

## **Research Paper on Alternatives to Detention**

### **Practical alternatives to the administrative detention of asylum seekers and rejected asylum seekers**

#### A Introduction

In its 1996 Position Paper on the Detention of Asylum Seekers, the European Council on Refugees and Exiles (ECRE) sets out the extremely exceptional grounds on which it is reasonable for governments to detain an asylum seeker (see paras. 12 and 13). The present paper attempts to describe various measures which, though not necessarily ideal in themselves, are at least preferable alternatives to the detention of asylum seekers who are detained on other than exceptional grounds (including rejected asylum seekers who are in the process of appeal).

Non-governmental organisations believe that, in the majority of cases, the alternative to detention should simply be liberty. The various alternatives set out below should therefore not be seen as recommendations, but as preferable solutions in cases where detention is at present considered the only option – i.e. as a substitute for detention where the authorities believe that some form of supervision or control is required. If these substitutes were widely implemented as a matter of general policy, it would bring European practice more closely into line with UNHCR's 1986 Executive Committee Conclusion No. 44 and UNHCR's 1995 Guidelines on the Detention of Asylum Seekers.

As its starting point, the paper takes government statements of the reasons for detaining asylum seekers at face value: European governments say that they increasingly resort to detention because they need to reduce the number of asylum seekers who abscond during the asylum procedure or who fail to comply with deportation orders. The most common ground for detention is thus "likelihood of absconding", a likelihood which is assessed broadly, with reference to nationality or to the fact that the person perhaps entered the country with false documents.

ECRE has therefore conducted research into systems which are, or could be, used to keep track of asylum seekers and ensure their compliance with national asylum procedures and other regulations governing aliens, but which stop short of detention in the strict sense of the term. Experts from the field of criminal justice have been consulted in order to identify what systems of pre-trial monitoring exist, what bail support schemes are used, and whether any of these systems could by analogy be applied to secure the release of asylum seekers and other immigration detainees.

Leaving aside for one moment the overwhelming human rights arguments against detention of asylum seekers, it can also be argued that the financial costs of detention are so high that governments have an incentive for this reason alone to

seek alternatives. According to the German Federal Ministry of the Interior, detention costs DM 116 per asylum seeker per day, which would amount to an annual total of over DM 50 million. In the United Kingdom, the Home Office reports that the average weekly cost of detaining an asylum seeker in an immigration detention centre is GBP 600. The cost of detention in police or prison cells in the UK ranges from GBP 298 to GBP 874 per night. Amnesty International has estimated the annual cost at GBP 20 million. One prison visitors board stated in its Annual Report for 1994 that holding asylum seekers in prisons “constitutes an improper use of Prison Service resources and the taxpayer’s money”.

Furthermore, the identification of those asylum seekers not genuinely requiring the constant form of control which detention represents is, for the authorities, a question of efficiency. This is the case particularly where space in detention facilities is limited. In the United States, for example, there are approximately 100,000 persons in removal proceedings at any one time, and 10,000 places for immigration detainees. As these 10,000 places are usually filled at any one time, it is in the interests of the authorities to ensure that they are filled by the “right” 10,000 people – in other words, those who really have a record of absconding and no other incentives to stay in the system. Asylum seekers whose cases are still pending do, generally speaking, have an incentive not to disappear and can stay in contact with the authorities by other means.

In Section B of this paper, various categories of alternative are listed, with reference to countries in which they are used, if not nationwide, then at least in certain areas where NGOs have taken initiatives. These country examples are then described in greater detail in Section C. A number of the examples of specific NGO initiatives have been collected from outside Europe (the United States, Canada and Australia) so that the possibility of introducing them in Europe can be considered. Section D outlines international standards governing non-custodial measures which should be applied to all alternative models.

## B Categories of alternative measures

### B.1 Supervised release of children and young adults to local social services<sup>1</sup>

If a detainee’s age is in dispute, the children’s section of the local social services may be asked to visit them and, if appropriate, these social services may volunteer to find the person a placement with supervision. If a specific alternative place of accommodation is known to be available and the local social services are prepared to take responsibility for that person’s whereabouts, it is more likely that the authorities will agree to release.

Country example: United Kingdom

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1 See also the ECRE’s 1996 *Position Paper on Refugee Children*.

## B.2 Supervised release to an NGO

Certain groups of asylum seekers may be defined as eligible for release into the hands of an NGO which holds a contract with the authorities stating that they will supervise such individuals if provided with financial support from the State. Such release can be structured around a combination of incentives and penalties, along the lines of a probation service. The incentives can include additional assistance with their cases and with preparing for appointments, and the penalties can include reports to the immigration authorities or the certainty of being re-detained if they fail to cooperate.

