

Mandates of 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

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right to education; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 26/17, 33/9, 26/19 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the deteriorating health conditions and violation of human rights of fourteen-year old [REDACTED] her four-year old brother, [REDACTED], in the context of their detention at the Australian Regional Processing Centre.**

According to the information received:

In April 2014, the Nepalese family arrived by boat on the Australian shores of Christmas Island, where they resided for seven months and applied for asylum. In November 2014, the family was transferred to RPC3 on the island of Nauru, where they currently reside.

Ms. [REDACTED] attended the Save the Children led RPC school until its closure in June 2015. Following this event, Ms. [REDACTED], currently 14 years old, attended Nauru College where she remained assigned to a class lower than her demonstrated capacities, despite obtaining high marks on tests that she was invited to take following her insistence to move up to a higher class grade. Ms. [REDACTED] experienced bullying at school, and in one instance, she was pushed down the stairs by peers that resulted in injuries, including wounds on her leg and arm. A complaint was made to the Principal of Nauru College, but no subsequent action was taken. Furthermore, she has allegedly been the victim of sexual harassment by her peers. The bullying and sexual harassment continued until March 2016, when she dropped out of school following her physical harassment and verbal abuse by a teacher.

The situation of Ms. [REDACTED] mental health has significantly deteriorated since the events of March 2016. In April 2016 she attempted suicide, and subsequently undertook acts of self-harm the following month.

According to information received, she started taking medication in February 2016. In March 2017, she was visited by a doctor who recommended she increase her dose of medication to [REDACTED] of [REDACTED] and [REDACTED] of [REDACTED]. The former drug is used to treat depression, obsessive-compulsive disorder, panic disorder, anxiety disorders, and post-traumatic stress disorder in adults. Pharmaceutical companies have advised that [REDACTED] should not be used in children and adolescents below the age of 18 years for the treatment of major depressive disorder, unless the doctor has prescribed it for the treatment of obsessive compulsive disorder¹. Reportedly, [REDACTED] is not approved in Australia for the treatment of depression in persons aged less than 18 years². However, it is noted that the drug is approved for treating children and adolescents who are diagnosed with obsessive compulsive disorder³. Assessment of the published and unpublished data available for [REDACTED] use in children and adolescents indicates that there is evidence of an increased risk of suicidality, including suicidal ideation, suicide attempts and self-harm events⁴. The latter drug, [REDACTED], is used for the treatment of certain mental and mood conditions, including: schizophrenia, bipolar disorder, sudden episodes of mania or depression associated with bipolar disorder. This drug has also included warnings about increased risks of suicidal thinking and behaviour.

The growing adversity in Ms. [REDACTED] health has raised fear and concern for her parents, who are hardly able to leave her out of their sight. Ms. [REDACTED] has reported feeling depressed and having suicidal thoughts. She has lost a significant amount of weight and has been taking high doses of both anti-depressants and sleeping pills. She has isolated herself, barely leaves the tent, and does not communicate with anyone.

In addition, Ms. [REDACTED] four-year old brother, Mr. [REDACTED] has a severe skin conditions that is getting worse. The infection is visible on a large proportion of his body. He experiences itchiness and irritation that cause him to cry and prevents him from sleeping. Furthermore, his condition makes it difficult for Mr. [REDACTED] to play with other children. Allegedly, he has consulted a dermatologist from the International Health and Medical Services who has not

¹ <https://www.ebs.tga.gov.au/ebs/picmi/picmirepository.nsf/PICMI?OpenForm&t=&q=sertraline>

² <https://www.tga.gov.au/use-ssri-antidepressants-children-and-adolescents-october-2004>

³ <https://www.tga.gov.au/use-ssri-antidepressants-children-and-adolescents-october-2004>

⁴ <https://www.tga.gov.au/sites/default/files/aadrb-0412.pdf>

prescribed any medication, but has recommended he use a cream that should not be applied for extended periods due to its associated side effects.

In October 2015, the family's asylum application was rejected on first instance, and was also rejected on appeal. Their future remains unknown.

Given the danger of irreparable damage and harm to the two children's physical and mental health, we consider the alleged situation of extreme gravity. Serious concerns are expressed with regard to your Excellency's government's obligation to implement article 3 (1) of the Convention on the Rights of the Child which refers to the best interest of the Child as a primary consideration in all Governmental actions. Grave concerns are expressed with regard to asylum seeker children living in the regional processing centres in Nauru, with regard to their inadequate access to education, lack of protection and access to justice, as well as inadequate access to health care and information. Particular concerns are expressed at the adverse impact of the Australia Regional Processing Centre on the health and mental health of Ms. [REDACTED] and Mr. [REDACTED]. Serious concerns are expressed at the lack of effective and timely treatment that adequately addresses their physical and mental health conditions. Serious concerns are further expressed at the absence of effective measures to investigate promptly and impartially the allegations of bullying and sexual harassment suffered by Ms. [REDACTED] in Nauru College.

In connection to the above alleged facts and concerns, we would like to stress that your Excellency's government has the obligation under article 22 of the Convention on the Rights of the Child, ratified on 17 December 1990, to take appropriate measures to ensure that a child who is seeking refugee status receives 'appropriate protection and humanitarian assistance in the enjoyment of applicable rights' set forth in international human rights or humanitarian instruments to which the said State is party. Moreover, article 37 of the Convention on the Rights of the Child provides that the detention of a child 'shall be used only as a measure of last resort and for the shortest appropriate period of time'.

The aforementioned allegations are in contravention of the right of everyone to the highest attainable standard of physical and mental health. This right is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by your Excellency's government on 10 December 1975. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights supports this by affirming the State's obligation to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population without discrimination. It further provides that States are under the obligation to 'respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons,' including detainees and asylum-seekers 'to preventive, curative and palliative health services'. The Committee further reiterates the Covenant's prohibition of 'any

discrimination in the access to health care and underlying determinants of health, as well as to means and entitlements for their procurement', on the grounds of, inter alia, national or social origin, health status, and civil, political, social or other status.

Article 24 of the Convention on the Rights of the Child stipulates that State parties recognize the right of the child to the 'enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health'. State parties shall 'strive to ensure that no child is deprived of his or her right of access to such health care services'. This is furthered by article 24(2) that affirms the States obligation to 'pursue full implementation of this right, and in particular, shall take appropriate measures' to 'ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care', and 'combat disease and malnutrition, including within the framework of primary health care'. This is supported in General Comment No. 15 that provides that, in accordance with article 4 of the Convention, State parties 'shall fulfil the entitlements contained in children's rights to health to the maximum extent of their available resources and, where needed, within the framework of international cooperation'. Article 28(2) of the Convention on the Rights of the Child asks 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 present Convention. General Comment No. 13, article III expands on the State's obligations to protect children from violence.

Furthermore, we would like to refer your Excellency's government to communication No. 900/1999 of the Human Rights Committee that holds that the continued detention of a migrant, when the State is aware of his or her mental condition and fails to take the steps necessary to ameliorate his mental deterioration, constitutes a violation of article 7 of the Covenant prohibiting torture and cruel, inhuman or degrading treatment or punishment. It further considers that 'deportation of the author to a country where it is unlikely that he would receive the treatment necessary for the illness caused, in whole or in part, because of the State party's violation of the author's rights would also amount to a violation of article 7 of the Covenant. That said, the State has the obligation to protect the right to life, security, and physical and mental integrity of all persons; and to ensure that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. These rights are set forth inter alia in the Universal Declaration for Human Rights and article 7 of the International Covenant on Civil and Political Rights, ratified by Australia on 13 August 1980. We would also like to bring your Excellency's government's attention to article 39 of the Convention on the Rights of the Child that stipulates that State parties shall take 'all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse' and 'torture or any other form of cruel, inhuman or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child'.

In connection to the allegations presented above, we wish to bring your Excellency's government's attention to the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, which provides that 'a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention' and thereafter, 'medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge'.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
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.
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.
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.
5. Please advise what measures have been taken to investigate allegations of bullying and sexual harassment of Ms. [REDACTED] who attended Nauru College and what measures are being taken to ensure future violations will not recur.

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

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 responsible of the alleged violations. We further urge your Excellency's government to take all necessary steps to ensure the children's mental and physical, and to give them access to proper and effective medical care.

We wish to inform you that a letter with similar content has been sent to the authorities of Nauru.

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.

Koumbou Boly Barry
Special Rapporteur on the right to education

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

François Crépeau
Special Rapporteur on the human rights of migrants

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