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The “existential threats to the black family: racialized interpretations of the best interests of the child”

Tatyana (not real name), a little black girl’s father was in 2018, choked and wrestled down by the Dutch police to grab the 13-month-old breastfeeding baby and take her into custody. She was taken while crying as her father resisted her removal. Tatyana was later that day given to a white woman to take care of. Just imagine the shock and trauma Tatyana went through on seeing a strange woman feeding her with baby formula for the first time. Tatyana is just one of the hundreds of black children subjected to enforced suffering contrary to the notion of the ‘best interests of the child’.

As we gather here right a black child is being removed from his or her parents somewhere in one of the “civilized societies” to be placed in a foster center or family. This happens every hour, day, week, month, and year but why is it that most black children find themselves in this kind of situation? Why do we think that the white children deserve better to stay with their families than black children in these civilized countries?

The foster parents in Europe are white, who don’t eat our food, speak our languages, and do not like to associate with our community. This is enforced and backed by the states through the courts and its agencies in the name of protecting the best interests of the child. Is it really in the best interest of a child to lose his or her culture, language, and tradition?

Not until the moment I, as a black man can be recognized to foster white children, to prove that there’s equality before the law, black people will not believe that the systems are designed to benefit them. I watched with grief that a single black mother of Sudanese origin was pleading for assistance from the Australian authorities to find her 16-year-old daughter who was later found with a 32-year-old man after weeks. She said, “you make us (black people) helpless



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because you tell our children it is their right to do what they want to disrespect us when your's respect and do what you want." I wish Australia and other states transform that into their policies and programs because black people believe the system is designed for the whites.

Now let's talk about how racism manifests under the notion of the best interests of a black child under article 3 (1) of the Convention on the Rights of the Child (CRC) which states,

“ In all actions concerning the children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interest of the child, shall be a primary consideration.”

The keywords here are “...a *primary consideration*.” The superseding phrases of all actions and decisions of any authority.

Focusing on “a *primary* ” means going beyond the issue at hand but considering the roles played by the parents and stakeholders such as siblings, and the community with which a child is familiar. As we talk, Tatyana is almost making six, she can't speak her own biological parent's language, does not eat *matooke* (traditional Ugandan food), is cut off from her siblings, and is alienated from her community. She is now learning her own language taught by a 'mother' who never spoke it.

In their Joint General Comment No. 2 of the Committees on the rights of the child and that of the protection of rights of all migrant workers and their members of their families in 2017 (para 27) encouraged state parties to

“... comply with their international legal obligations in terms of maintaining family unity including siblings and preventing separation, which should be a primary focus, in accordance with the Guidelines for the Alternative Care of Children. Protection of the right to family environment frequently requires that States not only refrain from actions which could result in family separation or other arbitrary interference in the right to family life but also take positive measures to maintain the family unit, including the reunion of separated family members.”

Considering situations like the above, the best interests of the child cannot be realized if states keep on only concentrating on interpreting article 3 together with article 24 CRC and neglect other important provisions like articles 9 and article 18 of the Convention. These provisions call for both positive and negative obligations. Black children especially those with refugee backgrounds need even their parents more than any in order to maintain their languages, traditions, and development to maturity.

Things have to change. That change will not be realized by the national laws alone. In fact, racism is designed and imposed by the policies and programs without the black people



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involved. Someone sits in a public office and decides on what he thinks is best for a black family.

Focusing only on the children as a practice is not in the best interests of the child. Parents need not only financial and material assistance but also enough information to manage their emotional and psychological challenges. If at all, the children are to be temporarily removed and they should not just be dumped like pets but placed under people who share culture and customs. The ultimate goal should be to reunite the child with their parents promptly. Keeping a child such as Tatyana with a person who shares no common values for five years without contact with her parents, siblings, and community is counter reproductive to the best interests of the child.

Unnecessary restriction of contact between the parents, and siblings is itself a violation of the Convention even if not intentional. Why should, for example, a convict in prison be allowed family visits but a child under custody denied access to her sane parents and siblings?

The General Comment 14 of the Committee on the Rights of the Child further provides a wider non-exhaustive list of the measures that need to be taken into account by the states when deciding on the best interests of the child. For example, the parent's views, identity, preservation of the family environment, the child's view, maintaining contacts or restoration of relationship, the safety of the child, care, protection, and situation of the vulnerability among others.

Consequences of involuntary separation

The issue in these civilized societies is that they are blind to the anomalies in their policies and programs which are designed to portray the black people as inferior, and irresponsible in all matters that concern them. These loopholes arise because black people are not involved in such important processes where the systems are diversified.

Important to note is that children depend on their parents, their primary caretakers, for their development. There are significant risks of sudden and traumatic experiences children face when abruptly removed from their habitual caretakers. This can be avoided if all stakeholders are involved in the decision-making processes.

The continuous separation without contact could also increase the risks of mental illness, poor social functioning, insecure attachment, disrupted reactivity, crimes, and death. Such measure also contradicts the important roles family plays in a child's development free from State control.

Foster homes ought to be temporary alternative care to give the State the time to design services that could help to solve the problem that forced the separation. Generally, in the complaint



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against the parents, a court may order involuntary removal when there is proven evidence of abuse, abandonment, negligence, or inability to provide for the child due to their mental or physical incapability.

The costs of keeping children in foster care and treatment are not cheap. Why not invest it in empowering the community by establishing facilities that can help to minimize involuntary separation of families due to behaviors, especially among the black in the diaspora of which many are refugees, vulnerable to having their families separated.

Notwithstanding, cultural differences, many black parents of refugee backgrounds live in isolation without access to information and guidance. Meanwhile, as the Sudanese lady said, children tend to learn and integrate faster than their migrant parents. When parents more often are being referred from one authority to another, excessive paperwork and not properly filled, and informed about the help and support available.

The UN also reported that in countries like the Netherlands' the time to reunite separated children with their parents takes unnecessarily too long with the blacks and people with migrant backgrounds compared to the white Dutch. That the Dutch families have greater access to their children, routine visitation, and without language restrictions while there is a routine deployment of the police in courts and places of meetings than the non-nationals. That the non-Dutch parents, particularly those with refugee backgrounds face even harder challenges in receiving justice because many could not afford private lawyers.

National Court practices and interpretations

Definitely, when children like Tatyana are involuntarily separated from their parents, the judge has to determine if the child should be kept away or not. One of the reasons for denying contact, particularly with families from Africa is the prejudice that they “lack the skills of upbringing their children by the Western standards” so until such parents are trained, the children can remain away like Tatyana. Moreover, the courts also rely on information provided by the state and foster organizations and invoke articles 3 and 24 CRC to justify denying black children in foster care to learn and maintain their own “African standards”, especially culture, language, and the community.

Emphasizing the training of the black parents in “western standards” also portrays that other non-western standards are not worth recognition which entrenches institutionalized stereotyping. There is no doubt national courts play great roles in ensuring that national laws, policies, and enforcement conform with international law, its interpretation, and decisions in good faith.



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Although article 3 (1) CRC did not explicitly mention the role of parents, children are their basic concern which should not be overlooked. National courts could make a significant contribution towards the promotion of ‘the best interests of the child’ if they widen the scope of their interpretation by, for example, considering all the stakeholders’ interests involved in the promotion of the best interests of the child which includes charging the state to execute its obligations in assisting and supporting parents as required by the law.

It is detrimental to any parent without the necessary support and assistance to order the removal of a child. Moreover, such support is important in enabling parents to perform their duties. Instead, State agencies tend to advocate for long-term placement of the child by creating an atmosphere that could portray the foster care as the most suitable place for the child than a family reunion.

