

Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Working Group of Experts on People of African Descent; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on discrimination against women and girls

REFERENCE:
UA NLD 1/2020

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Working Group of Experts on People of African Descent; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 34/35, 36/23, 41/18 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government allegation received concerning the Immigration and Naturalisation Service (IND)'s intention to deport **Mrs. Anita Mavita**, her husband **Mr. Jude Kasangaki** and their youngest child [REDACTED] to Uganda, while keeping their other seven children in the Netherlands. The latter children were forcibly removed by the Child Care and Protection Board (The Raad van kinderbescherming) in 2018 and placed in foster homes.

This case was the subject of previous communications (AL NLD 2/2019; AL NLD 1/2019; AL NLD 1/2018) and replies from your Excellency's Government (GEV-pa 153/2019; GEV-pa 055/2019; GEV-pa 196/2018). The Kasangaki-Mavita case was also subject to subsequent discussions and exchanges between the Netherlands, 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 including during the country visit of the Special Rapporteur in the Netherlands in 2019, and afterwards.

According to the information received:

Mr. Jude Kasangaki arrived in the Netherlands in 2010, where he applied for asylum. In 2013, the IND granted Mr. Jude Kasangaki refugee status. In 2015, his wife, Ms. Anita Mavita and their six children travelled to the Netherlands through a family reunification process. Upon arrival, the IND offered Ms. Anita Mavita the option of applying for asylum independently of her husband's refugee status, which she did. Therefore, in 2015 the IND granted Ms. Anita Mavita refugee status independently from her husband.

Mr. Kasangaki has lived in the Netherlands as a refugee for seven years, and Mrs. Anita Mavita for five years. Mr. Kasangaki and Mrs. Mavita were granted residence permits valid for five years as refugees. The IND granted the six children resident permits related to Mrs. Mavita's refugee status. In December 2016 Mr. Kasangaki and Mrs. Mavita had a daughter (██████), who was granted a residence permit related to Mr. Jude Kasangaki's refugee status. However, in May 2018 the other seven children were forcibly removed from their parents by the Child Care and Protection Board (the Raad van kinderbesccherming), and placed in foster homes allegedly because of the use of corporal punishment by the parents as a way to discipline their children. In June 2019, Mrs. Mavita gave birth to a son (██████) whose status depends on Mr. Kasangaki. The IND never provided any valid document to ██████ who is still undocumented alleging that he was born when Mr. Kasangaki residence permit expired. However, according to information received, the IND recently renewed ██████'s resident permit, despite the fact that Mr. Kasangaki does not have a valid resident permit. Yet the girl child ██████'s residence permit theoretically depends on her father's.

Following the expiration of their five year refugee residence permits, Mr. Kasangaki and Mrs. Mavita reportedly applied for a permanent residence permit in August 2018 and January 2019, respectively, as they were eligible for it. Mr. Kasangaki and Mrs Mavita passed the integration test and obtained the certificate necessary for the permanent residence permit and paid for it as required by the IND.

In September 2019, the IND invited Mr. Jude Kasangaki for an interview to reassess the validity of the grounds of his refugee status. During the interview, Mr. Kasangaki, who was granted asylum in the Netherlands as an LGBT activist and ██████ himself, explained that he seriously fears for his life if he is returned to Uganda. However, on 2 July 2020, the IND notified Mr. Kasangaki and Mrs. Mavita of its intention to revoke their refugee status and to deport them with their youngest child ██████. The IND did not interview Mrs. Mavita, and considered that Mrs. Mavita's refugee status is de facto linked to her husband's, and thus should be revoked; and that she should be returned together with their child.

The IND allegedly indicated that their seven other children will remain in the Netherlands following the deportation of their parents and their youngest child Quinton.

The seven children were forcibly removed from their parents and placed in foster homes in 2018, and the children have not seen their parents for almost two years. There has not been any phone contact between the children and their parents since April 2019, although the children have been consistent in their demand to see their

parents since their placement in foster homes. As of now, the seven children continue to live in five different foster homes and remain separated from their siblings, and are prevented from speaking their mother tongue Luganda. The former and current social workers responsible for following the children's cases are unfamiliar with Ugandan culture.

The lower court and the High-Court issued several judicial orders in favour of the parents and the children. In July and December 2018, the lower court and the High Court respectively ordered the Child Care and Protection Board to provide the parents with child-care parenting and guidance services on how to raise their children. On 16 June 2020, the High Court ordered the Child Care and Protection Board to allow physical contact between the parents and their children. However, rather than helping the parents and the children as ordered by the courts, the Board has not implemented any of the courts' orders: it denied the parents child-care training services which the parents were willing to receive; it kept delaying the planning of in-person interaction between the children and their parents, and the Board also requested the lower court in November 2019 to remove Mr. Kasangaki and Mrs. Mavita's parental authority over their seven children, thus raising serious concern about a possible procedure by the Netherlands for adoption .

