international detention coalition

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SUBMISSION BY
THE INTERNATIONAL COALITION ON DETENTION OF REFUGEES, ASYLUM SEEKERS AND MIGRANTS
TO THE
JOINT STANDING COMMITTEE ON MIGRATION INQUIRY
INTO IMMIGRATION DETENTION
IN AUSTRALIA

The International Coalition on Detention of Refugees, Asylum Seekers and Migrants (IDC) is a coalition of non-governmental organizations, faith based groups, academics and individuals working around the world providing legal, social, medical and other services, carrying out research and reporting, and doing advocacy and policy work on behalf of refugees, migrants, and asylum seekers. The Coalition has more than 150 members from more than 40 countries, including more than 15 Australian member organizations.

The International Detention Coalition welcomes the inquiry into immigration detention in Australia as an opportunity to ensure that Australia's detention policy is in line with international standards and Australia's international obligations, and to place on the public record the serious human rights concerns that have been raised by individuals and organizations over the past 15 years of indefinite, non-reviewable mandatory detention policy.

IDC's core position on immigration detention
The International Detention Coalition believes that detention of refugees, asylum seekers and migrants should be avoided. Alternatives such as supervised release, regular reporting requirements or posting bail, should be considered and pursued before detention. A person should only be deprived of his/her liberty if this is in accordance with a procedure prescribed by law and if after a careful examination of the necessity and proportionality of deprivation of liberty in each individual case, the authorities have concluded that resorting to non-custodial measures (alternatives to detention) would not be sufficient.

Where detention is considered to be absolutely necessary and authorized under international, regional and national standards, governments should ensure that it is used only for initial identification of persons or for legitimate removal or security purposes and only as a last resort. Any decision to detain must be subject to regular judicial review and the time period must be reasonable.

Refugees, asylum seekers and migrants must not be subject to indefinite detention. Conditions of detention must comply with human rights standards, and there must be regular independent monitoring of places of detention. Certain groups – such as pregnant or lactating women, children, survivors of torture and trauma, elderly persons or the disabled – should not be placed in detention.

Summary of Recommendations to the Australian Government

Length, Review and Oversight

1) A legislative and detention policy framework be developed in accordance with UNHCR guidelines in relation to purpose, length, review, release and rights of immigration detainees
2) A detention review process be developed that is independent and which incorporates an administrative and judicial process
3) Australia should accede to the Optional Protocol of the Convention Against Torture (OPCAT)
4) Voluntary return options to be extended to detainees, based on an assessment that individuals who pose minimal risks can be made lawful for the basis of departure.
5) Risk assessment tools and the case management model to be further resourced and developed.

Alternatives to Detention

6) Alternative Places of Detention (APD) and Immigration Residential Centres should be used as a last resort.
7) If Immigration Transit Accommodation Centres (ITACS) are to remain, they could potentially become open centres, as occurs in Europe and New Zealand.
8) The continued use of APD, particularly guards holding detainees in motel rooms, should cease and the MSI 371 be revised to take into account residence determination and community care pilot developments.
9) Community Detention, while a better option, should be used only where other community-based options are not possible.
10) If there are no health, character or public interest concerns, then Bridging Visa release options with Community Care Pilot-type support should be made available as the priority option.
11) Individuals released from detention should be granted the right to work, in order to self-sustain where possible, and which has the connected right to Medicare as a tax-payer.

The needs of children and families

12) The detention of one parent should only occur as a last resort and all considerations made for reunification of the family unit in the best interests of the child.
13) In terms of Christmas Island, we propose that families, unaccompanied minors and individuals with health issues to be transferred to the mainland under Community Detention arrangements.

Introduction

Improvements to Australia's detention policy

There has been significant change in Australia's detention policy and practice over the past 3 years. Most significantly being the transferral of detainee children and families into the community under Residence Determination. In addition, there have been significant improvements in relation to detention conditions, release options, health and oversight since the Palmer and Comrie Reports. The Department of Immigration has on a number of areas worked closely with welfare organisations, such as in the formation and oversight of the Community Care Pilot.

The Minister of Immigration, Chris Evans' recent announcement to stop the use of indefinite detention and only use detention as a last resort is a vital step in improving Australia's treatment of detainees. This follows other positive developments, such as the closure of off-shore detention on the Pacific Island of Nauru and Manus Island.

However Australia still has further to go in relation to ensuring detainee rights, oversight and conditions are in line with international standards. Further work needs to be done on developing a framework for detainee rights and appropriate release options, such as the Community Care Pilot, and of fundamental importance is the question of how detention will be made reviewable. This inquiry provides an important opportunity to highlight possible solutions in line with the terms of reference.

Outline of this submission

The International Detention Coalition submission aims to contribute to dialogue on the following areas:

- Length detention
- Criteria for release
- Rights and conditions
- Transparency and visibility
- Alternatives to detention

The submission will include a cover letter which draws attention to two appendices, which the author wrote or co-wrote: 1) *Asylum Seekers in Sweden*[1], and 2) *Alternative approaches to asylum seekers: Reception and Transitional Processing System* (JAS, 2002).[2] In addition, the submission aims to draw attention to the document, *Improving Outcomes and Reducing Costs for Asylum* Seekers (JAS, 2003)[3], which outlines a full-costing of a community-based model of care, as well as the international research into *Alternatives to Detention of Asylum Seekers and Refugees* by Ophelia Field[4].

Both the Swedish and the Reception and Transitional Processing System (JAS) models aims to ensure detention is used as a last resort, and is balanced with a functioning reception regime, based on a comprehensive risk assessment, case worker support, independent oversight and implemented according to specific process stages and review mechanisms.

1. Length detention and categories of detention

The UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers[5] state that there should be a 'presumption against detention' and should only be used where it is determined to be necessary and proportionate to the objective to be achieved, where alternative measures have been fully considered and for the shortest possible time. (UNHCR, 1999)

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1 Asylum Seekers in Sweden, Grant Mitchell, August 2001

2 Reception and Transitional Processing System, Justice for Asylum Seekers (JAS) Alliance, 2002. Please note, the JAS paper written pre-2005, however highlights the review and release options important. This paper written for asylum seekers, but also takes into account the treatment of others held in immigration detention facilities.

3 http://www.melbourne.catholic.org.au/ccjdp/pdf/ImprovingOutcomesandReducingCostsforAsylumSeekers.pdf

4 http://www.unhcr.org/cgibin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=4474140a2

5 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, December 1999

Furthermore any decision to detain should include an administrative or judicial body overseeing the need, terms and conditions of ongoing detention. Following identity, health and security clearance, individuals should be released into the community into supported living arrangements. Sweden, for example, has developed a legislative and detention policy framework in accordance with UNHCR guidelines in relation to purpose, length, release, rights and review process of immigration detention:

"According to Swedish Immigration Law all asylum seekers who arrive in Sweden without documentation are detained until their identification has been investigated, taking usually from 2 weeks to 2 months. However the government has also stipulated that detention in Sweden shall only be employed if supervision is deemed inadequate. In practice this means that asylum seekers may be signed into the detention centre and subsequently released into the reception centre after an initial assessment. This is often the case for families, single women and unaccompanied youths.