All asylum seekers who are detained on grounds other than those which ECRE would recognise as reasonable could be eligible for such release. This should include in particular:

1. persons whose claims enter the full (non-accelerated) asylum procedure, especially where the person has a very well documented claim;
2. persons arriving without documents but with “manifestly” credible stories;
3. persons who are awaiting return under the terms of the Dublin Convention or return to a “safe third country”;
4. families in which the identity of at least one member has been verified;
5. persons who are unlikely to be removed even if their claim for refugee status is rejected, due to the human rights situation in their country of origin;
6. persons who are unlikely to be removed even if their claim for refugee status is rejected, due to the general non-cooperation of their national authorities (unwillingness to provide replacement passports etc.);
7. persons who clearly have sufficient means to sustain themselves and their family in the host country without any assistance from the State;
8. persons with substantive appeal cases.

Particular efforts could be put into securing the release of those who, in the United States, are called “affirmative asylum seekers”. These are asylum seekers who have come forward either upon entry, or after entry through a legal immigration channel, to make their claim, as opposed to persons who apply after they have received a deportation order or after they have been arrested for illegal residence, so-called “defensive asylum seekers”. However, it should be noted that this prioritisation of affirmative cases should not imply that defensive cases are lacking in credibility – restrictive asylum and entry laws in Europe currently encourage asylum seekers to be “defensive”.

Country example: United States.

## B.3 Supervised release to an individual citizen – release on “bail”

Individual citizens could offer to act as guarantors and take responsibility for the appearance of an asylum seeker at hearings and all official appointments. This could be guaranteed in terms of penalty payments imposed on the guarantor if the asylum seeker fails to appear. This system could function well during the initial stages of an asylum claim but may be less suitable for guaranteeing compliance with deportation orders.

A system could be established whereby any interested citizens could apply, and gradually a set register of citizens (or groups, such as church volunteer groups) willing to give such guarantees could be built up. It would obviously be most suitable for those cases where an asylum seeker already has a relative or friend who is a citizen or is permanently resident in the host country.

In some countries, it is currently possible for the asylum seeker facing detention to apply to the authorities for release in return for payment of "bail".<sup>2</sup> Eligibility for bail is assessed on a case by case basis but one drawback in practice is that this assessment is not automatic. The asylum seeker has, in the first place, to be made aware of his or her right to apply and he or she (or the legal representative) must initiate an application. It is not a very effective legal remedy in most cases because the asylum seeker does not possess sufficient funds. Thus one idea for an alternative is to explore systems of raising the bail, either from donations, or from a bail support scheme similar to those provided for young criminal offenders.

"Bail hostels" often accompany the payment of bail for asylum seekers, providing a fixed address where there is a supervisor or rota of supervisors at the hostel making it easier for the authorities to contact the residents.

Country examples: Canada, the United Kingdom.

#### B.4 General restrictions on freedom of movement or place of residence

Under this system, asylum seekers are instructed by the authorities to reside in a certain locality or at a certain address, and if they fail to report regularly to the local police then they may be penalised by the withdrawal of social assistance. This may be preferable to detention or compulsory residence in a large collective centre, but is nevertheless a limitation upon the individual's human right to free movement within the country.

In certain European countries, this system is used not only as a substitute for detention, but also as a way of distributing the "burden" of asylum seekers. After immediate reception, they are settled in different locations throughout the country on

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2 The term "bail" is used to denote a financial deposit placed with the authorities in order to guarantee the asylum seeker's future attendance for interviews during the processing of his case. This means that the sum of money is returned if the asylum seeker appears as required or otherwise is forfeited.

the basis of local population size. The system has however been criticised because important factors such as family ties, availability of support from an ethnic community, job opportunities or an individual's special needs are all too rarely taken into account.

Country examples: Germany, Austria, Switzerland and Sweden.

#### B.5 Reporting requirements

Asylum seekers can be asked to surrender their passports and other travel documents, and to report to the State authorities at regular intervals – e.g. twice a week. This is closely related to the above system of internal distribution, in that people are usually registered at a nearby reception centre even if they are living independently in the community, and are thus restricted to the areas near the assigned centre.

