

29 July 2020

Universal Periodic Review team  
Human Rights Unit  
Attorney-General's Department  
[upr@ag.gov.au](mailto:upr@ag.gov.au)

Dear UPR team,

### Save the Children feedback on Universal Periodic Review (UPR) draft national report

Save the Children appreciates the opportunity to provide feedback on the draft national report for Australia's third cycle UPR (**draft report**). This feedback is based on the draft dated 30 June 2020 released by the Attorney-General's Department (**AGD**) for consultation. Our feedback builds on, and in some cases reiterates, the feedback provided in my 13 January 2020 letter to Dr Ella Dilkes-Frayne, Human Rights Unit on an earlier in-confidence draft report provided by AGD to civil society for comment.

Save the Children's feedback is guided by relevant human rights treaties, principles and authoritative statements, particularly the Convention on the Rights of the Child (**CRC**) and the Committee on the Rights of the Child's recent concluding observations on Australia.<sup>1</sup> Our views are also informed by the NGO Coalition position development process that resulted in the *Joint NGO Submission on behalf of the Australian NGO Coalition: Australia's Human Rights Score Card* dated April 2020 and subsequently updated in July 2020, including with an annexure addressing human rights and COVID-19, before submission to the United Nations.<sup>2</sup> Save the Children was the lead author of the children's rights content in that document.

Save the Children's feedback in this letter is confined to what we consider to be the highest priority issues relating to children's rights in Australia, to the extent these can be addressed in the national report. Our feedback covers:

- lack of attention on child rights challenges, with undue weight given to positive developments;
- climate change – a significant child rights issues that is not acknowledged in the draft report;
- significant child rights issues that are mentioned in the draft report but merit greater prominence;
- significant child rights issues arising from natural hazards and disasters, and from COVID-19;
- opportunities for voluntary commitments; and
- other opportunities for the Australian Government.

### Lack of attention on child rights challenges

Save the Children is concerned that the draft report does not strike an appropriate balance between achievements and challenges. Resolution 5/1 of the Human Rights Council<sup>3</sup> notes that one of the objectives of the UPR process is:

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<sup>1</sup> *Concluding observations on the combined fifth and sixth periodic reports of Australia*, CRC/C/AUS/CO/5-6, 1 November 2019 (**2019 concluding observations**).

<sup>2</sup> Available at: <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5f15222b049f73378f136fa0/1595220535385/UPR+++Australian+NGO+Coalition+Submission++domestic+publication+version+July+2020.pdf>.

<sup>3</sup> United Nations Human Rights Council, *Institution-building of the United Nations Human Rights Council*, A/HRC/RES/5/1, 7 August 2007.

*The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State*

Additionally, it is noted that the content of the outcome may include:

*An assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country*

The children's rights section of the report focuses overtly on positive developments since 2015, while failing to provide sufficient consideration to challenges. At the same time, it is narrowly focused thematically on the National Framework for Protecting Australia's Children 2009-2020 (**National Framework**), juvenile justice and youth detention and age of criminal responsibility. While important issues, they cover a relatively narrow subset of children's rights issues in comparison to those concerns identified in Joint NGO Submission.

Save the Children recommends that additional text is provided to take account of the challenges in the fulfilment of children's rights in Australia. For example, at paragraph 92 of the draft report, it is noted that the separate detention for children and adults in detention happens in the vast majority of circumstances, but no data is given on circumstances where that does not happen and why. Furthermore, no information is provided on whether this has led to reconsidering the reservation under Article 37(c) of the CRC. Such an omission, alongside other challenges not adequately addressed, is covered in further detail below.

#### **Climate change and human rights, including children's rights**

Save the Children is concerned that the draft report makes no mention of climate change. This is a notable omission. Over time, the UN Committee on the Rights of the Child has increasingly commented on climate change and made recommendations about the need to act to address its effects on children's rights.<sup>4</sup> In its recent concluding observations on Australia, the Committee stated:

*The Committee is very concerned about the State party's position that 'the Convention does not extend to protection from climate change'. The Committee emphasises that the effects of climate change have an undeniable impact on children's rights, for example the rights to life, survival and development, non-discrimination, health, and an adequate standard of living.<sup>5</sup>*