There are three categories of detainees. Firstly ID or identification detention, allowing for aliens to be detained if their identity is unclear. This category can be held in detention for 2 weeks while their identification is being ascertained. This can be extended to a maximum of 2 months.[6]

The second category is investigation detention, where the right of the detainee to be released into the community is being investigated. This is generally when there are questionable aspects to the alien's identity and further investigation is needed, particularly if there is a possibility of national security being at risk if they are released. This category can be held in detention for 2 months and extended to a maximum of 4 months. It can happen that a detainee will move from an ID to an Investigation category, meaning they can be held in detention up to 6 months. Identity investigations are undertaken by the Migration Board's Asylum Bureau with aid from the Foreign Affairs Department and the Police.

The third category is when the alien is in all probability to be deported shortly or that they will go into hiding if released. This is also for a maximum of 2 months, usually for the duration of the preparation of travel documents. In 1999 an Indian national was held in detention for almost 8 months as he arrived without documentation and was held on each of the categories and was to be deported. Since the Indian government was unwilling to provide travel documents for the client he was finally released into the Swedish community awaiting travel documents, as he could no longer be held in detention under Swedish law.[7]" (See Appendix 1, page 4)

2. Criteria for release, review mechanisms and oversight

2.1 Criteria for release

In terms of the criteria that should be applied in determining a person's release from immigration detention following health and security checks, there are a number of examples to draw from:

- Health checks in Sweden are undertaken in most cases within a period of 1 week or less
- In Canada, the issue of identification has been dealt with using a sworn affidavit from the detainee where no official documentation is available.
- The JAS model outlines a comprehensive risk assessment model looking at a combination of factors; 1) Health and self harm risk; 2) Absconding risk; 3) Community Risk, including security concerns.[8] (See Appendix 2, pages 24 and 25)
- Risk assessment is a useful tool to screen out those who do not need to be detained, to transition individuals into appropriate community settings (See Section 3), as well as assessing who can be made lawful for the purpose of voluntary departure
- Risk assessment has been successfully used in Sweden, Canada and the UK for these purposes.

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6 All the above detention categories and requirements are listed in: Rikslagen (State Law) 1996:1379

7 Asylum Seekers in Sweden, Grant Mitchell, August 2001

8 Reception and Transitional Processing System, Justice for Asylum Seekers (JAS) Alliance, 2002.

- Central to any risk assessment model in Australia, is the role of the DIAC Case Manager in assessing individual cases, both in terms of need and risk and making recommendations in relation to the need to detain and appropriate alternatives.
- Detainee risk assessments have on an ad-hoc basis been utilised over the past 3 years in IDCs across Australia, most notably in assessing eligibility for referral for residence determination, removal pending bridging visas or to various forms of alternative places of detention.
- These risk assessment tools and the case management system need to be further resourced and developed to include assessment of:

1) All unauthorised arrivals on entry
2) All cases identified by Compliance in the community
3) Individuals currently in detention

2.2 The role of Case Management
Prior to late 2005, there was a one-size-fits-all response to detention in Australia, with little assessment of individual circumstance or the need to detain. With the introduction of the Case Management system in 2006 DIAC has since had a comprehensive mechanism by which individual circumstance, history, need and risk could be assessed to improve decision making, responsiveness to need and overall client outcomes.

The DIAC Case Management role developed is remarkably similar to that developed and successfully implemented in Sweden. The multidisciplinary role is not a decision-maker, but provides ongoing assessment, support and recommendation to the Department and client throughout their immigration pathway. The role has a central focus on assessing and overseeing the broader welfare, need and barriers to immigration outcomes for an individual in the migration stream deemed as vulnerable. Case Management aims to ensure a fair and expeditious process, with the client being informed and empowered throughout the process. The role also aims to improve DIAC decision-making in relation to detention and removal, ensuring informed assessment of circumstance, as opposed to the assumptions made prior to 2005, most notably those relating to the detention and removal of Vivian Solon Alvarez.

The further development and resourcing of the Case Management model is integral to any transition from a detention-based to a community-based reception model and to ensure detainee and community client needs are appropriately managed.

2.3 Detention pending removal concerns
The unnecessary detention pending removal of detainees is a continuing concern in Australia, particularly as no voluntarily return options currently exist for detainees.

All individuals in immigration detention in Australia with no legal basis to remain are by law required to be removed under the Migration Act as soon as practicable. Removal in this context is defined as the Departmental intervention to remove an unlawful non-citizen from Australia, and includes: 1) the process of withholding of travel documents, 2) handing people over to authorities on arrival, 3) being registered as a person detained and removed, affecting future travel, and 4) not being empowered to make their travel arrangements and depart in dignity. In addition, certain countries require to be informed of individuals ‘removed’ from another state, which does not occur for individuals voluntarily returning.

This ‘removal’ process can lead to high levels of anxiety and place certain individuals returning at heightened risk by being made known to authorities. Many detainees choose to remain in detention and appeal their cases due to a fear of the removal process.

Detainees in Australia refused a visa have no option but removal by the Government. This includes clients in the Red Cross care under the Community Detention Program, who have no right to voluntarily depart the country with dignity. The voluntary repatriation program run by the International Organisation for Migration (IOM) currently funded through the Community Care Pilot for eligible bridging visa holders urgently needs to be extended to detainees, based on an assessment that individuals who pose minimal risks can be made lawful for the basis of

departure. A number of European countries, including the UK, provide this voluntary return option for detainees through the IOM.

UK Example: Detention Centres: Voluntary Assisted Return Programmes (VAARP)
Since August 2005, detainees in the UK have been able to seek assistance from the IOM to voluntarily depart the country. All detainees are informed of this program, which includes assistance to explore departure options, to leave independently with dignity and to receive repatriation assistance. This options is available to detainees with no set removal direction (i.e. the process of removal has begun) and is approved by the Home Office.[9]

2.23 Detention Review
While the IDC welcomes the Minister of Immigration's recent decision to ensure all detention cases should be subject to periodic review by a senior departmental official, the IDC would like to highlight the importance of a review process that is independent and which incorporates both an administrative and judicial process in relation to the detention of individuals.

Article 9 of the ICCPR states that: 'Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful'[10].

The IDC believe it is vital that a detainee is informed of the reason they are detained, for how long, how this can be reviewed, and what legal recourse and advice is available to them. These are fundamental rights of individuals detained.

