**Edmund Rice International**



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**Report**

**to the**

**United Nations Committee on the Rights of the Child**

**60th Session of the CRC**

**Review of Australia**

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**Background**

1. This submission is made by Edmund Rice International (ERI), a faith-based international NGO based in Geneva. The focus of the submission is the protection of deported minors and adult deportees, their children and families after they have been *refouled* to Afghanistan having had refugee status refused by the Australian authorities.
2. The statements that follow are based on first-hand accounts gathered by staff of Edmund Rice Centre for Justice & Community Education (ERC) (Sydney) who visited Afghanistan in March 2012 and interviewed thirty-one (31) recently returned asylum seekers.
3. Each deportee’s story has been recorded using video and photographic evidence where permission was given.

**Assurances by the Australian Government**

1. In the National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1\* (Review Tenth Session, 2011) Australia recognizes its international human rights obligations towards all persons in Australia, including migrants, refugees and asylum-seekers. Asylum seekers are guaranteed to have their claims assessed on a case-by-case basis, in line with the Refugee Convention 1951 taking into account the changing situation within the country of origin of asylum seekers. The subjects of this submission are those who have been deported after their case had been heard by the Australian authorities. It seems the decision to *refoule* them to Afghanistan has placed themselves, their families and children at great risk.
2. Australia’s 4th Periodic Report to the Committee on the Rights of the Child (Fourth Periodic Report, 2011) states in Section VIII of the Special protection measures 39 (arts. 22, 30, 32–36, 37 (b)–(d), 38, 39, and 40) (A) Children in immigration detention No 246 that since June 2005 the “the Parliament affirms as a principle that a minor child shall only be detained as a measure of last resort”, to ensure that families with children in detention will be placed in the community, under Community Detention arrangements, with conditions set to meet their individual circumstances. This statement confirms the Australian government’s concern that the best interests of the child must have first priority as children are vulnerable and need special consideration and care. {Part 1. (3) 1. (Convention on the Rights of the Child)}.

**Areas of Concern**

1. The urgent issue addressed in this submission is the endangering of deported minors and the children and families of deportees when the deportees are returned to their country of origin after seeking asylum in Australia. Decisions taken by the Australian authorities regarding asylum seekers need to take into account the accuracy and independence of the advice and information received about the level of security for deported civilians in Afghanistan before their *refoulement.*  This will ensure that the Australian Government fulfills its obligations as a good global citizen under the Convention on Refugees 1951 to which Australia is a signatory.

**Primary Source Evidence**

1. A delegation from the Edmund Rice Centre Sydney (Australia) visited Kabul in March 2012, and met and interviewed 31 returned asylum seekers. These documented interviews confirmed 29 of these 31 are living in extreme danger. The deaths of another two returnees and the kidnapping of one other, who is now presumed dead, was also confirmed. The majority of deportees are unable to live with their wives and children because of the risk their simple presence would pose to the safety of their spouse and children.
2. The visiting team met with the leaders of Aschiana, one of Afghanistan’s largest Non-Governmental Organisations with responsibility for displaced children in the 45 camps that now ring Kabul, who reported that they had found a 17 year old boy who was sent back from Australia last year. He was found by Aschiana staff, living on the street, homeless and ill. Another deportee survived a rocket being fired through his house. His wife and his father were killed instantly. He lives now in hiding in Kabul - along with his six children – all under the age of nine. The deportees are being actively targeted for having left their country, because they are seen as being ‘favourable to the West’. Many are falsely held to have converted to Christianity, and others are targeted out of a fear that they may have been sent back to fight alongside the international forces.
3. Edmund Rice International feels that it is important to publish information about the deportees’ situation so that these data are available to the appropriate bodies within the United Nations and the Australian Government. There is urgent need for policy change so that more safeguards and informed intelligence are in place concerning the likely fate of deportees before they are found to have invalid claimsand returned to their country of origin. There is need to bring to public awareness the plight of these deportees, their children and families. The Australian Government needs to ensure deported minors and deportees, their children and families, be returned to safe and secure situations where the best interests of the children are a major consideration {Article Part 1. (3) 1. (Convention on the Rights of the Child)}. In accord with Article part 1. (22) 1. (Convention of the Rights on the Child) minors are to be afforded ‘appropriate protection and humanitarian assistance’. No child is to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. {Article Part 1, (16) 1. (Convention on the Rights of the Child)}.
4. According to the Independent Human Rights Commission for Afghanistan the situation is deteriorating rapidly and security cannot be guaranteed. Dr Sima Samar Chair of Afghanistan Independent Human Rights Commission (AIHRC) says in this executive summary of the 2011 Annual Report 1389 (2011) there is ‘concern for the deterioration of security, increased numbers of civilian casualties, corruption and particularly the case of Kabul Bank, specific cases of rape by local police, women and child trafficking, the parliamentary election and its problematic outcome, ambiguity in peace and reintegration policies, over emphasis on the military aspect of the Transition overshadowing the civilian aspect of it, continuation of impunity and weak performance of legal and judiciary institutions are of specific mention and challenge... The AIHRC is very much concerned about the human rights, and in particular about women’s and children’s rights situation on one hand, and the growing political dilemma between the state organs’. Moreover, the Director of the AIHRC, Musa Mohammad reported to the visiting ERC delegation in March that the security situation had deteriorated to such an extent that ‘if we were to go 15 minutes down the road outside this office in the direction of Ghazni, you would be kidnapped and I would be killed’. He added, in speaking of the return of asylum seekers to Afghanistan, ‘under no circumstances should they have been sent back here. They are targeted. Why? Because they left, and went to a western country’.