The Committee's comments were prompted by Australia having expressed the view, in 2019, that, '[a]s a matter of international law, the Convention [CRC] does not extend to include a general right to the environment or protection against climate change'.<sup>6</sup> The Committee provides authoritative legal guidance about the interpretation of the CRC and its concluding observations make clear that climate change's effects on children do engage the CRC. Jurisprudence in such form is more than opinion, as was suggested

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<sup>4</sup> Center for International Environmental Law & Global Initiative for Economic, Social and Cultural Rights, *Children's rights obligations of states in the context of climate change: Synthesis of statements on climate change by the Committee on the Rights of the Child (2020 Update)*, p 3, available at: <https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/5e839a80ae70fb2a380b0c9e/1585683073206/CRC.pdf>.

<sup>5</sup> 2019 concluding observations, [40].

<sup>6</sup> Committee on the Rights of the Child, *List of issues in relation to the combined fifth and sixth reports of Australia: Addendum – Replies of Australia to the list of issues*, 4 July 2019 (date received: 28 June 2019), [58].

by AGD representatives during the AGD Consultation Forum on 29 July 2020 (the **AGD Consultation Forum**), and forms an authoritative source of legal interpretation.

The Committee urged Australia:

- (a) To ensure that children's views are taken into account in developing policies and programmes addressing climate change, the environment and disaster risk management and to increase children's awareness and preparedness for climate change and natural disasters;*
- (b) To promptly take measures to reduce its emissions of greenhouse gases by establishing targets and deadlines to phase out the domestic use and export of coal and to accelerate the transition to renewable energy, including by committing to meeting 100 per cent of its electricity needs with renewable energy.<sup>7</sup>*

Save the Children strongly recommends that the national report adequately address the human rights impacts of climate change, including their impact upon children. If the Australian Government considers that, contrary to the views of UN human rights bodies, climate change does not have a significant impact on human rights, including children's rights, the national report should state this and give reasons.

Save the Children was concerned by the indication from AGD representatives at the AGD Consultation Forum that comments on climate change may not be provided until the UPR hearing. The issue of climate change and human rights will undoubtedly be covered in recommendations during the third cycle and its omission in the national report will be noted by foreign governments. Acknowledging space limitations, Save the Children recommends that text from other sections is deleted to make room for its inclusion, even if that reference is brief.

### **Significant child rights issues meriting greater prominence in the draft report**

Australia has not fully **incorporated the CRC into domestic legislation and policy**, and does not have a **national plan, strategy or policy for children** that comprehensively protects children's rights. The Committee on the Rights of the Child has highlighted these deficiencies,<sup>8</sup> and Australia received several second cycle UPR recommendations to better protect children's rights overall.<sup>9</sup> The draft report, including Annex 1, describes a range of actions and initiatives of Australian governments, including under the National Framework.

Save the Children considers that the national report should:

- highlight that Australia does not have a national plan, strategy or policy for children that comprehensively protects children's rights;
- acknowledge that full incorporation of the CRC into domestic legislation has not occurred;
- indicate that the National Framework is not, and does not aim to be, a comprehensive framework for protecting children's rights, as its objectives relate to reducing child abuse and neglect only, and that, accordingly, while it will be crucial that the National Framework be replaced with a successor strategy after it ends in 2020, this successor will not itself comprise a national plan or strategy that comprehensively protects children's rights; and
- highlight that, despite significant efforts through the National Framework, there continue to be significant concerns about children's exposure to violence, abuse and neglect and separation from

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<sup>7</sup> 2019 concluding observations, [41].

<sup>8</sup> 2019 concluding observations, [7]-[8].

<sup>9</sup> Greece, Tajikistan, Morocco, Maldives and Bhutan made overarching recommendations to better protect children's rights.

families, with children from some backgrounds – particularly Aboriginal and Torres Strait Islander children – disproportionately affected.<sup>10</sup>

The draft report includes information about Australia's **juvenile justice and youth detention** systems. This is important, as those systems have been the subject of sustained concern and focus in recent years.<sup>11</sup> Moreover, in its second cycle UPR, Australia accepted a recommendation to reform the juvenile justice system in conformity with international standards.<sup>12</sup> As Annex 1 to the draft report acknowledges, this has only been partially implemented.

