

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the right to education**

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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the sale of children, child prostitution and child pornography; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the right to education, pursuant to Human Rights Council resolutions 33/30, 26/20, 25/6, 25/13 and 26/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a range of severe alleged human rights violations perpetrated against children with disabilities in public and private educational institutions in Australia. The allegations of violence and abuse, including sexual violence, which may constitute a form of torture or other ill-treatment, documented between 2008 to 2016, concern fifty-five autistic children in six of Australia's eight States and Territories.

According to the information received:

Fifty-five autistic children would have been subjected to human rights violations and abuse between 2008 and 2016 in over 65 schools in the Australian Capital Territory and the States of South Australia, Western Australia, Queensland, New South Wales, and Victoria. All the children are Australian citizens and five percent of them identify as Aboriginal and Torres Strait Islanders. Children were aged between five and up to 18 years at the time of the violations and most of them have been exposed to a repeated number of incidents that continued over an extended period of time. Subsequent unconfirmed information released in the media indicates that there might be other similar cases of abuse against autistic children in Australia, pointing towards a serious demand for better accountability, and guarantees of non-repetition through the necessary legislative, policy and institutional reforms.

*Sexual harassment, abuse and rape*

Three children came forward to make allegations of sexual harassment, sexual abuse, and rape at school premises. The law enforcement mechanisms in charge of looking into the complaints have failed to respond to the allegations of sexual harassment and rape. Difficulties in interviewing complainants with disabilities, lack of credibility of the alleged victim, impossibility to corroborate their

accounts, lack of witnesses and evidence have been argued as main reasons for refusing to initiate an investigation process on the reported cases. The accounts were found to be unreliable and no legal action against the alleged perpetrators has been taken. Reportedly, the alleged victims did not receive free legal assistance. Neither disability nor child-sensitive/friendly, age appropriate and procedural accommodations have been provided.

#### *Solitary confinement and restraints*

Children reported being detained alone in a secluded dark room without furniture which are called “calm down rooms” or “time out rooms”, and were prevented voluntary exit. In other cases, children were locked in cage-like structures placed inside or outside the classroom and left unsupervised. Reports indicate that the detention time lasted for an average of 30 minutes, during which the child was expected to fall asleep. In addition, this practice could be repeated several times per day. It is highlighted that children were not allowed to take with them water or other personal items, and were denied exit when they asked permit for using the toilet facilities.

In addition, it was reported that teachers and other staff were resorting to forcible mechanical or physical restraints for the purpose of restricting or subduing the capacity of children to move freely. Different forms of restraints have been reported, including strapping to the chair, tying the children on a leash, and ordering children to lie in a prone position with their hands tied at the back.

#### *Corporal punishment and other forms of violence*

Different forms of physical violence (including dragging, hair pulling, arm twisting and pushing) that resulted in extensive bruising and injuries were allegedly applied with regularity on autistic children. It has been claimed that school administrations were reluctant to listen to the parents’ concerns regarding the violations perpetrated against their children and reportedly took sides with the teachers and other involved staff justifying the incidents as “behavior management”.

An analysis of relevant legislation indicates that corporal punishment as a form of discipline is legalised in Queensland. Allegedly, police would refuse to initiate an investigation on the cases of violence referring to section 280 of the Criminal Code (Queensland Consolidated Acts 1899, s280), which states that ‘It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances’.

In addition, other forms of non-physical punishment were applied, such as, for example, the use of belittling and denigrating words, humiliation in front of other

children and parents, threats of disclosing to others personal information, ongoing and intense verbal assaults and bullying, blaming and scapegoating.

*Segregation, lack of adequate support and denial of reasonable accommodation*

While formally attending mainstream schools, autistic children were reportedly receiving a low quality education. According to victims' accounts, schools lack the regulations, capacity and professional expertise to effectively deliver inclusive education for autistic children.

It has been alleged that, in spite of the fact that the parents provided evidence to confirm that their children need reasonable accommodation or disability related support as necessary to facilitate their learning experience, their requests have been denied.

