



## Convention on the Rights of Persons with Disabilities

Distr.: General  
15 October 2019

Original: English

### Committee on the Rights of Persons with Disabilities

#### Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 24/2014\*, \*\*

<i>Communication submitted by:</i>	Z (represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	United Republic of Tanzania
<i>Date of communication:</i>	12 June 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 64 and 70 of the Committee's rules of procedure, transmitted to the State party on 9 January 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	19 September 2019
<i>Subject matter:</i>	Torture, inhuman and degrading treatment; discrimination against a person with albinism
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Albinism; discrimination based on disability; torture, inhuman and degrading treatment; violation of the right to respect for intellectual and mental integrity
<i>Articles of the Convention:</i>	5, 6, 8, 10, 14, 15 (1), 16 and 17
<i>Article of the Optional Protocol:</i>	2 (d) and (e)

1. The author of the communication is Ms. Z, a national of the United Republic of Tanzania, born in 1983. She claims to be a victim of violations by the State party of articles 5, 6, 8, 10, 14, 15 (1), 16 and 17 of the Convention. The United Republic of Tanzania ratified the Optional Protocol on 10 November 2009. The author is represented by counsel.<sup>1</sup>

\* Adopted by the Committee at its twenty-second session (26 August–20 September 2019).

\*\* The following members of the Committee participated in the examination of the communication: Ahmad Alsaif, Martin Mwesigwa Babu, Monthian Buntan, Imed Eddine Chaker, Gertrude Oforiwa Fefoame, Amalia Eva Gamio Ríos, Jun Ishikawa, Rosemary Kayess, Kim Mi Yeon, László Gábor Lovász, Robert George Martin, Dmitry Rebrov, Jonas Ruskus, Markus Schefer and Risnawati Utami.

<sup>1</sup> The author and her counsel have requested anonymity.



## A. Summary of the information and arguments submitted by the parties

### The facts as submitted by the author

2.1 The author was born on 3 March 1983. She is from the village of Ntubeye in Kagera Region of the United Republic of Tanzania. She is a person with albinism and a single mother. Until 2008, she was self-sufficient as a farmer.

2.2 On 17 October 2008, while she was sleeping with her 2-year-old son, the author was attacked by two men who cut off one of her arms with machetes and maimed the other. She managed to see the men: one of them was her neighbour, and she did not know the other. The author screamed for help but no one came to her rescue, and the men managed to escape with her arm. The other arm was later amputated in the hospital. The author was pregnant at the time, but, as a result of the attack, she miscarried.

2.3 On an unspecified date in 2011, the attackers were arrested and tried. The author claimed that she knew one of the attackers well. However, her testimony was given little weight because the court considered that, as a person with a visual impairment who could therefore not see well, she could not correctly identify the attackers. Additionally, her father was allowed to testify without any power of attorney and while he was drunk. His testimony contradicted the author's. The attackers were therefore acquitted for lack of evidence.

2.4 After the incident, the author was unable to perform any activity. The District Commissioner took her in and accommodated her at his home. However, she continued to face harassment, discrimination and stigma, and, without her arms, she was unable to carry out personal routines such as bathing and feeding herself.

2.5 According to statistics provided by the author, the total number of persons with albinism in the United Republic of Tanzania is estimated to be more than 200,000.<sup>2</sup> Persons with albinism are subjected to various forms of persecution and discrimination, many of which are grounded on myths. It is believed, according to the author, that they are "a curse from God" or "internal ghosts". The author also refers to the belief that the body parts of a person with albinism provide wealth and prosperity. In this context, persons with albinism are frequently victims of witchcraft; such practices are also aimed at eliminating persons with disabilities because it is considered that looking after them is an unnecessary burden for the community. In that connection, the author submits that impunity characterizes most cases of violence perpetrated against persons with albinism, as the State party's authorities consider that such violence is linked to witchcraft, which is a generally accepted cultural practice and about which prejudice still prevails in society.

2.6 The author claims that no effective domestic remedies are available in the State party. The State party authorities failed to prosecute with due diligence and commitment to enable justice to be done in the author's case. The authorities handled the case negligently and failed to gather significant evidence, leading to the acquittal of two of the accused persons for supposed lack of evidence.

2.7 The author claims that it is up to the State party to appeal against this ruling through the Office of the Attorney General. She further argues that her right to a fair trial was violated as reparation has not been made for the harm that she suffered, and her cause was not considered thoroughly by the competent national authorities. In that connection, the author refers to the decision of the Inter-American Commission on Human Rights in *Arges Sequeira Mangas v. Nicaragua*, according to which, in the case of crimes of public action, and even in those that may be prosecuted by a private actor, it is not valid to demand the exhaustion of domestic remedies, since the State has a duty to maintain public order and therefore has an obligation to set the criminal law system into motion and process the matter until the end. As stated by the Inter-American Court of Human Rights and quoted by the Commission in the above decision, the obligation to investigate must be assumed by the State as its own legal duty, not as a step taken by private interests that depend upon the

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<sup>2</sup> The United Republic of Tanzania has one of the highest rates of albinism in the world, estimated at 1 in 1,429 people (Stiefel, "Albinos in Africa: a population at risk").

initiative of the victim or the victim's family or upon their offer of proof, without an effective search for the truth by the Government. In other words, the obligation to investigate, prosecute and punish the persons liable for human rights violations is a non-delegable duty of the State.<sup>3</sup>

### **The complaint**

3.1 The author claims that she has been a victim of violations of her rights under articles 5, 6, 8, 10, 14, 15 (1), 16 and 17 of the Convention.

3.2 Regarding article 5, she claims that she has been discriminated against on the basis of her disability due to the State party's failure to take care of persons with albinism. She argues that her attack is an illustration of a systematic practice against persons with albinism. She considers that if the State party had taken preventive measures to protect persons with albinism, she would not have suffered such an attack.