There are a number of examples to explore in relation to the review of detention:

1) The Swedish model includes both administrative and judicial review mechanisms: 'It is important to note that all detainees (in Sweden) are aware of their rights in detention and the length of time they can be held in detention. All detainees have a right under Swedish law to appeal their being held in detention. They can appeal each category that they are held on, firstly to the Local Court and then to the Alien Appeals Board. Asylum Seekers are kept in detention only for the period of time it takes to ascertain their identities, not for the duration of their asylum procedure. The average stay in a Swedish detention centre is 47 days. Once released they are placed in the Carlslund Refugee Reception Centre (an open centre).'[11]

2) The JAS model outlines the introduction of an independent representative panel comprising representatives from the DIAC/Government, health, judiciary and community, that oversees and monitors client and internal and community release conditions and complaints. 'The independently chosen panel will meet regularly to make decisions based on risk assessments and security and administrative issues. The workload demands flexibility and prompt response, with a possible magistrate's level of judicial overview for urgent matters. The panel should ideally have the power to commission reports. Independent watchdogs, such as HREOC and the Ombudsman, will continue their external observation of the centres. The role of the Assessment Panel includes:

- Decision-making on compliance and risk assessment;
- Reviewing client categories and working between DIMIA, security, case worker and asylum seeker;
- Ensuring accountability, responsibility and overseeing duty of care requirements, such as health care, case management and security;
- Ensuring adequate training of staff and appropriateness of services in issues of cross-culture, gender, child protection, religion and trauma.' (Appendix 2, page 22)

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9 http://www.ncadc.org.uk/archives /filed%20newszines/oldnewszines/newszine74/IOM-VAARP.html
10 http://www2.ohchr.org/english/law/ccpr.htm
11 Asylum Seekers in Sweden, Grant Mitchell, August 2001

2.4 Transparency of Immigration Detention Centres and detainee rights and conditions

The loss of liberty for detainees places individuals in a vulnerable situation, being dependent on authorities for their protection and welfare, and in itself demands transparency and independent oversight and monitoring to ensure individuals are not at further risk and that their rights are upheld.

Monitoring of detention is based on the regular scrutiny of all aspects and forms of detention, in order to ensure the rights, security and welfare of detainees are recognized, and protected, in accordance with international standards. This protection includes detention conditions and humane standards of treatment, and procedural rights, including the presumption against detention, that detention is not arbitrary, that it is time limited, that alternatives have been explored, that there is access to fair procedures for refugee status determination and visa options and that there is respect for the principle of non-refoulement.

In terms of Australia there have been significant improvements regarding monitoring of detention. In 2005 the Committee on the Rights of the Child stated that there was no regular system of independent monitoring of detention conditions in Australia[12], however since then there has been the development of a formal Immigration Ombudsman with a detention mandate, a strengthening of the Human Rights and Equal Opportunity Commission (HREOC) monitoring of complaints and conditions, as well as the existing work of the Immigration Detention Advisory Group and Immigration Detention Health Advisory Group.

The IDC however believes that monitoring of detention to ensure the rights, security and welfare of detainees are recognized and protected in accordance with international standards, needs ideally to be a mix of international and domestic mechanisms. It is thus vital that the Australian Government accedes to the Optional Protocol of the Convention Against Torture (OPCAT), which demands the development of a system-wide, functioning national preventative mechanisms for detainees, with the principle of unhindered visits to all detainees without distinction. We also believe that greater access to places of detention by NGOs and welfare groups is required.

Recommendations:

- A legislative and detention policy framework be developed in accordance with UNHCR guidelines in relation to purpose, length, review, release and rights of immigration detainees
- A detention review process be developed that is independent and which incorporates an administrative and judicial process
- Australia should accede to the Optional Protocol of the Convention Against Torture (OPCAT)
- Voluntary return options to be extended to detainees, based on an assessment that individuals who pose minimal risks can be made lawful for the basis of departure.
- Risk assessment tools and the case management model to be further resourced and developed.

3. Alternatives to detention

Alternatives to detention in Australia have been developing since the August 2001 introduction of the residential Housing Project in Woomera, based on the Swedish concept of group homes which Minister Ruddock visited earlier that year. Since that time a range of alternatives have been developed.

With the introduction of the Migration Series Instruction (MSI) 371 on Alternative Places of Detention (APD) in December 2002, the concept of Alternative Places of Detention was developed, whereby a person could be detained outside a detention facility held by a 'designated' person. These arrangements included staff of schools, hospitals and community

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12 http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(4341200FE1255EFC59DB7A1770C1D0A5)~right-of-child.pdf/$file/right-of-child.pdf

agencies taking on the designated role. These arrangements were superseded by legislative change in 2005 under Section 197AB, whereby under the concept 'Residence Determination', the Minister had the discretion to determine any place to be a place of detention. This was the arrangement by which children and family were released in late 2005 under the care of the Australian Red Cross, which has worked successfully since that period, and is now called 'Community Detention'.

In addition, there has been the development of low security detention facilities such as Immigration Transit Accommodation Centres and Immigration Residential Housing (IRH) for the management of short-term turn around cases and individuals with low security concerns and specialist needs.

The development of the Community Care Pilot (CCP) has seen a further enhancement of alternatives to detention, and is in fact the most ideal model of care and processing for asylum seekers and vulnerable individuals in the migration stream in Australia. The CCP is unique as it is a comprehensive early intervention model, aimed at DIAC overseeing complex cases through their Case Management system, while utilising the Australian Red Cross for welfare assistance in the community (social work, housing, living assistance etc), legal assistance through the Immigration Advice and Application Assistance Scheme (IAAAS) scheme and voluntary return advice and assistance through the International Organisation for Migration. This concept of care is similar to that provided in Sweden under the broader reception policy model of community-based holistic care to asylum seekers awaiting an immigration outcome.

Although initially developed to assist DIAC manage and support early-identified complex community cases through their immigration pathway, it has increasingly been used to manage long-term complex cases, including a number of cases released from detention into the care of the pilot. Despite the complexities of cases referred, there have been overall positive outcomes in relation to improved:

- Client health and welfare
- Improved settlement outcomes for approved cases
- Low levels of absconding
- Increased voluntary return outcomes for refused cases, and
- Lower cost than detention.

3.1 Concerns regarding use of current alternatives

While the IDC welcomes any move to use alternatives to detention, there are a range of concerns about current practice in Australia, including:

- Concern has been raised about the long-term use of IRHs, including for families with children and individuals with health issues, where community-alternatives would have been more appropriate. These arrangements raise a number of concerns around isolation and access for this group to health-care, recreation and other supports available in either community care or detention facilities.
- While a number of new alternatives to detention have developed since 2005, the Department continues to use old forms of alternatives to detention for prolonged periods, defined by the Migration Series Instructions 371 drafted in 2002. This includes people being detained in motel rooms with GSL guards outside, or being transferred into the care of a 'designated' person under Alternative Places of Detention.
- In addition, community groups and family members have found the requirements under MSI 371 to be both a 'designated' person who is in effect detaining the individual, as well as providing a care-giving role, to be onerous and difficult to implement, particularly for individuals with mental health concerns.
- The prolonged separation of family units with one parent detained in immigration detention. The separated parent's ability to undertake their basic parental role and responsibilities for the upbringing and development of their child is limited as a result of the separation, and it is well documented that interrupted bonding between a child and parent can have significant negative and long-term health and wellbeing impacts on the child, and on the child-parent relationship. Additionally, the difficulties for the

partner remaining in the community as the primary carer for the child, are increased, as their capacity to best meet the needs of the child is limited as a consequence of the detention of the other parent.