Official reporting points could be established all over a country, so that an asylum seeker is not restricted in his or her freedom of movement, but can report into a centralised computer system at a wide variety of locations. Provision of social assistance could then be made conditional upon sustained reporting. Collection of this assistance could be limited to a certain locality where there is a fixed address, as it is for nationals, so that the asylum seeker would always be free to travel away from this specified locality and collect the accumulated assistance upon their return. In practice, of course, it should be noted that factors other than the collection of social assistance will limit the freedom of movement of asylum seekers: the need to stay in touch with their lawyer, the need to collect mail or renew their papers, or lack of money.

Country examples: several European countries, including Denmark and France.

#### B.6 Open centres

Compulsory collective accommodation is far from being the ideal form of accommodation: assistance with finding accommodation in the community is greatly preferable. Non-governmental organisations, social workers and medical practitioners across Europe have all reported problems, such as depression and loss of independence, arising from residence in such centres/camps after a period of some months.

Open centres can provide an alternative in cases where asylum seekers might otherwise be held in detention, as such centres can control the whereabouts of the residents to varying degrees. In some open centres, the authorities operate a curfew at night but allow the residents to leave during the day. In others, residents are asked to register whenever they leave and re-enter the centre, stating where they intend to go during each excursion. In many cases, however, these centres are situated in

inconveniently remote locations (as indeed are most detention centres), and this in itself serves as a form of control on the residents' movements.<sup>3</sup>

Other than release, it is difficult to suggest alternatives to very short-term detention in airports or in attached airport buildings/hotels. However, long-term detention in airports (lasting for many months) certainly requires an alternative – open centres could be built near to international airports if necessary, for example.

Country examples: in Germany, Switzerland and the Netherlands, residence in a collective centre is compulsory for part or all of the asylum procedure. In Belgium, Norway, Denmark, Slovakia, Poland and the Czech Republic, eligibility for financial assistance from the State is conditional upon residence in such a centre.

## C Country examples

### C.1 Australia

In Australia, unauthorised or “spontaneous” refugee arrivals are usually detained throughout the determination procedure.

The Australian Refugee Council and an independent rapporteur have recently developed an Alternative Detention Model which has been submitted to the government. This proposal is based on the argument that individual cases can be reviewed on a regular basis in order to choose the level of control demonstrably required for each person. There are three levels:

Level 1: Closed detention (which all asylum seekers experience initially upon arrival at a port);

Level 2: Open detention (which equates to open centres of compulsory collective accommodation in Europe). Open detention would involve accommodation in a hostel with a curfew from 7 p.m. to 7 a.m., and asylum seekers would be eligible to work or to receive financial assistance;

Level 3: Community release, which involves residence at a designated address and reporting requirements. There are three forms of control here:

- a) Family release. It is proposed that this form of release would be at a designated address, with a nominated close family member, and that the asylum seeker must report to the authorities at regular intervals, the frequency of which is to be decided by the case officer after an individual assessment. The family member would be required either to pay a bond in advance or to sign a recognisance with the authorities. If called upon at any time, the asylum seeker must report to the authorities within 24 hours;

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<sup>3</sup> For further details on standards and conditions within such centres, see ECRE's 1997 *Position on the Reception of Asylum Seekers* .

- b) Community organisation release;
- c) Release upon own recognisance.

Applicants can be moved flexibly up or down these levels of control as their circumstances change. The level is stated upon their visa, and a new visa must therefore be issued every time that the level is adjusted. Anyone who is not released must be provided with a statement of the reasons for his or her detention

The Alternative Detention Model proposes that priority be given to securing and sustaining the community release of children, close relatives of children, elderly persons, single women, persons with special health needs or persons with previous experience of torture or the symptoms of trauma.

The penalty for an unjustified failure to cooperate with any of the non-custodial levels of control is return to detention, with a brief period in which it is impossible to apply for re-release.

## C.2 Belgium

Since 17 January 1997, all asylum seekers in Belgium who are not detained have been systematically assigned to open centres of collective accommodation.<sup>4</sup> The only exceptions are for the few asylum seekers who do not need to receive any assistance, or if there are no available places in these centres. A coordination unit keeps an inventory of available places and will take humanitarian considerations into account when deciding where to assign each person. Two more such centres were being built in the spring of 1997.

## C.3 Canada

In Canada, asylum claimants are not re-distributed throughout the country and usually tend to live in the provinces where they first arrive. The individual is nevertheless free to move to another province (as it is a violation of the Canadian Charter of Rights and Liberties to restrict internal freedom of movement in any way), but the authorities may refuse to change the venue of the hearings so that the person must travel back to attend. Immigration detainees are quite often released on bond (bail) either by cash deposit or by someone with proven means signing for their release. Reporting requirements may be imposed in addition.