11. The Head of Aschiana, Dr. Mohammad Engineer, in an extended interview with the ERC delegation in March, expressed his deep concerns for the fate of the deportees and for the security of Afghanistan generally. He was concerned that the guarantees provided for in the MOU between the Afghan and Australian Governments can not be met in the deteriorating security situation - a situation he describes as “worse than 2001/02/03”. He cites the absence of any real systems of justice and law and order and the absence of democratic institutions leaving regions vulnerable to the re-emergence of the Taliban and local commanders. Plainly he expressed very grave concerns for the safety and security of deportees declaring “there is no safety and security for these people”.

1. In the March visit the ERC research team confirmed the deaths of Mohammad Hossain, the death of Shaid Ahmadi and the disappearance and presumed death of Ghulam Payador. The March visit confirmed ERC’s belief that Australia has breached its international obligations in the *refoulement* of asylum seekers to Afghanistan.
2. These deaths were preventable. In January 2009 officials of the Australian Department of Immigration offered to reopen the cases of two of the men named above, among a list of 40, at a meeting in Sydney in the presence of a senior Departmental official, a senior official of the Refugee Council of Australia and the Director of the Edmund Rice Centre (Sydeny). At the Department’s request, ERC submitted the names of 40 failed asylum seekers so that their cases could be re-opened and re-processed from Dubai. However, as more boats began arriving on Australia’s northern borders in the period 2009-11, the cases were frozen and as yet no Afghan case of wrongful return has been re-opened. This puts the plight of the 17 year old and the children and families of deportees in immediate danger.

**Questions:**

**What will the Australian Government do to ensure the safe re-settlement of these 29 Afghanistan deportees (including minors), along with their children and families?**

**What additional measures will be put in place to ensure future deportees are not returned to grave danger in their country of origin?**

**Recommendations:**

We are extremely concerned about the plight of deportees from Australia to Afghanistan and see the situation needing urgent attention. So we make the following recommendations.

That the Australian Government:

1. **Ensure that deportees (including minors) from Australian refugee detention centres are not *refouled* to grave danger in Afghanistan that in turn endangers their families especially the well being of children.**
2. **Insist that the processing of asylum seekers in detention in Australia includes an accurate assessment of the ‘the risk’ faced by deportees and their families especially children before asylum seekers are *refouled* to Afghanistan ensuring they are not deported to danger.**
3. **In accordance with the Convention on the Rights of the Child Part 1 (3) 1. & 2. ensures the best interest of children of asylum seekers be given primary consideration and ensure such protection and care as is necessary for their well-being.**
4. **In accordance with its obligations not to *refoule* valid asylum seekers, Australia needs to re-open the cases of those wrongfully deported.**

Edmund Rice International (20/04/2012)

**References:**

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