- Concern continues that detainees have been released on Bridging Visa Es that deny the right to a Medicare and workrights. Individuals are on their own undertaking, or dependent on an assurance of support from a family member or friend. Invariably these arrangements have not been sustainable or adequately assessed as appropriate.
- While Community Detention (CD), otherwise known as Residence Determination, has been a positive alternative to detention policy, a number of concerns remain: 1) Individuals are still in detention experiencing extended periods of uncertainty with connected mental health implications, and for those with no visa options removal is the only option, no voluntary return options. 2) No flexibility to change residence address as one address is signed off by the Minister under the current process. This is particularly challenging for individuals transitioning from hospital facilities or from interstate.

3.2 Recommendations

(a) APDs and IDFs

14) Alternative Places of Detention and Immigration Residential Centres should be used as a last resort.
15) The development of alternative detention facilities such as residential housing projects and ITACs, have been an important transition from the previous practice of detaining all unauthorized arrivals and visa overstayers in IDCs. However, with the implementation of a case management model, a risk assessment procedure and structured release options like the CD and CCP, the use of medium and low security facilities is unnecessary. If individuals are low level risk, they should be released into the community.
16) If ITACS are to remain, they could potentially become open centres, as occurs in Europe and New Zealand.
17) The continued use of APD is a concern, particularly guards holding detainees in motel rooms. This practice should cease and the MSI 371 be revised to take into account residence determination and community care pilot developments.

(b) Detention Release Options

1) Community Detention, while a better option, should be used only where other community-based options are not possible.
2) If there are no health, character or public interest concerns, then Bridging Visa release options with Community Care Pilot-type support should be made available as the priority option.
3) Individuals released from detention should be granted the right to work, in order to self-sustain where possible, and which has the connected right to Medicare as a tax-payer.

(c) The needs of children and families

18) Whilst recognising the complexity and constraints of individual cases, IDC seeks that DIAC makes all considerations for reunification of the family unit in the best interests of the child.
19) IDC recommends that these cases are identified from the outset, and detention of one parent only occurs as a last resort. In the instances that this does occur, options for community detention or other placement options should be expedited to limit the impact on the children and whole family unit affected.
20) In terms of Christmas Island, we propose that families, unaccompanied minors and individuals with health issues to be transferred to the mainland under Community Detention arrangements.

4. Conclusion

The Immigration Detention Coalition welcomes the parliamentary inquiry into immigration detention in Australia. This submission has aimed to contribute to dialogue on a number of core areas to detention policy in Australia, such as length, criteria, rights, conditions and alternatives to detention. The accompanying two appendixes provided further information on the issues raised.

The 'Immigration Detention Values' statement recently released by the Government provides an important starting point to the implementation of a fair and humane detention policy in Australia. The IDC believes however that this statement needs to be followed by a clearly defined legislative and policy framework, aimed at developing mechanisms to review, oversee and transition detainees from detention, based on Australia's international obligations and UNHCR guidelines. In addition we believe it is vital that the Government and DIAC continue to dialogue with UNHCR, NGOs and welfare groups on any proposed changes.

Grant Mitchell
August 5th, 2008

Grant Mitchell, the Coordinator of the International Detention Coalition and author of this report, has been working extensively on detention issues in Sweden and Australia over the past 10 years, including work at the Swedish Immigration Department, Hotham Mission and the Australian Red Cross, and also as part of the Justice for Asylum Seeker Alliance and on the Board of the Refugee Council of Australia. This work has included service delivery to detainees, research, policy development and working closely with the Department of Immigration and Citizenship. In 2002 he received the Human Rights Award for Community Work (HREOC) for the work done by Hotham Mission in developing alternatives to detention.

Appendix 1

Asylum Seekers in Sweden

An integrated approach to reception, detention, determination, integration and return

Sweden received almost 16,000 asylum seekers in 2000, which per capita is roughly double the intake of Australia. Considering that up to 80% of asylum seekers arrive in Sweden with fake passports or with no documentation at all, the potential for problems and public concern is substantial.

Yet despite these large numbers Sweden has been successful in building a functioning reception process that allows for a just and humane treatment of asylum seekers while they await a decision, addresses national security concerns and effectively removes failed refugee-claimants. Sweden has also been successful in quickly integrating resettled refugees into society.

This has been achieved by implementing a comprehensive and well-planned reception, detention, return and integration system that is fundamentally based on clear government guidelines and stipulations on both enforcement of policy and of how asylum seekers are to be treated. As with most Swedish public policy formation, migration policy has been built on consultation between NGOs, academics, departments and government in order to allow for an adequate legal and social framework and implemented as a part of foreign affairs, security, trade and foreign aid policy. This paper aims to look at the policy and practice of Swedish Refugee Policy -*flyktingpolitik* - and aspects of Swedish Law behind these policies.

A background to immigration and refugee reception in Sweden

As late as the 1930s Sweden was primarily a country of emigration, with over 1 million people moving abroad since the mid-nineteenth century for economic, religious or political reasons. It was not until after World War 2 that the level of immigration increased, initially with the resettlement of Jewish refugees and until the early 1970s with labour migration primarily from Southern Europe and Finland.

Since the late 70s the majority of immigrants granted residence in Sweden have been of refugee or humanitarian background. Almost 11% of the population is foreign born, with the largest groups being from Finland, Iran, and the former Yugoslavia.13 The number of asylum seekers arriving in Sweden grew from 3,000 in 1980 to 30,000 in 1989, with large numbers of Chilean, Iranian and Africans being granted refugee status.14

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13 Country Reports on Human Rights Practices –2000, Released by the US Bureau of Democracy, Human Rights, and Labor, February 2001
14 Rystad, Lund Press, 1992

During the war in the Former Yugoslavia in the early 1990s up to 80,000 Bosnian refugees were arriving per year seeking asylum in Sweden. While numbers have certainly decreased since that time a significant number of asylum seekers from Iraq and the Former Yugoslavia continue to arrive in the region.

Sweden does not have a skilled migration program, nor does it have an extensive family migration program, though they allow for reunification of spouses, children and in certain cases parents. Sweden does take a small number of 'quota' refugees, based on UNHCR suggestions. This figure, between 600 and 1,800 places is the responsibility of the National Integration Board15. Sweden however does not have a set intake for refugee resettlement, as occurs in Australia. Instead they have opted for a flexible approach to both the numbers and the type of assistance that Sweden can provide, such as allocating funding at the disposal of the UNHCR. This was noted most clearly in their approach to both the Bosnian and Kosovar crises. Sweden received over 160, 000 Bosnian refugees in a relatively short space of time, with many needing to stay in gymnasiums, motels and with Swedish families. Sweden initially allowed for a temporary residence status for Bosnian refugees, but later granted them permanent residency.

Yet despite these relatively large numbers, there has been little public outcry and an overall positive portrayal of asylum seekers in the media. This general community support has been seen as a combination of the reality of there being a "war in Europe" and a continuation of the social consciousness for which Sweden was known in 1950s and 60s. While Sweden has had a great deal of empathy for those with genuine protection needs, there have been difficulties in implementing an adequate multicultural policy –*integrationspolitik*- and in addressing issues affecting long-term immigrants, such as discrimination in employment and housing.16

Since the early 1990s there has been an increase in neo-nazi and right wing movements against immigration both in Sweden and throughout Europe. A number of academics have cited an increase in racially motivated violence, including a number of murders, after the Swedish government placed harsh restrictions on refugee policy and spoke out on the issue in 1989. Since that time the government has been careful not to incite anger towards asylum seekers, particularly as a large number of the immigrant population have a refugee or humanitarian background.

The Treaty of Amsterdam, which came into effect May 1999, means that issues related to EU member states will be subject to a greater number of common rules on visa, asylum and immigration matters. Under Swedish leadership of the EU in the beginning of 2001, the Swedish government made concerted attempts to address the issue of xenophobia in Europe, which was noted in the Stockholm International Forum on the Holocaust in January. The Swedish government has also attempted to dissuade the EU from further restricting its refugee policies to the detriment of a humane approach, at the International Conference on the Reception and Integration of Resettled Refugees in April in Norrköping.17

Refugee Reception

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15 Migrationsverket's website: www.migrationsverket.se- 'Quota refugees'.
16 Grant Mitchell, "Obstacles to Swedish Immigrant Policy", Stockholm University, 1998
17 Regeringenkansliet's website: www.regeringen.se -Speeches - and the Integration Board's website: www.integrationsverket.se- Conferences and Seminars

The majority of asylum seekers in Sweden live freely in the wider community. A person has been immigration cleared and sought asylum is taken initially to the Carlslund Refugee Reception Centre. There they are signed into the centre and given a Caseworker –*handläggare* - whose job it is to explain the refugee determination process and their rights and entitlements while awaiting a decision. The caseworkers also ensure their asylum application is processed correctly and that interpreters and legal representation are sought if needed.

The Carlslund Refugee Reception Centre is in close proximity to the Arlanda International Airport on the outskirts of Stockholm. Within the Centre is a refugee medical centre, accommodation, a group home for unaccompanied minors, the Carlslund Detention Centre, as well as offices for the Migration Board.

All asylum seekers spend at least 2 weeks in Carlslund Reception Centre in order to complete the initial application and to assess any health or support needs. After that time an asylum seeker will be moved to one of Sweden's regional refugee centres while they await a decision. If the applicant has family or close friends in Sweden they can choose to live with them, which over half of all applicants do.

While Sweden does have a universal identifier or person card – *personkort* - this is not issued to asylum seekers, they instead receive a general identity card - *LMA*. Although it can be more difficult, it is possible to live, work, study and access services without either the LMA or person card. For example international students and EU citizens do not generally need these. If it is assessed that an asylum seeker's application will take more than four months to determine, as most do, then the applicant is entitled to work. All asylum seekers are offered free housing, but must provide for themselves if they have enough money. Emergency medical and dental procedures and prescriptions are provided at around AUD$10. All asylum seeker children receive the same medical coverage as Swedish children.

Regional refugee centres are essentially a number of flats and apartments in small communities close to a central office reception, which includes childcare and recreation facilities. Asylum seekers must visit the reception office at least monthly for their allowance, news on their application and need and risk assessment. Caseworkers are assigned to each asylum seeker by the Migration Board to make these assessments and to refer clients for medical care, counselling and other services. Caseworkers are also required to provide 'motivational counselling', preparing the asylum seeker for all possible immigration outcomes and to assess the risk of absconding on a negative decision. Asylum Seekers in urban areas need to visit their caseworker at the local Migration Board office. All asylum seekers awaiting a decision are encouraged to participate in some form of organized activity such as english or swedish lessons if they are not working.

The Swedish Refugee Determination Process.

People seeking asylum in Sweden need to approach either the Police or the Migration Board and submit an asylum application - *Conferral of Refugee Status* - which is completed at the Carlslund Reception Centre. If more information is required then they may be required to stay longer in Carlslund, or they may complete a verbal interview. Case Officers at the Migration Board's Asylum Unit make the decision as to whether a person has protection needs and requires residency in Sweden.

Under Swedish law, persons who are found not to be "convention" refugees under the 1951 Refugees Convention may also qualify for asylum under a category known

as ‘persons in need of protection’ -*skyddsbehövande*. This includes those that have left their native country and have good reason to fear capital punishment, torture; need protection due to war or an environmental disaster in their native country or fear persecution due to their gender or homosexuality. This group is often labelled ‘defacto refugees’, however people with other strong humanitarian grounds may also be granted permission to stay in Sweden, such as extreme illness or other compelling reasons.

From the initial application the Asylum Unit assesses if an applicant falls into either of these categories. If they do they will be generally be granted a permanent residence permit (PUT). Once granted a visa, the only difference between a convention refugee and a defacto refugee or humanitarian entrant is that non-convention entrants are required to pay back the approximately AUS$4000 loan for resettlement needs. Under certain circumstances a person may be granted a temporary, fixed-term permit, such as during the war in Kosovar when 3,700 people from the region were granted permission to remain in Sweden for 11 months under a Humanitarian Evacuation Programme.18

At this point the Asylum Unit may discover that a person has arrived with false documents. Following consultations with their Caseworker, a decision is made as to whether this person will be detained or if they will be required to report to the authorities one to three times per week. The Case Officer also needs to take into account the Dublin Convention whereby asylum seekers passing through another EU country on their way to Sweden may need to be sent back to the first country of asylum.

If the Asylum Unit find that the applicant does not have compelling protection needs, they may appeal within 21 days to an independent tribunal, the Aliens Appeals Board - *Utlänningsnämnden*. The majority of asylum seekers do appeal to the AAB, with a waiting period of up to 2 years. The AAB is made up of 2 tribunal members interviewing and making a decision on the case. In almost all cases legal representation is present. In certain circumstances an asylum seeker can make a second appeal to the AAB if they have new information about their case.19

There are few legal options for asylum seekers not in detention, with discretion being accorded to individuals in decision-making positions. In extreme cases the Migration Board and AAB can hand a decision over to the Swedish government. This is rare and usually in highly political cases or if there has been considerable public pressure.

Sweden’s two step refugee determination process is thus built on a thorough refugee screening process by the Migration Board and the Alien Appeal Board’s autonomous multi-member tribunal and the incorporation of a humanitarian element in the initial application.20

Return, Deportation and Voluntary Repatriation

After a final rejection by the AAB, an asylum seeker is expected to prepare to leave Sweden. The role of the caseworker by this point has been to preempt a

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18 UNHCR Asyl Nord No.11, 18 June 1999 and Migrationsverket’s website: Who can get asylum?
19 Utlänningsnämdenäs website: www.un.se -Flyktingförklaring och Resedokument
20 Migrationsverket’s website: Who can get asylum?

negative decision and prepare the refugee claimant for possible return through "motivational counselling". This includes exploring all possible immigration outcomes and how to cope with a negative decision and having to return to their homeland.

During motivational counselling applicants are given three options on a negative decision: voluntary repatriation, escort by caseworkers or being handed over to the police. The Migration Board provide certain incentives for those who voluntarily repatriate, such as some funds to help for resettlement, plus the cost of domestic travel within their country. Return travel is generally arranged by the caseworker and paid for by the Migration Board.

Failed refugee claimants who at this point are assessed by caseworkers to be at risk of absconding are detained until return is possible. In some cases travel arrangements have been made prior to informing and detaining the applicant, in order to ensure the length of time in detention is minimal. Only on rare occasions, and usually because a family member has previously absconded, will a parent be detained with the remaining family placed in a "group home" outside of the detention centre. Most people however are not detained and are given the option to arrange where and when they would like to travel. Their caseworker will often drive them to the airport to ensure they take the flight.

People that have already absconded, committed a criminal act or where it is believed that coercive measures may need to be employed are handed over to the police. They are held in immigration detention but all deportation arrangements are the responsibility of the Polices' Aliens Unit – *Utlännningsrotel*. Under Swedish law Police are not allowed to administer drugs during expulsions. They are however allowed to shackle a deportee. In most cases deportees tend to comply during a police escort out of the country, which usually entails plain clothed policemen sitting in the back of a plane with the deportee. In cases where the person may be at risk of violent behaviour, or where the pilot refuses to fly with the person on board for safety reasons, a plane may be charted and restraints used.21

Failed asylum seekers being escorted out of the country by caseworkers is usually not due to risk factors but for technical or medical reasons. It is often easier for asylum seekers with no travel documents but with proof of their homeland to be escorted to the border in order to negotiate entrance with border control. This is often the case with asylum seekers from South Asia, where it can take up to one year for passports to be issued.

Also the Schengen Agreement, which has removed border control and transit areas for member countries, means that asylum seekers whose flight stops within the region will often need to be escorted to ensure both that they can enter the country without a valid visa and also that they can continue on their outgoing flight. Caseworkers will often try to make arrangements for travel directly out of Schengen, such as through Moscow or they will notify the airport that an unescorted deportee will be arriving so they can ensure they take the outbound flight, in which case the deportee is handed over to the captain.

Implementing the Dublin convention has also proved difficult and expensive. Special agreements between Sweden and Germany have been introduced to help

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21 Telephone interview with Anna Wessel, Head of Voluntary Repatriation and Return, Migrationsverket (7/8/01)

return Iraqi nationals that have continued to Sweden to seek asylum because of their family reunion laws. However the most difficult aspect of repatriation is arranging for travel documents for those who arrived without legitimate documents. The Swedish Foreign Affairs Department has spent considerable time arranging repatriation agreements with countries like India, where it previously had been difficult to organise passports or adequate travel documents.

Some people who arrive without adequate documentation are turned around and deported within 72 hours of arrival after an on-arrival screening process. NGO's in Sweden have been critical of their lack of access to legal counsel. The Swedish Government has recently experimented with pilot programs at selected border crossings to provide expeditious legal assistance. Most of these are cases of persons who passed through or have asylum determinations pending in other EU countries.22

Sweden enforces up to 80% of deportation and return notices on failed asylum claims and overstayers. Between January to July 2001, 2,475 people returned voluntarily with assistance of the Migration Board and 588 people were handed to the police.23

Anna Wessel, who is in charge of the Migration Board's Voluntary Repatriation and Return Unit said that Sweden has a goal of "enforcing policy with the dignity of the applicant maintained". Ms Wessel says Sweden rarely has to resort to coercion when removing failed asylum seekers because of the effectiveness of the caseworker system. "Before the Migration Board took over responsibility for detention it was not unusual that you needed to use a lot of coercive measures to enforce a negative decision, to enforce an expulsion order, but these days that is extremely rare" she says. 24

Swedish Detention Law – *Aliens Act*

According to Swedish Immigration Law all asylum seekers who arrive in Sweden without documentation are detained until their identification has been investigated, taking usually from 2 weeks to 2 months. However the government has also stipulated that detention in Sweden shall only be employed if supervision is deemed inadequate. In practice this means that asylum seekers may be signed into the detention centre and subsequently released into the reception centre after an initial assessment. This is often the case for families, single women and unaccompanied youths.

There are three categories of detainees. Firstly ID or identification detention, allowing for aliens to be detained if their identity is unclear. This category can be held in detention for 2 weeks while their identification is being ascertained. This can be extended to a maximum of 2 months.25

The second category is investigation detention, where the right of the detainee to be released into the community is being investigated. This is generally when there are questionable aspects to the alien's identity and further investigation is needed, particularly if there is a possibility of national security being at risk if they are

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22 Country Reports on Human Rights Practices –2000, Released by the US Bureau of Democracy, Human Rights, and Labor, February 2001

23 Swedish Migration Board Statistics, August 2001

24 ABC's PM Interview with the Anna Wessel of the Swedish Migration Department, December 9, 2000.

25 All the above detention categories and requirements are listed in: Rikslagen (State Law) 1996:1379

released. This category can be held in detention for 2 months and extended to a maximum of 4 months. It can happen that a detainee will move from an ID to an Investigation category, meaning they can be held in detention up to 6 months. Identity investigations are undertaken by the Migration Board's Asylum Bureau with aid from the Foreign Affairs Department and the Police.

The third category is when the alien is in all probability to be deported shortly or that they will go into hiding if released. This is also for a maximum of 2 months, usually for the duration of the preparation of travel documents. In 1999 an Indian national was held in detention for almost 8 months as he arrived without documentation and was held on each of the categories and was to be deported. Since the Indian government was unwilling to provide travel documents for the client he was finally released into the Swedish community awaiting travel documents, as he could no longer be held in detention under Swedish law.

It is important to note that all detainees are aware of their rights in detention and the length of time they can be held in detention. All detainees have a right under Swedish law to appeal their being held in detention. They can appeal each category that they are held on, firstly to the Local Court and then to the Alien Appeals Board. Asylum Seekers are kept in detention only for the period of time it takes to ascertain their identities, not for the duration of their asylum procedure. The average stay in a Swedish detention centre is 47 days. Once released they are placed in the Carlslund Refugee Reception Centre.

The authority which decides if a person will be detained depends on where their case is at the time. Deciding authorities are the Police, the Alien Appeals Board and the Migration Board. The Government can overrule any detention decisions. The deciding authority needs to be informed of any decisions pertaining to the client or if they are to be transported. The Migration Board also has the right to negotiate with another deciding authority as to whether the person shall remain detained or not. In cases of detention longer than four or five months the Migration Board will often interview the client and assess the feasibility of releasing them under compliance. This information obtained will be used in negotiations with the deciding authorities, which in some cases can be taken to the local court.

In cases where the supervisor deems a detainee a possible threat to other detainees or staff or in cases of violence, the police will be called and the detainee will be placed in a holding cell or prison. While solitary confinement was never used at the Carlslund detention centre, it is allowed under Swedish law in extreme cases of violence. It is also required by law that a doctor examines anybody placed in solitary confinement as soon a possible.26 In most cases however the police are called and they deal with the matter. A detainee may also be held in a holding cell if the detention centre is full. The deciding authority needs to make that decision and it can only be until a room if available at one of the four detention centres.

