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Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Administration and operation of the Migration Act 1958

WEDNESDAY, 28 SEPTEMBER 2005

SYDNEY

BY AUTHORITY OF THE SENATE

SENATE
LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Wednesday, 28 September 2005

Members: Senator Crossin (*Chair*), Senator Fierravanti-Wells (*Deputy Chair*), Senators Bartlett, Joyce, Kirk and Ludwig

Substitute members: Senator Parry for Senator Fierravanti-Wells

Participating members: Senators Abetz, Barnett, Mark Bishop, Brandis, Bob Brown, George Campbell, Carr, Chapman, Colbeck, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Humphries, Lightfoot, Lundy, Mason, McGauran, Milne, Murray, Nettle, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Trood and Watson

Senators in attendance: Senators Crossin, Kirk, Nettle and Parry

Terms of reference for the inquiry:

To inquire into and report on:

- the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
- the outsourcing of management and service provision at immigration detention centres; and
- any related matters.

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BRITT, Sister Mary Eveleen, Volunteer Researcher, Edmund Rice Centre**LEAVEY, Sister Margaret Carmel, Volunteer Researcher, Edmund Rice Centre**

CHAIR—I welcome our next witnesses, from the Edmund Rice Centre. We have received your submission and numbered it 151. Are there any amendments or alterations you would like to make to that submission?

Sister Leavey—There is one minor alteration to page 6. Question 4 should read not ‘detention policies’ but ‘deportation policies’.

CHAIR—I invite you to make an opening statement, and then we will go to questions.

Sister Leavey—I would like to thank you, first of all, for the opportunity to make this submission. The Edmund Rice Centre project began in September 2002, when we were able to assemble some volunteer researchers and a number of interviewers. The original question of the project was ‘What is happening to Australia’s deported asylum seekers?’, and we were prompted at that stage by our contact with a number of rejected asylum seekers, especially in Africa and Iraq. The aims of the project from the beginning were to record as accurately and as professionally as possible the record for Australian history. But, at the same time, we had two major concerns: (1) that we would preserve the safety of the asylum seekers and respect their anonymity and confidentiality as promised in the interview schedule, which is at the back of the report that you have; and (2) that we would maintain with the Department of Immigration and Multicultural and Indigenous Affairs a cordial, cooperative, ‘dialogical’ and non-adversarial approach, because of the stringent ethical requirement of the Edmund Rice Centre. This was in accordance with their mission statement.

The original question, as I have said, was: what has happened to Australia’s rejected asylum seekers? This original question spanned out into five questions. The first was: has the Australian government or its agencies sent rejected asylum seekers to places of danger? ‘Places of danger’ means that the respondents have no proper identity papers, they are in prison, they are subject to torture, they are unable to work, they have to live in hiding, they fear persecution because of religion or ethnicity, they are in a war zone or they are subject to threats from police. The second question was: has Australia or its agencies increased the dangers to rejected asylum seekers by sending incriminating evidence about them to overseas authorities? The third question was: in managing removals, has the Australian government or its agencies encouraged asylum seekers to obtain false papers and become associated with corruption? The fourth question was: is the manner of conducting asylum seeker removals consistent with Australia’s legal obligations? And the fifth question was: is the manner of conducting asylum seeker removals consistent with Australia’s traditional values?

The answer to the first three questions is an overwhelming yes: Australia has deported people to danger, it has increased the dangers to asylum seekers by sending incriminating evidence and it or its agencies have become involved with false papers and corruption. The evidence in the report for the answers to the first question is from page 26 onwards. The answers to the second question are on page 37 onwards. The answers to the third question are on page 38. The answers

to the fourth question are on page 40 onwards, and the fifth question is on page 46 onwards. Our evidence shows that the Australian government or its agencies—such as ACM, GSL, IOM and especially P&I—have sent or attempted to send people to dangerous places. At the back of our submission to you there is a two-page table. In that, there is an account of all the 40 interviews that we undertook.