The agencies that the courts rely on have conflicts of interest because they receive money to keep the children away from their parents and providing assistance would speed up family reunions which could imply a loss of money from the government. Foster care centers and families are not inclusive and diverse in many western countries. They are dominated by white people yet refugee and migrant black children are of diverse cultures and races whose languages are not spoken when in custody.

The UN Working Group of Experts on People of African Descent appeals to States Parties not to rush the termination of parental authority of any person for its failure to provide the needed assistance and support to the concerned parents as stated under article 18 CRC. It could also be disproportionate to deny contact just because of allegations that a parent is incapable of performing his or her duties. Such a move should be taken unless there is extreme violence like sexual abuse by the parent, neglect, or mental incapability to protect and care for the child than promoting the State-funded agencies’ self-interests.

The courts tend to rely on reports issued by the child and youth care institutions against parents as facts in making decisions without involving other stakeholders. Moreover, some mix facts and opinions to influence court decisions negatively making reunion almost impossible.

The UN Committee on the Rights of the Children, also noted that the notion of ‘the best interests of the child,’ “has been abused by Governments and State-funded organizations to justify their unjust policies.”

Policy reformation and actions needed to comply with CRC

States can achieve a higher degree of success in the implementation of ‘the best interests of the child’ if it considers redesigning inclusive and diversified policies and programs. Providing



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services like public awareness, counseling, training, and encouragement of diversity could be the best achievable strategies.

1. Training and encouraging black people to work at foster centers and become foster parents. This could provide a variety of diverse and multi-cultural foster homes to enable children separated from their parents to still practice their culture, language, and religion, contributing to their well-being towards developing their talents and mental capacity even not with their parents.
2. Creation of awareness programs about the child care system targeting all new asylum seekers and refugee families in camps and reception centers, during and after asylum procedures, and in municipalities where refugees live. States are obliged under international law to provide education to parents. For example, sensitizing and warning against corporal punishment, domestic violence, child labor, compulsory school, child marriage, and female genital mutilation among others could prevent involuntary separation, criminal charges, and termination of parental authority due to such acts.
3. Provision of support to black parents like offering training and counseling as alternative methods of enforcing discipline in the home can be a game-changer. This could keep parents in check and act appropriately. Children learn about foreign cultures faster than adults, therefore, conflicts between parents and their children should not be ruled out. A Dutch writer, Helene van Oudheusden, in her book *Teaching Refugee Children*, also observed that actively involved parents, increase the feeling of safety of a child in the school career and that feeling is like a warm blanket. To realize the best interests of the child; parents, schools, the community, and all stakeholders is to know that children have to integrate well into unfamiliar places. Involving the black community and people with migrant backgrounds in the process will be ideal to avoid racial biases and create a sense of belonging.
4. Training social workers, law enforcement officers, teachers, and other stakeholders as the first contacts of the black children to avoid stereotyping to enable them to effectively guide black parents on their duties.
5. The municipal contact persons should be diversified as most of them have few blacks or minority groups and be trained to be able to identify the needs of their clients and address them before it becomes a legal matter. It should be noted that some refugee parents are not aware of the available services to assist them.



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In conclusion, sometimes racialized decisions are taken without intention because it is difficult to notice if policies and programs tend to promote racism and discrimination. Making information available to black parents would contribute to minimizing the traumatic experiences of children in foster homes. Even if under foster care black children's identities, cultures and languages should not be denied because of a lack of personnel. States should diversify foster families to include blacks in the diaspora. This approach is cost-effective for the government because it would save money and time on judicial processes, trauma treatment, and upkeep in foster homes. Above all, racialized actions by the state and its agencies would be reduced when black people are included.

Interpreting the best interests of the child should be jointly interpreted with other provisions such as article 9, 18, and 24 CRC by the courts and people of authority, or else even if unintentional, some actions promotes racial biases and discrimination and are themselves against the best interests of the child as seen above.

Thank you



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