

ALTERNATIVES TO DETENTION OF AYLUM SEEKERS Working paper¹

1. The engagement of JRS in opposing the current trend of national authorities of resorting to detention as a tool to manage migration is based on both ethical and international legal considerations. The most reasonable strategy, taking into account the security and procedural justifications presented by the States, seems to be to ask at national level (and, where appropriate and possible, supported by an adequate campaign in the media) that detention be replaced by alternative measures that respect the dignity and the rights of asylum seekers, adapted to the local reality and effective in pursuing the legitimate aims expressed by the State in resorting to detention.

International law establishes that unconditional release is the basic rule to be applied to asylum seekers and that their detention can only be envisaged as a measure of last resort, when any other less restrictive measures have been proved as ineffective in a specific case, determined on its own individual merits. On the other hand the effectiveness of the alternative measures considered in this paper has been shown on the ground – and underlined by unanimous and well-established researches – in different and varied national situations, on condition that they be correctly adapted and oriented to local circumstances. There is, therefore, room to propose and to advocate, both at the legislative and at the administrative national levels, alternatives to the detention of asylum seekers.

2. There does not exist one alternative measure that fits, from the ethical and efficiency point of view, all situations and all States. It is up to any national JRS to analyse the local realities and appreciate what alternative measures can be more suitable and effective in that particular country, having in mind the legitimate aims pursued and the justifications presented by the State authorities; national JRS will also be prepared, when necessary, to adjust contents and modalities of any proposed measure on account of the social environment, the legislation and the administrative structure of the country. Finally, a concrete and practical way to alert governments to alternative measures to detention could consist in proposing pilot projects aimed to test, in the specific national context, the viability of a measure, its effectiveness in reducing the rate of absconding or flight and its economic interest in terms of saving human and financial costs.

On the other hand, any alternative measure to detention could become intrusive and stigmatising when not all aspects of the country's reality are taken into account; particular care has to be taken to avoid that a theoretically satisfying measure become de facto restrictive or excluding because of its modalities or environmental situation. In any case, basic principles considered as essential by JRS, such as the respect of human rights, the need of special alternatives for children and other vulnerable groups, should be kept in mind when dealing with alternative measures.

3. The aim of the present document is to offer elements of information and to encourage the increase of alternatives to detention of asylum seekers while taking into account local circumstances.

¹ This paper is essentially built on the studies mentioned in foot-notes 2 and 5, carried out under the aegis of EU and UNHCR respectively, and on *Alternative approaches to asylum seekers: Reception and Transitional Processing System*, Camberra 2002. Empirical knowledge suggests that situations in different States have evolved since the periods examined in these studies.

The paper briefly introduces, with regard to asylum seekers, **the legal framework** of detention and alternative measures, indicates **evidence from national field experiences** and gives an **overview of existing alternative measures**.

4. The use of administrative detention of migrants, including asylum seekers, as a tool to manage migration is becoming increasingly widespread and frequent². This practice is highly stigmatising and constitutes a breach of the international and regional legal systems³ because it neglects that

- *the basic treatment to be granted to asylum seekers is their unconditional release;*
- *when some legitimate objective justifies in individual cases a limitation of the freedom of movements, a number of alternative measures to detention, less prejudicial for migrants, exist and, if effective, should be used⁴.*

5. One of the most common aims given by States to deny asylum seekers unconditional release is *to prevent absconding and to ensure compliance with asylum procedures⁵* or, when pending removal because the claim is unsuccessful, *availability for removal*.

THE LEGAL FRAMEWORK

6. The right to seek and enjoy asylum is recognised as a basic human right under article 14 of the Universal Declaration of Human Rights (1948). It follows that *migration management strategies and legitimate security arrangements cannot undermine access to asylum or damage acceptable standards of protection for refugees and migrants*. The Convention relating to the Status of Refugees (1951) particularly states that *refugees who arrive without valid documentation should not be penalised for their illegal entry or presence⁶*. They remain entitled to international protection under the international procedures and human rights standards and *as a general principle they should not be detained⁷*.

