures for the appointment of a guardian must not be less favourable than the existing national administrative or judicial procedures used for appointing guardians for children who are nationals in the country.

¹⁸"Legal representative" refers to a lawyer or other person qualified to provide legal assistance to, and inform, the child in the asylum proceedings and in relation to contacts with the authorities on legal matters.

¹⁹For more information on basic principles for complaint systems, see Defence for Children International (DCI), *Practical Guide, Monitoring places where children are deprived of liberty*, 2016, Belgium, available at: <https://defenceforchildren.org/wp-content/uploads/2016/02/DCI-Practical-GuideEN.pdf>.



PART C. GUIDANCE RELATED TO SPECIFIC TYPES OF ALTERNATIVES TO DETENTION

Specific to the ATD 'living independently in the community':

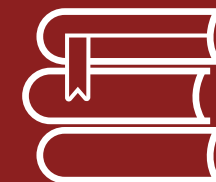
Living independently in the community in private accommodation with social and /or work rights is the preferred approach. Right to work granted by the host state fosters independence and increases the ability of the individual to self-sustain as well as to cope and constructively engage with asylum and/or migration processes. If not allowed to work, a comprehensive assistance scheme is organised for asylum-seekers and accompanying family members to facilitate the integration of asylum-seekers and refugees into local social and economic structures. Such assistance programme aims to cover basic needs for the duration of the asylum procedure, **in particular food**, housing (including furniture), documentation and transportation. Renewable temporary stay permit should be provided to ensure persons are not arrested and detained.

- Does this ATD ensure a **sufficient** living standard? What kind of specific support is provided to the person?
- What type of services are available? How would you assess their quality?

Specific to the ATD 'community supervision':

Community supervision arrangements refer to a wide range of practices in which individuals and families **are allowed to live** into the community, with a degree of support and guidance (that is, "supervision"). Support arrangements can include support in finding local accommodation, schools, or work; or, in other cases, the direct provision of goods, social security payments, or other services. The "supervision" aspect may take place within open or semi-open reception or asylum facilities, or at the offices of the relevant service provider while the individual lives freely in the community. UNHCR *Detention Guidelines* Annex A. Alternatives to detention

- What does the supervision entail, and who provides the supervision?
- What type of services are available? How would you assess their quality?
- Does the supervision comply with the principle of minimum intervention (less intrusive as possible)?



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Specific to the ATD 'reporting requirements':

Periodic reporting, including by phone, to immigration or other authorities (for example, social worker or police) may be a condition imposed on **particular asylum-seekers** during the status determination procedure. Such reporting could be periodic, or scheduled around asylum hearings and/or other official appointments. Reporting could also be to an NGO or private contractor within community supervision arrangements.

- Is the information provided about reporting requirements sufficiently clear and available in multiple languages?
- Are modalities of reporting adapted to specific needs (e.g. telephonic reporting, reporting to social workers instead of police to avoid re-traumatisation)? Please explain these modalities and how they are adapted.
- Is the frequency of reporting, either automatically or upon request, reduced over time?
- Are reporting conditions periodically reviewed?
- Are the frequency and location for reporting established with due consideration for the person's **particular circumstances** (including specific needs)?
- Are travel expenses related to the reporting covered by the authorities, and if so, by which authorities?
- Are reasons for non-compliance with the reporting

requirements properly assessed? Is some flexibility shown where there are good reasons for any delays in reporting?

- What are the consequences of non-compliance with reporting requirements?

Specific to the ATD 'surrender of documentation':

The deposit or surrendering of identity and/or travel documentation (such as passports) may be applied as a guarantee of future compliance with immigration or asylum procedures.

- Is substitute documentation (identity document and legal residence status) provided for those required to surrender their documentation?
- If yes, does this substitute documentation authorise access to basic services?
- How is the surrendering of documentation implemented? Are there any protections in place (such as security of storage of the surrendered documentation?).



Specific to the ATD 'directed residence':

Asylum-seekers may be released or not placed in detention on condition they reside at a specific address or within a **particular administrative region** until their status has been determined. Asylum-seekers may also be required to obtain prior approval if they wish to move out of the designated administrative region; or to inform the authorities if they change address within the same administrative region. Release into open or semi-open reception or asylum centres with the condition to reside at that address is another form of directed residence.

- Are efforts made to assign and to approve a change in residence that facilitates family reunification or closeness to relatives or other support networks?
- In cases of residence at open or semi-open reception or asylum centres, where curfews and/or signing in and out of the centre may be required, is the degree of freedom of movement allowed **sufficient** to qualify the alternative as a 'real alternative to detention' as opposed to a form of detention? Does the curfew or signing in regime interfere with the person's access to other rights (such as for example the right to education / their ability to attend classes)?
- Does the location of the designed residence allow for an access to basic services (such as access to education, psychosocial or medical assistance, legal advice)?
- Is there a reasonable distance between the designated residence and the location of the administrative authorities that the asylum-seeker **has to** be in contact with during the asylum procedure?



Specific to the ATD 'provision of a guarantor/surety':

The guarantor or surety is to be understood as a person (an individual resident or citizen; usually a family member), an NGO or a community group, who is responsible for ensuring the attendance of asylum-seekers at official appointments and hearings, or otherwise to report as specified in any conditions of release. Failure to appear could lead to a penalty – most likely the forfeiture of a sum of money – being levied against the guarantor/surety.

- Where the provision of a guarantor/surety or bail/bond is a condition of release, has there been an assessment whether this measure is proportionate to the individual circumstances (reasonable amount, capacity of the person to provide a guarantor, etc.) to ensure compliance in this individual case?
- Are individuals informed of the possibility to provide a guarantor/surety?
- Are NGOs or community groups authorised to act as a guarantor/surety? Are individuals informed about this?
- Are guarantors and sureties vetted/checked to avoid any exploitation of asylum-seekers or other migrants? If so how?



Specific to the ATD 'release on bail/bond':

Bail involves a financial deposit placed with the authorities **in order to** guarantee the individual's future attendance at interviews or asylum or immigration proceedings. The sum of money is returned if the individual appears as required; otherwise it is forfeited. Release on bond refers to a legal agreement, sometimes with sureties, guaranteeing the faithful performance of acts and duties, such as reporting or attendance at interviews, inquiries and/or removal proceedings. Application for release on bail/bond requires access to legal counsel and a reasonable bond amount to be set, given the **particular situation** of asylum-seekers. This amount should not be so high as to render bail systems merely theoretical. For bail to be genuinely available to asylum-seekers, bail hearings would preferably be automatic. Alternatively, asylum-seekers must be informed of their availability and they need to be accessible and effective.

- Where release on bail/bond is possible, are asylum-seekers informed of their availability and the conditions to comply with **in order to** be eligible for bail/bond? How?
- Do persons in detention receive support to access (from lawyers, NGOs, social workers) bail or bond?
- Are bail hearings automatic (when in detention) and available on a regular basis (e.g. every month)?
- Is there guidance available to decision-makers re. the conditions and factors to be **taken into account** to grant bail or to define the amount of bail?
- Does the decision to impose bail include an assessment of the resources of the persons and destitution risks related to the imposition of a high amount?





Alternatives to Detention



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