

The Best of the Best Interests of a Child of African Descent

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Introduction

A child of African descent is generally a person below the age of 18 years, who identifies herself or himself as a descendant of a person of African descent. Persons of African descent include Africans that were displaced to the Americas during the transatlantic trade and trafficking in enslaved Africans, and migrants who have journeyed to the Americas, Europe, Asia and within Africa.¹

‘Humanity owes to the child the best that it has to give’.² It is trite that children start life with the legacies of their ancestors. The Durban Declaration and Programme of Action rightly notes the key effect of four centuries of enslavement, trade and trafficking in enslaved Africans as the ‘negation of the essence of its victims’.³ People of African descent were compelled into invisibility, insignificance and intense economic deprivation. African history was re-written to a narrative of defeat, savagery and primitivity of its people, with deliberate undertreatment of African civilization, greatness and resilience.⁴ It should be remembered that the oldest human rights charter – the Mande Charter of 1222 is traceable to present day Mali.⁵ Subsequently, over 75 years of colonial rule further eroded Africa’s confidence.

The post-colonial era is characterized by migration, at all costs, by Africans to other parts of the World, in search of better lives. Some of the lived realities of people of African descent, and the enduring effects of slavery and colonialism are racism, racial discrimination, xenophobia, and related intolerance. Racial segregation was formalized as state policy in South Africa and South West Africa for 46 years. Africans and people of African descent remain one of the most marginalized groups in the world. The Office of the High Commissioner for Human Rights highlights the following key concerns (i) structural and institutional racial discrimination, xenophobia and related intolerance; (ii) inequality, marginalization, and stigmatization; (iii) low levels of participation and underrepresentation in political and institutional decision making; (iv) lack of adequate representation in the administration of justice; (v) barriers to and inequality in the enjoyment of key human rights such as access to quality education, health services and housing, which results in intergenerational transmission of poverty; (vi) unequal access to the labour market; (vii) disproportionate presence in prison populations; (viii) racial profiling; (ix) limited social recognition and valuing of people of African descent’ ethnic and cultural diversity and contribution to society; (x) intolerance against religions of African origin.⁶ This is the context in which children of African descent are born and nurtured. It poses the question: what does humanity owe children of African descent?

The Best Interests of the Child of African Descent

The principle of the best interests of the child is the golden standard for all matters concerning children. The Convention on the Rights of the Child provides that in all actions concerning children, whether

¹ Peter Lesa Kasanda, ‘Identification and definition of people of African descent and how racial discrimination against them is manifested in various regions’, Commission on Human Rights, 24 January 2003, E/CN.4/2003/WG.20//WP.3 para 6.

² Geneva Declaration of the Rights of the Child, 1924.

³ Durban Declaration and Programme of Action (DDPA), 2001, United Nations, p.1

⁴ See Graziella Bertocchi, ‘The legacies of slavery in and out of Africa’, (2016) 24 (5) IZA Journal of Migration 1- 19.

⁵ The Manden Charter, proclaimed in Kurukan Fuga, 1222. Accessed from [28118-EN.doc \(live.com\)](#)

⁶ People of African Descent, Fact Sheet by OHCHR, Accessed from [Microsoft Word - PAD-final for NY \(ohchr.org\)](#)

undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.⁷

There is no concise definition of the best interests of the child. The inherent flexibility and contextual nature of the concept is seen as a source of its greatest strength.⁸ The best interests of each child or group of children are determined by factors that derive from the individual circumstances of the child or the group. Racial inequalities are seen to intersect with inequalities based on age worldwide.⁹ Children are naturally in a position that requires special protection and support; but children of African descent even require more support because of the effect of discrimination and exclusion on the protection of their rights. There are therefore certain peculiar concerns, which form the best interests of the child of African descent in addition to all other criteria that characterizes the well-being of every child. These arguably constitute the best of the best interests of children of African descent.

i) Respect for and protection of the family of African descent

Family is the natural foundation of life in society.¹⁰ It is the best environment in which children can be raised.¹¹ It is always in the best interest of the child to protect the integrity of the family.

The oppressive systems of slavery, colonialism and apartheid were characterized by forced movement of people of African descent and forced labour, without any regard for the family. People were separated from their families indefinitely; they were compelled to work for the benefit of others, other than their families; human breeding farms were formed to produce more slaves, hence completely undermining the primacy of the institution of the family as the nucleus of socialization, among people of African descent.

To date, the state of deprivation among households of people of African descent has led to haphazard migration, widespread institutionalization of children of African descent, absentee parenting, and inconsistencies in foundational family values. The sectors that are dominated by people of African descent do not yield enough financial gains for them to afford to raise families without strife. The financial demands of immigration, for families to live together, fall above the threshold that people of African descent can meet. This has negative consequences on family reunification and solidarity. There is limited appreciation of African values of parenting, which underscore the responsibility of the child to his or her parents and family in the discourse of many jurisdictions. In many respects, a family of African descent is faced with existential threats.

It is therefore in the best interest of the child of African descent that the actual stance of the African family in modern day society is recognized and supported. Protection of a family of African descent includes safeguarding it from uninformed judgement based on the standards of other cultures. Social workers of African descent should be employed and consulted in cases concerning care for children of African descent.