3.3 The author argues that the State party has failed to take measures to protect women with disabilities and guarantee their rights and empowerment, as required by article 6 of the Convention.

3.4 The author further considers that she has been a victim of a violation of her rights under article 8 of the Convention, since the State party does not carry out public awareness campaigns to ensure that the public understands the rights of persons with albinism. Albinism, as a disability, seems to have been intentionally ignored by the State party authorities. In this connection, the author submits that the inhabitants of her village felt that she had brought shame to the village because she had sought justice. She argues that this perception demonstrates the prevailing ignorance about the rights of persons with disabilities, and that the authorities have failed to take action in that regard.

3.5 The author submits that the State party has failed to take measures of protection for persons with albinism, and that this failure amounts to a violation of her rights under article 10 of the Convention. She argues that, had the State party complied with the requirements of the Convention, her aggressors would not have dared to attack her.

3.6 The author also considers that the State party has failed to provide the necessary security to enable persons with albinism to enjoy life, in violation of article 14 of the Convention.

3.7 The author argues that the State party has failed to protect her from violence and torture. She has suffered double jeopardy, first as a woman and then as a person with albinism. She submits that cutting off her arms clearly amounts to torture and degrading treatment, in violation of her rights under article 15 (1) of the Convention.

3.8 The author considers that the State party has failed to ensure that persons with albinism are protected from exploitation, violence and abuse, and that impunity remains for all related crimes, while such practices are widespread and the authorities are aware of them. She therefore considers that the State party has violated her rights under article 16 of the Convention.

3.9 The author also alleges that, as a result, her physical integrity has not been respected. Given that the State party has failed to take any measures to protect persons with albinism against such practices or to create effective protection and deterrence mechanisms, the State party has violated its obligations under article 17 of the Convention.<sup>4</sup>

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<sup>3</sup> Inter-American Commission on Human Rights, *Arges Sequeira Mangas v. Nicaragua*, Report No. 52/97, Case No. 11.218 (18 February 1998), para. 96.

<sup>4</sup> The author also submits that she has been a victim of violations of her rights under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination against Women. These allegations do not fall within the competence *ratione materiae* of the Committee and are therefore not referred to.

**State party's observations on admissibility and the merits**

4.1 On 25 June 2015, the State party submitted its observations on admissibility and the merits. It argues that the communication should be held inadmissible for non-exhaustion of domestic remedies, in compliance with article 2 (d) of the Optional Protocol. The State party also argues that the communication has not met the admissibility requirement provided for by article 2 (e) of the Optional Protocol.

4.2 The State party submits that the author could have initiated a constitutional petition under the Basic Rights and Duties Enforcement Act, which provides for the procedure for the enforcement of constitutional basic rights. The State party has enhanced adjudication of constitutional cases by establishing a permanent roster of five judges to preside over constitutional cases and to expedite their hearings.

4.3 As regards the author's claim for reparation, the State party argues that this matter has never been raised before its authorities. In that connection, it submits that the author could file a civil suit for malicious prosecution against the authorities that instituted the charges.

4.4 The State party further challenges the author's allegation that it failed to conduct effective investigations, as an investigation was instituted by the police immediately after the attack.<sup>5</sup> It recalls that three suspects were arrested and arraigned in the High Court for attempted murder (criminal case No. 36 of 2009).

4.5 The State party argues that the State prosecution was committed to securing a conviction as the competent authorities had themselves initiated the criminal prosecution of the accused. The fact that the available evidence did not meet the required standard of identification beyond reasonable doubt cannot be attributed to any form of negligence by the prosecution, which rigorously presented the case.

4.6 When the case came before the High Court, the prosecution withdrew the charges against two of the accused as the available evidence against them did not meet the required standard (beyond reasonable doubt) to secure a conviction. These two accused persons were not acquitted and can still be charged with the offence of attempted murder. A full trial proceeded against the third accused person. The prosecution presented eight witnesses and produced three exhibits as evidence. On 14 November 2011, the High Court acquitted the accused because the requirements of identification set by the Court of Appeal to prove a case beyond reasonable doubt and warrant a conviction had not been met.

4.7 The State party refutes the claim that the evidence of the author was given little weight because she could not see sufficiently. The author's vision were never taken into consideration by the prosecution, the defence or the judge. The identification of the accused was tested against the principles and standards of identification of an accused person as stipulated by the Court of Appeal. Further, the State party claims that it is inconceivable that the prosecution, the judge and the assessors would have allowed a witness to testify while under the influence of alcohol. The State party therefore considers that the author's allegations are ill-founded and unsubstantiated.

4.8 The decision by the High Court that the identification of the accused did not meet the required standard (beyond reasonable doubt) was adopted taking into consideration all factors, such as contradictions in the witness testimonies regarding whether a wick lamp was in the author's room, thus enabling her to identify the accused.

4.9 The High Court relied on landmark national jurisprudence, which has set out the conditions for the identification of the accused to warrant a conviction. In *Waziri Amani v. The Republic* (1980), the Court of Appeal held that evidence of visual identification was of the weakest kind and most unreliable, and that no court should act on such evidence unless all possibilities of mistaken identity were eliminated and the court was fully satisfied that the evidence before it was absolutely watertight.<sup>6</sup>

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<sup>5</sup> The State party does not specify the date on which the investigation was initiated.

<sup>6</sup> The State party also refers to *Makuru Jumanne and Mlokozi Misese v. The Republic*, Criminal Appeal No. 117 of 2005, and *Issa s/o Mgara @ Shuka v. The Republic*, Criminal Appeal No. 37 of 2005.

4.10 The author has never raised her demands before the municipal courts and has not given the State party a chance to address the alleged violations raised before the Committee. The State should be given the opportunity to redress an alleged violation within the framework of its own domestic legal system before it is dealt with at the international level.<sup>7</sup> It has been determined that it is not enough to cast aspersions on the ability of the State party's domestic remedies with respect to isolated incidences; rather, it is incumbent on the author to take all necessary steps to exhaust domestic remedies, or at least to attempt to do so.