It has been reported that instead of being provided with the necessary adequate support, children were removed from the class and put in separate rooms by themselves waiting for the time to pass by. In other cases, when a support staff was not available, children were reportedly expelled on the hallways and prevented from entering the classroom, released home before the end of the school day, suspended from school for periods of up to 6 months or conditioned access to school on unwanted psychiatric medication. In addition, autistic children were kept separately from other children during recess and lunch times to prevent them from interacting with their peers.

*Lack of redress mechanisms*

It has been reported that parents tried to challenge the abusive treatment of their children, either by raising their complaints with the school administrations or lodging formal complaints through the Departments of Education. However, the internal inquiries conducted by the Departments of Education allegedly lacked transparency and impartiality, resulting in widespread impunity for perpetrators and lack of redress for victims. As a consequence, children were exposed to further victimisation and parents were put under pressure to keep their children out of school as a means of preventing further violence and harm.

A number of parents have tried to bring the issue to the attention of the Ombudsperson, the Local, State and Federal members of Parliament, the Human Rights and Equal Opportunities Commission, and the Child Protection Investigation Unit. However, they reported being constantly redirected from one entity to another since everybody claimed having no responsibility for monitoring and handling complaints of abuse perpetrated against children with disabilities.

It has been noted that parents faced difficulties in reporting crimes to the police. Allegedly, police were reluctant to record their complaints and to initiate an investigation into the cases. On a number of occasions, police advised parents

against pursuing charges because the victim was a “special needs” child and there would be “no chance of any conviction” against the perpetrators. There has been very little follow up on the registered cases from the side of the police.

In some other cases, the absence of free legal aid and the expensive judicial charges have prevented victims from bringing their cases to the court.

In 2015, the Senate Standing Committees on Community Affairs announced the findings of a national inquiry into the issue of violence, abuse and neglect perpetrated against persons with disabilities which indicate the magnitude to which children with disabilities experience cruel and violent treatment in schools. The report reveals a systemic failure to protect persons with disabilities from violence and abuse, and to adequately respond when such cases are reported. Allegedly, no subsequent measures have been taken to address the key recommendations of the report.

We are highly concerned about the alleged widespread human rights violations perpetrated against children with disabilities in the Australian educational institutions, amongst whom autistic children are disproportionately affected. We call on the State to exercise due diligence to prevent, investigate, punish and provide remedies for acts of violence rooted in and fueled by discrimination on the basis of disability. We express grave concern at the allegations of sexual abuse and rape perpetrated against children with disabilities. Therefore, we urge the State to ensure accountability for the crimes of sexual violence against children with disabilities, which are usually under-reported, and to provide redress for victims.

We are equally concerned that victims are often denied justice and left without adequate remedies, causing them to be victimized twice. With respect to upholding the right of children with disabilities to education, we encourage the State to end segregation and to introduce an enforceable right to inclusive education in the national laws, to commit sufficient financial and human resources for providing effective accommodations and adequate support, and to provide mechanisms for reporting violations and to provide redress when the rights of the students with disabilities are breached.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide the legal framework which permits the detention of children, noting how it complies with Australia's international obligations.
3. Please provide the details, and where available the results, of any investigation, including judicial or other inquiries, and prosecutions carried out in relation to violence and abuse perpetrated against children with disabilities in schools. Also provide details of all remedies which have been applied.
4. Please provide the details on what measures have been taken to prevent, detect, report and address all forms of exploitation, violence and abuse perpetrated against children with disabilities in schools.
5. Please explain what measures have been taken to inform and raise awareness among children with disabilities on how to identify and facilitate their access to complaint and reporting mechanisms against violence, exploitation and abuse.
6. Please provide information on the awareness-raising and specialized training targeted at officials (teachers, care givers, police) dealing with alleged or potential child victims of sexual abuse and violence, including children with disabilities.
7. Please provide the details of any measures taken to facilitate access to justice and remedy for persons with disabilities, including free legal aid, procedural accommodation and measures adopted to ensure child-sensitive justice proceedings and to avoid re-traumatizing victims.
8. Please provide information regarding the national legislation on education, and the progress in providing inclusive and quality education for children with disabilities.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations and redress for victims.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

