

SUBMISSION TO SENATE COMMITTEE INQUIRY INTO DETENTION

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My particular concern is the determination process which I see as significantly flawed, particularly in the way in which apparent 'inconsistencies' in an asylum seeker's case cast doubts on their credibility and then contribute to their application for refugee status being rejected, a decision which is very difficult to challenge.

As a person who has been a regular visitor to Baxter, and a volunteer in two organizations assisting asylum seekers and refugees, I have come to know at least 40 people from Iraq, Iran and Afghanistan who have sought refuge in Australia in the last 5 years. While I only know the detailed story of a few people, I know enough of others' cases to say that there are many similarities.

Some reasons for apparent 'inconsistencies' in asylum seekers' cases

- Interviews and decision are made relatively soon after the arrival of asylum seekers when their English is very limited. Even with the use of interpreters (not always actually present and unfortunately, not always neutral) the process is not conducive to clear and accurate statements of their claims.
- Tapes and transcripts of interviews show that the inquisitorial approach often adopted by interviewers is not helpful in eliciting accurate information.
- Already traumatised by the experiences which led to their leaving their country, their journey to Australia and subsequent detention, this approach compounds their stress and language difficulties, and leads more to confusion than clarification.
- Coming from repressive regimes, asylum seekers are understandably very wary of speaking freely to government authorities. eg 'This interview is being taped. Will it be sent back to my country?'
- Fear for the safety of their families is a very significant reason why applicants often do not tell their full story at a first or even second interview. Often it is an unfolding story with the full facts gradually being told. All too often this is seen as being 'inconsistent' and so casts doubts on their credibility.
- Then too, applicants may have been advised by the people smugglers to 'say nothing'. In some cases, people were told to 'be brief' in their first interview. 'There will be other opportunities later'. Negative decisions are made apparently on the basis that they had not told their full story at these early interviews.

From two actual cases:

1. In 2000, shortly after his arrival, when asked why he left Iran, Mr A was told by the interpreter at the time that he should keep his answers brief and that he would get a better opportunity to explain his problems later. Mr A was unsure of the system and worried about information getting back to Iranian authorities and consequently in his first interview he did not go into detail about why he fled Iran and he specifically did not give any information about his political activities.

6 months later he applied for a protection visa and in that interview with the primary decision maker Mr A made a full and frank disclosure about his political activities in Iran. Unfortunately because of the different information at the two interviews, his application for a protection visa was refused.

2. Mr M's extended family owned land which was confiscated by the Iranian government. Already known by the authorities for his protests against this, he fled the country when an armed attack was planned.

Because he did not speak of this attack until his third interview, the RRT member noted the inconsistencies of his claims and rejected 'the applicant's claims to have been involved in an altercation over land and [found] that this claim has been provided solely to give strength to an otherwise weak set of claims.' A negative decision followed.

But Mr M was understandably reticent to disclose his full story until he had first contacted his family to find out if the attack had actually taken place and if his family was safe. He was unable to until after his first two interviews because he was kept with new arrivals in a separate section of the detention centre and had no access to phones.

Three further issues are of concern in the determination process.

- Country information supplied by Australian government departments is often at variance with that supplied by Human Rights Groups
- Interviewers and Members of the Refugee Review Tribunal are all employed by DIMIA which does not encourage the process to be objective, independent or transparent.
- Of particular concern is that decisions made in the process are so difficult to challenge for subsequent court proceedings cannot re-examine the facts of the case, only if due legal processes have been allowed.

I welcome very much the changes that have recently been made as a result of the efforts of Petro Georgiou and his colleagues. It is imperative that the determination process be more open to independent and frequent review.

Thank you for this opportunity,
Yours sincerely

M.E.Flenley

For the last 2 years or more I have regularly writing to a young man from Iran in Baxter and for the past 15 months I have been able to visit him nearly every month. Through this contact and through writing a submission for a 417/48b to the Minister at his request, I have come to know his case well.

Since he is currently still in Baxter after 4½ years in detention but likely to be released soon, only on a Removal Pending Bridging visa I prefer his identity and story to remain confidential until he has greater security - at least a TPV.