4.11 The State party does not accept that the author was unable to access justice. A full trial was held and the fact that the accused was acquitted and that there was no appeal does not mean that the author was deprived of the right to access to justice and to go through the court system. The decision not to appeal was based on the professional legal opinion that an appeal to the Court of Appeal would have been futile, given that the High Court relied on the very same Court of Appeal decisions on standards to convict on the basis of identification.

4.12 The State party requests the Committee to declare the case inadmissible as it is groundless. It refutes the allegation of a violation of article 5 of the Convention, since the State party has undertaken initiatives to ensure that persons with albinism are not discriminated against and are treated equally. In 2010, the Person with Disabilities Act was adopted to provide for the needs of persons with disabilities, including persons with albinism, and to ensure that they were not discriminated against. In 2004, the Employment and Labour Relations Act was specifically enacted to end discrimination against persons with disabilities in the workplace. Furthermore, a specific department was created within the Ministry of Health and Social Welfare to oversee the rights of persons with disabilities, including persons with albinism. Through the Social Welfare Division, people with albinism can be exempted from paying for medical services upon request. Various services are available too, such as guidance and counselling. The State party developed a national disability policy in 2004 to ensure that persons with disabilities enjoy the right to participate in public and private affairs. For example, a person with albinism is currently a member of Parliament. The Ministry of Health and Social Welfare established a National Council (Fund) for the provision of services to persons with disabilities. The State party continues to provide food, clothing, shelter and health services for persons with disabilities who cannot provide for themselves, and in 2014 assisted 1,235 people. The National Population Policy of 2006 is another tool that protects the rights of persons with albinism. The policy demonstrates an awareness of the problems facing persons with disabilities, including stigma and discrimination, and its objective is to promote the well-being of persons with disabilities.

4.13 The State party submits that it has made an effort to ensure that women with disabilities, including women with albinism, are provided for in all matters relating to their personal development and their rights to health and education. In that connection, two colleges for people with disabilities in two regions offer vocational training courses for persons with disabilities. The State party has adopted several specific acts and policy papers in the field of health, such as the Health Sector Strategic Plan (July 2009–June 2015). The State party therefore considers that it has not violated its obligations under article 6 of the Convention.

4.14 The State party also denies the author's allegations that it has made no effort to raise awareness about the rights of persons with disabilities and persons with albinism. Rather, the Ministry of Health and Social Welfare has collaborated with civil society and other actors to raise public awareness throughout the country. The Commission for Human Rights and Good Governance, the national human rights institution, has also played a very active role in promoting and protecting the rights of persons with albinism. In 2009, the Commission carried out research, investigation and awareness-raising among the public and all key actors, namely law enforcement agents, the judiciary, opinion leaders at the grass-root levels, licensed traditional healers and social welfare officers in the regions and

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<sup>7</sup> African Commission on Human and Peoples' Rights, *Article 19 / Eritrea*, communication No. 275/03, Decision, 30 May 2007, para. 45.

districts, in particular in areas where killings of persons with albinism were rampant. On 24 September 2014, the Commission, in collaboration with the organizations Under the Same Sun and the Tanzania Albinism Society and other stakeholders, organized a public event with the theme “Rights to peace for all: stop killing persons with albinism”. On this occasion, the public was informed about how to take steps to individually and collectively promote the rights of persons with albinism.

4.15 The State party disputes the allegations that it has not demonstrated or taken appropriate measures to curtail the targeted physical, emotional and mental abuse of its citizens. The State party reacted immediately to the attacks and killings of persons with albinism, which reached a climax in the period 2006–2007. Special task forces were formed to investigate and prosecute attacks of persons with albinism, and the arrests and prosecutions conducted to date are the result of collaborative efforts between the police, prosecutors and the judiciary. Substantial information was received, and is still being received, through a community policing initiative, whereby the police have made concerted efforts to be accessible to the society and community that it protects in order to receive credible information. The State party took appropriate measures to stop such killings with the formation of a task force, the suspension by the Government of all licences of traditional healers in 2008, public awareness campaigns and the fast-tracking of the investigation and prosecution of criminal cases, including specific criminal sessions for cases related to attacks against and killings of persons with albinism in order to expedite their adjudication. These vigorous measures have contributed to the reduction in attacks against and killings of persons with albinism. The Ministry of Home Affairs is currently in the process of revoking the licences of traditional healers and will visit the parts of the country where attacks against persons with albinism are most prevalent, with the aim of tracing the unscrupulous practitioners who promote the concept that the body parts of persons with albinism are linked to the attainment of wealth and success.

4.16 The Director of Public Prosecutions is conducting various initiatives that are focused on sharing information and strategies such as fast-tracking investigation and prosecution and handling the challenges faced by institutions when dealing with cases involving attacks against and killings of persons with albinism. For instance, the Director of Public Prosecutions conducts inspections of the regions where incidents of crimes targeting persons with albinism are highly reported. The aim of the inspections is to examine police case files in order to obtain accurate data on the number and status of cases, while counselling victims and encouraging potential witnesses who were reluctant to testify in court.

4.17 The State party submits that many challenges have to be overcome and efforts continue to be made. However, it should not be perceived that the State party has made no efforts and is not concerned with the situation of persons with albinism. It refutes the allegations that it has failed to observe the author’s rights, in violation of articles 5, 6, 8, 10, 14, 15 (1), 16 and 17 of the Convention.

4.18 The State party further submits that a number of remedies sought in the communication have already been implemented either fully or in part. The State party shall continue to make every effort and fulfil its obligations as the main duty bearer in the promotion and protection of the rights of persons with albinism.

4.19 The State party reiterates that the issue of reparation has never been raised before national courts, that the author has not exhausted all available domestic remedies, and that the Committee has no jurisdiction to decide on matters of reparation that have never been raised within the State party.