José Guevara  
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

Catalina Devandas-Aguilar  
Special Rapporteur on the rights of persons with disabilities

Maud de Boer-Buquicchio  
Special Rapporteur on the sale of children, child prostitution and child pornography

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

Boly Barry Koumbou  
Special Rapporteur on the right to education

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to a number of international human rights treaties ratified by Australia which are relevant to violence perpetrated against children with disabilities in the context of public and private institutions, including schools. These include provisions of the International Covenant on Civil and Political Rights (article 7), the Convention on the Rights of the Child (articles 34, 37 and 39), the Convention on the Rights of Persons with Disabilities (articles 5, 7, 13, 15, 16 and 24) and the Convention on the Rights of the Child (article 19).

We would also like to refer your Excellency's Government to articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which provide for the prohibition of torture and other acts of cruel, inhuman or degrading treatment or punishment as one of the few absolute and non-derogable human rights standards. In addition, article 12 of the Convention requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 requires State parties to prosecute suspected perpetrators of torture.

In this context, we recall that the Committee against Torture, the Subcommittee on Prevention of Torture and the Committee on the Rights of the Child, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have unanimously declared that solitary confinement and restraints, applied for even a short period of time, are conflicting with the prohibition of torture and ill-treatment and called for an absolute ban on such practices (see A/HRC/22/53, para 63, A/66/268, paras. 77 and 86, A/68/295, para. 61, A/66/268, paras. 67-68, 78, CAT/C/CAN/CO/6, para. 19 and A/HRC/28/68 para. 44).

Although they do not specifically refer to the situation of children with disabilities in schools - since these issues have increasingly gained visibility only after the adoption of the Convention on the rights of persons with disabilities – the international community has begun to recognize that torture may also occur in other contexts (see A/HRC/22/53, para 15). In addition, the Committee against Torture in its General Comment No. 2 (see CAT/C/GC/2, para. 51), underscores that the prohibition against torture relates not only to public officials in the strictest sense, but may apply to other professionals, including teachers.

Furthermore, it is commonly recognized that the definition of torture and other cruel, inhuman or degrading treatment or punishment can occur all situations of powerlessness, whereby the victim is under the total control of another person (see A/63/175, para 50). Structural inequalities, such as the power imbalance between children and teachers, and the failure of the State to intervene so as to prevent and eradicate the infliction of harm, should be evaluated (see CAT/C/GC/2, para 15).

We would also like to bring to the attention of your Excellency's Government to the Convention on the Rights of the Child which provides a framework for demanding legal accountability for all forms of violence and abuse, including rape and sexual abuse of children. Article 19 of the Convention on the Rights of the Child exhorts States to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. In addition, article 34 requires States to protect children from all forms of sexual exploitation and sexual abuse. This is complemented and extended by article 37, which requires States to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, encompasses as well the prohibition of all forms of corporal punishment of children. Article 39 also requires States to take all appropriate measures to promote the physical and psychological recovery and social reintegration of child victims of exploitation, abuse and torture, among others. Furthermore, the Optional Protocol to the Convention on the Rights of the Children on the sale of children, child prostitution and child pornography outlines the obligation of States to provide support services to child victims throughout the legal process (art. 8.1 (d)); to ensure appropriate training for the persons who work with child victims of sexual exploitation (art. 8.4); and to ensure that child victims have access to adequate procedures to seek compensation (art. 9.4).