Given those considerations, Save the Children considers the national report should explicitly deal with the following issues:

- Australia's juvenile justice and youth detention systems are not fully consistent with the CRC and other relevant human rights treaties and international standards. Children's rights are being breached. The national report should acknowledge this and explain what consideration has been given by Australian governments to fully reviewing their juvenile justice and youth detention systems against the CRC and other human rights treaties and international standards.
- Australia has not fully implemented the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory. The national report should explain why this has not occurred, approaching three years since the Royal Commission's report was publicly released.
- According to Australian law, children can be detained together with adults. Such joint detention occurs in practice. The national report should explain why this practice continues to be legally permissible, given its inconsistency with children's rights.<sup>13</sup>
- The harmful effects of the deficiencies in Australia's juvenile justice and youth detention systems are disproportionately suffered by Aboriginal and Torres Strait Islander children. The national report should explain how these harmful effects are being mitigated and avoided.<sup>14</sup>

Relatedly, Australia's **minimum age of criminal responsibility** remains only 10. Numerous UN treaty bodies and special rapporteurs have recommended that Australia raise its minimum age in line with international standards,<sup>15</sup> as have other States parties.<sup>16</sup> The international minimum standard for the minimum age is 14.<sup>17</sup> The draft report notes that a Council of Attorneys-General (**CAG**) working group has been established to consider raising Australia's minimum age of criminal responsibility. The national report should include an update on this work and any discussions or decisions of CAG. If some or all Australian governments have

<sup>10</sup> The Committee on the Rights of the Child recently highlighted these as two of its 'main areas of concern' about Australia's human rights record, calling for 'urgent measures': 2019 concluding observations, [4].

<sup>11</sup> See, eg, 2019 concluding observations, [47]-[48], and recommendations made by Lithuania, Poland and the Czech Republic during Australia's second cycle UPR.

<sup>12</sup> Recommendation 173 (Poland).

<sup>13</sup> Among other recommendations, the Committee on the Rights of the Child has urged Australia to ensure that, in cases where detention is unavoidable, children are detained in separate facilities (2019 concluding observations, [48](e)), and in Australia's second cycle UPR, Lithuania recommended the removal of minors from the adult justice system.

<sup>14</sup> Among other recommendations, in Australia's second cycle UPR, Paraguay recommended reducing family separation of Indigenous peoples, including by youth imprisonment.

<sup>15</sup> See, eg, 2019 concluding observations, [48](a); Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, 26 December 2017, [26](a); Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, 1 December 2017, [44]; *Report of the Special Rapporteur on the Rights of Indigenous peoples on her visit to Australia*, A/HRC/36/46/Add.2, 8 August 2017, [77] and [113](i).

<sup>16</sup> In Australia's second cycle UPR, Iceland and Uruguay recommended raising the age in line with international standards.

<sup>17</sup> Committee on the Rights of the Child, *General comment No 24 (2019) on children's rights in the child justice system*, 18 September 2019, [22].

not decided to raise the minimum age to at least 14, the national report should explain the reasons. It is not sufficient for the draft report to just note that “it is a decision for each jurisdiction”. The UPR process is a review of Australia’s fulfilment of its human rights obligations as a whole, across all jurisdictions. Save the Children urges against the use of language that could be read as the Commonwealth absolving itself of responsibility for the lack of actions of states or territories.

Also relatedly, Australia has maintained its reservation to **Article 37(c) of the CRC**, which requires children to be detained separately from adults, despite repeated recommendations by the Committee on the Rights of the Child<sup>18</sup> and during Australia’s second cycle UPR to withdraw the reservation.<sup>19</sup> Annex 1 to the draft report states that the Australian Government considers the reservation remains necessary.<sup>20</sup> The national report should explain why the reservation to Article 37(c) has been maintained. If the continuing reservation is based on ‘the geography and demography of Australia’, as noted in Australia’s original reservation,<sup>21</sup> the national report should explain the distinctive characteristics of Australia compared to other States parties that justify the reservation.

Australia continues to allow **detention of asylum-seeking, refugee and migrant children**, despite recommendations of the Committee on the Rights of the Child<sup>22</sup> and during Australia’s second cycle UPR.<sup>23</sup> Australia accepted second cycle UPR recommendations about this, but Annex 1 to the draft report acknowledges that these recommendations have only been partially implemented.<sup>24</sup> The draft report should explain why asylum-seeking, refugee and migrant children continue to be detained, covering immigration detention centres, ‘alternative places of detention’ and all other forms of detention, as well as outlining how such measures comply with Australia’s treaty obligations, specifically Article 37(b) of the CRC.