#### **Author’s comments on the State party’s observations on admissibility and the merits**

5.1 On 25 August 2016, the author submitted her comments to the State party’s observations on admissibility and the merits, arguing that the rule on exhaustion of domestic remedies should not be used as a protective shield by States that have not established a suitable environment for promoting, protecting and preserving the rights of its individuals. In that connection, the author refers to the jurisprudence of international and

regional human rights mechanisms.<sup>8</sup> Where domestic remedies are non-existent, or unduly and unreasonably prolonged, or unlikely to bring effective relief, resort to international measures is allowed. The author considers that this is the case for the acts of murder and attacks against persons with albinism, which are systemic and continuous in the State party, amounting to a grave violation of their rights, and which remain unpunished.

5.2 As to the State party's submission that the investigation into the author's case began on the same day that she was attacked, namely on 17 October 2008, and that three culprits were arrested, the author acknowledges that the prosecutor withdrew the matter against two of the accused persons for insufficient evidence.

5.3 The author recalls the decision of the Inter-American Commission of Human Rights in *Arges Sequeira Mangas v. Nicaragua*, referred to above. According to the Commission, in the case of crimes of public action, and even in those that may be prosecuted by a private actor, it is not valid to demand the exhaustion of domestic remedies by the victim or the victim's relatives, since the State party has a duty to maintain public order and therefore to set the criminal law system into motion and process the matter until the end. Furthermore, the Commission quotes the Inter-American Court of Human Rights as stating that the obligation to investigate, prosecute and punish the persons liable for human rights violations is a non-delegable duty of the State.<sup>9</sup>

5.4 The author submits that the State party has neglected to conduct effective investigation and prosecution in her case, as in many *nolle prosequi* cases, in which prosecution is discontinued. She was not provided with any information as to the progress made to bring the culprits to justice. Therefore, even though the State party alleges that the investigations are ongoing to bring justice, there is no sign of an end and result of such investigations and, ultimately, justice has been denied to the author.

5.5 The author further argues that there is no need to exhaust unduly prolonged remedies that by their very nature are ineffective. Ordinarily, treaty bodies consider the conduct of the State concerned and the complexity of the case to assess the reasonableness of the delay.<sup>10</sup> The State party states that the author has yet to file a constitutional petition claiming a violation of her rights as provided for in the Basic Rights and Duties Enforcement Act, and that this amounts to the non-exhaustion of domestic remedies. The author admits that she has not filed a constitutional petition regarding the violation of her rights.

5.6 In that connection, the author refers to a petition submitted in 2009 to the High Court in accordance with the Basic Rights and Duties Enforcement Act by persons with

<sup>8</sup> The author refers to the decision of the African Commission on Human and Peoples' Rights in *Sir Dawda K. Jawara v. The Gambia* (communications Nos. 147/95 and 149/96, Decision, 11 May 2000), according to which "[t]hree major criteria could be deduced ... in determining this rule, namely: the remedy must be available, effective and sufficient". The Commission also stated the following: "A remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint." The author also refers to the jurisprudence of the European Court of Human Rights in *Sejdovic v. Italy* (Application No. 56581/00, Judgment, 1 March 2006), according to which applicants are required to exhaust only those domestic remedies that are available in theory and in practice at the relevant time and that they can directly institute themselves, meaning that the remedies must be accessible, be capable of providing redress in respect of their complaints and offer reasonable prospects of success.

<sup>9</sup> The author also refers to the decision of the Inter-American Commission on Human Rights in *Greco v. Argentina* (Report No. 72/01, Case No. 11.804, 10 October 2001), in which the Commission stated the following: "While it is the responsibility of the petitioner ... to ensure that the State is placed on proper notice of an alleged violation of the Convention, so as to have an adequate opportunity to resolve the complaint within its own legal system, it is the State that is obliged to advance the investigation of any crime which may be prosecuted *de officio*. In such cases, it can only be demanded that the petitioner exhaust domestic remedies where the State concerned investigates the facts alleged with due diligence and proceeds to punish any persons found responsible in accordance with its duties under both domestic law and the [American] Convention [on Human Rights]."

<sup>10</sup> See also European Court of Human Rights, *Spas Todorov v. Bulgaria*, Application No. 38299/05, Judgment, 5 November 2009, para. 45.

albinism who had been victims of acts of violence.<sup>11</sup> A decision was adopted six years later, rejecting the applicants' claims. The author argues that the procedure before the High Court usually leads to undue delay because the limited number of judges in many regional branches of the High Court complicates the formation of the bench. The treatment of cases related to the rights of persons with albinism has been unduly delayed and prolonged, and this remedy is therefore not available.

5.7 The author further submits that a remedy is considered available only if it is accessible in theory and in practice,<sup>12</sup> and can be pursued without impediment.<sup>13</sup> Domestic remedies are also said to be effective when they offer some prospects of success, such as redress for the violations. The author refers to the jurisprudence of the European Court of Human Rights, according to which applicants do not need to exhaust domestic remedies "where an administrative practice consisting of a repetition of acts incompatible with the Convention [for the Protection of Human Rights and Fundamental Freedoms] and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective".<sup>14</sup>

5.8 The author submits that the local remedies in the State party are unavailable, and when they are available, they are ineffective and insufficient. A remedy is said to be available if it can be utilized as a matter of fact without hurdles. It can be considered as effective if it offers a prospect of success, and it is sufficient if it is capable of redressing the violation.<sup>15</sup> The author also refers to the jurisprudence of the European Court of Human Rights, according to which the existence of domestic remedies must be sufficiently certain not only in theory but also in practice. In determining whether any specific remedy meets the benchmarks of availability and effectiveness, the particular circumstances of the individual case must be taken into account.<sup>16</sup> Further, when determining the outcome of a human rights case before the courts of the United Republic of Tanzania, the Committee must consider that the nature and scope of remedies that the High Court can render is not clear. In *Legal and Human Rights Centre and Another v. Attorney General and Another*,<sup>17</sup> the High Court was of the view that compensation is only granted after the damage has been proven in a separate civil suit. Although the case was in respect to a group of people (the albinism community) whose rights have been violated, the wording of the judgment seems to suggest that in a situation in which an individual claims compensation as a result of a human rights violation, a civil suit would need to be opened.