Under Swedish law, no child under 18 years shall be held in detention for more than 3 days. In extreme circumstances this can be extended to 6 days.27 The period January 1999 to January 2000 there were approximately 20 children held in the Carlslund detention centre, most of whom were released after 2 days, none were held in the detention more than 4 days.

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26 Rikslagen 22: 1997:432

27 An amendment was made in 1996 changing the rules for children in detention from 16 to 18 years. Immigration and Refugee Policy, Ministry of Foreign Affairs, 1997, page 29

If an unaccompanied minor arrives in Sweden they are taken directly to a supervised group home run by the Migration Board and Child Social Services. If a family arrives without documentation or if the family is about to be deported, in many cases they are released into family accommodation at the Carlslund Refugee Reception Centre under compliance, reporting twice weekly to the Department.

However in cases where the threat to national security is unknown, where their identity cannot be ascertained or where authorities are unwilling for their release, one parent is held in detention, while the other parent and children are released into group homes outside of the detention centre, with the possibility to visit remaining parent during the day. The family is first signed into the detention centre and informed of their rights, including the right to appeal and the detention procedure in relation to children and the family. The Migration Board assures the parents that their case will be of utmost priority and that they will be regularly informed of the state of their case. It is important that the family is reassured that they will have visitation rights and regular telephone access.

Asylum Seekers living in group homes are free to move around the community, however there is normally some supervision to ensure access to information, legal advice, counselling, recreation and services. All who live in the homes are involved in food preparation. There are also regular group meetings with consensus deciding all issues. Telephone translators are available whenever required.

Detention History

Prior to 1997 the Swedish Federal Police were primarily responsible for all detention and a number of immigration issues in Sweden. The Police managed the centres, but hired private security contractors to ensure the daily operation of the centre. There was much media attention prior to that time given to the hard nature of the detention centres, the number of suicide attempts and hunger strikes. Human rights watchdogs criticised the lack of knowledge and experience of contractors in their work with asylum seekers and also the lack of transparency in management of the centres. The Police were criticised for incidents of forced and occasional violent deportations.28

Problems related to detention centres in Sweden were discussed both within the department and by government and media, with press coverage of breakout attempts, hunger strikes and protests. One hostage incident in particular which received coverage was of detainees about to be deported, who held a guard captive with a knife before escaping.

Due to governmental concern over the running of the centres an inquiry into detention and deportation procedures was conducted in 1996. The Swedish government wanted to investigate the relinquishment of authority to the Migration Board and the possible role of humanitarian NGOs. Researchers and experts from various disciplines were asked to contribute to the inquiry.29 A considerable amount of money was invested by the Swedish government at that time into external research in immigration and refugee policy.

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28 Polisen kommer oanmäld (The police come unanounced), Jean-Luc Martin, UR Artikel 14 nr 4/97
29 Immigration and Refugee Policy, Ministry of Foreign Affairs, 1997, page 30-31

Following the recommendations of the inquiry, on October 1st, 1997 the Swedish Parliament's new policy on detention came into effect, handing all authority of running the detention centres over to the Migration Board, who's role it was to create a more civil, culturally sensitive and open detention policy. The Government made clear however that the aim was still one of enforcement of policy and that detention centres were a necessity in order to verify aliens' identities before releasing them into society and in order to realise deportations effectively. It was noted that a detainee's civil-rights should not be limited more than necessary and their treatment should reflect that they are not criminals. They were to be guaranteed contact with the outside world, transparency in management, freedom of information and any further restrictions on their movements, such as searches for dangerous objects, could be appealed to the local administrative board.30

During the change from the Police to the Migration Board, NGOs were asked to contribute to discussions of the new procedures of the detention centres and to have an active presence at the detention centres with a number of Forums being organised. FARR - the Refugee Group and Asylum Committee's National Council - was active in its involvement in policy restructuring.

Swedish Detention Practices

There are 4 detention centres in Sweden with Carlslund detention centre being the largest, holding a maximum of 50 detainees at one time but totalling in hundreds per year with its high turnover of detainees and its close proximity to Arlanda International Airport on the outskirts of Stockholm. There are no barbed wire fences surrounding the detention centre. It is a building similar to those around it; a refugee reception centre, a group home, a medical centre. It is however fitted with special locks and alarms, with the detainees only being given access to the inner part of the building.

In the centre of the building is a small yard used for soccer and volleyball. Detainees share their rooms and have their own keys to their room. Each room consists of a number of beds, a chest of drawers, a window and a tape player and radio. Rooms for women and families also included a bathroom. The communal areas of the building include a games room, mess hall, computer and TV rooms, bathrooms, laundry and library. The kitchen is generally locked up but access is given to clients wanting to use the kitchen. All knives are locked up to reduce the incidence of suicide attempts. In the basement are interview rooms, the nurses room and a gym, which can only be used under supervision. The reception area is open to both clients and visitors, but the offices are in another inaccessible area. There are 2 visitors rooms and a waiting room, with visitors welcome from 9am until 4pm, normally at a maximum of one hour per visit, however longer for visiting children or if the person is to be deported.

Security measures include no cigarette lighters or metal objects being allowed and the use of a metal detector after every visit. Only disposable razors are allowed. In some cases a body search is used, in which case a consent form needs to be filled in. Periodically room searches are undertaken. All staff have both an alarm and a walkie talkie on them at all times. Since the Migration Board took over the running of the centres the aim has been towards a more transparent management of the

30 ABC radio interview with Anna Wessel, former head of SIV detention (PM- 19/12/00)

detention centre, with NGOS and their representatives being given access and input. There is a very open policy regarding the media, with detainees deciding themselves if they want to speak to the media.

The Migration Board chose to implement a system of caseworkers, who though mindful of security, are not guards. They are social workers, counsellors and people with experience working in closed institutions, bringing sensitivity and experience to their work with the asylum seekers. A detainee will have the same caseworker for the duration of their stay in detention, whose primary role is to inform detainees of their legal rights and ensure these rights are upheld, to inform them of the state of their asylum case and appeal possibilities, as well as to prepare the detainee for all possible immigration outcomes. Other duties included ensuring they have access to a lawyer, that family members are informed that they are being held in detention, the granting of financial support if permitted in their case, initial mediation between lawyer and client and preparing their asylum application. Specific departmental training is given in conflict prevention and motivational counselling. There are weekly meeting where detainees can present any grievances they have and make suggestions.

There tends to be a multidisciplinary approach to casework, with a great deal of scope allowed for dealing with the needs of clients properly. Caseworkers work in shift covering 24 hours a day and have regular access to clients. The department attempts to ensure the client is coping well while in detention. Thus much of the work of caseworkers is to placate distressed and anxious detainees using a number of alternatives:
- Allowing clients to call family in their home country for a limited time
- Arranging visits by the Red Cross or other organisations
- Arranging for a psychologist or a trauma counsellor to see the client
- Allowing extended visitation times for families and friends
- Ensuring that there are adequate recreational activities available for the client
- In extreme cases where the client is not coping well or is sick and with the supervisor's permission, two caseworkers will take the client for a trip or a walk outside of the detention centre.