In connection with the alleged corporal punishment and other non-physical forms of humiliation of children with disabilities in schools, we would like to recall the provisions of article 28 of the Convention on the Rights of the Child which requires States parties to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the human rights principles. In its General Comment No.1 the Committee on the Rights of the Child states that the use of corporal punishment can never be applied under the guise of discipline and that education must be provided in a way that promotes non-violence (see *CRC/GC/2001/1*, para. 8). In addition, the Committee on the Rights of the Child defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light, and includes in this definition other non-physical forms of punishment which aim to humiliate and to compromise the dignity and worth of the child (see *CRC/GC/2001/1*, para. 11). In its General Comment No. 13 on the right of the child to freedom from all forms of violence, the Committee infers the responsibility of the State to "ensure the protection of child victims and witnesses and effective access to redress and reparation" (see *CRC/C/GC/13*, para. 41 (f)). Moreover, in its General Comment No. 5 on general measures of implementation of the Convention, it noted that for rights to have meaning there must be effective remedies that redress violations (see *CRC/GC/2003/5*, paras. 23).

Furthermore, we refer to the Convention on the Rights of Persons with Disabilities, which is the highest international standard to promote and protect the rights of persons with disabilities. Article 15 of the Convention on the Rights of Persons with Disabilities complements other human rights instruments on the prohibition of violence, abuse and exploitation and affirms the right of persons with disabilities to be free from



any act of torture or any form of cruel, inhuman or degrading treatment inflicted under any pretext or circumstance. In this connection, we would like to bring to the attention of your Excellency's Government that the required criteria of intent, as prescribed by the definition of torture contained in article 1 of the Convention against Torture, can be effectively implied where the purpose of inflicting physical and mental suffering can be rooted in and fueled by discrimination on grounds of disability (see A/HRC/22/53, paras 20 and 22). Furthermore, States have a heightened obligation to protect persons vulnerable to discrimination, as such individuals are generally more at risk of experiencing torture and ill-treatment (see CAT/C/GC/2, paras. 15, 17 and 18).

We would like to underline that the specific articles of the Convention on the Rights of Persons with Disabilities referring to violence and abuse should be read in conjunction with article 7 which states that children with disabilities enjoy all human rights and fundamental freedoms on an equal basis with other children and article 5 which asserts the status of the child with disabilities as equal before and under the law and provides for their equal protection against discrimination.

With regard to the rights of children with disabilities to seek accountability and remedies for human rights violations, Article 13 of the Convention on the Rights of Persons with Disabilities refers to an all-encompassing and stand-alone right of access to justice for persons with disabilities. It requires a clear prohibition of discrimination on grounds of disability by the law enforcement and justice system actors, regardless of the procedural status of the person. It guarantees "effective access to justice" by setting a fundamental obligation related to the provision of "procedural accommodations" which are meant to ensure that, when engaging with the justice system, persons with disabilities are heard and appropriate action is taken. Lastly, Article 13, paragraph 2, explicitly requires States to provide the judiciary, police and other staff with disability training.

Concerning the infringements on the right to education, in particular practices such as segregation, denial of reasonable accommodation and lack of supports for students with disabilities, it should be noted that article 24 of the Convention on the Rights of Persons with Disabilities is the first legally binding instrument to contain a reference to the concept of quality inclusive education. According to, paragraph 1, States parties must ensure the realization of the right of persons with disabilities to education through an inclusive education system at all levels, from pre-schools to extracurricular activities, and for all students, including persons with disabilities, without discrimination and on equal terms with others. Paragraph 2 establishes the obligation of States to provide reasonable accommodation of the individual's requirements and necessary support to facilitate effective education. Read in conjunction with article 5, the duty to provide the reasonable accommodation is of immediate application and not subject to progressive realization.

We would like to further refer your Excellency's Government to the General Comment No. 4 on the right to inclusive education of the Committee on the Rights of Persons with Disabilities, which provides a definition of segregation, reasonable accommodations and examples of support that need to be provided within the education

system, such as support teaching staff, school counsellors, qualified learning support assistant, psychologists, and other relevant health and social service professionals, as well as access to scholarships and financial resources (see CRPD/C/GC/4, paras 29 and 31). Furthermore, the Committee highlights in their concluding observations to States that financial constraints and lack of resources cannot serve as a justification for failing to make progress towards inclusive education and therefore violates article 24 of the Convention on the Rights of Persons with Disabilities.