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the IND's intention to revoke the refugee status of Mr. Jude Kasangaki and Mrs. Anita Mavita, and to forcibly return them with their youngest child [REDACTED] to Uganda where the refugee family fears for their life as stated by Mr. Jude Kasangaki during his interview before the IND.

In this regard, we would like to remind the Netherlands of its obligation under article 33.1 of the 1951 Convention relating to the Status of Refugees ratified by the Netherlands on 3 May 1956, not to "expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". We would like to remind the Netherlands that the application of the principle of non-refoulement as a norm of customary international law enshrined in the 1951 Refugee Convention is not dependent on the lawful residence of a refugee in the territory of a Contracting State¹, and thus should apply to Mr. Kasangaki and Mrs. Mavita although their residence permits expired, and their child has no relevant documentation.²

¹ UNHCR Note on the Principle of Non-Refoulement, November 1997, <https://www.refworld.org/docid/438c6d972.html>

² UNHCR Note on the Principle of Non-Refoulement, November 1997, <https://www.refworld.org/docid/438c6d972.html>

The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity also provides “everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity” (Principle 23).

Furthermore, as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 21 December 1988, the Netherlands has the obligation under article 3 paragraph 1 and 2 to not “expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”; and “for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”.

In this connection, we would like to also recall General Recommendation No. 30 on discrimination against non-citizens (2005) from the Committee on the Elimination of Racial Discrimination (CERD), which provides that States must “ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment” (para. 27).

We further recall the Human Rights Committee, General Comment No. 31 [80] on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, which provides that article 2 obligation of the International Covenant on Civil and Political Rights (ICCPR) ratified by the Netherlands on 11 December 1978 requires that “States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters” (para. 12).

Regarding the child [REDACTED], we are particularly concerned that his life would also be endangered if the family is expelled while bearing in mind that [REDACTED] who although born in the Netherlands, is undocumented and has no ties with his country of origin. In this regard, we would like to recall that the Committee on the Rights of the Child (CRC) in its Joint general recommendation No 22 (2017) with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

(CMW), requires the Netherlands as a State party to the Convention on the Rights of the Child since 6 February 1995 “[not to return [a child] to a country where there are substantial grounds for believing that he or she is at real risk of irreparable harm, such as, but by no means limited to, those contemplated under articles 6 (1) and 37 of the Convention on the Rights of the Child, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of States parties’ action or inaction” (CMW/C/GC/3-CRC/C/GC/22, para. 46)³.

Furthermore, as stated by the Committee on the Rights of the Child the Netherlands as a State party to the Convention on the Rights of the Child is obliged, “in line with article 3 of the Convention, to ensure that any decision to return a child to his or her country of origin is based on evidentiary considerations on a case-by-case basis and pursuant to a procedure with appropriate due process safeguards, including a robust individual assessment and determination of the best-interests of the child” (CMW/C/GC/3-CRC/C/GC/22, para. 33).

The Committee on the Right of the Child further recalls that “the non-discrimination principle of the Convention on the Rights of the Child obliges States parties to respect and ensure the rights set forth in the Convention to all children, whether they are considered, *inter alia*, migrants in regular or irregular situations, asylum seekers, refugees [...], including in situations of return or deportation to the country of origin, irrespective of the child’s or the parents’ [...] nationality, migration status or statelessness” (CMW/C/GC/3-CRC/C/GC/22, para. 9).

Concerning Mrs. Anita Mavita, we are concerned that the IND *de facto* considered Mrs. Mavita refugee status linked to her husband’s in order to justify her deportation even though she was granted asylum regardless of her husband’s refugee status, and had applied for her own permanent residence permit. We are further concerned that she did not benefit from any individual assessment with due process to argue her case before the IND as the IND did not hear her case prior to notifying its intention to revoke her refugee status and to deport her. In this regard, we would like to recall that under article 15 paragraph 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ratified by the Netherlands on 23 July 1991 “States Parties shall accord to women equality with men before the law”.

³ Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (CMW/C/GC/3-CRC/C/GC/22, 16 November 2017).

Furthermore article 2 (d) provides that “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: [...] to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”.

We would also like to recall that under article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) ratified by the Netherlands on 10 December 1971 “in compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law”.

Finally, we are extremely concerned by the IND’s intention to return the parents and their youngest child to Uganda without their other seven children, which will lead to a definite separation of the children from their parents and their youngest brother. We remain concerned that such a separation would violate the principle of the best interests of all the Kasangaki/Mavita children, affect their right to family life, and hinder their right to family unity which has already been seriously harmed. In this regard, we are concerned that the Child Care and Protection Board is not supportive of the refugee family unification process and their rights to family life and unity, as it refuses to implement the courts orders to assist the parents with child-parenting guidance; is delaying inter-person interaction between the children and their parents despite an order by the High Court to the contrary; and persists with its request to remove the parents’ parental authority thus raising serious concerns about a possible procedure by the Netherlands for adoption .