⁷ Article 3 (1), Convention on the Rights of the Child, entered into force in 1990.

⁸ *Nel v Byliefeldt and Another* (27748/2015) [2015] ZAGPPHC 386 (11 May 2015) para 28.

⁹ See briefing note on Children on African Descent in Latin America, Economic Commission for Latin America and the Caribbean, 15 November 2019. [Children of African descent in Latin America | Briefing note | Economic Commission for Latin America and the Caribbean \(cepal.org\)](#)

¹⁰ Article 18, Constitution of the Republic of Guinea, 2010; Article 22, Constitution of Eritrea, 1997.

¹¹ Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Second Periodic Report of the Republic of Kenya, on the Status of the Implementation of the African Charter on the Rights and Welfare of the Child, November 2020, para 44.

Regard should be had for the circumstances of people of African descent in making determinations of family reunification and expulsion of persons of African descent from territories in which they have families.

ii) **Recognition of people of African descent**

Racial discrimination culminates into a burden of proof upon a person to prove their humanity. Dehumanisation of people of African descent was so thorough and intentional, while also undermining the significance of their contribution to the economic advancement of many nations, the social capital and cultural wealth of the world. The lack of reliable racially disaggregated data in several countries has obscured the demographics of people of African descent. The Working Group of Experts on People of African Descent has emphasized the significance of such data in informing policy to improve the situation of people of African descent,¹² and in the fight against invisibility.

Recognition is one of the pillars of the International Decade of People of African Descent (2014 – 2024). This pillar represents the commitment of stakeholders to ensuring the equal enjoyment by the people of African descent of all human rights.¹³ Recognition of people of African descent as a distinct group of people furthers the best interests of children of African descent to be raised in conditions which maximise their chances of belonging to society. Recognition covers aspects such as the politics of black people's hair, which stimulate controversy and crises of identity among children. The Working Group learnt of the effect of lack of black models in medical schools of some European countries. This has limited the quality of health care for people of African descent as medical professionals are not familiar with diseases that are peculiar to people of African descent, and how symptoms manifest on black bodies. Recognition also facilitates the inclusion of people of African descent hence providing exemplars for children of African descent.

iii) **Reconstruction of the heritage of people of African descent**

The dignity of people of African descent was stolen through brutal processes of slavery, colonialism and apartheid, amid intense resistance and defensive action. The image and heritage of the people of African descent has been dominated by consequences of what is now considered 'appalling tragedies in the history of humanity'.¹⁴ There is need for a decisive break from that constructed and imposed brand to one that is representative of the humanity of people of African descent. Transformation and sensitivity of law, policy, education curricular, media output, literature, language, art, music, and commerce are essential. Humanity could raise its consciousness to the contributions that people of African descent are making to societies and crediting them directly.

Rebuilding the heritage of people of African descent has an existing foundation in African history that demonstrates significant strides in civilization, commerce, and governance among ancient African empires and Kingdoms. Authentic African history needs to be taught and promoted globally.

It is in the interest of children of African descent to receive a heritage of a dignified, empowered and valuable citizenry.

¹² See for example, Report of the Working Group of Experts on People of African Descent on its Mission to Germany, A/HRC/36/60/Add.2, 15 August 2017, para 56; See also Commentary on SDG 10.7: Data Collection, Operational Guidelines for the Inclusion of People of African Descent in Agenda 2030, Working Group of Expert on People of African Descent, 09 December 2020, p.58.

¹³ People of African Descent in Latin America and the Caribbean: Developing Indicators to measure and counter inequalities, ECLAC, 2020, p.18.

¹⁴ Durban Declaration and Programme of Action, 2001, p.1.

iv) Respect for and decriminalisation of racial identity

One of the key violations of the rights of people and children of African descent is the criminalisation of their racial identity. The presence of a person of African descent in a particular place raises the presumption of criminality. This triggers controversial responses such as racial profiling, stigmatisation, and xenophobia, among others. These responses limit the mobility and freedom of children of African descent, which are essential for growth and impact. The criminalization of the juvenile justice system intersects with criminalization of racial identity to result in brutal policing of children of African descent, and imposition of premature accountability on children of African descent.

The best interests of children of African descent require that their identity is respected as a representation of humans that are equal in dignity and worth without vicious presumptions.

v) Reparation

The contribution of leading powers to the impoverishment of people of African descent needs no further articulation. Children of African descent are indirect victims of the crimes against humanity that were perpetuated against the preceding generations. A child of African descent that has a family history of enslavement is a victim of racialized intergenerational deprivation.

Reparations to people of African descent must meet both procedural and substantive requirements; they must be appropriate, prompt, proportional and adequate, and culminate from a process that ensures meaningful participation of victims and judicious regard for all relevant factors and circumstances. It is not enough to introduce *ad hoc* programmes as expressions of remorse. Participation of victims validates their voices and contributes to the process of healing.