² *Survey on Alternatives to Detention of Asylum Seekers in E.U. Member States*, The Regional Advocacy Coalition 2006, <http://www.alternatives-to-detention.org>. See also Card. R. Martino, *A Reflection on the Ethics of Detention*, 2006, in *Ethics in Refugee Work*, JRS 2006; *Migration-Related Detention: A research guide on human rights standards relevant to detention of migrants, asylum-seekers and refugees*, November 2007, www.amnesty.org/en/library/info/POL33/005/2007.

³ Universal Declaration of Human Rights, 1948; European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; Convention relating to the Status of Refugees, 1951; International Covenant on Civil and Political Rights, 1966; Protocol relating to the Status of Refugees 1967; Convention on the Rights of the Child 1989; UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-seekers, 1999; EU Amsterdam Treaty, article 6 and article 76 K 3 on expulsion of illegal third country nationals; EU Minimum Reception Standards Directive 2003/9/EC of 27 Jan. 2003; Dublin II EU Regulation 343/2003 of 18 February 2003; EU Minimum Standards Criteria for Refugee Status and International Protection Directive 2004/83/EC of 29 April 2004; EU Minimum Procedures Standards Directive 2005/85/EC of 1st December 2005; Return Directive *****. Concerning the EU directives, it must be born in mind at the national level that under article 6 of the Treaty on the European Union national laws and administrative procedures and decisions transposing the EU directives have to comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴ Administrative detention and alternative measures must not be confused with similar instruments or sanctions of the penal systems. They are imposed not by a judge but by the administration, without any (or with reduced) forms of judicial oversight.

⁵ *Alternatives to Detention of Asylum Seekers Refugees*, Ophelia Field with the assistance of Alice Edwards, UNHCR Legal and Protection Policy Research Series, 2006, p. 24, <http://www.unhcr.org/protect>

⁶ See *UNHCR Guidelines* (cit.) and *Declaration of The Hague on the Future of Refugee and Migration Policy*, Society for International Development, Netherlands Chapter, 2002, The Commentary, n. 5 and 7, <http://www.sidint.org>

⁷ This principle covers also "a person who transits an intermediate country for a short period of time without having applied, or received, asylum there", *UNHCR Guidelines*, 1999, cit.. *Administrative Detention of Asylum Seekers and Irregular Migrants in Europe: Common position of JRS in Europe*, 2008, affirms JRS' opposition to administrative detention, and conditions that must be adhered to for those who are already in detention, www.jrs-europe.org.

7. Exceptionally detention is deemed as admissible *under very stringent conditions*⁸. In general, “*detention is only lawful when the authorities can demonstrate in each individual case that it is necessary and proportionate to the objective to be achieved, that is on grounds prescribed by law, and that it is for one of the specified reasons which international and regional standards recognise as legitimate grounds for detaining asylum-seekers, such as an objective risk of absconding by the person in question*”⁹.

The basic principle in applying such an *exception* is that *detention may be assessed and applied only on individual basis, individually investigating the particular personal situation of the claimant*¹⁰.

Lawyers agree that decision to detain has to be *concurrently*:

- *based on one of these grounds*¹¹:
 - to verify identity;
 - to determine (that means to clarify and delimit, not to ascertain) the elements on which the claim to refugee status or asylum is to be judged;
 - to deal with cases where *refugees or asylum seekers have destroyed their travel and/or identity documents in order to mislead the authority of the State in which they intend to claim asylum*. This means that when documents have not *a)* been destroyed by the claimant *b)* with the specific purpose to mislead the authorities *c)* of the State in which it intends to claim asylum, “*travelling with fraudulent documents or without documents, are not in themselves sufficient ground for detention, particularly when it may not be possible to obtain genuine documents in the country of origin*”¹²;
 - to protect national security or public order. It must be born in mind that a threat to national security or public order has to be assessed individually, on the basis of individual claimant’s personal behaviour. It must be added that likelihood of absconding and lack of cooperation have also been considered by the Human Rights Committee as interests that may justify detention, if any other condition is fulfilled; but, once again, the risk of absconding must be assessed individually, case by case, on an objective personal basis;
- *in accordance with and authorized by law*. It cannot be decided and applied on a simple discretionary administrative basis or instruction;
- *necessary* (that means without any possible alternative) to protect the interests of the State referred to by the authority in the specific case. A mere administrative expediency or convenience will not suffice. As an example, some State practice indicates that measures other than detention, such as reporting requirements, release on bail or surety, may be effective in individual cases while awaiting verification of identity, or where identity cannot be readily established but there is no other individual reason to consider the person as a possible risk to society. From this evidence it should follow, for any State, that without previous consideration of the effectiveness of such alternative measures (or others) both at the legislative and at the individual administrative level, detention on the only ground to verify identity cannot be considered as necessary;

⁸ In the EU, under article 18 of Directive 2005/85/EC, asylum seekers can be detained but, as provided by the European Convention for Protection of Human Rights and Fundamental Freedoms (1950), this detention cannot be based on the mere fact of applying for asylum or of simple crossing a border without authorization or without documents; there must be further justified individual reasons. Furthermore Members States “should take care to provide” rapid legal review of any individual detention decision.

⁹ *The Netherlands: Detention of irregular Migrants and Asylum-seekers*, 2008, Amnesty international.

¹⁰ “The decision to detain should always be based on a detailed and individualized assessment, including the personal history of, and the risk of absconding presented by, the individual concerned”, *The Netherlands*, cit.

¹¹ *UNHCR Executive Committee Conclusions* n. 44 (1986).

¹² *UNHCR Guidelines*, cit.; Card. R. Martino, cit.:” People fleeing in these circumstances [i.e. fleeing prosecution and other human rights abuses] often have no choice other than to cross borders without authorisation and without their documents”, p. 8.

- *not discriminatory* between aliens¹³;
- *proportionate*, i.e. appropriate, not excessive compared to the desired result. “The punishment of asylum seekers by mandatory detention as a deterrent to people smugglers is a clear case of the means being disproportionate to achieve the end”¹⁴;
- *subject to challenge in a Court*;
- *open to periodical reviews*. Should a detention be initially justified, it becomes illegal if its necessity or proportionality is not, in any individual case, periodically reviewed in light of changing circumstances; in particular, in case of a deportation order, if it becomes clear that actual deportation cannot be carried out for reasons that are not the fault of the migrant¹⁵.

8. On this legal context, UNHCR Guidelines¹⁶ conclude that detention of asylum seekers should only be decided “*after a full consideration of all possible alternatives*, or when monitoring mechanisms *have been demonstrated* not to have achieved the lawful and legitimate purpose”. In short, it may only be used as a measure of last resort¹⁷.

In particular, for excluding alternative measures as inadequate, State’s authorities *have to look carefully at, consider and based on existing evidence of their adequacy come to a decision regarding their adequacy*.

9. Also alternative measures to detention have to meet the test of *due regard to individual factors, necessity and proportionality*. This entails that

- *among different possible effective measures, in any individual case the less intrusive has to be chosen*¹⁸ and
- *any measure applied to an individual person has to be constantly monitored and subject to a periodic review* because “ongoing or indefinite restrictions on one’s freedom of movement or restrictions that become onerous over an extended period of time (e.g. excessive reporting requirements over many years) may also become unlawful”¹⁹.

10. Finally, special legal protections are imposed for vulnerable people²⁰, in particular for children²¹. The Convention on the Rights of the Child (1989)²² establishes that in taking any kind of decision, especially on detention or freedom of movements, *the basic principle is the child’s best interest*. “As a rule, minors should not be detained unless as a measure of last resort²³ and for the shortest possible time. *They should not be separated from their parents*

¹³ Many States have specific reservations to this condition on grounds of national security, public order, or public interest.

¹⁴ *Alternative approaches*, cit.

¹⁵ In this sense, decisions of the European Court of Human Rights, number of national Court Rulings, the UN Human Rights Committee, the Special Rapporteur on Migrant Workers. “The detention of persons subject to a deportation order may be or may become arbitrary depending on the circumstances, for example, (...) if their detention continues after it becomes clear that the deportation order cannot be carried out”, *Alternatives to Detention*, cit., n. 142.

¹⁶ Cit.

¹⁷ Explicitly in this sense article 36.1 of the Danish *Aliens Act*.

¹⁸ Arguing from analogy from the UN Standard Minimum Rules for Non-Custodial Measures, 1990, related to non-custodial sentencing.

¹⁹ *Alternatives to Detention*, cit., n. 142. “The Refugee Law of Lithuania contains an especially strong safeguard requiring a court to set a time limit, not exceeding twelve months, for the application of each alternative measure”, *ibid.*, n. 85.

²⁰ *UNHCR Guidelines* (cit.) lists as vulnerable persons *single women, children, unaccompanied minors, persons with special medical or psychological needs*. EU Directive 2003/9 on minimum standards for reception of asylum seekers lists *unaccompanied minors, dependent elderly persons, persons with disabilities, pregnant women, unaccompanied parents with minor children, and victims of torture, rape or any other serious form of psychological, physical or sexual violence*. See also *The conditions in centers for third country national*, European Parliament, 2007. However, up to now, except for children no specific significant experience of alternative measures has been usefully reported. *The Netherlands*, cit., observes that “there should be a statutory prohibition on the immigration detention of vulnerable persons”.

²¹ See *Children in Immigration Detention. Position Paper*, International Detention Coalition, 21 November 2007, http://idcoalition.org/portal/component?option=com_remository&Itemid,105/func,select/id,6/

²² Cit.

²³ Canada *Immigration and Refugee Protection Act* 2002 explicitly affirms this principle.

against their will²⁴, nor from other adults responsible for them whether by law or custom. If minors are detained, they must not be held under prison-like conditions. Every effort must be made to release them from detention as quickly as possible and place them in other accommodation. If this proves impossible, *special arrangements must be made which are suitable for children and their families*²⁵. For unaccompanied minor asylum seekers, alternative and non-custodial care arrangements, such as residential homes or foster placements, should be arranged and, where provided for by national legislation, legal guardians should be appointed, within the shortest possible time²⁶.

NATIONAL FIELD EXPERIENCES WITH ALTERNATIVE MEASURES

11. With regard to asylum seekers, national field experiences offer systematic evidence that:

- a) *The need to keep an asylum seeker immediately available in order to avoid his disappearance is different at the different stages of his claim's assessment:*
 - stricter measures, *soundly based on the individual risk factors of the claimant*, could meet the tests under point 7 above *for a very short period* in the first stage of identification and preliminary weighing of the application²⁷. Nevertheless some State practice indicates that alternative measures (e.g. daily reporting requirements, release on bail or surety to citizen) may be effective even while awaiting verification of identity, or where identity cannot be readily found but the person is not considered a risk to society;
 - evidence based on general practice demonstrates that any strict measure is rarely justified during the asylum procedure, until the rejection of the claim;
 - greater care could be admitted, based on individual merits and circumstances of a case, in a pre-removal stage after the rejection of the claim²⁸; but, once again, even pending removal, evidence based on practice demonstrates the success of alternative measures backed by schemes of supported voluntary returns²⁹. Moreover it must be kept in mind that
 - a. even at this stage detention is unjustified if it is (or when it becomes) clear that actual deportation cannot be carried out for reasons that are not the fault of the migrant³⁰;
 - b. there are many incorrect and misleading statistics and information in relation to the risk of absconding by refused asylum seekers: often it happens that numbers of refused asylum seekers and numbers of forced removals are not consistent. These figures often do not take into account

²⁴ Italic added.