Detainees are made to be made to feel active in their case, by having access to media and internet to research their case and to be able to contact NGOs for advice. By doing all of the above detainees feel they are given a fair hearing, are empowered and tend to comply with decisions, removing the need for the coercive measures previously used by police and the security company.

Also as the detention centre holds both men and women, staff are trained in gender based issues, such as that a male caseworker may not conduct a body search of a female detainee. Cultural considerations included never tolerating discrimination or racist remarks between clients, as it is against the law in Sweden. If a client is racist towards another client they are spoken to by their caseworker and given a warning. If it happens again they can be charged and in most cases are transferred to another detention centre. This has been a common practice between centres, that if someone is not fitting in well at one centre they may be transferred.

In cases of extreme depression where staff are concerned the client may attempt suicide or where they have stated that they will, clients are either taken directly to the psychiatric emergency ward or caseworkers are stationed in the client's room in shifts throughout the night. A mental health professional will speak with

them during the day and often they will be prescribed anti-depressants. The use of anti-depressants is somewhat common in the detention centre. At the end of the shift there was a debriefing, giving staff an opportunity to go through the events of the day. In the case of an incident occurring, usually a suicide attempt, the staff on duty were given counselling and called a number of times in the next few days to see how they were coping.

Lessons from the Swedish approach to asylum seekers

While there are many differences in Australian and Swedish experience and history of refugees and asylum seekers there are still many lessons that can be learned. The problem's facing Sweden's detention centres prior to 1997 bear a marked resemblance to those currently facing Australia.

Many of these problems, including riots, mass hunger strikes and worker safety have been addressed due to comprehensive changes by the Swedish government following an inquiry in 1997. The changes included:

- The removal of private contractors and the police from the detention centres
- Dividing detention into 3 categories: initial health, security and health checks; investigation; and for realising return for individuals at high risk of absconding.
- Implementing a caseworker system aimed at need and risk assessment and preparing detainees for all immigration outcomes
- Increasing transparency in management and operation, with centres to be run more like closed institutions than prisons.
- Ensuring all staff are trained to work with asylum seekers and show appropriate cultural and gender sensitivity and respect to all detainees.
- Increasing access for NGOs, clergy, researchers, counsellors and the media.
- Allowing for freedom of information, such as access to internet, NGOs and the option to speak to the media
- Ensuring legal counsel and the right to appeal is available
- Ensuring no children are held in detention for extended periods and removing families as soon as possible.

Sweden's integrated approach to detention and reception has been aided by the implementation of the caseworker system which has helped bureaucratic decision-makers to make informed decisions as to whether detention or reception is required and has ensured that clients are prepared for either return or settlement. The system of release into the community after initial checks has brought about a significant reduction of tax payer's money and public outcry and has not lead to large numbers of asylum seekers absconding.

If an asylum seeker living in the community is assessed at being a high risk to abscond just prior to receiving a final decision they will be placed in detention. The caseworker system has also encouraged failed refugee claimants in Sweden to comply and return after a final decision in a number of ways:

- By providing 'motivational counselling', including coping with a decision and preparation to return
- Providing three options to asylum seekers: voluntary repatriation; escort by caseworkers; or escort by police.
- Providing incentives for those who chose to voluntarily repatriate, including allowing time to find a third country of resettlement, paying for return flights, including domestic travel and allowing for some funds for resettlement.

The Swedish refugee determination process has also been successful in reducing the appeal time and the need for asylum seekers to access the courts. This has been achieved by:

- The incorporation of a humanitarian and 'other protection needs' category at the initial
  decision-making stage.
- Allowing for an independent multi-member tribunal to review the initial decision on both 'convention' and other grounds.
- Ensuring all asylum seekers are represented by legal counsel all both stages of the refugee determination process.

Probably the most important lesson to be learned from the Swedish experience is that a healthy migration policy is not based on deterrence or on restrictive policies or visas but allows for an expeditious refugee determination process and effectively realises settlement or return. It is a system based on treating asylum seekers humanely and with a uniformity of rights and entitlements irrespective of the means of arrival, allowing for the best possible outcome for both those seeking asylum and for the wider community.

Conclusion

Swedish Refugee and Migration Policy has been through a number of changes in the past 20 years, most recently being the division of immigration and settlement policies into two different departments – *Migration Board and Integration Board*. Simultaneously certain immigration responsibilities have been handed over to the Migration Board from the Federal Police, including detention practices. Since 1996 the Swedish government has implemented a number of changes to create a refugee policy that provides a legal and social framework for a humane and integrated approach to reception, detention, determination, integration and return.

Certain minimum standards in detention and return procedures have been established which are undeniably rooted in the state's consciousness of fundamental universal rights for all within the nation-state. Swedish law states that all who are held in detention shall be treated humanely with their dignity respected.31 People smuggling and the risk of asylum seekers absconding, while taken seriously, are not overemphasised, nor is detention used as a deterrent. Detention however is used in the initial period to determine the identity of those that have sought asylum without identification, for investigation and to realise return. This however must be done with sensitivity and with civil-rights not being infringed upon beyond freedom of movement.

This is not to say that Sweden is a "soft touch" country in regard to detention or deportation issues. Enforcement of policy is a serious concern for the Government and the Migration Board, with Sweden having the highest level of returns on negative decisions in Europe, at over 80%. Major incidents of violence, riots and mass hunger strikes have not occurred since the Migration Board took over detention centres in 1997 and introduced changes to policy and practice. The incidence of suicide attempts has also decreased and there has been little animosity between staff and detainees. There has proven to be a high level of compliance with decisions with very few asylum seekers absconding under supervision. A system of release into the community, after initial health and

31 Rikslagen 18: 1997:432

security checks, has brought significant reduction in the use of tax payers' money and in public outcry. Sweden now has the lowest levels of illegal immigrants living in the community in Europe, with research showing that resettled refugees integrate quickly into the community with no increase in levels of welfare dependency or crime.[32]

An integrated, humane approach to refugee policy leads to less animosity and fewer problems in detention centres and a safer working environment. It helps to effectively enforce expulsion orders and more importantly helps those granted refugee status and residency to integrate more quickly into society. The link between immigration and settlement is taken seriously in Sweden, with the way individuals are treated during the immigration process directly related to how they adjust and settle into the new country.

The key to the success of Sweden's integrated approach is its streamlined refugee determination process and its caseworker system, which oversees an asylum seekers journey throughout both reception and detention and onwards to either return or settlement. It is a system based on informing and empowering the asylum seeker and a clear understanding that the asylum seeker experience cannot be bureaucratically controlled and planned but demands flexibility and compassion.[33]

Grant Mitchell, August, 2001

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32 Österberg, T: Economic Perspectives on immigrants and Intergenerational Transmissions, Handelshögskolan, Göteborgsuniversitet, 2000

33 Much of the research for this paper was based on first-hand experience at the Carlslund detention centre.