

Mandates of the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE:
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21 September 2018

Excellency,

We have the honour to address you in our capacity as Working Group of Experts on People of African Descent and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 36/23 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a case of alleged racial discrimination in the child welfare system, and lack of judicial review, which has led to the unnecessary forced removal and continued separation of seven children [REDACTED]

[REDACTED] from their parents Mr. [REDACTED] and Ms. [REDACTED], who are refugees of African descent living in the Netherlands.

According to the information received:

In February 2017, there was a domestic argument between Mr. [REDACTED] and Ms. [REDACTED] which degenerated into a fight. The police were called to their home, at [REDACTED], by the neighbours. [REDACTED]

Following the incident the case was reported to the state child welfare system Veilig Thuis (Safe at Home), Jeudg en Gezinsbeschermers (Youth and Family Protectors) and the Salvation Army who decided to investigate the family. Veilig Thuis interviewed Mr. [REDACTED] and Ms. [REDACTED], and the couple explained it was the first time for such domestic violence. Their neighbours also confirmed that this was the first incident they ever witnessed in the household.

Nevertheless, from February to April 2017, Veilig Thuis went to schools several times to interview the children. Mr. [REDACTED] and Ms. [REDACTED] asked the Organization to stop interrogating their children at schools as they were concerned

it was interrupting their studies and asked them to visit the children at home instead. Then the visits stopped.

In February 2018, the parents were invited to a meeting at one of the children's schools ([REDACTED]). At the school they found staff of Veilig Thuis, the Director and one of the teachers of the school. They informed the parents that they had decided to invite staff of the OC Trompendaal (Salvation Army) in [REDACTED] to investigate the alleged domestic abuse by the parents of their children. For about one week, employees of OC Trompendaal visited the family home. They also interviewed the children at school. It is reported that these interviews were for up to two hours after their school classes finished and the staff reportedly did not release the children until they said they were mistreated at home.

In May 2018, staff from OC Trompendaal reported to Veilig Thuis that the children were "not safe at home". Upon receiving this report, Veilig Thuis reportedly contacted the Raad voor kindbescherming, an organization that deals with children's rights, who contacted the Jeudg en Gezinbeschermers, a state institution that guides families with serious problems in terms of parenting. Without prior judicial review, or consideration of the best interests of the children as refugees of African descent, and without first providing pedagogical intervention to combat any problems identified in the home, the harmful decision was taken to remove all seven children from their parents and place them in foster care.

On 18 May 2018, the Jeudg en Gezinbeschermers accompanied by police, without prior notification, forcefully removed all children from their parents, six were taken directly from school and the youngest child, who was still being breastfed, was taken from home and placed into foster care. The authorities did not provide the parents with any documentation proving the Court order to remove the children from the parents.

Since 18 May, the parents have not been allowed to see any of their seven children in violation of their human rights. They have only been allowed to talk on the phone with [REDACTED] and [REDACTED] two times each and with [REDACTED] once. The children are reportedly forbidden to speak in their mother tongue [REDACTED] and instructed to only speak in Dutch, which the parents do not speak, or English which the children do not speak, making communication difficult.

On 29 May 2018, the court sat for the parents and other parties to be heard regarding the decision to remove the children from the home. The parents and their lawyer were present however, the Judge could not rule on the case, as Child Protection Services had not submitted the documents. Despite a request by the

parents for a [REDACTED] interpreter, an English interpreter was present. The Judge ruled that another date must be scheduled and that the Child Protection Services must send in all the documents.

On 11 June 2018, the court sat and the Judge said that she still had not received all the documents. The interpreter in the room was [REDACTED] and [REDACTED]. The Judge immediately planned another date, 18 June, and urged the Child Protection Services to send in all the documents.

On 18 June 2018, the Court sat without an interpreter, an English speaking person was brought in instead. This time the documents were present however, the Judge said she could not proceed because the documents had been submitted at that moment. The Judge asked for more time to read the documents. On the same day, the parents pleaded with the Judge. They said they were remorseful, ready to undergo training or any other punishment provided they are reunited with their children. The Judge ordered that the Jeugd en Gezinbeschermers should start family care training and counselling for the parents. Despite the Judge's order, to date no such training or counselling has been offered to the parents by Jeugd en Gezinbeschermers.

On 16 August 2018, the court sat with a [REDACTED] interpreter. Jeugd en Gezinbeschermers claimed that the children were not willing to talk or see their parents. Jeugd en Gezinbeschermers asked for a one year extension period on the separation measure to keep the children away from their parents. The Judge decided under her discretion that the children should be kept away for another six months without any justification.

On 20 August 2018, a group of civil society activists, [REDACTED], children right's advocates, human rights advocates, People of African Descent, and refugees peacefully demonstrated and presented a petition in solidarity and seeking justice for this family. They called for an immediate and unconditional family reunification in order to minimize further harm to the children. They also called on the Dutch authorities to provide assistance to these refugee parents in assuming their parental responsibilities within the home.