5.9 The author submits that the notion of "serious" or "massive" human rights violations has also evolved in various human rights bodies as an exception to the general rule of the exhaustion of domestic remedies.<sup>18</sup> Statistics indicate that from 2000 up to June 2006, a total of 76 persons with albinism were killed,<sup>19</sup> and 69 survived attacks, many of whom having been severely mutilated. The judicial system in the United Republic of Tanzania is ill-equipped to handle the high number of cases related to persons with albinism and the ongoing practices demonstrate that the Government has not been willing to deal with the

<sup>11</sup> The author refers to a case brought to the High Court in 2009 by the Legal and Human Rights Centre, the Tanzania Albinism Society and the Tanzania Federation of Disabled People's Organizations on behalf of a person with albinism, in accordance with the Basic Rights and Duties Enforcement Act. In 2015, the complaint was rejected.

<sup>12</sup> European Court of Human Rights, *Akdivar and Others v. Turkey*, Application No. 21893/93, decision, 16 September 1996, para. 66.

<sup>13</sup> African Commission on Human and Peoples' Rights, *Jawara v. The Gambia*, para. 32.

<sup>14</sup> European Court of Human Rights, *Akdivar and Others v. Turkey*, para. 67.

<sup>15</sup> Frans Viljoen, *International Human Rights Law in Africa*, 2nd ed. (Oxford, Oxford University Press, 2012).

<sup>16</sup> See, for example, European Court of Human Rights, *D.H. and Others v. The Czech Republic*, Application No. 57325/00, Judgment, 7 February 2006.

<sup>17</sup> Miscellaneous Civil Cause No. 15 of 2009.

<sup>18</sup> Henry Onoria, "The African Commission on Human and Peoples' Rights and the exhaustion of local remedies under the African Charter", *African Human Rights Law Journal*, vol. 3, No. 1 (2003), p. 16.

<sup>19</sup> Under the Same Sun, "Reported attacks on persons with albinism – most recent attacks included", 2016. These are conservative estimates due to the secretive nature of witchcraft and ritual killings.



problem.<sup>20</sup> The author states that the State party ought not to wait to be informed about human rights violations before acting to remedy the situation: it has the primary duty to act before being informed.

5.10 The author argues that a serious and diligent prosecution system could not spend more than seven years investigating a matter against two accused persons. The State party has not shown how vigilant it has been in dealing with the alleged violations, to uphold the confidence of the victims in its commitment in bringing the perpetrators to justice. The act of not appealing to the Court of Appeal and instead leaving the matter to end up in the High Court is to be interpreted altogether as a lack of commitment to curb the continued violation of the author's rights.

5.11 In the case of the author, no one was charged, for lack of evidence. However, the author considers that the State party has the obligation to effectively and diligently investigate and prosecute the perpetrators of these inhuman acts.<sup>21</sup> The author contends that, even though the State party claims to have prosecuted the case, as long as the Government exhibits a lack of diligence in preventing and responding to the violations against persons with albinism, it is violating its affirmative duty to respect, protect and fulfil human rights.

5.12 The author claims that she was able to identify one of her attackers by a wick lamp, and because she knew him as her neighbour. She further submits that they had spent considerable time together in the afternoon before the night of the attack. As corroborating evidence, a pair of green sandals were found in her room together with a lighter, both of which were identified as belonging to the accused person whom she knew.

5.13 The author argues that the right to appeal is a constitutional right provided by the State party that aims to ensure equality before the law.<sup>22</sup> The right to appeal functions as a check against erroneous judgment. The State party therefore also denied her constitutional right by assuming the judicial position not to appeal from the commencement of the proceedings.

#### **Lack of reply from the State party on additional observations**

6. On 29 August 2016, 13 February 2017 and 11 January 2018, the Committee requested the State party to submit additional observations on admissibility and the merits. On 15 January 2018, the State party requested the retransmittal of the author's comments on the State party's observations on admissibility and the merits. On 16 January 2018, the State party acknowledged the receipt of the author's comments. The Committee notes and regrets that the State party has provided no further information by the fixed deadline.

## **B. Committee's consideration of admissibility and the merits**

### **Consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been examined by the Committee, nor has it been or is it being examined under another procedure of international investigation or settlement.

7.3 Before considering the arguments of the parties as to the admissibility of the communication, the Committee wishes to recall that article 1 of the Convention states that

<sup>20</sup> The African Commission on Human and Peoples' Rights has held that in the context of "massive" and "serious" violations of human rights, a State is aware of such violations and it is expected to take appropriate actions to prevent the violations.

<sup>21</sup> See the National Prosecutions Service Act, 2008, sect. 16 (1) and (2), and the Criminal Procedure Act, sect. 90 (1).