On the three codes there—S, NS and S?—a person is deemed to be safe when they have proper identity papers, they are free and they are able to work. They may be not safe, as I have indicated already. They are in a doubtful situation if they are in an immigration detention centre, if they are applying for refugee status in a First World country, if they are worried about their safety because of their past political activity or having to bribe police to maintain safety on a tourist visa. So we have those three codes. Then we have a special code for Nauru, where some people were deported from Christmas Island. Researchers have coded Nauru as not safe—as a place dangerous to the psychological health of detainees because of reports we have of isolation, lack of access to lawyers, flawed translations of interpreters, extreme heat, insufficient fresh water and pressure on them to return to Afghanistan with threats of chemical injection.

In the table here we can say that 35 of the people were in danger immediately on arrival in the country. The evidence is quite overwhelming for that. But of the five who were safe, two were able to resist deportation altogether through the intervention of friends. One was a Zimbabwean man whose father had founded, with others, the Movement for Democratic Change, and he had seen his father murdered. Yet, after two years in this country—at five o'clock at the end of two years—he received notice from Canberra that they had a fortnight to leave country and to return to Zimbabwe. He was able to get a visa through friends who got him to New Zealand, and he has now applied for protection in New Zealand.

The other man was an Iraqi man whose grandfather had been found in a mass grave because of his opposition to the Baath Party. He was threatened with deportation as well, and he was able to get a visa. The other three who were safe on arrival were not safe after arrival. When we say that five are safe, in fact none of them are safe all the time, either on arrival or after arrival. So it is not even as good an outcome as sometimes the press has reported.

As well as this we looked briefly at the processing and assessment of the claims for visas. Our project found evidence of professional incompetence of department of immigration officials and immigration detention staff. There was a profound recognition of the lottery aspect of the RRT decisions—and there are some very moving accounts of this in the study. There are also profound examples of the limitations of the RRT and the ignorance and misinformation about conditions in Afghanistan, Iraq, Iran, Zimbabwe, Sri Lanka, et cetera. The countries we chose to send our interviewers to were countries of high risk. We interviewed people from 11 countries, including Angola, Rwanda, Nigeria, Zimbabwe, the Congo, the Sudan, Afghanistan, Iraq, Iran and Sri Lanka. In all of these we have accurate information.

With regard to our relationship with the department of immigration, we have maintained fairly good relationships, despite the fact that the present minister suggested to the *Age* that we have unsubstantiated allegations masquerading as fact. That is not the opinion of the middle management of the department of immigration, with whom over the years we have had cordial and cooperative relationships.

Finally, with regard to detention, our study found evidence of harsh and demeaning conditions with the punitive use of isolation. We found the treatment of asylum seekers as prisoners and the use of handcuffs. We found carelessness in the loss of crucial documents, which really put asylum seekers in great hazard. We found threats and use of chemical injections, we found lack of adequate health care and we found long-term physical and psychological effects of detention, especially with 10 people of the 40 that we are now in contact with. I will now hand over to Sister Britt.

Sister Britt—I would like to make some initial remarks about the refugee policy and its implementation, which create the context for the deportation experience. The current refugee policy appears to be dictated by a domestic political agenda and not by a recognition of universal fundamental human rights and the obligation to safeguard them. Some of the fundamental human rights enshrined in the Universal Declaration of Human Rights of 1948 have particular relevance to the situation of refugees and asylum seekers—for instance, the right to life, liberty and security of person; equality before the law; presumption of innocence; the right to nationality; and the right to seek asylum.

The people we interviewed fled from their homelands because one or more of those fundamental rights were denied them. They exercised their right to seek asylum in a country where they believed that their right to life, liberty and security of person would be respected. In fact, here they were not accorded presumption of innocence; they were taken into mandatory detention, where many of them endured physical and psychological hardship. They and their companions in detention were constantly denigrated by the government as being illegal, in contradiction of the UDHR and the refugee convention of 1951 and its protocol of 1967.

It seems to us that the Pacific solution and the excision of some Australian islands from the migration zone were strategies to prevent asylum seekers setting foot in Australia, where their claims on the government would have been stronger. The seven-day rule also tampered with the asylum seekers' rights, denying their right to protection here if they had not taken all possible steps to claim protection in some other country on their way to Australia—even if to do so had been, as it was for many of them, manifestly impossible.

