



Australian Permanent Mission
to the United Nations
Geneva

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Mr Karim Ghezraoui
Officer-in-Charge
Special Procedures Branch,
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
Palais Des Nations
1211 Geneva 10
Switzerland

Dear Sir

Joint Urgent Appeal from Special Procedures

I refer to the Joint Urgent Appeal dated 23 June 2017 sent by the Special Rapporteur on the right to education; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

I reiterate the Australian Government's longstanding commitment to cooperating with the United Nations and the Australian Government's strong human rights record.

Before responding to the substance of this communication, I would like to take the opportunity to make some preliminary observations.

Australia takes its obligations under international human rights law seriously and is a longstanding party to the International Covenant for Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (the CRC). Australia is firmly committed to upholding its obligations under these instruments.

Australia also reiterates its firm support of the rights of persons to submit communications about alleged breaches of human rights. It has consented at international law to the establishment of the United Nations Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD Committee), the Committee against Torture (CAT), the Committee on the Rights of the Child (CRC Committee) and the Committee on the Rights of Persons with Disabilities (CRPD Committee).

Furthermore, Australia recognises the competence of the HRC, the CERD Committee, the CAT Committee and the CRPD Committee to receive and consider communications from individuals subject to the Committees' jurisdiction who claim to be victims of a violation by Australia of any of the rights contained in the ICCPR, CERD, CAT and CRPD. Australia considers that the

complaint procedures established under these treaties are the primary mechanisms for considering individual complaints.

Australia is not a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, nor the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Accordingly, it does not recognise the competence of the CESCR nor the CRC Committee to receive and consider communications from individuals subject to the Committees' jurisdiction who claim to be victims of a violation by Australia of any of the rights in ICESCR or the CRC.

Australia recognises that, in some cases the ability for Special Procedures Mandate Holders to receive individual communications is provided for in the resolutions establishing their mandates. In such cases, Australia emphasises the need for Special Procedures Mandate Holders to avoid duplication with the work of treaty bodies wherever possible.

With regards to this communication, Australia acknowledges that the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture have a mandate to request and receive information from individuals alleging human rights violations (HRC resolution 26/19 and HRC resolution 25/13 respectively).

However, Australia is concerned that neither the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, nor the Special Rapporteur on the right to education, has a mandate to request and receive information from individuals alleging human rights violations. The resolutions setting out the mandates for these Special Rapporteurs permit the holder to gather, request, receive and exchange information from 'all relevant sources', including Governments, intergovernmental organizations, and non-governmental organizations, on the realization of the rights to which their mandate relates (HRC resolution 8/4 of 12 June 2008; HRC resolution 6/29 of 14 December 2007). The mandate of the Special Rapporteur on the right to education also extends to receiving information from civil society and other concerned stakeholders. The mandates do not extend to requesting and receiving information from individuals alleging human rights violations.

Accordingly, the basis for the Special Rapporteur on education and the Special Rapporteur on health to join in this appeal is doubtful. Australia would be grateful for any further information the Special Procedures Branch of the Office of the High Commissioner for Human Rights may be able to provide in this regard.

Australia also wishes to note that it has previously raised similar concerns and sought further information from the Special Procedures Branch about Special Procedures Mandate Holders receiving individual communications in its response to communication AUS3/2015 and again in response to communication AL AUS 2/2017. Australia is yet to receive a response to these requests.

Australia is mindful of its obligations to respect the privacy of the two children who are the subject of this communication in accordance with Article 17 of the ICCPR and consistent with Australia's domestic laws. In Australia's view, where the holder lacks the mandate to consider individual complaints and, as a result, has no right to request or receive personal information, Australian authorities are not able to release such information. To do so would likely be a breach of our domestic laws and international human rights obligations.

Accordingly, until Australia receives a response clarifying the basis for the Special Procedures Mandate Holders to request and receive information from individuals alleging human rights

violations where they have no mandate to do so, Australia is unable to release any personal information, including information with respect to the children named in this communication.

Notwithstanding the above, Australia engages with Special Procedures Mandate Holders in good faith, and provides the following general information in response to the Joint Urgent Appeal to the extent that it can do so consistent with Australia's domestic laws and international human rights obligations.

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

Australia notes that the Regional Processing Centre (RPC) in Nauru is administered by the sovereign State of the Government of Nauru under Nauruan law. In so far as the request by the Special Procedures Mandate Holders for information relates to arrangements administered under Nauruan law, the Australian Government respectfully defers to the Government of Nauru to respond to these questions.

In Australia's view, a high standard of effective control needs to be met and sustained before a State's human rights obligations may be said to apply beyond its territory. This standard is not met in respect of the RPC arrangements in Nauru and as such, Australia does not consider that its human rights treaty obligations are enlivened.

Nonetheless, Australia supports the Government of Nauru to provide asylum seeker and refugee children in Nauru with access to a range of health, welfare and educational services broadly commensurate with those available to children in Australia. Further information regarding the support and assistance provided by Australia to the Government of Nauru is outlined where relevant below.