<sup>22</sup> Article 13 (6) (a) of the Constitution of the United Republic of Tanzania of 1977 (as amended from time to time).

persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The Committee also recalls the description of albinism by the Independent Expert on the enjoyment of human rights by persons with albinism (A/HRC/34/59, paras. 15–16), according to which albinism is a relatively rare, non-contagious, genetically inherited condition that affects people worldwide regardless of ethnicity or gender. It results from a significant deficit in the production of melanin and is characterized by the partial or complete absence of pigment in the skin, hair and eyes. The most common and visible type is oculocutaneous albinism, which affects the skin, hair and eyes. Within this type are subtypes that may reflect varying degrees of melanin deficiency in an individual. Lack of melanin in the eyes results in high sensitivity to bright light and significant vision impairment, with the level of severity varying from one person to another. This vision impairment often cannot be completely corrected. In addition, one of the most serious health implications of albinism is vulnerability to skin cancer, which remains a life-threatening condition for most persons with albinism. The Committee notes that a human rights-based model of disability requires the diversity of persons with disabilities (Convention, preamble, para. (i)) and the interaction between persons with impairments and attitudinal and environmental barriers (*ibid.*, para. (e)) be taken into account.<sup>23</sup> In view thereof, and noting that the State party does not question the competence *ratione materiae* of the Committee to address the author's complaint, the Committee considers it necessary to clarify that albinism falls within the definition of disability as enshrined in article 1 of the Convention.<sup>24</sup>

7.4 As regards the State party's submission that the communication should be found inadmissible under article 2 (d) of the Optional Protocol on the grounds of failure to exhaust domestic remedies, the Committee notes the arguments of the State party that (a) the author did not file a constitutional petition under the Basic Rights and Duties Enforcement Act, and (b) the author did not initiate civil proceedings to request compensation for damages and harm. In that regard, the Committee notes the author's submission that civil action and private prosecution do not constitute effective remedies in her case.<sup>25</sup> The Committee also notes that the author submitted a complaint to the police on the day that she was attacked, namely, 17 October 2008; that the prosecution against two of the accused was withdrawn as the available evidence did not meet the required standard to obtain a conviction, and a third accused person was acquitted because the requirements of identification had not been met; and that, since then, the author has never been informed of any new additional steps taken by the authorities to investigate the case and bring the culprits to justice. In this context, the Committee recalls that the effectiveness of a remedy depends on the nature and seriousness of the alleged violation.<sup>26</sup> The Committee further recalls that, under the State party's criminal procedure, the magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, including the victim.<sup>27</sup> However, in cases of violations of such gravity as those that the author alleges, the primary responsibility to prosecute lies in the hands of the authorities of the State party,<sup>28</sup>

<sup>23</sup> *S.C. v. Brazil* (CRPD/C/12/D/10/2013), para. 6.3.

<sup>24</sup> *X v. United Republic of Tanzania* (CRPD/C/18/D/22/2014), para. 7.6.

<sup>25</sup> *Ibid.*, para. 7.3.

<sup>26</sup> *Villafañe Chaparro et al. v. Colombia* (CCPR/C/60/D/612/1995), para. 5.2.

<sup>27</sup> United Republic of Tanzania, Criminal Procedure Act, sect. 99 (1): "Any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorized by the President in this behalf shall be entitled to conduct the prosecution without such permission."

<sup>28</sup> *Ibid.*, sect. 90, which states that the Director of Public Prosecutions has the duty: "(a) to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed by that person; (b) to take over and continue any criminal proceedings that have been instituted or undertaken by any other person or authority; and (c) to discontinue any criminal proceedings instituted or undertaken by him or any other authority or person." Article 59B (2) of the Constitution (1977) states: "The Director of Public Prosecutions shall have powers to institute, prosecute and supervise all criminal prosecutions in the country." See also the National Prosecutions Service Act.

which have a non-delegable duty and obligation to investigate, prosecute and punish perpetrators.<sup>29</sup>

7.5 With regard to a constitutional petition under the Basic Rights and Duties Enforcement Act, the Committee notes the author's argument that, in 2009, other victims of similar violent acts brought their case to the High Court of the United Republic of Tanzania under this Act and that the case was rejected only in 2015.<sup>30</sup> In that connection, the Committee notes the author's claim that the High Court faced difficulties to compose a bench of three judges to decide on the merits of each application submitted under the Basic Rights and Duties Enforcement Act. The Committee also notes the State party's submission that a permanent roster of five judges had been established to enhance adjudication of constitutional cases. However, the Committee notes that the State party has not demonstrated that the establishment of this roster of five judges has enabled in practice a substantial reduction in the duration of constitutional proceedings before the High Court. Nor has the State party questioned the existence of prior High Court jurisprudence rejecting similar cases of violence against persons with albinism. In such circumstances, the Committee considers that the information before it does not allow it to conclude that a constitutional petition would have been an effective remedy in the author's case.

7.6 The Committee further considers that, in the circumstances of the present case, a civil claim and award of compensation alone would not be an effective remedy for the purposes of article 2 (d) of the Optional Protocol. In the light of the foregoing, the Committee concludes that it is not precluded, under article 2 (d) of the Optional Protocol, from considering the author's complaint.<sup>31</sup>

7.7 With regard to the author's claims under article 6 of the Convention, the Committee recalls its general comment No. 6 (2018) on equality and non-discrimination, in which it states (para. 36) that article 6 of the Convention is a cross-cutting article and must be taken into account in relation to all provisions of the Convention. In the present case, the Committee will therefore examine the author's claims based on article 6 in the light of the rights invoked under articles 5, 15 (1), 16 and 17 of the Convention.

7.8 As regards the author's allegations under article 8 of the Convention, the Committee considers that the provisions of this article set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol. The Committee further notes that the author's allegations under that provision are closely linked to the allegations submitted with regard to articles 5, 15 (1), 16 and 17. The Committee will therefore examine these allegations together.

7.9 The Committee also notes that the author has invoked a violation of article 10 of the Convention, without, however, providing further substantiation or explanation as to how this article may have been violated in her case. The Committee therefore considers that this claim is insufficiently substantiated, for the purposes of admissibility, and is thus inadmissible under article 2 (e) of the Optional Protocol.

7.10 In relation to the author's claims under article 14 of the Convention, the Committee notes that the author was never deprived of her liberty in the sense of article 14, which relates to any form of detention or institutionalization of persons with disabilities.<sup>32</sup> The Committee therefore considers that this part of the communication is inadmissible *ratione materiae*, under article 2 (b) of the Optional Protocol.

7.11 There being no other obstacles to admissibility in regard to articles 5, 15 (1), 16 and 17, the Committee declares the communication admissible and proceeds with its consideration of the merits.

<sup>29</sup> See, for example, *S.C. v. Brazil*, para. 6.3; Inter-American Commission on Human Rights, *Greco v. Argentina*, para 51; and Inter-American Commission on Human Rights, *Arges Sequeira Mangas v. Nicaragua*, para. 96.

<sup>30</sup> See para 5.6 above.

<sup>31</sup> *X v. United Republic of Tanzania*, para. 7.5.

<sup>32</sup> See the Committee's guidelines on article 14 of the Convention (September 2015).

### Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of the Committee's rules of procedure.

8.2 As regards the author's complaint under article 5 of the Convention, the Committee notes her argument that she has been discriminated against on the basis of her disability, because the violence that she has suffered constitutes a generalized practice in the State party affecting only people with albinism. The Committee also notes the author's submission that she has been a victim of disability-based discrimination owing to impunity for the violent acts that she has suffered, the effects of which remain to date. In that connection, the author submits that impunity characterizes most cases of violence perpetrated against persons with albinism, as the State party's authorities consider that such violence is linked to witchcraft, which is a generally accepted cultural practice and about which prejudice still prevails in society. The Committee further notes the State party's submission that its authorities have undertaken and continue to undertake initiatives to ensure that persons with albinism are not discriminated against and are treated equally, such as new laws, purposeful policies and initiatives addressing the situation of persons with disabilities, including persons with albinism. Lastly, the Committee notes the author's claim that the State party's authorities have not taken the necessary measures to ensure an effective, complete and impartial investigation and prosecution of the perpetrators of her attack, and that no preventive or protective measures have been implemented to prevent violence against persons with albinism and ensure their integration into society.

8.3 The Committee recalls that States parties, under article 5 (1) of the Convention, recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law, and, under article 5 (3), are required to take all appropriate steps to ensure that reasonable accommodation is provided, in order to promote equality and eliminate discrimination. The Committee considers that discrimination can result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate, but that disproportionately affects persons with disabilities.<sup>33</sup> In the present case, the Committee notes that the author was a victim of a violent crime corresponding to the characteristics of a practice that affects persons with albinism exclusively: on 17 October 2008, she was attacked by three men while she was sleeping; they hacked off one of her arms and maimed the other, and took her arm away. Since then, the author's access to justice has been significantly limited in that no investigative action seems to have been taken by the competent authorities after the withdrawal of the prosecution of two of the accused persons and the acquittal of the third, and the perpetrators remain in total impunity more than 11 years after her attack.

8.4 The Committee considers that the State party cannot avoid its responsibilities under the Convention for the mere fact that some of its judicial authorities have already dealt or are still dealing with the matter, while it is clear that the remedies pending in the State party have been unduly prolonged and would appear to be ineffective. Furthermore, the Committee notes that the author has not been provided with any support from State party's authorities to enable her to live independently again after the loss of her arms and that, generally speaking, the State party has not adopted adequate and effective measures to prevent this form of violence against persons with albinism and to protect them therefrom.<sup>34</sup> In spite of the observations of the State party on the matter, the Committee considers that the author has been a victim of a form of violence that exclusively targets persons with albinism. It further considers that the State party's failure to prevent and punish such acts has resulted in the author, and other persons with albinism, having been put in a situation of particular vulnerability and prevented from living in society on an equal basis with others. The Committee therefore concludes that the author has been a victim of direct discrimination based on her disability, in violation of article 5 of the Convention.

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<sup>33</sup> *S.C. v. Brazil*, para. 6.4.

<sup>34</sup> *X v. United Republic of Tanzania*, para. 8.4.

8.5 As regards the author's allegations under article 15 (1) of the Convention, the Committee notes the author's argument that the acts that she suffered amount to torture, violence and abuse, which the State party has failed to effectively and promptly investigate and punish. The Committee further notes the State party's submission that it has taken appropriate measures to address attacks on persons with albinism and to prosecute those responsible, that additional measures have been taken to expedite the adjudication of cases and that these vigorous measures have contributed to the reduction in attacks against and killings of persons with albinism.

8.6 The Committee recalls that under article 15 (1) of the Convention, no one is to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Committee also recalls that, according to article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee further recalls that the violent acts suffered by the author were perpetrated by private individuals, and that, as such, they cannot be seen as constituting acts of torture. Nonetheless, the Committee also recalls that the obligation of States parties to prevent and punish torture and other inhuman or degrading treatment applies to acts committed by both State and non-State actors.<sup>35</sup> Expedition and effectiveness are particularly important in the adjudication of such cases. The Committee also considers that the suffering experienced by the author, owing to the lack of action by the State party in order to allow the effective prosecution of the suspected perpetrators of the crime, has become a cause of revictimization, and as such amounts to psychological torture or ill-treatment. In the light of these considerations, the Committee concludes that, in the circumstances of the present case, the State party has violated the author's rights under article 15 (1) of the Convention.<sup>36</sup>

8.7 The Committee recalls that under article 16 (4) of the Convention, States parties must take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services, and that such recovery and reintegration must take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs. The Committee observes that at the time of the attack, the author was a 28-year-old woman, the mother of one child and pregnant with another child. She was working as a farmer and was self-sufficient. Nonetheless, according to the information provided by the parties, the competent authorities have not taken any measures to provide the author with assistance for her rehabilitation and reintegration. For these reasons, the Committee finds that, in the circumstances of the present case, the State party has violated the author's rights under article 16 of the Convention.

8.8 The Committee recalls that under article 17 of the Convention, every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others. It also recalls that the right to integrity of the person is based on what it means to be a person; it is linked to the idea of human dignity and that each person's physical and mental space should be protected; it includes the prohibition of physical and mental torture and inhuman and degrading treatment and punishment, as well as a wide range of less grave forms of interference with a person's body and mind.<sup>37</sup> The Committee

<sup>35</sup> Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 13.

<sup>36</sup> See, for example, *Durić v. Bosnia and Herzegovina* (CCPR/C/111/D/1956/2010), paras. 9.6–9.7; *Yrusta and del Valle Yrusta v. Argentina*, para. 10.8; and *X v. United Republic of Tanzania*, (CRPD/C/18/D/22/2014), para. 8.6.

<sup>37</sup> *X v. United Republic of Tanzania*, para. 8.7.

considers that the violent acts suffered by the author clearly fall within the category of acts that violate the victim's physical and mental integrity. The Committee also recalls that, under article 4 of the Convention, States parties have a general obligation to take all necessary measures to ensure and promote the full realization of all human rights, including the right to integrity of the person. In the present case, the State party has not taken sufficient measures to prevent and punish the acts suffered by the author and to support her so that she can live independently again after the loss of her arms. To date, more than 11 years after their occurrence, the crimes committed against the author remain unpunished. The Committee also observes that the author has not been provided with any support from the State party's authorities to enable her to live independently again after the loss of her arms and that, generally speaking, the State party has not adopted effective measures to prevent this form of violence against persons with albinism and to protect them therefrom.<sup>38</sup> Consequently, the Committee considers that the failure by the State party to take all necessary measures to prevent acts of violence similar to those suffered by the author and to efficiently investigate and punish the perpetrators of these acts in the author's case amounts to a violation of the author's rights under article 17 of the Convention.

8.9 Having found a violation of articles 5, 15 (1), 16 and 17 of the Convention, the Committee considers it relevant to examine the author's claims under articles 6 and 8, read in conjunction with these articles. As regards article 6, the Committee notes that, at the time of the attack, the author was the single mother of a small child and was pregnant. It further notes that, as a direct consequence of the attack, the author suffered a miscarriage. The Committee further notes that these elements, which are intrinsically linked to the author's status as a woman with albinism, have resulted in the isolation of the author from her community, and amount to gender- and disability-based discrimination. Additionally, according to the information available in the case file, none of these elements has been taken into account in the course of the procedures before the national authorities, in order to ensure that the gender discrimination involved in the facts under consideration are addressed. The Committee considers that such "invisibilization" of the specific impacts of the attack suffered by the author as a woman also amounts to gender-based discrimination, and is contrary to the State party's obligations under article 6 of the Convention to recognize that women and girls with disabilities are subject to multiple discrimination, and to take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention. In view thereof, the Committee considers that the facts under review reveal a violation of the author's rights under article 6, read in conjunction with articles 5, 15 (1), 16 and 17 of the Convention.

8.10 Turning to the author's claims under article 8, read in conjunction with articles 5, 15 (1), 16 and 17 of the Convention, the Committee notes the author's argument that the State party failed to take appropriate and adequate measures to raise awareness throughout society about persons with albinism, and that this led to discrimination against and lack of security for persons with albinism, which she has directly suffered through her attack. The Committee also notes the author's argument that the State party has undertaken no initiatives to end this situation. It further notes that, according to the State party, the Ministry of Health and Social Welfare has collaborated with civil society and other actors to raise public awareness throughout the country, and that authorities have embarked on efforts to raise awareness and change attitudes about persons with albinism through social welfare officers in the regions and districts, in particular in areas where killings have been rampant. Nonetheless, the Committee notes that, according to the information available, such measures have not been systematic or sufficient to meet the State party's duties under article 8 to raise awareness throughout society, including at the family level, regarding persons with albinism and to foster respect for their rights and dignity, and to combat stereotypes, prejudices and harmful practices relating to persons with albinism. The Committee concludes that this lack of an adequate response from the State party amounts to an implicit acceptance of the perpetuation of the heinous crimes committed in its jurisdiction against persons with albinism, and therefore considers that it amounts to a

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<sup>38</sup> Ibid., para. 8.4.

violation of the author's rights under article 8, read in conjunction with articles 5, 15 (1), 16 and 17 of the Convention.

### C. Conclusion and recommendations

9. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under articles 5, 15 (1), 16 and 17, read alone, and articles 6 and 8, read in conjunction with articles 5, 15 (1), 16 and 17, of the Convention. The Committee therefore makes the following recommendations to the State party:

- (a) Concerning the author, the State party is under an obligation to:
  - (i) Provide her with an effective remedy, including compensation, proper medical treatment, redress for the abuses suffered, support devices such as functional prostheses, rehabilitation, and the support necessary to enable her to live independently again;
  - (ii) Conduct an impartial, prompt and effective investigation into the attack suffered by the author, and to prosecute and punish the perpetrators;

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee refers to the recommendations made by the Independent Expert on the enjoyment of human rights by persons with albinism as contained in her report to the Human Rights Council (A/HRC/34/59, paras. 97–99), and requires the State party to:

- (i) Review and adapt legal frameworks as necessary to ensure that they encompass all aspects of attacks against persons with albinism, including with regard to trafficking in body parts;
- (ii) Ensure prompt investigation and prosecution of cases of attacks against persons with albinism and trafficking in body parts and the punishment of those responsible;
- (iii) Ensure that the practice of using body parts for witchcraft-related practices is adequately and unambiguously criminalized in domestic legislation;
- (iv) Develop and implement sustained awareness-raising campaigns, based on the human rights model of disability and in compliance with the State party's obligations under article 8 of the Convention, and training for the general public, judicial officials, the police and all workers in the areas of education, health and justice to address harmful practices and rampant myths affecting the enjoyment of human rights by persons with albinism and to cover the scope of the Convention and its Optional Protocol;
- (v) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population;
- (vi) Pursue rehabilitation measures for survivors of attempted killings and victims of mutilations.

10. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response, including information on any action taken in the light of the present Views and the recommendations of the Committee.