An initiative has been taken in Toronto called the Toronto Bail Program, which is an adaptation of a scheme originally designed to help people in the criminal justice system who cannot afford bail. A rigorous screening of asylum seekers in detention

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4 In summary, asylum seekers in Belgium tend to be detained: at the border, if they lack the required documents, if they have left a previously designated place of residence, if they have applied after a legal residence permit has expired, or if they are appealing against a negative decision.

takes place in order to find suitable candidates (those who are unlikely to abscond but who do not have friends and relatives able to post bail). When the asylum seeker is then released he or she is carefully supervised in the community. It should be noted that a number of NGOs have criticised the Toronto Bail Program because, by its mere existence, it encourages the immigration services to opt for supervised, as opposed to unconditional, release.

#### C.4 Denmark and Finland

Asylum seekers in Denmark are asked to surrender their passports and to stay at a Red Cross reception centre. In practice, only asylum seekers who are unidentified or whose travel route is unknown are subject to detention. According to police guidelines, however, some categories are exempt from detention, e.g. women asylum seekers with minor children, and may be asked to report to the police at fixed times instead. Only if the asylum seeker fails to comply with these restrictions will detention be imposed. A similar system operates in Finland, where reporting to the police can be required every day for the duration of a relatively short asylum procedure.

#### C.5 France

The main control mechanism in France is the need to renew the *autorisation de séjour* every three months, and to collect financial support every month, which requires a fixed address. The Schengen Convocation stamp also needs to be renewed every 15 days, and this acts as a form of additional reporting requirement in Schengen cases.

#### C.6 Germany

Asylum seekers' right to free movement within Germany is restricted by the government authorities. Though this policy is mainly motivated by a belief in internal "burden sharing" between Federal States, it is also notable that asylum seekers awaiting a first decision on their claim are not normally detained (with notable exceptions such as the detention of asylum seekers in the special "airport procedure" at Frankfurt Airport). Thus alternative control measures are deemed sufficiently effective, despite the large number of registered asylum seekers in the country and a large underground economy of illegal workers.

Each residence permit states the asylum seeker's enforced place of residence (in a collective accommodation centre for the first three months – containing a minimum of 300 persons – and then in the community) and a compelling reason is needed to leave the designated address and surrounding zone. Population size is the only criterion used in the distribution of asylum seekers, though minors are able to



live in the same place as family members and unaccompanied minors can choose the district in which they want to stay. The main problem which NGOs have witnessed with this system is the fact that families are separated too fast – often asylum seekers spend a lot of energy trying to get to the same district as their friends and family. They then go to the local reception centre to apply for asylum, only to be told that they will be sent to the other side of the country within a few days. This can be very traumatic, and if the distribution system was slightly slower it would be more humane. Another problem is the fact that asylum seekers are sent to rural areas where they have trouble getting access to all the necessary services – lawyers, interpreters, community support – and where jobs may be particularly scarce. On the positive side, however, it means that citizens and local authorities in every part of the country have to think about how to accommodate and integrate refugees, thus dispelling prejudices arising from a lack of experience.

#### C.7 Norway

A system of compulsory collective accommodation operates, with all asylum seekers sent to one of 20 centres. The centres are open, but any movement outside the centre must be registered and of limited duration. Asylum seekers must stay at the centres if they wish to receive financial assistance.

#### C.8 Sweden

There is an internal distribution system in Sweden (as in Germany). This distribution takes place in proportion to the municipality's population, but also in proportion to the number of lawyers and interpreters in each place. Since 1994, asylum seekers no longer have to live in camps to receive State assistance but are free to live in private accommodation. They are, however, registered at a nearby camp and there is a social worker there who is responsible for them. This extent of monitoring has been found beneficial both to the individual asylum seekers and to the authorities. It has been found that asylum seekers under the new system have been more willing to comply with the asylum decision, even if it ends in a deportation order.

#### C.9 United States

In New York City, the Vera Institute of Justice has signed an agreement with the immigration authorities to run a three year "demonstration project" called the Appearance Assistance Program (AAP). The aim of the AAP is to provide an effective, credible system of pre-hearing supervised release, which takes those who do not need to be detained out of detention, and at the same time results in increased appearance rates at interviews and increased compliance with deportation orders.

The Vera Institute is an independent organisation, which has a history of working on joint projects with government agencies involved in the justice system. It

was responsible for the pioneering development of pre-trial release systems for offenders in the 1960s and the current project is based on the expertise acquired from this experiment. The Immigration Service is funding the project.

Screening of possible participants in the project takes place at Kennedy and Newark airports, as well as at a number of detention centres where staff make recommendations for release. One or two members of staff from the Vera Institute work at each location. At the airport, they aim to interview people within 24 hours, but not until the new arrivals have had an opportunity to rest. They interview asylum seekers who are still eligible to apply for a legal remedy but whom the Immigration Authorities indicate are to be detained. Suitability for supervised release is determined according to the following criteria:

1. there is some substance to the asylum claim;<sup>5</sup>
2. they are not a risk to public safety;
3. they are “amenable to supervision”, which implies that:
  - a) they have a verified private address (not a shelter) where they could live;
  - b) they have an individual (this may be a relative, friend or employer who is a citizen or a permanent resident and over 18 years of age) or a recognised community group willing to act as their “community sponsor”. This person or group is not legally or financially responsible, however – it is a sponsorship involving time and effort rather than cash;
  - c) they do not have a previous record of non-appearance at official appointments etc.

The staff making these assessments have three weeks of specific training, including some basic training in refugee law and the psychological effects of torture. Some, but not all, have legal backgrounds. The staff involved in the AAP are, as a whole, ethnically diverse, possess a wide range of language skills and have experience of working with New York’s ethnic communities.

After an asylum seeker is accepted into the AAP, the Vera Institute acts as a kind of probation service. Asylum seekers must report twice a month to a Reporting Assistance Center. Incentives to ensure that they do come in are a resource library with materials that might help their cases (human rights reports, recent maps, etc) and a referral service for social assistance and legal advice. The asylum seekers are sent extra reminders from the Vera Institute about what official appointments they have to attend and what deadlines they have to meet. If they are rejected in the procedure but are willing to cooperate with deportation proceedings, they also

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5 Interestingly, the key to the assessment is not whether the asylum seeker has a good case, but rather whether the asylum seeker *thinks* he or she has a good case, on the basis that as long as the asylum seeker *believes* the claim to be a deserving one then he or she will go to appointments and is unlikely to abscond.

receive additional return assistance in the form of information and administrative assistance.

Every participant in the AAP has a certain officer responsible for them and also a field officer who will come and visit them to verify, both by appointment and through spot-checks, where they are living.

The only real penalty for people who abuse the AAP and abscond is that they will be detained without doubt if and when they are apprehended again. The Vera Institute may also write a report to the immigration authorities informing them of the person's behaviour. This possibility is usually a sufficient incentive in itself to ensure compliance with the requirements.

This demonstration project will be evaluated after three years in operation by both the NGOs and the authorities to see if it has indeed met both sets of needs and demands.

Another project to provide an alternative to detention in the US is Gay Hartner's Refugee Immigration Ministry in Boston. It is similar to the above in so far as it is a place to which people can be released on bail, located near to a detention centre, but is based on religious charity and supported by a congregation. Vermont Refugee Assistance (VRA) is a similar local operation, started in 1987, whereby volunteers organise "host homes" for asylum seekers so that they can be released to an individual citizen's responsibility. The People of the Golden Vision (an NGO set up in Pennsylvania to help the Chinese who landed on the Golden Venture boat in 1993) have also recently purchased a "halfway house" to accommodate asylum seekers whom the authorities would otherwise insist on detaining.

Finally, the Florence Project in the US takes voluntary return seriously as an alternative in certain cases and therefore produces a video which asylum seekers can watch when they are first detained, explaining their rights but also presenting the legal system and definition which will be applied to them so that non-refugees can "self-identify" and opt for voluntary return at an early stage.

#### D Safeguards and standards attached to non-custodial alternatives

ECRE would suggest that any alternatives implemented by European States should, as a minimum, conform to the United Nations Standard Minimum Rules for Non-Custodial Measures (the "Tokyo Rules").

The Tokyo Rules are the most comprehensive statement of principles relating to non-custodial sentencing in the criminal justice field. While emphasising that very few of the asylum seekers held in detention in Europe have committed offences other than illegal entry to the national territory, it is nevertheless enlightening to analyse how these standards of criminal justice could relate to any alternatives to detention of asylum seekers.

The Tokyo Rules are the result of global discussion and exchange of experience, pursuant to Section XI of the Economic and Social Council Resolution

1986/10. They demonstrate an evolving understanding of the negative effects of imprisonment, which, in the case of an asylum seeker, may be compounded by the possibility of previous arbitrary detention and/or torture in the country of origin.

The majority of penal sanctions which may be imposed on convicted offenders around the world are therefore, in the 1990s, non-custodial. The guiding principle is that of a balance between the human rights of the detainee and the overall concerns of society. It should be noted that immigration offences are “victimless crimes” and therefore the interests of a victim do not need to be assessed. It is also noted under the Tokyo Rules’ commentary on “fundamental aims” that community involvement in non-custodial models has the added advantage of improving public understanding. Such public understanding certainly needs to be fostered with regard to asylum.

Rule 3.6 states that the [asylum seeker]<sup>6</sup> should be entitled to make a complaint or request regarding the non-custodial measure imposed. Rule 3.9 relates to ensuring respect for the person’s dignity, 3.11 to respect for privacy, and 3.12 to respect for confidentiality.

“Taken together, [Rules 3.9–3.12] require that supervision shall not be carried out in a way that would harass the [asylum seekers], jeopardise their dignity or intrude on their privacy or that of their families. Methods of supervision that treat [asylum seekers] solely as objects of control should not be employed. Surveillance techniques should not be used without the [asylum seekers’] knowledge. Third parties other than properly accredited volunteers should not be employed for the surveillance of [asylum seekers].”<sup>7</sup>

Rule 7 relates to “social inquiry reports” which are compiled for individual criminal offenders, relating to their past and present circumstances. This is similar to the Australian model, described above, which calls for more individual assessment in the treatment of asylum seekers. Those who are unlikely to abscond, for example, when the expected outcome of their cases begins to look positive, are promptly identified, and those who should be released for other humanitarian reasons are also identified. At the moment it is extremely rare for individually-related evidence of the “likelihood of absconding” to be produced by any national authorities.

Rule 10.3 states that not only detention, but also “supervision ... should be periodically reviewed and adjusted as necessary”. The commentary on this Rule then adds that “the important element is the personal relationship between the supervisor and the [asylum seeker]”. It describes supervision as a “highly skilled task”, combining a control function with a welfare function. “Parts of the supervisory task may be delegated or contracted out to the community groups or volunteers” while statutory power remains with the State authorities.

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6 The term “asylum seeker” is inserted to replace reference to criminal offenders in the various Rules.

7 Commentary on the Tokyo Rules, p. 13.

Rule 12.3 relates to the quality of information provided to the person who is the subject of the non-custodial measure. It notes that well explained obligations are more likely to be met.

Rule 14.3 states that “[T]he failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.” It comments that minor transgression can be handled by a good supervisor and that factors to consider include whether the non-compliance takes place at an early stage or after a period of time during which there was full compliance. Factors beyond the person’s control should also be taken into account.

Rule 15.1 includes the statement that “policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the [asylum seekers] to be supervised”.

Rule 17 encourages public participation and notes that “ethnic organisations” can be a resource. Rule 19 similarly describes the role of volunteers, seeing them as doing a favour for the State and for society, which requires training, recognition and reimbursement of costs incurred.

Rule 18.1 implies that the government should look favourably on funding NGO schemes to secure release of detainees. Rule 20 encourages research and experimental projects in this field, and Rule 21 stresses the importance of evaluation. All these considerations apply equally, if not more so, to the search for alternatives to detention of asylum seekers.

## E Conclusion

It is simply unsustainable for European countries to continue to detain non-criminals asylum seekers at the present rate. A cost-benefit analysis should be commissioned by each government into its current system of immigration-related detention as compared to other systems of reporting requirements, open centres etc. Such an analysis would prove that it is in the interests of States, as well as being their clear humanitarian obligation, to seek other means of supervising asylum seekers and rejected asylum seekers awaiting the outcome of appeals.

The above examples have categorised some of the ways in which detention can be avoided when there is a political will to do so. Joint initiatives with non-governmental organisations and building relationships of trust with local community groups are clearly central to the success of a number of these non-custodial alternatives. European NGOs should take the lead from their north American counterparts who are establishing release schemes, with governmental permission and funding, in several local situations. European governments should also learn from one another how to implement non-custodial alternatives, in a spirit of regional cooperation.<sup>8</sup>

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8 See, as a basis for such cooperation, Recommendation 1327 (1997) of the Parliamentary

This paper was researched and written by Ophelia Field (Policy Officer, ECRE), with the assistance of Elsa Seguin.

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Assembly of the Council of Europe, in which member states are urged "to give priority to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems" (vii g).