Save the Children welcomes the draft report’s affirmation of the Australian Government’s commitment to working in genuine partnership with Indigenous Australians and to **recognising Indigenous Australians in the Constitution**.<sup>25</sup> We also welcome the draft report’s reference to the **Uluru Statement from the Heart**. Given the extensive Aboriginal and Torres Strait Islander peoples-led process that resulted in the Uluru Statement, the draft report should explicitly describe the Australian Government’s basis for not immediately acting on the Statement’s calls to establish an Aboriginal and Torres Strait Islander elected representative Voice to Parliament and a Makarrata and Truth and Justice Commission to develop a treaty with the First Peoples of Australia.

Australia has not acceded to the **Third Optional Protocol to the CRC**, which provides for a communications procedure, despite repeated recommendations by the Committee on the Rights of the Child<sup>26</sup> and during Australia’s second cycle UPR.<sup>27</sup> Annex 1 to the draft report states: ‘The Australian Government considers the rights and opportunities afforded by this instrument are adequately protected in the existing

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<sup>18</sup> 2019 concluding observations, [6].

<sup>19</sup> Estonia recommended removing the reservation.

<sup>20</sup> In relation to recommendation 165 (Estonia).

<sup>21</sup> Available at: United Nations Treaty Collection, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>22</sup> 2019 concluding observations, [45].

<sup>23</sup> Fiji, Italy, Maldives, Luxembourg, Germany, Slovenia, France and Honduras made recommendations relating to protecting children of asylum seekers and ending mandatory detention of asylum seeker children.

<sup>24</sup> In relation to recommendations 245, 246, 248, 255-259, 261 and 264.

<sup>25</sup> We note that this was a voluntary commitment made during Australia’s second cycle UPR, which has not been fully implemented.

<sup>26</sup> 2019 concluding observations, [52].

<sup>27</sup> Italy and Montenegro recommended that Australia ratify the Third Optional Protocol. Trinidad and Tobago and Bolivia recommended that Australia ratify/consider ratification of the internal human rights instruments to which it is not a party.

instruments to which Australia is a party.<sup>28</sup> Annex 1 also states that children are able to bring communications under the complaints mechanisms to which Australia is a party and lists other treaty complaints mechanisms.<sup>29</sup>

Save the Children notes that the rights recognised in the CRC are clearly directed at children, and are not comprehensively included in other treaties, either as a matter of principle or in the practice of children's access to rights. For example, and incompletely, the rights of children to have their best interests be a primary consideration in all actions concerning them, the specific rights of children to be heard and taken seriously, and specific rights and obligations relating to areas such as juvenile detention and treatment in the criminal justice system, the family environment (and deprivation of that environment), and protection from sexual abuse and exploitation, are all detailed in the CRC without directly comparable provisions in other treaties. The body of the national report should highlight Australia's non-accession to the Third Optional Protocol to the CRC and provide more detail about Australia's justification for not acceding to this important human rights treaty in light of these concerns.

### **Natural hazards and disasters**

The draft report rightly highlights the impact that natural hazards and disasters have on human rights, in the context of the unprecedented devastation of the 2019-20 Australian bushfire season. Save the Children recommends that the national report recognise the unique short and long-term impact of disasters and emergencies on children's rights, and that climate change is significantly increasing the human rights risks of natural hazards and disasters. Save the Children's submission to the Bushfires Royal Commission and other major inquiries into the 2019-20 bushfire season contains more detail, including policy recommendations that the Australian Government could adopt as voluntary commitments.<sup>30</sup>

### **COVID-19**

The draft report summarises aspects of Australia's response to COVID-19. Save the Children recommends that the national report recognise that COVID-19 is having a profound effect on children's rights and wellbeing, which in some cases will be lifelong, and that these negative effects are falling disproportionately on those who were already marginalised, vulnerable or disadvantaged.<sup>31</sup> As the UN has stated, COVID-19 is a 'fundamentally disequalizing event' that is reinforcing existing inequality.<sup>32</sup>

Save the Children further recommends that, in light of those considerations, the draft report describe measures being taken by Australian governments in response to COVID-19's impacts on children. Areas of particular importance include ensuring children's continuity of learning, keeping children safe from abuse and neglect and developmentally on track, and empowering children to understand, express views and be taken seriously about decisions affecting them, and participate in and contribute to the response to COVID-

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<sup>28</sup> In relation to recommendations 34 and 35 (Italy and Montenegro).