2. Please provide detailed information on the steps your Excellency's government has taken to ensure the enjoyment of the right to the highest attainable standard of physical and mental health of asylum seeker children living in the regional processing centres in Nauru.

Australia provides assistance and support to the Government of Nauru in respect of asylum seeker children residing in Nauru to enable those children to enjoy the highest attainable standard of physical and mental health.

This includes specialist child health services provided by visiting specialists and may be supplemented by tele-health services as needed. A multi-disciplinary mental health team provides additional specialist child health services including:

- Child and adolescent occupational therapist;
- Child and Family Services Counsellor; and
- Child and Family Social Worker.

These services include the provision of outreach services.

Mental health assessments are conducted by mental health professionals, including counsellors, mental health nurses, psychologists and psychiatrists.

Specialist care, support services and tailored education programmes for children in family groups and unaccompanied minors are provided at the Nauru RPC. The open centre arrangements also assist in this aim.

3. Please provide information on measures taken to apply the principle of the “best interests of the child” as a primary consideration in order to prevent harassment and mistreatment of asylum seeker children attending schools outside of the regional processing centres.

We understand that the Government of Nauru Child Protection Unit has lead responsibility for the care and protection of children in Nauru and is working with schools to ensure that the specific needs of refugee and asylum seeker children are recognised and addressed.

The Australian Government supports the Government of Nauru with the integration of all school aged asylum seeker and refugee children into the local Nauruan education system and believes that integration promotes social connectedness for children and their families with the local community.

The Australian Department of Immigration and Border Protection (the Department) is assisting the Government of Nauru to employ a Guidance Counsellor to support asylum seeker and refugee students and their parents, including promoting engagement with the school teaching staff. The Department provides school uniforms to all school-aged transferee and refugee children and funding for youth-specific support services, such as out-of-school hours activities for refugee and local Nauruan children.

Throughout 2017, expatriate professional development and support services will be provided to the Government of Nauru Education Department managers and Nauruan school principals to improve their capacity to lead and manage the provision of education services in Nauru.

4. Please provide information on the measures taken to apply the principle of the “best interests of the child” as a primary consideration in order to ensure that Ms. [REDACTED] and Mr. [REDACTED] have access to adequate and timely specialized treatment, including mental health therapy and medication.

The Department’s Health Services Provider, International Health and Medical Services (IHMS), monitors the growth and development of transferee children at the RPC as per Australian standards and treats any health issues that arise.

IHMS has a full-time paediatrician at the Nauru RPC to undertake child-specific specialist assessments, recommend appropriate treatment and prescribe medications accordingly. To supplement the service provided by the paediatrician (and other IHMS site-based staff), IHMS provides specialist services via visiting medical specialists, tele-health consultations with specialists based in Australia, as well as second opinions from specialists based in Australia who review the clinical records.

Mental health assessments are conducted by mental health professionals, including counsellors, mental health nurses, psychologists and psychiatrists.

5. Please advise what measures have been taken to investigate allegations of bullying and sexual harassment of Ms. [REDACTED] who attended [REDACTED] College and what measures are being taken to ensure future violations will not recur.

Where allegations of bullying and/or sexual harassment arise, these are referred to appropriate staff within the school community for resolution and/or to the Nauru Police Force (NPF) and the Government of Nauru Child Protection Unit as and when appropriate.

Where relevant, transferees and refugees are offered a range of support services, including welfare and medical treatment and assistance with engaging with NPF where necessary. Within the Government of Nauru Home Affairs Ministry, there is both a Gender Violence and Child Protection Unit and a Victim Support Service that assist in the support of affected individuals.

As previously stated, the Department is assisting the Government of Nauru to employ a Guidance Counsellor to support asylum seeker and refugee students and their parents, including promoting engagement with the school teaching staff.

6. Please confirm that Sertraline is not approved for treating depression in children and adolescents below the age of 18 years.

Australia notes that the Government of Nauru is responsible for all aspects of the RPC, including the provision of medical treatment for those living in the RPC. The medical treatment and health care that those living in the RPC receive is broadly consistent with Australian public health standards.

7. What measures and actions have been taken to ensure that adequate medical care and treatment is provided whenever necessary in the regional processing centres?

Australia provides support and assistance to the Government of Nauru in respect of asylum seeker and refugee children residing in Nauru to enable those children to enjoy the highest attainable standard of physical and mental health.

For example, all transferees at the RPC receive clinically indicated health care. General practitioner, nursing and mental health care clinics are open at the RPC seven days a week. There is also after-hours medical staffing to respond to after-hours medical emergencies. These services are supplemented by visiting health practitioners, a tele-health service and medical transfers, when required.

Australia hopes that the information it has provided in this response is of assistance to the Special Procedures Mandate Holders, and respectfully refers the Special Procedures Mandate Holders to the Government of Nauru for any further information they may require.

Finally, while Australia supports the Government of Nauru to provide asylum seeker and refugee children in Nauru with access to a range of health, welfare and educational services, Australia reiterates its view that it does not have effective control in respect of the RPC arrangements in Nauru, and that consequently, its human rights treaty obligations are not enlivened.

Yours sincerely



Vanessa Wood
Chargé d'Affaires