²⁵ Id.

²⁶ Council of Europe Committee of Ministers 2003. See also *UNHCR Guidelines* (cit.).

²⁷ *UNHCR Guidelines*, cit., affirm that detention should only be resorted to for preliminary interviews and identifying the basis of an asylum claim. It is not to be used or extended while determination of the claim is occurring.

²⁸ Article 5 of the European Convention on Human Rights allows, when any other condition is fulfilled, detention "of a person against whom action is being taken with a view to deportation or extradition". Nevertheless, it must be borne in mind that "*policies ensuring respect of human rights of persons without valid residence permit during a removal procedure, and developing alternatives to forced removal*" constitute a work priority for the Churches' Commission for Migrants in Europe.

²⁹ See *Asylum Seekers in Sweden*, by Grant Mitchell, <http://www.fabian.org.au/940.asp>

³⁰ The European Parliament (*The conditions in centres for third country national*, 2007, IP/C/LIBE/IC/2006-181) has noted, as a recent trend, "an increase in the number of foreign nationals refused asylum and a higher number who are "neither received nor removed" due to violent and unstable conditions in their country of origin".

the number of voluntary departures and of persons that it is impossible to remove³¹.

b) *In countries generally considered as destination countries, alternatives to detention, including unrestricted stay in the community, achieve high rates of success*³². Asylum applicants generally do not abscond prior to a refusal of their claim. Moreover, well conceived and applied alternative measures can reach an acceptable degree of effectiveness even when the asylum application has been refused³³. Taking into account this evidence States should analyze the adequacy of alternative measures on the basis of their situation of “destination” or “transit” country, as well as the consideration of the individual asylum seeker and of the procedural stage of the claim.

c) *The flight risk of families with young children is inherently low and can further be reduced by appropriate accompanying measures.*

d) *Supporting schemes* such as individual legal assistance, social and health assistance, supported-return programs reduce significantly the rates of absconding or not complying with asylum or removal procedures.

e) *Well organised reception arrangements* improve compliance with asylum procedures.

f) *Combination of alternative measures* has proved satisfactorily effective even when the effectiveness of any individual alternative is deemed inadequate.

g) *Alternative measures are often significantly cost saving* compared to detention³⁴.

Provision and organisation of alternative measures are therefore unavoidable for States' compliance with the international legal system.

OVERVIEW OF EXISTING ALTERNATIVES TO DETENTION³⁵

12. Since 1999, *UNHCR Guidelines*³⁶ have suggested considering as possible alternatives to detention *monitoring requirements, provision of a guarantor/surety, release on bail, open centres*. These alternatives and others, listed below, have been provided for and implemented under different forms, sometimes on small scale or simply as pilot projects, in different States. *Everywhere their application supports the evidence* indicated at point 8 above.

Duty to remain in a designated residence

The asylum seeker has to reside in a specific collective supervised accommodation - sometimes (especially families or other vulnerable people) in a designated individual house - with freedom of movement and access to the wider community. Designated residence can be an authority-sponsored accommodation, private accommodation provision (sub-contracted), an open or half-open accommodation centre, a boarding

³¹ It has been recently observed (Ambrosini, *L'umano mercato*, Il Regno, 2008, 14, p. 492) that paradoxically, in order to avoid costs and difficulties in expulsions, “in many countries only migrants coming from countries open to cooperate in migration controls are held and detained, to identify them and to send them back to their country of origin”.

³² As regards to this point official and private statistics in UK, USA, Australia and Canada are conclusive. They are confirmed by empirical evidence in a certain number of EU countries (see *Alternatives to Detention*, cit. foot-note 5, n. 86-134; *Survey on Alternatives*, cit. foot-note 2).

³³ See footnote 29.

³⁴ See, for instance, *Reception and Transitional Processing System*, cit., page 11.

³⁵ See footnote 1.

³⁶ Cit.

house. Size of accommodations varies from large capacity hostels to relatively small shared houses. Ancillary measures are usually linked up, such as reporting obligations, duty to remain in a specific administrative area, supervision by special or community workers, granting social rights or advantages (health care, periodical financial supports, education programs, work permit³⁷). Penalties such as withdrawing advantages or, in case of repeated relapses, even imprisonment, detention or deportation are provided for failure in complying.

This measure, improved or not by ancillary measures or support schemes, is provided for and commonly applied in Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Lithuania, Malta, The Netherlands, Norway, New Zealand, Romania, Sweden, Switzerland; it is provided for but less commonly applied in Italy and in United Kingdom (part of the normal support package in the UK for asylum seekers – so fairly widely applied); it is provided for but scarcely applied in Australia, Poland, Romania and Slovenia.

The duty to remain in a designated residence is generally considered as a fair alternative to detention because of the large freedom of movement it grants to the claimant. Nevertheless its financial costs have to be borne in mind, depending on the length of the asylum procedure. Moreover, social operators underline the necessity of strictly monitoring the quality of accommodation; in particular, a location of the designated residence in the same premises or areas of detention centres are harshly stigmatizing for the asylum seekers and misleading the public opinion towards them. Granting a work permit is essential to avoid a *de facto* isolation of the claimants from the local community.

Duty to remain in a designated administrative area

The asylum seeker's freedom of movement is restricted to a designated area, such as a city or a district. Any exit from the area must previously be either notified or authorised, depending on the national legislation. Ancillary measures and penalties are usually provided for, as for the duty to remain in a designated residence.

This alternative, often applied as an ancillary measure, is provided for and enforced in Denmark, Ireland, Japan, Romania and, with a significant success, in Germany. It is provided for but in practice not applied in Slovenia.

The measure, clearly not costly, is considered in general as a highly suitable alternative to detention. However, to avoid a *de facto* isolation or marginalisation of asylum seekers, a reasonable extension of the designated areas and their location in any normally developed parts of the national territory has to be provided. Granting the asylum seeker a work permit is an essential tool against his marginalisation or psychological rejection by the local community.

As underlined by UNHCR, refugee-specific services, such as legal aid providers, and if possible the asylum seekers' national or ethnic community, should be found in the

³⁷ "The possibility of working is a constant concern for asylum-seekers in the centers, but access to work varies according to national law and the status of persons in the centers. Some countries authorize asylum-seekers to work after a defined period of time following reception of their asylum application. These periods vary considerably according to country. For example, asylum seekers are authorized to work after 20 days in Portugal; 3 months in Finland, 6 months in Italy and the Netherlands; 9 months in Luxembourg and 12 months in Germany. Finding work depends on the local labor market. In general, when centers are close to major conurbations there are more work opportunities. Persons with temporary status obtain work permits more easily. Rejected asylum-seekers in "return" centers are not allowed to work (e.g. Denmark, Germany)". *The conditions in centers for third country national*, European Parliament, 2007, IP/C/LIBE/IC/2006-181.

location to which the claimants' movement is restricted. Temporary visits outside the area must be permitted for personal, health, family and administrative reasons.

Registration of the place of residence

The asylum seeker has to register his independent residence with an authority in order to get and maintain valid identity cards. In case of non-notified changes of address, cards can be taken back and other more intrusive measures, such as duty to remain in a designated residence or even detention can be provided for. Social and civil advantages are often dependent on the registration of the residence and are withdrawn if a non-notified change of residence is discovered.

This measure is provided for and applied in Bulgaria, Canada, Estonia, Japan, United Kingdom and in a certain number of African States.

It is considered a really suitable one, because it allows asylum seekers to choose where they like to live. However, the registration authority must be in an easily reachable location, in order to avoid a *de facto* isolation of asylum seekers in separate areas around some limited registration points.

Duty of reporting

The asylum seeker has to report periodically to an authority, either personally, or by phone, or in writing, in order to provide information on his place of residence. Compliance with the obligation is frequently spurred by the need to renew identity cards, residence or work permits - or other documents - of short duration, or by granting social or civil advantages based on compliance. Penalties are often provided for in case of not reporting or giving false information to the authority.

This measure is provided for and implemented (or *de facto* applied, when renewal of documents or granting advantages are conditional on compliance) in a number of countries, also as an ancillary measure: Australia, Austria, Bulgaria, Canada, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Japan, Lithuania, Luxembourg, Malta, The Netherlands, New Zealand, Poland, Portugal, South Africa, Thailand, United Kingdom, United States. It is provided for but in practice not applied in Lithuania, Romania, Slovenia.

Duty of reporting is considered an interesting alternative measure to detention for asylum seekers if a certain number of modes of implementation are granted: 1) it must be organised as an administrative, not as a police measure: the authority to report to cannot be the police, but an asylum or a local authority; 2) the authority to report to must be accessible on the whole national territory and easily reachable, without waste of time or of money, by the asylum seekers; 3) the frequency of reporting must be fair and not intrusive: once a month is considered a reasonable frequency.

Deposit of passport or normal identity cards or travel documents

This measure is aimed to prevent the asylum seeker leaving for other countries.

It is provided for and applied, giving good results, in Austria, Canada, Germany, Hungary, Luxembourg, Norway, Sweden, Poland, United Kingdom. Elsewhere it is applied as an ancillary measure of other alternatives.

The measure could become uselessly intrusive and therefore unjustified if, having regard to the legal system of the State, it impedes in practice any movement within its territory. Deprivation of passport or other documents must therefore be coordinated with issuing national documents allowing the interested person to move within the territory.

Freedom on bail, bond or surety

The asylum seeker is granted freedom of residence and movement on leaving money (*bail*) with authorities as a guarantee of his compliance with procedural obligations. Instead of leaving money he can be asked to underwrite a written engagement (*bond*) to comply with his obligations and to pay a sum of money in case of non-compliance. Sometimes similar written guarantees can be given by a third person (*surety*).

Often supported by public or private schemes helping to find loans for a guarantee or guarantors, this measure is provided for and applied, particularly as a preliminary measure to a more structured decision, – and generally with high rates of success – in Australia, Canada, Denmark, Finland, Japan, New Zealand, United Kingdom, United States, Thailand. Provided for, but in practice not applied, in Slovenia. It is also applied as an ancillary measure of other alternatives.

In general it is considered as an acceptable alternative to detention, but deep reservations are raised on its inherent discriminatory character, because in absence of schemes helping to find loans for a guarantee or guarantors only wealthy people or people supported by their community can benefit by it. Other concerns arise as it is a scheme adapted from the criminal justice sphere.

Monitoring with different forms of electronic control

The asylum seeker would be granted a form of supervised freedom constantly monitored by an individual electronic device (tag or bracelet). This form of control, *conceived for and so far applied in the criminal field* in some States (Netherlands, Sweden, United Kingdom, USA), is at present also used for monitoring some asylum seekers in the United Kingdom. Results seem to show that it is costly, technically difficult and of restricted applicability, and no more effective than a release on parole. As it is highly intrusive and stigmatising, it is doubtful that it could meet the test of necessity, proportionality and due regard to individual factors.

Community supervision

The asylum seeker is entrusted with an individual, a municipality, an NGO or a religious organisation that acts as a guardian for his compliance with the procedural obligations. Ancillary measures are often imposed, such as duty to remain in a specific residence or area, registration, reporting. Sometimes sureties are requested from the guardian.

This measure is provided for and applied in Lithuania, in Sweden, in Japan and, to vulnerable people, in the United States. It is also provided for, but in practice not applied, in Slovenia.