I am afraid that I see these strategies as an abrogation of the government's responsibilities to not only asylum seekers but also the Australian people and the international community. I would say that unreviewable mandatory detention and the use of commercial companies in a situation demanding sensitive attention to human rights would attract the same criticism. People in our study did experience, while in detention, the deficiencies and abuses which have drawn severe, well-documented criticism from members of the legal and medical professions. That the government has chosen to disregard these first-hand professional reports is cause for both amazement and alarm. One wonders what it says about the values and standards the government expects from its institutions and its agents.

Some of the people we interviewed are stateless, and being stateless leaves people without recourse to establish even fundamental human rights. Australia has ratified the two conventions of 1954 and 1973 which attempted to rectify this human rights vacuum. The deportation of these people, however, would indicate that these conventions which address their specific needs and rights were not taken into account in assessing their claims.

I would like to raise the issue of accountability, because awareness of the Australian experiences of the people we interviewed and the reality of their situations really prompts this question. I submit that the government is responsible, and therefore accountable—not only for the policy but for its implementation at every level—for what happens in the RRT, which the government established to serve its purpose and whose sitting members it appoints. The government is accountable for what happens day to day in detention centres, where management and staff are its hired agents. It is also accountable for the quality of the processes by which appeals for asylum are assessed, which would include the qualifications, the appropriate experience and the skills of people who are appointed as sitting members of the RRT.

We have met people whose lives are in ruins after deportation. But, as some of them said in interviews about other aspects of their experience, Australia does not care. The issue of refoulement came up during the 2000 Senate inquiry, which recommended that a system of informal monitoring of the results of deportation be established to test whether we were in fact meeting our obligations to people seeking our protection. The principle of non-refoulement, which safeguards asylum seekers against being returned to the situation from which they fled, is part of customary international law, and it binds all states, even those who have not signed the conventions which Australia has signed and ratified. The disturbing question of refoulement is again raised by our research. Has Australia been engaged in refoulement in breach of international law? We believe, at least with regard to the 40 people we interviewed, that the government has a case to answer in relation to that principle. Our recommendations for reform of the current situation are included at the end of the submission. Should I leave you to find them, or would you like me to run through them?

CHAIR—No, we all have a copy of your submission and of the study. I will start with the study. On page 2 of the executive summary you say:

It is clear that the danger was exacerbated by documents issued under Australian authority.

You go on to say:

Some of this paperwork was confiscated on arrival or had a short expiry date. Some was declared to be false and of no use.

Are you suggesting there that documents issued under the Australian authority were in fact false?

Sister Leavey—Yes.

CHAIR—I am assuming DIMIA is the Australian authority you are referring to.

Sister Leavey—It is either DIMIA itself or the agent. For instance, P&I certainly issued the Angolan man, whose name we can now use—Matuse Calado, who was deported by P&I—with papers to the Congo, though he does not speak French and his family is not there. He was shrewd enough at Johannesburg to ask to see the Angolan ambassador, who determined that he was Angolan. But he had been given papers. Amnesty International could not say whether or not they were issued directly by DIMIA or whether DIMIA handed him over to P&I. That is certainly an example. There are other examples of a false passport, and there are photos of this in the book. There are a number of false papers.

CHAIR—So there are a number of instances where the Australian government, or agents on its behalf, deport people with documents that are false, of little relevance or of little benefit to the deportee?

Sister Leavey—That is right. If you look at the end of page 28, you will see that it is particularly true of the deportation of the stateless Bedoons, who were sent to Damascus. Their nationality was often given as Kuwaiti, but that, in fact, is not true. On page 29 are tickets to Kuwait purchased by the department of immigration in Canberra, and then there is a certificate which is valid only for one-way travel. The man to whom it was issued could not use it beyond about three weeks at the time he was there. So there is a good deal of evidence there. We have been careful. The Federal Police and the department of immigration have taken those papers and looked at them quite carefully, and negotiation is still going on about them. They confiscated the false passport but have since returned it.

CHAIR—You have raised this with the minister?

Sister Leavey—We raised it with the minister some years ago. It received a great deal of public press when the interim report came out in October 2003. It had worldwide coverage then. The 2004 interviews did not include anybody from Damascus.

CHAIR—What has been the response of the department and the minister to these revelations?

Sister Leavey—One would have to say that there has been a certain evasion and obfuscation. We were invited to Canberra after the final report was launched in Geneva in October last year. The members of the team who were in Geneva were invited to go to Canberra by one man from the department who said, ‘You must see X.’ When we got to Canberra and saw X, he said, ‘No, you should have been seeing Y.’ That was the man who recommended we see X. It was that kind of thing. When we got there, the five of us met five members of the department and a member of the Federal Police.

Sister Britt—On that occasion, the principal representative of the department had not read the report.

Sister Leavey—They had the report before it was launched in Geneva both in 2003 and 2004. It was part of our contract that we would always give the information to the department before it was launched publicly.

CHAIR—This is an astonishing claim. You have not had the minister say to you, ‘This is outrageous and I will immediately act upon it. Come in and have a cup of tea and we’ll talk about how I can improve the situation’?

Sister Leavey—No.

Sister Britt—No.

CHAIR—So you have been sent from pillar to post inside the department without it being addressed seriously. Is that what you are telling us?

Sister Leavey—Yes. We personally have not had to deal with the media on this issue, although we have had interviews. I was interviewed by the BBC World Service. The interviewer was very concerned about this issue. He said, ‘This is a criminal offence, Sister Leavey, that your government has committed.’ He was very concerned about the criminal offence but not at all concerned about the fact that we had put a man in an enormous amount of danger by giving him a false passport to start with and then returning him again on the same false passport. That received a great deal of world coverage in October 2003, but it has not really translated into a great deal of effective response. It has been the director of Edmund Rice who has had to deal with those questions. Our main responsibility has been with getting an accurate analysis of the 40 interviews.

CHAIR—You also put to us that, when you made these claims and got a lot of publicity, middle management within DIMIA agreed with your findings. Was that a private agreement with you? Was any letter sent to you about it?

Sister Leavey—No, it has always been in personal contacts with the director of the Edmund Rice Centre, Phil Glendenning. He would normally have been here today but he is in Dubai.

CHAIR—You are saying, though, that the minister has not agreed with your findings—that the minister has repudiated them publicly?

Sister Leavey—Yes.

CHAIR—Are you putting to us that we have a situation where middle managers in DIMIA would confer with you and tell you that there is an issue here—

Sister Britt—That seems to be the case.

CHAIR—but the minister does not have that view?

Sister Leavey—That is right. That is certainly the case. We have heard that again and again. As late as a couple of weeks ago there were two people from the department at the Edmund Rice Centre saying just that. They know that the Edmund Rice project is here to stay and that we support everything that is in this report as being accurate as far as we know from the reports of the people we interviewed.

CHAIR—I have to say you have taken my breath away. What do you believe is the situation now with people who are deported? We put them on a plane and there is no monitoring process whatsoever.

Sister Britt—No, there is no monitoring.

Sister Leavey—We should say though that the department of immigration, as well as the media, are very keen to interview the people that we interviewed. While we needed to substantiate what we have said, we are vulnerable in one sense: because we assured them of confidentiality, and anonymity if necessary, we could not give names and addresses. But we are now negotiating with the department, and certainly with the four people who have been granted

permanent asylum in other First World countries—one of whom was given permanent asylum within three months of being deported.

CHAIR—Which country was that?

Sister Leavey—One is the United Kingdom. One of the Bedoons from Kuwait is in Canada and the other two are in New Zealand.

CHAIR—So those people's claims were denied in this country, despite all the processes they went through. We put them on a plane and sent them somewhere, and they have found refugee status in another Commonwealth country. Is that what you are telling us?

Sister Leavey—That is right. There are still three others. We have not had reports that their permanent refugee status has been granted but we are expecting that it will be.

CHAIR—On Monday in Adelaide we heard that there were cultural problems in DIMIA—concealment and cover-up—that DIMIA only acted when they were threatened with any legal action and that the system was cumbersome, inefficient and ineffective. What is your response to that claim?

Sister Britt—I think our experience would suggest that that claim is accurate. There are examples even in the report of lack of knowledge and of ignorance, for instance, in the RRT. The RRT obviously is an agent of DIMIA. It is not always possible for us to know where a particular decision was made, whether by a public servant in DIMIA or at the RRT. Sometimes it is clear; sometimes it is not. Certainly, at least in anecdotal evidence, there is a suggestion that there is lack of knowledge in some cases actually in DIMIA and certainly in RRT.

Sister Leavey—But we also have the example of the simple denial that chemical injections have taken place.

CHAIR—In countries where people have been deported, you mean?

Sister Leavey—They have actually happened in Australia. It happened with an ex-ACM guard. On page 49 of our report, *Deported to danger*, there is a quite horrifying description of a chemical injection. The head of the department denied that this was true and said that, because this was not true, he doubted the credibility of the whole report. Yet it was obvious in the 2000 inquiry, *A sanctuary under review*, that the question had been raised about chemical injection and the reply is recorded in *Hansard* that the department is looking into this question. In fact, we have five recorded instances of people being chemically injected and yet the department, through a man who I could name, said that this did not happen.

CHAIR—Julian Burnside put to us in Melbourne yesterday that there was a deliberative government policy, he believed, of mistreating people as a means of deterring other people from behaving in a particular way. What is your response to that claim from Julian Burnside?

Sister Leavey—I would have to think fairly hard about that. I think it is possibly true, and I have heard Julian say that. The very punitive culture that exists in the department, in the immigration detention centres, would suggest that that is the case. We are relying on the reports

of very vulnerable people who have been deported. While we tried to substantiate as accurately as we could all the reports that they gave us, that is all the information that we have. We had opportunities to see them in the countries where they were deported, except in the obvious cases: we could not go to Baghdad and we could not interview directly the Afghans who were in hiding; we had to do those by email. But we were able to see the others and to hear their reports of the behaviour in the detention centres, and I think that would support what Julian says.

Sister Britt—On page 8 of the submission there is a quotation from one of the people that we interviewed about his deportation. He mentions his fear of the ACM boss. In visiting the detention centre, I have heard the same kind of comment made by other detainees about the cruelty of X or Y and the fact that the behaviour of staff deters other detainees from being anything but very compliant.

CHAIR—Canada's immigration system has a pre-removal risk assessment built into it. Do you think there should be some consideration given to Australia introducing such a scheme?

Sister Leavey—It is not a question that I have looked at seriously. Obviously we would look at any alternative arrangement for our rather draconian behaviours with regard to rejected asylum seekers. What is particularly disturbing to us and was most disturbing in the interviews is interviewing youngsters who came here at 16 as unaccompanied minors and who were broken. They had never been to school, they had never had a job and now they are just wandering the world looking for some other place. Two of them are in South Africa with thousands and thousands of other refugees, speaking with a different accent and in great danger. Anything that would allow some more serious account of the stories of the Rwandan lad and the Sudanese lad would obviously be a more just system. I am not totally aware of the Canadian system.

Sister Britt—At the mention of Canada, I was not exactly sure of your question. One of the suggestions that is made in the report and that has been made by others to improve our policy would be to introduce what is called 'complementary protection'. Complementary protection means taking account of the fact that the definition of 'refugee' in the 1951 convention was drawn up at that precise time after the Second World War to cope with a situation that existed then, and now there are reasons which are not specifically allowed for in that convention—serious reasons which make people in need of the protection that a refugee would be given but which do not fit the convention definition. Canada has apparently taken the line of a broader interpretation of the 1951 convention; we have taken a narrow one. The alternative that has been suggested is complementary protection, drawing up another set of circumstances, perhaps, which demand protection. We have heard that the European Union is looking at that as a possibility to improve the situation.

CHAIR—We have had the Senate inquiry's 2000 report *A Sanctuary under review* and the Palmer report. The National Audit Office has looked at the management of detention centres and this will be another report. Do you see any major changes occurring in the administration of this area?