We would like to emphasize that article 3 paragraph 1 of the Convention on the Rights of the Child places an obligation on the Netherlands to guarantee the Kasangaki/Mavita children the right to have their best interests assessed and taken into account as a primary consideration in all actions or decisions affecting them (CMW/C/GC/3-CRC/C/GC/22, para. 27). As stated by the Committee on the Rights of the Child in its General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1): “the right of the child to have his or her best interests taken as a primary consideration means that the child’s interests have high priority and not just one of several considerations” (para. 39).

Furthermore, we would like to recall that article 17 paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) obliges the Netherlands to guarantee Mr. Kasangaki and Mrs. Mavita the right to family life as it provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family [...]”. We also recall the Netherlands that under article 23 paragraph 1 of the ICCPR “the family is the natural and fundamental group unit of society and is entitled to protection by

society and the State”; and that article 16 of the Convention on the Rights of the Child requires the Netherlands to ensure that “no child [is] subjected to arbitrary or unlawful interference with his or her privacy, family [...]. The child has the right to the protection of the law against such interference or attacks”. In this relation, as underlined by the Committee on the Rights of the Child “the right to protection of family life [...] should be fully respected, protected and fulfilled in relation to every child without any kind of discrimination [...]”. States should comply with their international legal obligations in terms of maintaining family unity, including siblings, and preventing separation, which should be a primary focus (CMW/C/GC/4-CRC/C/GC/23, para. 27)⁴.

Furthermore we would like to recall as stated by Committee on the Rights of the Child that “separating a family by deporting or removing a family member from a State party’s territory [...] may amount to arbitrary or unlawful interference with family life”. (CMW/C/GC/4-CRC/C/GC/23, para 28). The committee on the Right of the Child also underlined that “the rupture of the family unit by the expulsion of one or both parents based on a breach of immigration laws related to entry or stay is disproportionate, as the sacrifice inherent in the restriction of family life and the impact on the life and development of the child is not outweighed by the advantages obtained by forcing the parent to leave the territory because of an immigration-related offence”. (CMW/C/GC/4-CRC/C/GC/23, para. 29). In this relation, we would like to recall that in its General recommendation No. 30 on discrimination against non-citizens (2005), the Committee on the Elimination of Racial Discrimination (CERD) provides that States parties must “avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life” (para. 28).

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(s) 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:

⁴ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please clarify the grounds under which the IND intends to deport Mr. Kasangaki and Mrs. Mavita and their youngest child [REDACTED] to Uganda while such a decision seems incompatible with the international human rights obligations of the Netherlands, including the principle of non-refoulement and the best interest of the child.
3. Please indicate to what extent the IND's intention to deport Mr. Kasangaki and Mrs. Mavita and their child [REDACTED] is compatible with their rights to family life and family unity. Please indicate the measures implemented and foreseen to keep the family united and guarantee their right to family life and unity.
4. What measures does the IND envisage to ensure that Mrs. Anita Mavita will be granted an individual assessment of her case with due process guarantees, and effective access to legal remedies?
5. Please indicate the measures taken or envisaged to prevent a definite separation of the seven children from their parents and their youngest brother [REDACTED] as a result of the possible deportation of the parents, including renewing Mr. Kasangaki and Mrs. Mavita residence permits, bearing in mind that a definite separation of the children from their parents would be incompatible with the Netherlands obligations including under the Convention on the Rights of the Child and the 1951 Refugee Convention.
6. Please explain why the IND recently granted a resident permit to their child [REDACTED] but continues to refuse to grant a resident permit to their child [REDACTED] when both are registered under Mr. Kasangaki? Please explain the reasons for adopting such double standards.
7. Please provide information on the allegation concerning a possible adoption procedure of the seven children envisaged by the Netherlands.
8. Please provide detailed information on whether and when the Child Care and Protection Board (the *Raad van kinderbescberming*) will provide the parents with child-parenting guidance as ordered by the lower court and the High Court in 2018.

9. Please, provide information and details of any measures taken, or foreseen to organise in-person interaction between the parents and their children as recently ordered by the High Court in June 2020.
10. Please explain why the Child Care and Protection Board requested the lower court to remove Mr. Kasangaki and Mrs. Mavita parental authority when the courts ordered the Board to assist the parents with child-parenting and to allow the parents to see their children.
11. Please provide information on the measures taken to reunite all the children with their parents; and in the meantime to reunite the seven siblings in the same facility and ensure that they are allowed to speak their mother tongue Luganda.
12. Please provide information on the measures to properly train the current social worker for her to be equipped with the necessary knowledge and background of Ugandan culture and cultural differences, as well as the necessary skills to work with refugees..
13. Please provide information on any measures implemented or foreseen to investigate the administrative and judicial processes carried out by the Child and Protection Board in handling the Kasangaki/Mavita case since the removal of the seven children.
14. Please provide information on measures taken by the Dutch authorities to ensure that no one fearing persecution on the grounds of sexual orientation or gender identity is returned to a place where his or her life or freedom would be threatened.

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, also in light of the regular engagement we have had on this case with your Excellency's Government. 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 issues in question.

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.

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

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

Ahmed Reid
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls