

**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:  
AL NLD 2/2019

4 June 2019

Excellency,

We have the honour to address you in our capacities 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.

Thank you for your letter dated 17 April 2019 1 (ref. gev-pa 055/2019) responding to our communication NLD 1/2019 of 15 February 2019 regarding the forcible removal and continued separation of seven children of African descent from their parents, Mr. Jude Kasangaki and Ms. Anita Mavita, refugees of African descent living in the Netherlands.

As suggested, we have asked and obtained consent from Mr. Kasangaki to enter into a confidential dialogue with your Excellency's Government on the specific details of their case.

According to the information received in May 2019, the situation remains critical one year after the forced removal and separation of children from their family in 2018. Since that time there has been no visitation and very little phone contact permitted. The authorities are allegedly threatening to also remove the couple's unborn child and have asked the couple to move out of their current home to another location where they will be monitored. In addition, the parents may be facing reprisals for their continued advocacy on behalf of their children, including seeking our assistance. Well over one year after the alleged incidents supporting the removal, the parents were reportedly informed that they will be referred to criminal authorities for the incidents alleged in this case. Also, the immigration Authorities (Raad voor kindbescherming) have reportedly been asked not to renew the residence permit of Mr. Kasangaki.

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 this context, we urgently request action to be taken to address our specific concerns raised in our previous communications on this individual case, in particular action to:

- 1.) Reunite the 7 children with their parents and siblings
- 2.) Provide support to the parents on effective parenting, including alternative methods of discipline in the home

- 3.) Facilitate immediate, ongoing visitation between the parents and their children
- 4.) Facilitate immediate, ongoing sibling visitation among all of the children
- 5.) Develop a clear, immediate, and achievable plan to preserve the placement of the unborn child at home with the birth parents, with ongoing access to breastfeeding and parent-child bonding crucial to child development in the first year of life.
- 6.) If immediate reunification will not happen, develop a clear and specific reunification plan to facilitate family reunification.
- 7.) Prevent any further threats, harassment, or reprisals toward the family and unborn child by the State
- 8.) Appoint a culturally competent law guardian(s), with specific cultural expertise relating to Uganda, to comprehensively consider the children's interests vis-a-vis their rights to family and culture in this process.

We look forward to your reply on this case in writing. We would also like to schedule a meeting with you on 20th or 21st June in Geneva to get an update on action taken to remedy the situation in this case.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We may 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.

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

Ahmed Reid  
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 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. In CERD General Comment No. 34, the Committee clarifies that States in assessing the impact of a country's system of administration of justice, must take into consideration its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and pay particular attention to the measures where they pertain to people of African descent. Furthermore they require that States take all the necessary steps to secure equal access to the justice system for all people of African descent including by providing legal aid, facilitating individual or group claims, and encouraging non-governmental organizations to defend their rights.

Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. 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. 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. The Committee recalls that it is indispensable to carry out the assessment and determination of the child's best interests in the context of potential separation of a child from his or her parents (arts. 9, 18 and 20). The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children. The right of the child to family life is protected under the Convention (art. 16). Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided

for in article 9, paragraph 1, which requires “that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child”. Furthermore, the child who is separated from one or both parents is entitled “to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests” (art. 9, para. 3). It emphasizes that given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family’s capacity to take care of the child, unless separation is necessary to protect the child. In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child’s best interests. When separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child’s best interests. The quality of the relationships and the need to retain them must be taken into consideration in decisions on the frequency and length of visits and other contact when a child is placed outside the family. The right of the child to preserve his or her identity is also guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests.