

Children of African Descent and the Administration of Justice

Presentation to the Working Group of Experts on People of African Descent
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Good morning everyone and my thanks to the organizers for inviting me to participate in this 30th Session of the WGEPAD. Greetings to my fellow CERD member, Dr. Gay McDougall, who will be the CERD focal point on the WGEPAD come 2023. I must also say Happy Africa Day to all.

Now, as I am not a legal scholar or a lawyer, I am going to approach the topic of children of African descent and the administration of justice from a different angle than perhaps how lawyers /legal scholars would approach it. My main argument is that while we mark Africa Day and celebrate the history and culture of Africa, anti-African ideologies and practices continue to affect African children and children of African descent in the Diaspora and deny them justice, in particular in the matter of how they choose to express their African culture through their hairstyles.

Those who have been paying attention will know that children who wear dreadlocks or locs and who profess Rastafarianism, have, like their parents, suffered discrimination for decades; but over the last 5 years or so, the incidents of barring children of African descent from attending school because they wear African-inspired or African hairstyles has increased. This is an injustice; but the remedy is not only to be found in court settlements and legislation, but also in education, in awareness-raising around what constitutes racial discrimination and in ideological re-orientation away from colonial thoughts in all States Parties where such a practice is found. For unless there is true decolonization in former colonial and current colonial societies, those who administer justice and those under whose care our children are placed, will continue to institute unfair judgements and practices that deny children their fundamental rights.

To illustrate from the USA:

In 2017, a charter school outside Boston issued multiple detentions to black 15-year-old girls who wore their hair in braided extensions, saying the hairstyle violated the dress code.

In 2018, a referee in New Jersey forced a 16-year-old mixed-race wrestler to cut his dreadlocks or forfeit his match.

In 2019, a public elementary school in suburban Atlanta displayed several photos of black children, including girls with braids, to illustrate “inappropriate” haircuts.

A 6-year-old boy in Florida was turned away from a private Christian academy on his first day of school because his hair extended below his ears.

A New Orleans-area girl was sent home at the start of the school year from a Catholic school for wearing braids.

And finally, there is the **Arnold Family v. Barbers Hill Independent School District**. Legal Defense Fund for Hair Discrimination, (LDF) represented Everett De’Andre Arnold, Sandy Arnold, and Cindy Bradford (on behalf of her minor son K.B.) in a [lawsuit](#) against Barbers Hill Independent School District (BHISD), located in Mont Belvieu near Houston, Texas. The lawsuit filed in May 2020 challenged BHISD’s hair policy on the basis of race and gender discrimination and First Amendment protections. The lawsuit asked the U.S. District Court for the Southern District of Texas to require BHISD to immediately reinstate De’Andre and K.B. and rescind its discriminatory hair policy. Midway through the 2019-20 school year, BHISD changed its dress and grooming code to include a hair length requirement that targeted De’Andre and K.B. based on their race and gender. De’Andre and K.B. were told that they would not be allowed to participate in their regular classes or school activities. For De’Andre and K.B., who had been growing out their locs for years, their hair was a source of pride and an expression of their Black identity. The policy was strictly enforced against the two students after Sandy Arnold spoke about its discriminatory impact at a BHISD Board of Trustees meeting. The two students refused to cut their locs to conform to the school’s discriminatory policy, and both were suspended indefinitely and effectively expelled from the school they had attended for their whole lives. Ultimately, De’Andre was banned from attending his own high school graduation.

Outside of the USA:

These incidents are not confined to the USA. Similar incidents have been reported in the UK, in South Africa and in Jamaica.

News out of the UK reported by Shivaun Patel in the *Mail Online* is that in December 2021, a schoolboy who went to school with his hair in plaits was removed from his classes and put in isolation after his hairstyle was deemed 'extreme' by teachers. Lealan Hague, 14, was placed in Exmouth Community College's 'reflection room', where pupils continue lessons in isolation, after teachers said there was an 'issue with his hair being worn up in plaits'. The pupil, who regularly plays rugby at the Devon school, decided to tie his hair in plaits over one weekend to keep it out of his face but was told by staff he must instead keep it down.

Let me mention a few of the cases out of Jamaica:

- ***Manning's School, Westmoreland-*** In late June-July, 2021 a circular came out from Manning's School, in the western parish of Westmoreland denouncing the wearing of Bantu knots by their graduates. The Jamaica Gleaner newspaper reported that students participating in the photo session for the school leaving exercise were told "No Bantu Knots/Chiney Bumps." The Principal [Mr Gordon] told the Gleaner that "*the guidelines would have been in place to reduce the level of difficulty in trying to fit mortarboards on some of the elaborate hairstyles that students want to wear, including Bantu knots that have been dramatically enhanced by the addition of artificial hair.*" He denied that the action was discrimination against children of African descent and their hair. Yet, The Gleaner reported that the same circular allowed the wearing of European hair extensions.
- ***Kingston College locking out students-*** the popular all boys' institution ***Kingston College*** came under some heavy criticism in April (26-27), 2022 when it came to the public's attention through various news media that students were barred from entering the institution because of their hairstyles. The boys were not wearing any elaborate design or hairstyles they just had their African kinky hair normally trimmed and groomed for school. However, that was deemed unacceptable by the school's principal. The Gleaner reported that a parent called and registered her displeasure with the school and stated that, "*I follow rules and nothing is wrong with my son's hair, and that of the other students I saw this morning.*" The parent has threatened legal action if her son underperforms on his exams against the school and the Ministry of Education. The students claim that the school wants them to scull their heads and no hair should be shown.

- **Dunrobin Primary-** On April 6, 2022 an 11 year old male student was given a letter to his parents declaring that if his hair was not properly groomed he would not be allowed to return to class. The parent of the boy got Attorney-at-law Bert Samuels to write a letter threatening legal action against the school, if their child was not allowed to enter the school and go to classes.
- **Kensington Primary:** Perhaps the most talked about case of hair discrimination out of Jamaica recently is what is called *The Virgo Case*. In 2018 Dale and Sherine Virgo were informed by a Primary school, Kensington Primary, that their child 5 year old **ZV** would not be allowed to attend the institution the upcoming academic year because it was observed that the child was sporting locs. It was shared with the parents that the school has a policy of, ‘no braids, no beads, no locking of hair.’ The reason given was that parents do not wash their dreadlocked children’s hair, in a timely manner and the hair gets ‘*junjo*’ and this had led to lice infection issue in the past. This rule was not present in the handbook that the parents got but was an unwritten policy of the school.

This led to a court battle, and in 2020 the Supreme Court of Jamaica ruled that, the school was in its rights to impose its policy of ‘no braids, no beads, no locks.’ The ruling by the Supreme Court of Jamaica capped a two-year battle over the child’s hair. Part of the deliberation of the court is as follows:

“The school, through its then Principal, indicated that her locks are prohibited as there is a possibility that the hairstyle would lead to lice or ‘junjo’ infestation. It is my view that hygiene is a legitimate aim” ...The objective of creating a more controlled hygienic environment is important to the proper order and effective learning at school.” This from Justice Sonia Bertram-Linton

But the public was outraged by the suggestion that locs presented a health risk and encouraged lice; and the other reasoning that locs could only be worn if for proven religious reasons. A rights group, Jamaicans for Justice, had initially lent support to the family, saying the order for the girl to cut her dreadlocks amounted to a denial of her freedom of expression and her access to education. Others viewed the court battle as a stand against rules seen as discrimination against people who wear

"natural" hair, including Rastafarians whose dreadlocks are part of their religious tradition.

The child was eventually allowed back in school in a reversal of the decision; but as has been shown, other cases came before and after the Virgo case.

What is the Root Cause?

What is the root cause of the obsessive regulating of hairstyles in schools? On the one hand, all the recent cases of schools preventing, including locking out students from entering school because of hair style in the case of Jamaica, is supposed to be against the Jamaica Ministry of Education's policy. At the same time the Ministry of Education in 2018 issued a grooming policy that gives schools latitude in determining appropriate hair standards. The overwhelming view in the society is that there is strong discrimination against African hair look and styles by school administrators because of this latitude. Yet, Section 13(3)(i) of the Constitution of Jamaica provides that every citizen of Jamaica has the right to freedom from discrimination on the ground of race.

Clearly a unifying element is that the problem lies in our perception of what texture of hair is considered to be acceptable in society. Many people have been socialised from an early age into thinking that straight hair is considered to be "good hair" and that natural hair in black people must be physically or chemically altered to make it acceptable.

It is now widely accepted that hair discrimination is rooted in systemic racism, and, according to Legal Defense Fund for Hair Discrimination, "its purpose is to preserve white spaces.". Hair discrimination is rooted in systemic racism and erodes trust between students and the education system that is supposed to care for them. Protective styles, locs, headwraps, and durags are not just vital to the protection of Black hair, they are expressions of culture and identity. Discriminating against Black hair reinforces the othering of Black children and is another way that Black identity is policed.

Actions: Until recently, there were no protections for other natural Black hairstyles such as locks, knots, braids and twists. Protections that cover those styles exist only in places. I think one of the most impactful attempts to ensure there is justice for black children who have been discriminated according to hair styles

and texture is happening in the USA. Says LDF, “With no nationwide legal protections against hair discrimination, Black people are often left to risk facing consequences at school or work for their natural hair or invest time and money to conform to Eurocentric professionalism and beauty standards. No one should be targeted for being who they are. The criminalization of Black hairstyles must end.” So, together with the CROWN Coalition, LDF is fighting to end hair discrimination and push for **The CROWN Act** to become law in all 50 US states. CROWN = Creating a Respectful and Open World for Natural Hair. Based on what I have read, many States have signed The CROWN Act or legislation inspired by The CROWN Act into law. Advocates say a federal law is needed. The U.S. House passed the CROWN Act in September 2020, but the Senate has not acted.

Conclusion: Other remedies:

We need to call on States in which such practices exist to implement the relevant UN Conventions and Mechanisms designed to protect our children, as well as their own Educations Acts, Constitutions and Charter of Rights.

CRC: **Art. 3**: In all actions concerning children, whether 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. **Art. 4**: States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, **social and cultural rights**, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. **Art 28**: States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention. Art 29 (c) The development of respect for the child's parents, his or her own **cultural identity**, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

Programme of Activities, IDPAD: The recommendations in the Programme of Activities for the UN International Decade for people of African descent also provide guidance. The POA contain a call for the implementation of the main objective of the International Decade which is to promote respect, protection and fulfilment of all human rights and fundamental freedoms by people of African descent, as recognized in the Universal Declaration of Human Rights and as enshrined in subsequent international, national and regional human rights instruments. I also point to Para 17© under Access to Justice which is very clear on the issue of eliminating institutionalized stereotypes concerning people of African descent and applying appropriate sanctions against law enforcement officials who act on the basis of racial profiling.;

Under Recognition, the POA for the IDPAD requests States to promote greater knowledge and recognition of and respect for the culture, history and heritage of people of African descent, including through research and education, and promote full and accurate inclusion of the history and contribution of people of African descent in educational curricula. In terms of Education, Art 22 (b) is clear. States should take measures to ensure that public and private education systems do not discriminate against or exclude children of African descent, and that they are protected from direct or indirect discrimination, negative stereotyping, stigmatization and violence from peers or teachers; to this end, training and sensitization should be provided to teachers and measures should be taken to increase the number of teachers of African descent working in educational institutions.

Jamaica's Child-care and Protection Act, 2004:

4.-(1) For the purpose of protecting and enforcing the rights of children, there is hereby established a Commission of Children's Parliament which shall be known as the Children's Advocate.

Art 28: 28.-(1) Every person having the custody, charge or care of a child between the ages of four and sixteen years shall take such steps as are necessary to ensure that the child is enrolled at, and attends, school.

The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011:

The Charter of Rights of Jamaica provides for the right to freedom from discrimination on the ground of (i) being male or female; (ii) race, place of origin, social class, colour, religion or political opinions;

CERD:

As a member of CERD, I have to stress that the ways in which children of African descent are treated in the matter of cultural choice in how they wear their hair, constitutes racial discrimination and contravenes Art. 1 of the ICERD, which states:

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Clearly access is affected by racial discrimination, racial profiling and anti-African ideologies. Clearly the process of decolonial justice is an ideal that is still in action. Advocates for the cultural rights and identity of children of African descent need to lobby for the respect of such rights and also press for the kind of curriculum that will restore respect and dignity to children of African descent. If we do not interrupt this trend, then the administration of justice on behalf of our children will continue to be skewed. Let's make this our collective project – especially over the next two years of the UN IDPAD. If we do not, this is what they will face as adults. And I end with this example from Belize:

The case involved two female police officers who won a case against the Police Department in Belize in January, 2021. Both women wear locs, one because she is Rastafari, the other as a part of her African identity. The court ruled that the police regulations infringe on the women's constitutional rights. This ruling is far more progressive than the ruling that was handed down in Jamaica in the Virgo case.

Here it is summarized by Human Rights Lawyer, Dr Tracey Robinson, daughter of ICJ Judge, Patrick Robinson:

“The Supreme Court of Belize delivered a landmark ruling on Friday, January 29, 2021 in favour of female police officers who faced disciplinary charges for refusing to remove their dreadlocks. The court ruled that such regulations were an infringement on those officers’ right to freedom of expression, among others. The two officers who challenged the Police Department’s regulations are PC Shantel

Berry and PC Alleeya Wade, who lodged a joint constitutional claim against the department that resulted in this precedent-setting court decision.

In May 2019, five female officers faced disciplinary charges after they refused to remove their dreadlocks. At the time, the Police Department had said that the wearing of such a hairstyle violated section 7 of their Standing Order. The two claimants felt the regulations were unconstitutional, since, according to one of the two women, her wearing of dreadlocks is a part of her Rastafarian faith, while the other claimant asserted that the hairstyle is an expression of her African identity. The women were represented by attorney Leslie Mendez, who said that the decision is to be celebrated as a victory for black women's right to expression of their identity.

And while a written judgment has not been delivered yet, the oral judgment, handed down by Justice Sonya Young, will prompt employers to consider the implications of applying regulations within companies that may seem standard on the surface but infringe on certain rights of employees.

During an interview with News5 last week, attorney Leslie Mendez said, "The right to protection against discriminatory treatment doesn't only guarantee that you are going to be treated the same, but rather it also guarantees that our differences will be accommodated and our differences will be celebrated."

The Commissioner of Police, Chester Williams, also weighed in on the ruling, saying that the court's decision has prompted his department to revisit the regulations with a view to coming in line with the recent ruling from the high court. He also said that the Police Department long ago moved on from this matter.

"The officers involved, they have been working, and we have no issue. Some of them have been promoted, even with their dreadlocks, and the court ruling is the court ruling," Commissioner of Police Chester Williams shared.

He added, "While, yes, I do believe that women should be able to express themselves, particularly in terms of how their natural appearance is supposed to be, I do believe that when it comes to professional organizations, that there must be some guidelines that women should be able to follow."

The attorney for the claimants shared that in other jurisdictions, similar actions of this nature in high courts have been unsuccessful. As a result, the country and region owe these two brave WPC's a debt of gratitude.”

Victory is not guaranteed for the complainants in such cases, however; so the groundwork should be laid to obviate the necessity of having the courts settle cases of infringement of cultural rights!

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