<sup>29</sup> Ibid, referring to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>30</sup> Save the Children, *Children's experiences and needs in the 2019-20 bushfires*, Consolidated submission to inquiries into the 2019-20 bushfire season, April 2020, available at: [https://www.savethechildren.org.au/getmedia/34d65730-536f-43c6-aaa8-1cdca0c710c3/save-the-children-submission-children-s-experiences-and-needs-in-the-2019-20-bushfires-\(1\).pdf.aspx](https://www.savethechildren.org.au/getmedia/34d65730-536f-43c6-aaa8-1cdca0c710c3/save-the-children-submission-children-s-experiences-and-needs-in-the-2019-20-bushfires-(1).pdf.aspx).

<sup>31</sup> United Nations, *Policy Brief: The impact of COVID-19 on children*, 15 April 2020, available at: [https://unsdg.un.org/sites/default/files/2020-04/160420\\_Covid\\_Children\\_Policy\\_Brief.pdf](https://unsdg.un.org/sites/default/files/2020-04/160420_Covid_Children_Policy_Brief.pdf).

<sup>32</sup> Ibid, p 11.



19 – in all cases with a particular focus on the children who face particular difficulty in accessing their rights in practice, including those who are already marginalised.

### Opportunities for voluntary commitments

The Australian Government could commit to enacting a **Federal Human Rights Act** or, alternatively, to a detailed and sufficiently funded process for developing such an Act. As AGD will be aware, many UN treaty bodies and special rapporteurs have called on Australia to enact a Federal Human Rights Act, as have several States parties through Australia's second cycle UPR<sup>33</sup> and many other expert actors. This includes Save the Children, as an individual NGO<sup>34</sup> and as part of the Australian NGO Coalition.<sup>35</sup> To date, Australia has indicated it does not propose to introduce such an Act.<sup>36</sup> A commitment by Australia in this respect would be widely applauded. It is also more than likely that the third cycle recommendations will again include many States parties calling on Australia to introduce a Federal Human Rights Act.

The Australian Government could commit to enhancing **children's participatory rights**, including by:

- undertaking legal reform to provide mechanisms for children to participate and be heard on matters affecting them and providing all necessary funding to services that support direct advocacy for children; and
- legislating to mandate consultation between the National Children's Commissioner and children on matters affecting them and ensure that the results of those consultations and any other recommendations made by the Commissioner are taken into consideration in law and policymaking, while ensuring the Commissioner has adequate resources.<sup>37</sup>

Respect for the views of the child is one of the four general principles underpinning the CRC. It continues to be a focus of commentary and recommendations about the realisation of children's rights.<sup>38</sup> If fully implemented, these actions would constitute significant progress towards fully implementing the CRC.

The Australian Government could commit to establishing a **national commissioner for Aboriginal and Torres Strait Islander children and young people**. This commissioner could provide a dedicated focus on the rights of Aboriginal and Torres Strait Islander children, who continue to experience significant disparities compared to other children in Australia in indicators related to children's rights. Its establishment would also address the Committee on the Rights of the Child's recommendation to ensure effective coordination between the National Children's Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner.<sup>39</sup> SNAICC and the Family Matters campaign have outlined such a commissioner's core components, in line with the UN benchmark guidelines for national human rights institutions, the Paris Principles.<sup>40</sup>

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<sup>33</sup> Indonesia, Iceland, Turkey and Canada recommended Australia enact a Federal Human Rights Act.

<sup>34</sup> Save the Children, *'Free and Equal': An Australian conversation on human rights*, Submission to Australian Human Rights Commission, November 2019, pp 4-10, available at: [https://www.savethechildren.org.au/getmedia/6d6bab16-f219-47b5-b0b6-68ffc88057d4/save-the-children-submission-protecting-human-rights-in-australia-final-\(1\).pdf.aspx](https://www.savethechildren.org.au/getmedia/6d6bab16-f219-47b5-b0b6-68ffc88057d4/save-the-children-submission-protecting-human-rights-in-australia-final-(1).pdf.aspx).

<sup>35</sup> *Joint NGO Submission on behalf of the Australian NGO Coalition: Australia's Human Rights Score Card*, April 2020, p 4.

<sup>36</sup> Annex 1 to draft report, in relation to recommendations 70-73 (Indonesia, Iceland, Turkey and Canada).

<sup>37</sup> See Concluding observations, [12].

<sup>38</sup> See, eg, 2019 concluding observations, [22] and Committee on the Rights of the Child, *General comment No 12 (2009): The right of the child to be heard*, 20 July 2009.

<sup>39</sup> 2019 concluding observations, [12](c).

<sup>40</sup> *Position paper: Establishment of a national commissioner for Aboriginal and Torres Strait Islander children and young people*, October 2019, available at: [https://www.familymatters.org.au/wp-content/uploads/2019/10/SNAICC\\_Family-Matters\\_Position-Paper\\_national-commissioner\\_FINAL.pdf](https://www.familymatters.org.au/wp-content/uploads/2019/10/SNAICC_Family-Matters_Position-Paper_national-commissioner_FINAL.pdf).

The Australian Government could commit to establishing a national prevention, early intervention and reunification program to **prevent the involvement of Aboriginal and Torres Strait Islander children with child protection**, with significant Aboriginal and Torres Strait Islander community controlled service provision. If implemented well, such a program could significantly reduce the rates of Indigenous children's involvement with child protection and removal from their families. It could address repeated recommendations made to Australia, including by the Committee on the Rights of the Child and through the second cycle UPR.<sup>41</sup> For example, the Committee has urged Australia:

*To strongly invest in measures for children and their families aimed at avoiding the removal of children from their families; to limit removal, when it is deemed necessary, to the shortest time possible; and to ensure that children, their families and communities participate in decision-making in order to guarantee an individualized and community-sensitive approach; ...*

*To strongly invest in measures developed and implemented by Aboriginal and Torres Strait Islander children and communities to prevent their placement in out-of-home care, provide them with adequate support while in alternative care and facilitate their reintegration into their families and communities ...*<sup>42</sup>

The Australian Government could commit to developing a **national action plan for inclusive education and urgently ending restraint and seclusion of children with disability**. Children with disability face significant barriers to accessing their right to education, and experience violations of their rights through the practices of restraint and seclusion in schools and other settings.<sup>43</sup> The Committee on the Rights of the Child has expressed concern about these issues.<sup>44</sup> Substantive action by Australia would be well regarded by other States parties and support Australia's obligations under other relevant human rights treaties, notably the Convention on the Rights of Persons with Disabilities.

The Australian Government could commit to taking all necessary steps to **repatriate Australian children and families who are being held in al-Hol detention camp in North-East Syria**. Over 60 Australian women and children have been trapped in al-Hol for over 12 months, including 47 children – the majority under five years old. Australia's obligations under international human rights law towards women and children with links to terrorist groups include an obligation to treat the best interests of the child as a primary consideration, including in relation to maintaining family unity.<sup>45</sup> It is noted that the United Nations Independent International Commission of Inquiry on the Syrian Arab Republic has called for countries of origin of foreign fighters to take steps to repatriate them, noting the impact on the rights of children of foreign fighters and their families.<sup>46</sup> Additionally, the United Nations High Commissioner for Human Rights

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<sup>41</sup> Paraguay recommended reducing the rate of family separation of Indigenous peoples.

<sup>42</sup> 2019 concluding observations, [34].

<sup>43</sup> This may include the right to liberty and security of the person, and the right to freedom from torture and cruel, inhuman or degrading treatment or punishment: Committee on the Rights of People with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 15 October 2019, [27]-[30].

<sup>44</sup> 2019 concluding observations, [43](c).

<sup>45</sup> United Nations, *Key principles for the protection, repatriation, prosecution, rehabilitation and reintegration of women and children with links to United Nations listed terrorist groups*, April 2019, available at:

[https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key\\_principles-april\\_2019.pdf](https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key_principles-april_2019.pdf).