On 21 August 2018, the Dutch authorities replied to the call of the demonstrators and invited the family and their lawyer to a meeting. On 22 August 2018, Ms. [REDACTED] from Jeugd en Gezinsbeschermers, in her email to Mr. [REDACTED] asked for a meeting at a Police office in [REDACTED], because she felt a meeting at her office would not be safe. In addition, there was no invitation for interpreters who speak [REDACTED] or for the children to be present.

On 23 August 2018, the family lawyer and the petitioners objected to the location of the meeting and the absence of an interpreter. The authority then agreed to change the location to the City Hall and to provision of an interpreter. There was no reason given why the children were not present in the meeting. The meeting was rescheduled to 28 August 2018 at the City Hall.

On 28 August 2018, the meeting was held under duress due to a heavy deployment of police officers around the venue. This family has been portrayed as criminals by the state to the extent that if the authorities meet them, police are always deployed in and around the premises of the meeting or proceeding. Representatives invited by the [REDACTED] family to engage the authority in negotiation were not permitted to attend the meeting. During this meeting, the parents were requested to sign a document written in Dutch, a language they do not understand, to obtain their permission and consent that their children could be taken to a hospital for a medical exam. The parents refused to sign the document without first seeing their children.

This ongoing family separation has caused immense trauma and stress to the parents and children and there are serious concerns about the impact it is having on the children's physical and mental wellbeing.

According to information received this case is not an isolated one, children of African descent are allegedly more likely than other children to be reported to agencies as suspected victims of maltreatment due to negative stereotypes about parents of African descent. They are allegedly more likely to be investigated, and more often forcibly removed from their homes because of racial prejudice rather than the risk to which they were exposed. According to information received, there are disparities in how the social welfare system treats white Dutch families and those of African descent. It is reported that, Dutch children are allowed direct contact with their families, no police officers are deployed in courts or update meetings, languages are not restricted, and trainings and counselling services are provided to families in the home as the law takes its course in contrast with how refugee families of African descent are treated.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to appeal to your Excellency's Government to guarantee the right to equality before the law and to equal treatment before courts and all other organs administering justice in accordance with article 5(a) of the International Convention on the Elimination of Racial Discrimination (ICERD) and article 14 of the International Covenant on Civil and Political Rights (ICCPR). We are concerned that racial discrimination by police and judicial authorities, particularly in the use of discretionary powers, allegedly continues to take place, despite the report of the Working Group mission to the Netherlands (A/HRC/30/56/Add.1) in 2014. Furthermore, the Convention

on the Rights of the Child requires that any separation of the child from his or her parents must be deemed necessary in the best interests of the child and be subject to judicial review, in accordance with applicable law and procedures, with all interested parties, including the child, represented. In this context, the Committee on the Rights of the Child emphasizes that the separation of children from their parents should only occur as a last resort and must comply with strict procedural safeguards that guarantee the implementation of the child's best interests.

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.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to reunite the children with their parents and safeguard the rights of the abovementioned 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. What are the judicial checks on decision-making susceptible to racial bias, to ensure that child protection workers do not remove children because of racial prejudice rather than the risk to which they were exposed?
3. What steps have been taken to ensure sufficient understanding of non-discrimination and the rights of the child to have their best interests taken into account as a primary consideration and prohibit racial discrimination, in particular by judges and other professionals working for and with children?

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 intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release

will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

Michal Balcerzak
Chair-Rapporteur of the Working Group of Experts on People of African Descent

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following international legal norms and standards:

The right to equality before the law and to equal treatment before courts and all other organs administering justice in accordance with article 5(a) of the International Convention on the Elimination of Racial Discrimination (ICERD) and article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which the Netherlands is a party. In its General Comment No. 32, the Human Rights Committee stresses that this right is not limited to citizens of States parties and must be guaranteed to all individuals, including refugees. The General Comment further clarifies that article 14(1) of ICCPR entails the rights of equal access, equality of arms and non-discrimination in all criminal and civil proceedings. To ensure these rights, States are obliged to guarantee certain due process safeguards so as to enable all parties to claim justice and participate in the proceedings in a meaningful way. This may include the duty to provide free legal assistance and the free assistance of an interpreter for individuals who would otherwise not be able to participate in the proceedings on equal terms.

Article 9 of the Convention on the Rights of the Child requires that any separation of the child from his or her parents must be deemed necessary in the best interests of the child and be subject to judicial review, in accordance with applicable law and procedures, with all interested parties, including the child, represented. In this context, General Comment No. 14 of the Committee on the Rights of the Child emphasizes that the separation of children from their parents should only occur as a last resort and must comply with strict procedural safeguards that guarantee the implementation of the child's best interests.