CONDITIONS ON ASYLUM SEEKERS LIVING IN THE COMMUNITY

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Introductory Notes

- The countries examined below form the basis of the comparative studies in the International Detention Coalition's (IDC) report *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (2011). Further details have been obtained from the following reports which are listed in full at the end of this document: Edwards (2011); Banki and Katz (2009) and Field and Edwards (2006). These reports examine a number of countries in detail to provide an illustration of the types of conditions which may be imposed on asylum seekers in the community. A comprehensive list of countries that impose each of the types of conditions examined in this research is provided in the IDC Report at page 63.
- This document focuses on enforcement models, which rely on the imposition of restrictions/conditions on asylum seekers in the community. It does not examine (in any detail) community-based models which may be just as, if not more, effective in engaging asylum seekers and discouraging absconding.
- Unless indicated otherwise, the restrictions examined below are a list of restrictions that *may* be applied to an individual who falls within the description of the 'to whom restriction is applied' column. The actual conditions applied are determined on a case-by-case basis and contingent on factors such as security risk and flight risk.
- It is important to be cognisant of the definition of 'irregular migrant' in the table below: 'A migrant who does not fulfil, or no longer fulfils, the conditions of entry, stay or residence within a State.' This encompasses a much broader category of people than 'asylum seekers', and is not tailored to address the particular vulnerabilities which asylum seekers may have.

Country	To whom restriction is applied	Nature of restriction	Reference/Other Comments
Canada	Irregular migrants (see note on definition above)	At detention reviews, people may be released with or without conditions imposed. The Immigration and Refugee Board determines which conditions are necessary and appropriate. Such conditions may include: • **Payment of bail by a 'bondsperson'** – a financial deposit is placed with the authorities, held in trust, and returned if the individual complies with conditions of release (which includes reporting requirements) • **Provide a nominated address** – where the individual can live and be contacted by authorities • **Hand over travel documents** • **Reporting requirements** – the individual is required to present	IDC Report: 44 (Box 14) Banki and Katz, 2009: 20–22 Field and Edwards, 2006: 26, 83

		himself/herself to the authorities as required <u>Toronto Bail Program</u> An NGO that posts bail for asylum seekers who lack family or community contacts to assist them with bail. By posting bail for asylum seekers, TBP accepts responsibility for their compliance with conditions of release. TBP's supervision includes **bi-weekly reporting**, **social counselling** and **frequent and unannounced house visits**. TBP has a high compliance rate (91.6% compliance rate for 2003 fiscal year) and involves low cost relative to detention. (NB: the high compliance rate must be interpreted in recognition of the fact that the TBP only accepts those who meet its selection criteria, which relate to the individual's credibility, amenability of the individual to supervision, and flight risk).	
Hong Kong	Irregular migrants (Government detention policy requires each decision to detain to be based on the merits of the individual case. Under this policy, most asylum seekers and torture claimants are released from detention.)	Those who are released from detention are provided with a 'recognizance' document, which may be subject to a number of conditions, including: • **Reporting requirements** • **Payment of bond** The 'recognizance' document is issued for a period of usually 6–8 weeks, which incentivises the need to report regularly to obtain an extension. (However, this document does not provide legal status: the individuals are considered 'detained pending removal', but live within the community). This system of release is supplemented by government-funded support services operated by International Social Service (an NGO). Services include: accommodation searches, food, transportation, and counselling. The individual signs a contract with ISS, which is renewed every month and **subject to conditions**: eg failure to appear for two food collections will result in the agreement being terminated. The government reports that absconding rate is very low, at approximately 3%.	IDC Report: 28 (Box 5) Edwards, 2011: 65
Indonesia	Asylum seekers/refugees awaiting resettlement	Indonesia has established that irregular migrants holding attestation letters or letters verifying their status as refugees or asylum seekers by UNHCR should be allowed to remain in Indonesia. It does not provide legal status, but prevents detention. Such individuals must be **registered with immigration authorities** and sign a Declaration of Compliance while their application or resettlement is	IDC Report: 38 (Box 10)

		being processed by UNHCR. The Declaration stipulates certain conditions, including: • **Must stay within a designated area** • **Not allowed to be in an airport or seaport without an immigration officer present** • **Not allowed to have guests stay** in the accommodation provided • Must fully comply with Indonesian laws • Must **report to immigration every two weeks** to register their presence • Violations will likely result in detention	
Japan	Irregular migrants	'Provisional release' from detention may be granted (on a discretionary basis) if the detainee can present evidence of: • Financial self-sufficiency (personal income or a sponsor's income) • Alternative accommodation • Ability to post a **bond** • Other circumstances (evidence provided in support of application) 'Provisional release' is **restricted to one designated area** (the Prefecture that the released detainee selects for his/her residence). Prior approval must be sought from the Immigration Bureau to travel outside the designated area. Most released detainees are required to **report on a monthly basis**, and to **notify authorities of any change in address** within the Prefecture.	Field and Edwards, 2006: 27, 137 The system favours wealthier asylum seekers: maximum amount requested as bond is 3m yen (US$25,000–30,000).
New Zealand	Irregular migrants	The terms of a conditional release from detention must be flexibly set in proportion to the needs of the individual case, and may include: • **Reside at a specified place** • **Report** to a specified place at specific periods or times in a specified manner (frequency or manner of reporting requirements depend on the individual case) • If the person is a claimant, **attend any required interview** with refugee and protection officer or hearing with the Tribunal • **Provide a guarantor** who is responsible for: ensuring the person complies with any of the conditions in this list, and reporting any failure by the person to comply with these conditions • Undertake any other action for the purpose of facilitating the person's deportation or departure from NZ	IDC Report: 21 (Box 2) Field and Edwards, 2006: 163

		Person may be **subject to arrest and detention** if they fail to comply with the conditions of their release, or in order to execute a deportation order.	
Philippines	Asylum seekers	Section 13 of the Department of Justice Department Order No 94 of the series of 1998: 'if the [refugee] applicant is under detention, the Commission may order the provisional release of the applicant under recognizance to a responsible member of the community'. The only condition is that the asylum seeker agrees to **follow requirements of refugee status determination process**.	IDC Report: 25 (Box 4)
Sweden	Asylum seekers	• **Must visit refugee reception office at least monthly** to receive allowance, news on refugee application and risk assessment • For those asylum seekers who do not voluntarily leave the country following a negative final outcome, conditions may be introduced whilst they are still in the community, including **reporting requirements** or **reduced benefits** (detention may be applied as a last resort).	IDC Report: 35 (Box 9) Mitchell, 2001
United Kingdom	Irregular migrants	An individual released from immigration detention may be placed under the following conditions: • 'Temporary Admission': release without bail but dependent on having a **place of residence**, with a prohibition on employment and **requirement to re-appear on a specified date**. • **Bail** – two types available to immigration detainees: may apply through (i) UK Immigration Service; or (ii) an adjudicator/Immigration Appeals Tribunal. Bail is generally granted subject to conditions, usually **residence and reporting requirements**. NB: Bail is difficult to access for asylum seekers. Two NGOs – Bail for Immigration Detainees (BID) and Bail Circle – work to bring some equity into the system by offering bail. • **Support payments are linked to regular reporting requirements** (if applicants fail to present to a Reporting Centre, their Asylum Registration Card is cancelled and they are unable to access their support payments). • **Electronic monitoring and home curfew** of persons to be deported, including failed asylum seekers. This is a system whereby an electromagnetic device is attached to person's wrist/ankle, which emits a signal received by a device attached to home telephone, so authorities can ring the number and check whether a person is at home between certain, specified hours. [For more information on electronic monitoring, see table below on the United	Field and Edwards, 2006: 26, 29, 37, 208, 215 Banki and Katz, 2009: 52 Few reports have studied the effects of bail. One from 2002 documented high levels of compliance by both those awaiting deportation (80%) and those awaiting decisions about their status (90%).

		States.]	
United States		See table below.	
Venezuela	Foreigners subject to deportation or expulsion procedures (Venezuela has no law allowing for detention of migrants)	The following conditions may be imposed (but conditions must not exceed 30 days): • **Regular reporting** to the relevant authority in foreign affairs and migration • **Ban on leaving the town** in which he resides without authorisation • Provision of adequate **monetary bail**, to which economic conditions of the foreigner must be taken into account • To **reside in a particular locality** during the administrative procedure • Any other measure deemed appropriate to ensure compliance with decisions of the relevant authority, provided that such measures do not involve deprivation or restricting the right to personal liberty	IDC Report: 20 (Box 1)

United States

Program	**To whom restriction is applied**	**Description of Program**	**Reference/Other Comments**
Appearance Assistance Program (AAP)	Irregular migrants	3-year study of community supervision for people in immigration removal proceedings (February 1997–March 2000), conducted by Vera Institute of Justice (invited by US government). Two levels of supervision were offered to participants, who were released without bond: • Regular supervision: required **attendance at a group orientation** and **provision of an address**. No penalty for stopping participation in the program. • Intensive supervision: **mandatory personal and telephonic reporting requirements**, **visits to participant's home address** (both prearranged and unannounced) and **disclosure of employment** (even if unauthorised). Violation could result in recommendation to the INS to re-detain the participant. Also required to have a **guarantor** who agreed to take moral responsibility for the person to fulfil their obligations (no financial consequences for guarantor upon non-compliance) The appearance rates of participants were compared with control groups who were released on bail or on their own recognisance. (See composition of the asylum-seeking groups assigned to regular and intensive	IDP Report: 39 (Box 11) Sullivan and others, 2000 Banki and Katz, 2009: 73

		supervision at AAP Final Report p 26). For asylum seekers, there was not a monumental difference between appearance rates for regular supervision (84%) and intensive supervision (93%) (The appearance rate of the asylum seeker control groups was 62% and 78% respectively). Given the extra costs and burden of intensive requirements, this suggests that for asylum seekers, intensive supervision may be necessary in only infrequent circumstances.	
Intensive Supervision Appearance Program (ISAP)	Irregular migrants	Current program (commenced in 2004). ISAP supervises participants through: **unannounced home visits**, **reporting requirements** (in person and by telephone), **employment verification**, **curfews**, **travel documentation information collection** and **electronic monitoring** via radio frequency (RF) and global positioning satellite (GPS) equipment (further information below). ISAP monitors more than 5,700 participants and reports a 99% total appearance rate at immigration hearings, a 95% appearance rate at final removal hearings and a 91% compliance level with removal orders.	Banki and Katz, 2009: 76
Enhanced Supervision/ Reporting Program (ESR)	Irregular migrants	Current program (commenced in 2007). Similar to ISAP (above), but requires fewer home visits and in-person reporting visits and does not incorporate community referral requirements. ESR reports a 98% total appearance rate at immigration hearings, 93% appearance rate at final removal hearings and 63% compliance level with removal orders.	Banki and Katz, 2009: 76–77
Electronic Monitoring (EM) – a component of both ISAP and ESR	Irregular migrants	EM monitors irregular migrants using telephonic reporting, RF and GPS technologies. Participants are required to be at home during certain hours of the day, with higher restrictions at the start of their monitoring, which gradually become less intense over time. • **RF**: An electromagnetic tag is attached to a person's wrist or ankle: this emits a radio frequency which is received by a device usually attached to home telephone, so that authorities can ring that number to verify whether the individual is within a certain radius of their home phone (RF) • **GPS**: An electromagnetic tag is attached to a person's wrist or ankle: uses satellite technology to track the person's location anywhere. • **Telephonic reporting** (using voice recognition technology): the least restrictive and most cost effective EM measure. Requires the individual to call in at certain times, usually once a month.	Banki and Katz, 2009: 77–78 Field and Edwards, 2006: 36 Joint Standing Committee on Migration, 2009: 51

		Issues with EM: • Questionable whether the electromagnetic tags may meet the tests of necessity and proportionality required by international law for the majority of asylum seekers who have every incentive to comply with asylum procedure • Stigmatising and negative psychological effects of the electromagnetic tags • Tags/bracelets may require an individual to be plugged into a wall for up to 3 hours a day in order to recharge the batteries (a restriction on liberty) • RF can only apply to persons who can stay in private homes (i.e. asylum seekers with family and community ties): it is unsuitable for asylum seekers in large collective centres Conflicting data make it difficult to measure compliance. No statistics currently support the argument that all (or even most) asylum seekers require EM for high compliance.	Edwards, 2011: 78

Additional Comments on Conditions in Other Countries

- **Reporting requirements**:
  - France, Luxembourg and South Africa require asylum seekers to present themselves in person to renew their identity documentation (which may serve as a de facto reporting requirement, depending on the frequency with which papers need to be renewed).
  - Austria, Denmark, Greece, Ireland, Japan and Norway have legal frameworks that can require individuals to report to the police/immigration authorities at regular intervals.

Additional General Comments

- The IDC Report did not come across any examples of reporting mechanisms that made use of new communication technologies (eg email, SMS, Skype, web-based login). Exploring avenues for reporting using new communication technology has the potential to increase the frequency of contact with authorities for some groups, with limited impositions on daily life (see footnote 140).

References

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- Eileen Sullivan and others, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program* (Report to the US Immigration and Naturalization Service, 1 August 2000): www.vera.org/content/testing-community-supervision-ins-evaluation-appearance-assistance-program
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- International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (2011): http://www.scribd.com/doc/54661929/IDC-Handbook-There-are-alternatives
- Grant Mitchell, 'Asylum Seekers in Sweden: An Integrated Approach to Reception, Detention, Determination, Integration and Return' (2001): http://idcoalition.org/asylum-seekers-in-sweden/

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