<sup>46</sup> United Nations Independent International Commission of Inquiry on the Syrian Arab Republic, *"They have erased the dreams of my children": children's rights in the Syrian Arab Republic*, A/HRC/43/CRP.6, 13 January 2020, available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25465&LangID=E>.



has called on States to repatriate their nationals and has offered assistance to states on adopting human rights-based responses in doing so.<sup>47</sup>

Many other countries have brought their children home from Syrian camps, including Belgium, Finland, France, Kazakhstan, Kosovo, Norway, Russia, the UK and the US. Even with COVID-19, countries such as Finland are undertaking to repatriate their children. These States parties and others would welcome action by Australia to bring its own children and their families home.

### Other opportunities for the Australian Government

Save the Children encourages AGD to undertake **further engagement with civil society** before Australia's national report is finalised. Depending on the timeframes, this might include targeted engagement with key representative NGOs about specific themes or topics within the report.

We recognise that, in finalising the national report, AGD will continue to consult extensively with other government departments, and States and Territories, and will need to meet the deadline for lodging the report with the United Nations. We also note the value of full and transparent engagement with civil society throughout the process. Such engagement could be detailed in the national report and would be well received by other States parties.

As raised with AGD in the 2019 NGO Forum on Human Rights, held on 12 December 2019, and through correspondence dated 13 January 2020 on the confidential draft national report previously provided to NGOs, Save the Children is concerned that **Australia's Common Core Document**, which includes general information on the human rights environment in Australia, remains substantively out of date and requires amendment. The current Common Core Document was made public on 22 July 2008.<sup>48</sup> Save the Children urges AGD to update the Common Core Document, working closely with NGOs. This is important for the UPR process, considering that all human rights treaties to which Australia is a party to are a component of the UPR and are part of consideration in the Common Core Document. Updating the Common Core Document would also enable AGD to delete words and free up space in the draft national report, for example in the human rights framework section.

AGD has previously advised that amending the Common Core Document is a matter of consideration, but has not been done due to limited resources. Many States with substantively less resources than Australia, such as Bangladesh, have updated their Common Core Documents in recent years. Additionally, Save the Children notes that the AGD website currently lists Australia's Common Core Document as of 27 June 1994 in the link provided.<sup>49</sup> At the least, the existing AGD website should provide the current Common Core Document.

Additionally, Save the Children is concerned that the United Nations human rights recommendations database continues to remain out of date and recommends it is updated in the course of the UPR process.

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<sup>47</sup> United Nations High Commissioner for Human Rights, *High Commissioner updates the Human Rights Council on human rights concerns, and progress, across the world*, Human Rights Council 43rd Session, Item 2, 27 February 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25621&LangID=E>.

<sup>48</sup> Australia, *Core Document Forming Part of the Reports of States Parties*, HRI/CORE/AUS/2007, 22 July 2008, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI%2fCORE%2fAUS%2f2007&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI%2fCORE%2fAUS%2f2007&Lang=en).

<sup>49</sup> See the link provided on the Attorney-General's Department webpage titled 'United Nations Human Rights Reporting', available at: <https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/Pages/default.aspx> [accessed 27 July 2020].

The current version of the database was published on 3 November 2015<sup>50</sup> and fails to incorporate the recent CRC concluding observations, among others. Save the Children urges AGD to work with civil society to ensure that the database can remain relevant and current. This includes developing a new column that outlines whether a concluding observation is accepted, partially accepted or not accepted, and another column which outlines government actions undertaken to implement the relevant concluding observation.

Thank you again for the opportunity to provide this feedback. We hope it is useful. We appreciate AGD's engagement with civil society during this important process and recognise the Human Rights Unit's particular commitment to promoting, protecting and enhancing human rights in Australia.

Please do not hesitate to contact either Howard Choo, our Australian Social Policy and Advocacy Adviser, on +61 3 7002 1613 or [howard.choo@savethechildren.org.au](mailto:howard.choo@savethechildren.org.au), or myself on the details below with any queries.

Kind regards,



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<sup>50</sup> See the link provided on the Attorney-General's Department webpage titled 'United Nations human rights recommendations database', available at: <https://www.ag.gov.au/rights-and-protections/publications/united-nations-human-rights-recommendations-database> [accessed 29 July 2020].