

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; and the Special Rapporteur on the human rights of migrants

REFERENCE:
UA NRU 1/2017

23 June 2017

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; and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 26/17, 33/9 and 26/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the allegation of the physical and sexual harassment of fourteen-year-old [REDACTED] and the violation of her fundamental rights, including her right to education.**

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 Regional Processing Centre (RPC) 3 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 attend a class lower than her demonstrated capacities, despite obtaining high marks on tests that she was invited to take following her insistence to move to a higher class grade. Ms. [REDACTED] experienced bullying at school, and in one instance, she was reportedly pushed down the stairs by peers which 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 and verbal abuse by a teacher. The bullying and sexual harassment continued until March 2016, and, as a result, she dropped out of school.

The situation of Ms. [REDACTED] mental health has significantly deteriorated since the events of March 2016. In April 2016, she attempted to commit suicide, and subsequently undertook acts of self-harm the following month. 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 continued suicidal thoughts. She has lost a significant amount of weight and has reportedly 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 October 2015, the family's asylum application was rejected on first instance as well as on appeal's level. Their future remains unknown.

Serious concerns are expressed for asylum seeker children living in the RPCs in Nauru, with regard to the lack of access to education and to adequate healthcare and support, as well as their lack of protection and access to justice. 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 that resulted in her dropping out of school.

In connection to the above alleged facts and concerns, we would like to stress that your Excellency's government has the obligation under article 3 of the Convention on the Rights of the Child, to which Nauru acceded to on 27 July 1994, to ensure that 'the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision'.

Moreover, article 19 of the Convention on the Rights of the Child stipulates that State parties shall 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'. These protective measures should, as appropriate, include 'effective procedures for the establishment of social programmes to provide necessary support for the child', as well as 'for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement'.

Furthermore, article 22 of the Convention on the Rights of the Child imposes on State parties the obligation 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.

In addition, article 24 of the Convention of the Rights of the Child establishes that State parties should 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. The Committee interprets children's right to health as an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health.

The Committee has expressed its concern by the increase in mental ill-health among adolescents, including developmental and behavioural disorders; depression; eating disorders; anxiety; psychological trauma resulting from abuse, neglect, violence or exploitation; alcohol, tobacco and drug use; obsessive behaviour, such as excessive use of and addiction to the Internet and other technologies; and self-harm and suicide. There is growing recognition of the need for increased attention for behavioural and social issues that undermine children's mental health, psychosocial wellbeing and emotional development. The Committee has cautioned against over-medicalization and institutionalization, and has urged States to undertake an approach based on public health and psychosocial support to address mental ill-health among children and adolescents and to invest in primary care approaches that facilitate the early detection and treatment of children's psychosocial, emotional and mental problems (GC No. 15, para.38).

Additionally, the Convention on the Rights of the Child affirms in its article 28 the obligation of State parties to recognize the right of the child to education. It affirms that they shall, in particular, 'make primary education compulsory and available free to all' and 'take measures to encourage regular attendance at schools and the reduction of drop-out rates'. State parties have the obligation 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'. Furthermore, it affirms in its article 29 that State parties agree that a child's education shall be directed to 'the development of the child's personality, talents and mental and physical abilities to their fullest potential' and 'the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations'.

We would like to refer your Excellency's government to the Convention on the Elimination of All Forms of Racial Discrimination, signed by your Excellency's government on 12 November 2001, guaranteeing in its article 5 the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to education and training.

Lastly, we would like to draw your attention to Paragraph 51 of the Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance that affirms 'the necessity of eliminating racial discrimination against migrants in relation to issues such as social services, including education and health, as well as access to justice, and that their treatment must be in accordance with international human rights instruments'.

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 person 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 health and education of asylum seeker children living in the regional processing centres in Nauru.
3. Please advise what measures are being taken to investigate allegations of bullying and mistreatment of asylum seeker students attending schools outside of the regional processing centres, and what measures are being taken to ensure future violations will not recur.
4. What steps has the Government of Nauru taken to ensure the attendance and integration of asylum seeker and refugee children at schools and reduce the drop-out rates?
5. Have any measures been taken to ensure the reinsertion of asylum seeker and refugee children that have dropped out of the school system?

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

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.

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standard of physical and mental health

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