Adequate, appropriate and proportional reparations would further the best interests of the child of African descent if they have the effects of satisfaction, restitution, guarantees of non-repetition, and rehabilitation. Reparation is justice. Notable developments include the repatriation of artifacts from France to Benin, and from the United Kingdom to Nigeria.

vi) Development of children of African descent

The Human Development Index (HDI) has three indicators of human development: life expectancy (a long and healthy life), education (knowledge) and per capital income (a decent standard of life).¹⁵ The bearing of the latter two indicators on the first one is demonstrably clear. People of African descent have a low human development index. This absurd reality was expressed, in crude terms, to the Working Group, as follows: 'it takes forever for a black person to get anywhere'. There is a glass ceiling to the normal progression of a person of African descent.

Racial stereotyping has led to pre-determination of the competencies of children of African descent and limited them to specialized areas such as art, music, and sport. Formal and informal education systems are conveniently diverting the interest of children of African descent to the aforementioned areas, without

¹⁵ See, Human Development Index, [Human Development Index \(HDI\) | Human Development Reports \(undp.org\)](https://data.undp.org/hdi/).

according to them the free choice to maximise their potential. Studies demonstrate disproportionate underperformance by children of African descent in school.¹⁶ This is partly attributable to the racial stress, which culminates from cumulative negative racialized experiences of children of African descent in schools.¹⁷ Crozier convincingly contends that underachievement of a child of African descent does not start with the child; there is a pathological view of the black child that is so embedded within the school institution that conspires against their success.¹⁸ Children and parents of African descent have also informed the Working Group of racialized downgrading of assignments, and school exclusions on frivolous grounds. Linguistic racism, which is characterized by declassification of the language proficiency of children of African descent by schools and higher education institutions, is a barrier to achievement.

Education is an enabling right and an essential tool for human capacity development and arguably the most essential instrument of bridging the racialized skills gap. Children of African descent must be facilitated, through full access to education, to realise the highest attainable standard of their abilities and aspirations.

The barriers to the progress of children of African descent intersects with the well-being of women of African descent, who are the primary or often only care givers due to the breakdown of families. The gender and racially driven wage gap disproportionately and adversely affects women of African descent. Several women of African descent face intense pressure to sustain their households singlehandedly as several men of African descent are held up in the prisons of the world. This strains their resources of time and income that makes it improbable to afford better lives for their children including health care and education.

vii) Equal opportunity

A person of African descent recently revealed to the Working Group that ‘to grow up and not see oneself in spaces has an impact’. Underrepresentation of people of African descent in positions of influence is a validation gap for children of the same identity. Children of African descent require equal opportunities in the political, social and economic spheres of society. Inequality is a higher risk factor for society. For historical reasons, equal access for children of African descent may not be possible without affirmative action. Children rely on their families’ capital to access opportunities in society. This includes the social identity of their families, which is determined by the education levels, income, and accommodation of their households.

Of note, many children of African descent struggled to meet the financial and technical demands of online or hybrid models of learning following the changes arising from the COVID 19 pandemic.¹⁹ Families lacked facilities for home study including adequate food, heating, computers, workspace, and even care for their children that had to be kept at home. Efforts to increase the social and economic mobility of people of

¹⁶ See for example, Gill Crozier, “‘There’s a war against our children’: black educational underachievement revisited” (2005) 26 (5) *British Journal of Sociology of Education* 585 – 598; Feyisa Demie and Christabel McLean, “Black Caribbean Underachievement in Schools in England”, Research Report, Lambeth Education and Learning International House, 2017. [Black Caribbean Underachievement in Schools in England \(lambeth.gov.uk\)](https://www.lambeth.gov.uk/black-caribbean-underachievement-in-schools-in-england); Barbara T. Bowman, James P. Comer and David J. Johns, “Addressing the African – American achievement gap”, (May 2018) 73 (2) *YC Young Children*, 14 – 23.

¹⁷ Gill Crozier, “‘There’s a war against our children’: black educational underachievement revisited” (2005) 26 (5) *British Journal of Sociology of Education* 585 – 598, at 588.

¹⁸ *Ibid* at 596.

¹⁹ See COVID-19, systemic racism and global protests, Report of the Working Group of Experts on People of African Descent, A/HRC/ 45/44, 21 August 2020.

African descent should supersede the deeply entrenched structurally discriminatory impetus that propelled oppression.

Conclusion

Children of African descent are the opportunity for humanity to make amends for the tragedies in the past. The best interests of the child of African descent include peculiar interests that address legacies of the past, in addition to those that ensure their rights. A child of African descent desires respect for and protection of their family; recognition of their distinctiveness; a decisive break from marginalization and criminalization of their identity; equal opportunity; reparation; and development. These arguably constitute the best of the best interests of children of African descent. Of note, children have the right to have their best interests taken as a primary consideration, and the guarantee that this right would be implemented whenever a decision is to be made concerning them.²⁰

²⁰ 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), 29 May 2013, CRC/C/GC/14, para 6 (a). See Jonathan Collinson, 'Making the best interests of the child a substantive human right at the centre of national level expulsion decisions' *Netherlands Quarterly of Human Rights* (2020) 36 (3) 169 -190.

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