



The impact of the Swedish model of detention



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Not a week has gone by in the last few months without some new revelation or allegation of injustice emerging from one of Australia's immigration detention centres. Woomera and Port Hedland have become regular headlines, with rioting and hunger strikes common place news.

The impact of these protests have been divided. At one level the Howard Government has been consistent in stating that this emphasises the need to increase security measures and justifies their plans to implement laws allowing increased power to ACM guards. And on the other level, community and welfare groups have been outraged, claiming it is the treatment of asylum seekers while in detention that is causing these riots. This concern had been initially for women and children held in detention, but has become a general voice of concern at the government's hardening attitudes towards asylum seekers.

Meanwhile, the call for a full judicial inquiry into the management of detention centres by the Federal Opposition and many major welfare and church groups seems to have fallen on deaf ears.

In the midst of all of this however, the Swedish model of detention has emerged as middle ground and a point of analysis for Australia's troubled detention policy.

On Wednesday the 22nd of November, 2000, I had the opportunity to present to the Immigration Minister a number of proposals for detention policy, based on my experience working at a Swedish Detention centre in 1999. The Swedish approach to detention and refugee reception raised interest on a number of levels. Firstly because it solves the precarious situation of having children and families in detention and treats detainees with dignity and respect. And secondly because it has been successful in reducing incidence of riot and disturbance in detention centres and has had a positive effect on the level of voluntary repatriations on negative decisions. This has led Sweden to have the lowest levels of illegal immigrants in the community in

Europe. All this and with no need for coercive measures or increased security.

During their time in the detention centre, the Swedish Government has stipulated that detainees shall be treated with respect and humanity. Detainees shall have freedom of information, have contact with the outside world, including NGOs and the option to speak to the media. They shall have the right to appeal their stay in detention.

Children are never held in detention for more than 6 days. All detainees have one caseworker for the duration of their stay to ensure they are aware of their rights, are kept informed of their case and feel that they have had a fair and expeditious hearing.

Detention should never be used as a deterrent, both because it is ineffective and also because it retraumatizes the already traumatised. In principle, the use of detention in Sweden is only taken when supervision is deemed inadequate, only for a minimal period, and must be undertaken with sensitivity and with detainees' civil rights not infringed upon beyond freedom of movement.

Furthermore detention is only for the initial period for health and security checks, and for the final period where it is judged the person may abscond.

It is from this position that I presented the 'group home' model to the Immigration Minister. In Sweden in all but the most extreme of cases, families are released immediately into the community under supervision. In cases of any risk to national security, husbands are held in detention, while women and children are released into group homes outside of the detention centre, with the possibility to visit their husbands during the day.

In light of increased pressure on the Minister regarding the treatment of children in detention, Mr Ruddock stated publicly that he would look into the possibility of releasing women and children in the community, particularly in Woomera. This led to support for the Swedish 'group home' model, both bipartisan as well as from The Refugee Council of Australia, Human Rights and Equal Opportunity Commission, Amnesty International and Defence for Children International.

That along with mounting media pressure led his department to put together an internal preliminary report on the feasibility of releasing women and children, culminating in Mr Ruddock visiting Sweden in January, during which the Swedish government criticised Australia's harsh detention policy.

Although Mr Ruddock criticised Sweden for being "too generous" he conceded that he may re-assess the policy of keeping children in detention however he refused to consider other aspects of the Swedish model. According to his Department however, it first needs to be examined if any laws need to be changed before any children can be released from detention. This is expected to be discussed when Parliament resumes.

While we all welcome the removal of children from detention, the concern for the 'group home' model in the Australian context is that families may be separated for long periods as currently asylum seekers are detained for the entire duration of their case. Families need to be released together immediately, with the group home only used for extreme cases, and asylum seekers should only be detained while health and security checks are being undertaken. Furthermore a review of the entire detention process, policy and management needs to be undertaken, with access and consultation with NGOs, church and welfare groups.

A balanced, humane approach to detention and refugee reception is vital in providing future citizens with a fair and equitable start in their new country. The long-term benefits are self-evident both for those that have already suffered persecution in their home countries and in Australia preserving its international reputation.

"10.24 I received representations to the effect that children, or children and their mothers, should have the opportunity to live outside detention centres or should be assigned specific family detention centres. Since this matter is being investigated separately I have not examined this in depth. I note, however, that most women with whom this issue was raised in informal discussions with my Inquiry, and who are currently in detention accompanied by children and partners, made it clear that they would not be prepared to leave male family members behind if they were offered the opportunity to be located outside the centre with their children. Single female family heads indicated they may be interested provided they are not leaving a male relative behind. The issue of single male family heads and unaccompanied children would also need to be addressed." (source: www.minister.immi.gov.au/detention/flood2.doc)

So CROC isn't breached?

Mr Flood's report rejected submissions arguing that "the Commonwealth Government's detention policy is in breach of the Convention on the Rights of the Child". He reported that "it is my belief however, that the government's detention practices for minors are not inconsistent".

"8.7 Article 37(b) of the Convention states:

"States Parties shall ensure that:

... (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of children shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;..."

This article requires that the detention of children be in accordance with the law, be only used as a measure of last resort and not for an unreasonably long period of time. This needs to be balanced against a child's right to live with their parents unless this is incompatible with the child's best interests as required in Articles 3 and 9 as follows:

"Article 3

- 1 In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.
- 2 States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures..."

"Article 9

- 1 States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case as one involving abuse or neglect of the child by the parents, or one