It must be observed that if the asylum seeker is not granted a work permit, this measure could prompt a psychological rejection by the community because of its conspicuous costs individually attributable to the claimant.

Freedom combined with the appointment of a case worker

This alternative is close to a support measure. The asylum seeker is granted freedom but is assigned a case worker, such as a legal counsel or a social worker, sometimes operating under specialised national organisation's aegis, who assists him day by day clarifying his duties, informing him on the progress of his claim, helping in examining fundamental choices, or in administrative affairs or in practical difficulties. On the other hand the asylum seeker is informed that the social worker, within the limits of his professional ethics, has to report the authorities if, in general, the behaviour of the asylum seeker is not consistent with the fulfilment of his present or future obligations.

This measure, quite costly, is provided for and successfully commonly applied in Sweden and under a pilot scheme in Australia; elsewhere it is rather applied with failed asylum seekers in the pre-removal stage, often accompanied by support schemes such as voluntary return incentives. It is important that the limits of professional ethics of the social workers are clearly and strictly defined in order to avoid any confusion between their social role and the role of a control authority. If this condition is not properly satisfied, the measure could become quite intrusive and unjustifiable.

SUPPORT SCHEMES INCREASING THE EFFECTIVENESS OF ALTERNATIVE MEASURES

13. *During the assessment of the claim*, in a number of countries (Belgium, Finland, Luxembourg, Australia inter alia), financial or material direct supports, housing programs, specific individual legal advice programs, health care and educational schemes *systematically reduce the rates of absconding and increase the rate of success of different alternative measures to detention*. It is the same for special programs favorising finding guarantors, or bail funding, or different forms of community supervision implemented or tested in Canada, United Kingdom or United States.

Pending removal if a claim is unsuccessful, schemes of supported voluntary returns consisting in counselling, social workers support, vocational training, financial and practical assistance in organizing voluntary departure and re-integration into the country of origin, are successfully implemented in Australia, Canada, Germany, Sweden as ancillary interventions with different alternative measures to detention.

SPECIAL ALTERNATIVE MEASURES FOR CHILDREN

14. Special alternative measures for children are provided for and applied, or tested, or under consideration in number of States. There are no significant specific data or evidence reports on their effectiveness. Problems and solutions are obviously different depending on the status of unaccompanied children or of children as part of a family unit.

The most common policy reasons given by the States to detain children are

- for children with family, “for the sake of preserving family unit”;
- for unaccompanied children, to protect them from abduction and exploitation by traffickers.

As a fact it is commonly recognised that

- the flight risk of families with young children is inherently low and can further be reduced by appropriate accompanying supports (family allocations, health care, children’s education, etc.);
- the rates of disappearance of unaccompanied children are worrying.

15. The following alternative measures to detention of children are applied and deserve attention.

For children with family

- *Different forms of special accomodation units for families, with reporting requirements.* Provided for and applied in Sweden and, recently, in Australia.
- *Parents’ choice to split the family: one parent is detained, the other released with the children.* This measure is provided for and applied in Sweden, but it is criticized on the ground that many parents choose to stay united with their children, with the result that children remain effectively detained.

For unaccompanied children

- *Monitoring at the borders the real nature of relationship of arriving children to any accompanying or receiving adult,* in order to protect them from dependency on traffickers or other forms of exploitation and on smugglers and to immediately identify the most appropriate measure for the children. This monitoring has been tested with good results in Italy.
- *Fostering the children to children’s welfare agencies, with reporting requirements.* Provided for and applied in Canada.
- *Integrating the children in foster families.* Provided for and applied in Bulgaria and somtimes in United Kingdom.
- *Organising specialised homes for the children.* Provided for and applied in Poland, Hungary³⁸ and, with significant good results on the rate of disappearance, in France.

<p>For more information, contact:</p>
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³⁸ Detention of children is now explicitly prohibited in Hungary (see *The conditions in centres for third countries nationals*, cit. in foot-note 30).