Sister Leavey—We have been wondering how many reports are needed to show the inherent danger of what is happening with our whole detention policy. It seems to be totally impossible to convince the government—either side of government—about the legal obligations that they have undertaken, not to mention the humanitarian obligations that we have to other human beings. We

are not terribly confident that this inquiry will make any difference. In the end, it is about the people working at the grassroots level and the gradual change in the Australian community. I think there has been quite a dramatic change in the understanding of the issues. Once people have some idea of what is happening behind the razor wire and the detention centres, or what has happened to our rejected asylum seekers—once people know or come into contact with asylum seekers—their whole attitude changes. That has happened since we began this report, but I am not confident that even within the next five years great improvements will happen. Sister Britt, I do not know how you feel about that.

Sister Britt—The changes that have been introduced in recent months seem to be purely cosmetic. For instance, a great deal was made a couple of weeks ago about the minister snipping some wire at Villawood. We happened to be there that morning and we wondered exactly what was going to happen. We could see that some of the huge rolls of razor wire were going to be taken away. A week later, we went back. All the razor wire had gone from stage 2 and 3, but there was no attempt—or intention, apparently—to move it from stage 1. As well as that, in recent months a more comfortable shelter for visitors has been provided at Villawood, and some shelters, pathways and so on inside the detention centre have been arranged. When we went back a week after the snipping of the wire, we were able to just walk in instead of going through two locked gates before getting to the building you have to go through to be tagged, stamped and whatnot. But this makes no difference whatsoever to the people who are detained. It is improvements for the visitors.

Sister Leavey—It is cosmetic.

Sister Britt—It really makes no difference to what is happening on the other side of the wire. One of the big concerns that a lot of us have about this whole situation is not only what is happening to the detainees, the asylum seekers—and I realise of course that not all the people still in detention, at Villawood anyway, which is the centre I know, are, strictly speaking, asylum seekers—but what is happening to the Australian community, not just at the level of public opinion but at the government and higher public service level to standards of behaviour and the sorts of values that will build social capital, stability and harmony in the community. What is happening to us?

Amnesty International and STARTTS put on a conference some weeks ago, after those two remarkable academics at Deakin suggested that torture is all right sometimes. I understand that someone at Harvard was saying the same thing. That was a very interesting conference. I will quote for you only one thing: a question from the floor, after we heard what the philosophers had to say. The person from the floor said, ‘What has happened to us that this question could even be raised?’ That is the same sort of response that I would make: what has happened to us when we have been prepared to disregard the human needs and rights of so many people? Last year—it may have been earlier—Minister Ruddock publicly said, ‘What happens to people after they have left Australia is not our concern.’ It is my concern and it is the concern of thousands of Australians because it has to do with the way we have treated these people.

Robert Manne in *Quarterly Essay* No. 13 talked about the politics of indifference. Carmen Lawrence picked that up too in the correspondence section of that same issue. Indifference to the needs and rights of others is not a sign of a just civilization. At the end of the report itself we have made the statement that, if the human rights of one person—just one—are denied or

ignored, the human rights of all of us are put in jeopardy. There is cause for alarm about what is happening to Australia as well as what is happening to the people we have sent away or the people to whom we have denied protection.

Senator PARRY—I want to go back through the report and ask a couple of questions. The report was completed in 2004.

Sister Leavey—Yes.

Senator PARRY—Was there an interim report released prior to that 2004 report?

Sister Leavey—Yes, in 2003.

Senator PARRY—Has this report or the interim report been scrutinised by any other committee? Has anyone given evidence to any committee, authority or inquiry concerning the contents?

Sister Leavey—No.

Senator PARRY—So this is the first time that this report has had a public airing, if you like?

Sister Leavey—It was aired in Geneva, but we have not appeared before.

Senator PARRY—So the report has been tabled in other jurisdictions, either in this country or elsewhere?

Sister Leavey—It has not been tabled.

Senator PARRY—It has not been tabled here in Australia?

Sister Leavey—Copies were sent to parliamentarians in both 2003 and 2004, to the heads of the various political parties.

Senator PARRY—So it has been circulated, but the document has not been tested for accuracy or in any material way—it has just been circulated. Is that correct?

Sister Leavey—Yes.

Senator PARRY—Concerning the methodology in relation to the 40 people who were interviewed, how were the 40 selected?

Sister Leavey—We relied, first of all, on our knowledge as sisters of the Dominican order, which is a worldwide organisation. We had contacts which were quite useful in South Africa, Sri Lanka, Iraq, Pakistan and even Afghanistan. It was generally through refugee advocates who gave us a pool of names. We asked the advocates to contact them. We had to get written permission from everybody who took part in the study. I had a list of maybe 64 or 65 names to

start with. We were very lucky to get 41 interviews in the end. We have a further 10 interviews, but the situations were too dangerous for the people, so we did not even try to include them.

Senator PARRY—Can I just stop you there. I want to get this very clear, certainly in our minds, and on the record. The 65 names that were forwarded to you through your advocates in other countries, do you know if the advocates approached the people who became your interviewees or did they approach the advocates? Do you know which way that occurred?

Sister Leavey—I think it might vary from case to case. Regarding the cases that I knew of, when I was given the name of the Zimbabwean couple, for instance, their supporters in Australia asked them if they would take part in a study. They agreed, but I had to have a written agreement from them. Sometimes a written agreement was not possible; it had to be a verbal agreement by phone. But it was always that the advocates asked them if they would take part, and then, in order for them to take part, I or the Edmund Rice interviewers had to contact with them to ask their permission, because that is part of the quite stringent ethics committee provisions.

Senator PARRY—Did you personally speak with every person contained within the document?

Sister Leavey—Not personally; I was responsible for 14 of the interviews. Altogether we had 10 interviews and generally two interviewers present, one speaking and one recording. The obvious cases where this was not possible were the Afghans and the Iraqi in a war zone in Baghdad. They were done by internet.

Senator PARRY—So the interview questionnaire on pages 57, 58 and 59 was taken to one of the 40 with two interviewers present.

Sister Leavey—Always two people.

Senator PARRY—Then the questions were gone through by the interviewer.

Sister Leavey—Sometimes with an interpreter. In the refugee camps in Damascus there was always an interpreter. We had contact with the interpreter ahead of time and he had been an active advocate. He acted as an interpreter for a few of them, for sure.

Senator PARRY—From that point on, the document was returned to a central location, presumably to you.

Sister Leavey—That is right. Those who conducted the interview were asked to record their interviews there and then if they could, but because of the dangers that was not always possible. They were asked to record and type them on the night of the interview and then they were sent to me. The men did the interviews in Damascus, Sri Lanka, Iraq and Iran.

Senator PARRY—Assuming the document is returned untampered—and we just have to assume that—has there been any checking of the validity of the comments in the documents by any third party or has any supporting material accompanied those documents to verify the content in particular?

Sister Leavey—I am not too sure what the question means.

Senator PARRY—Is there any independent evidence apart from the interviewers who obtained information from the interviewees? You have either one or two interviewees together with interviewers. Is there any additional evidence that corroborates or supports that material? Basically, someone has asked a set of questions which have been responded to. The answers may or may not have been true. Is there any way of supporting the truthfulness of those answers?

Sister Leavey—The men would say that in the cases in Damascus, where they had ample opportunity to see the conditions in which people existed, they were able to check. They cannot check the truthfulness of what people say. People say something and we check back with them to ask, ‘Is this what you said?’ While we have accurate information on that, we cannot be sure that what they said is in fact the case. This is what they believe to be the case, and we have no more reason to believe that they are untruthful than the various other people who attack the information.

Senator PARRY—That is a good point. Earlier you said that you have to rely on very vulnerable people who have been deported.

Sister Leavey—Indeed.

Senator PARRY—So there may be added reasons for them to colour or exaggerate their story. We have to accept that that is a possibility without any external evidence to the contrary.

Sister Leavey—That is a real possibility, but the other possibility is that the department which is responsible can also be capable of obfuscation, evasion or straight-out untruthfulness.

Senator PARRY—I want to get to that. On page 39, at plate 5, there is mention of a former detainee with a false passport that he says was given to him by immigration officials. That was discussed earlier and Senator Crossin asked some questions about that. I think you indicated, and correct me if I am wrong, that the matter had been reported to the Australian Federal Police.

Sister Leavey—Yes. The Australian Federal Police actually took that false passport away.

Senator PARRY—So they still have possession of that false passport?

Sister Leavey—No, they have returned it to us. I think it is still in abeyance. I think it is still under investigation.

Senator PARRY—I suppose if that were significant evidence they would have kept that. If there is an investigation under way, have they given any reason or any explanation as to what the result of that investigation is or what the progress of that investigation would be?

Sister Leavey—I would have to check that with the director. This was a matter that he handled with the Federal Police. The researchers generally did not speak to the immigration department or the Federal Police, except on that day in Canberra.

Senator PARRY—I am sorry to pressure you with these questions—

Sister Leavey—Not at all—

Senator PARRY—but obviously the document has been presented to and tabled with us today, so we need to ascertain more about the document. Can we give you that question on notice concerning the result so far or what advice has been received by the director from the Australian Federal Police?

Sister Leavey—Yes.

Senator PARRY—If that could come back to the secretariat that would be really appreciated.

Sister Leavey—I shall do that. In fact, the director will be home tomorrow, so I can check that with him then. So I send it to Mr Walsh?

Senator PARRY—Yes, thank you. I want to continue as to any other authorities you may have reported this to. Have you reported any of these matters concerning DIMIA staff to ombudsmen? You have mentioned that you have had communication or discussion—or at least the director has—with the minister. Are there any other external parties that you may have reported this matter and the contents of this document to?

Sister Leavey—The document has been fairly well distributed, certainly in Australia, through refugee associations et cetera—groups like Amnesty and Oxfam. We certainly have not spoken to an ombudsman.

Sister Britt—I am assuming this as to the director. It would certainly have been my assumption that this is DIMIA's business and that to present them with this report is inviting them to respond to it. We would have perhaps thought that we would be going behind their back if we sent it to an ombudsman.

Senator PARRY—Thank you very much for that. It is important to get some of those things clarified. In the interests of time I will not ask any further questions.

Senator NETTLE—Thank you for appearing before us today and for the hard work that you have done on the project. I think it is important, given the recommendations that have been made before that there be some independent monitoring, that when a non-government organisation does that independent monitoring it is acknowledged—so thank you for doing that. I have one thing that I want to mention. I refer to the comments that were just made about a potentially ongoing Australian Federal Police investigation. I think it is important that we do not leave on the record a suggestion that the documents that have been returned to you have been returned for any reason. If it is an ongoing investigation, I think it is important that we do not make comments about the validity or otherwise of the documents that have been returned to you. It is important that we do not leave that on the record.

I suppose I am asking you for help on the issue of chemical restraint. I think you were here previously when I talked about this, and we know about the responses that we have received from DIMIA when they have been presented with examples of chemical restraint. If you did have any more information, particularly any more recent information, about chemical restraint, I am sure the committee would be happy to hear about that, because we will have a subsequent

opportunity to discuss this issue with DIMIA next week. I know what is in the report and we have put, as you have, what is in the report to DIMIA in the past and have been stifled as to the response and how far we have been able to go. If there is anything more that you would like to provide to the committee that we could ask DIMIA about when we see them next week, that would be welcome.

Sister Leavey—Could I take that on notice?

Senator NETTLE—Yes. If you are not able to provide further information, that is fine.

Sister Leavey—I am not aware of any, but I am not a regular visitor to the detention centres in the way that Sister Mary is. We were mainly concerned with rejected asylum seekers; we were not mainly concerned with what else is going on. We can comment on the detention centres only through the reports that we have had of their treatment before they were deported. As I said, there were five references from people who had seen what happens to resistors, and the man who recorded that he had seen another man injected, given a false passport and so on. But we will take that on notice.

Senator NETTLE—That would be great, thanks. On the issue of chemical restraint, you talked about conversations that you had had with middle management from DIMIA in which they had agreed with information that was in the report. Was there anyone from DIMIA that you had conversations with that agreed with the chemical restraint aspect of the report?

Sister Britt—I do not have any information about that. But we were not privy to the conversations between the DIMIA representative and the director. They always came to Phil, and he has not mentioned to us, I think, anything about chemical restraint. But we can take that on notice as well.

Senator NETTLE—That would be great.

CHAIR—I thank you both for your submission, for the work of the Edmund Rice centre and for making yourselves available to appear before the committee today. We certainly appreciate your time.

Sister Britt—Thank you.

Sister Leavey—Thank you for the opportunity.