



## Convention on the Rights of Persons with Disabilities

Distr.: General  
5 October 2017

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. 22/2014\*, \*\*

<i>Communication submitted by:</i>	X (represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	United Republic of Tanzania
<i>Date of communication:</i>	23 June 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 9 July 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	18 August 2017
<i>Subject matter:</i>	Torture, inhuman and degrading treatment; discrimination against a person with albinism
<i>Procedural issues:</i>	Admissibility — exhaustion of domestic remedies
<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>	1, 5, 15 and 17
<i>Article of the Optional Protocol:</i>	2

1. The author of the communication is X, a Tanzanian national with albinism, born on 12 January 1969. His left arm was cut off by two men when he was 41 years old, owing to his condition of albinism. He is no longer self-sufficient. He claims to be a victim of violations by the State party of articles 5, 15 and 17 of the Convention. The United Republic of Tanzania signed and ratified the Optional Protocol on 29 September 2008 and 10 November 2009, respectively. The author is represented by counsel.<sup>1</sup>

\* Adopted by the Committee at its eighteenth session (14 -31 August 2017).

\*\* The following members of the Committee participated in the examination of the communication: Ahmad Al-Saif, Danlami Umaru Basharu, Munthian Buntan, Imed Eddine Chaker, Theresia Degener, Samuel Njuguna Kabue, Hyung Shik Kim, Stig Langvad, László Gábor Lovaszy, Robert George Martin, Martin Babu Mwesigwa, Carlos Alberto Parra Dussan, Coomaravel Pyaneandee, Valery Nikitich Rukhledev, Jonas Ruskus and Damjan Tatić.

<sup>1</sup> The counsel has requested anonymity.



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

### Facts as submitted by the author

2.1 The author is from the village of Merda, Mvomero District, Morogoro Region, United Republic of Tanzania. He is a person with albinism. Until the age of 41, when his left arm was chopped off, he was a farmer and was self-sufficient.

2.2 On 10 April 2010, between 2 and 3 p.m., the author was fetching firewood from the bush in Melela Kibaoni area, Mvomero District, when two Maasai *morans* (young men between the ages of 14 and 30) came and asked him for tobacco. As he bent down to get it from his plastic bag, the men hit him on the head with clubs. The author lost consciousness and the men hacked off half of his left arm, from below the elbow, and left him behind, alone. When he regained consciousness, he was in great pain and screamed for help. Villagers took him to Morogoro Municipal Hospital, where he received treatment. The author's arm was never found and it is assumed that the men took it with them. The matter was reported to the police,<sup>2</sup> but there has been no prosecution.<sup>3</sup>

2.3 The author submits that the events took place in a context of particular violence against persons with albinism in the United Republic of Tanzania. In 2012, the total number of persons with albinism in the country was estimated at more than 200,000.<sup>4</sup> They have been suffering different forms of persecution and discrimination, many of which are grounded in myths. It is believed, for example, that persons with albinism are a "curse from God" or even "eternal ghosts", that sexual relations with an albino woman can cure HIV, and that the body parts of persons with albinism have magic powers, such as providing wealth and prosperity. In this context, new forms of persecution against persons with albinism have arisen in the State party, such as killings and mutilations, fuelled by the set-up of a lucrative black market for the selling of body parts. Body parts are usually cut off brutally using machetes, leaving the victims who survive with severe pain and suffering. In some instances, buried bodies of persons with albinism have been exhumed and dismembered.

2.4 The author claims that, despite his complaint to the police, no investigation has been instituted by the competent authorities of the State party. He submits that private prosecution is not possible in the United Republic of Tanzania, and that no other remedies are available under domestic criminal law.

2.5 As far as civil litigation is concerned, the author states that, in order to initiate proceedings, victims must submit their application before the high court of their place of residence. As there was no high court in Morogoro Region where he lives, the author would have had to travel to the capital, Dar es Salaam, to submit his case. He did not have the economic resources to travel 300 kilometres to the capital by himself.

2.6 The author submits that other persons with albinism, who had suffered similar attacks, filed a constitutional petition against the State before the High Court on 20 March 2009, with the help of the Legal and Human Rights Centre, Tanzania Albino Society and Tanzania Federation of Disabled People's Organizations. As at the date of submission of the author's complaint to the Committee, that matter had still not been heard by the High Court owing to the intermittent changes to the panel of judges, which has unduly prolonged and delayed it.

2.7 In that connection, the author notes that, according to the Basic Rights and Duties Enforcement Act, which sets out the procedure for an aggrieved person to bring a case before the courts, a bench composed of three judges must decide on the merits of each application. The author claims that this procedure usually leads to undue delays because, owing to the limited number of judges, it is difficult to constitute a bench of three judges in

---

<sup>2</sup> The author does not specify the date when the case was reported to the police.

<sup>3</sup> The author does not provide further details in this regard.

<sup>4</sup> Tanzania has one of the highest rates of albinism in the world, estimated at 1 in 1,429 people. See Hats on for Skin Health, "Albinos in Africa: a population at risk". Available at: <https://www.multivu.com/assets/55030/documents/Hats-On-For-Skin-Health-Campaign-Fact-Sheet-original.pdf>.

many regional branches of the High Court. He therefore argues that this remedy is not available.

### **The complaint**

3.1 The author alleges that he has been a victim of a violation of his rights under articles 5, 15 and 17 of the Convention. He claims that he has been discriminated against on the basis of albinism, which he considers to be a disability because of the different impairments and conditions that it entails. In that connection, the author recalls that albinism is a rare, genetically inherited disorder occurring in both genders, regardless of race, in all countries of the world. It results in a lack of pigmentation in the hair, skin and eyes, causing vulnerability to sun exposure and bright light and visual impairment in the large majority of cases. The author argues that the violence and non-access to justice that he has suffered are generalized practices against people with albinism in the State party. He states that State authorities have not taken any preventive or protective measures in that regard because they consider that violent acts against persons with albinism is linked to witchcraft, which is a cultural practice with regard to which, a lot of prejudice still prevails in society. The author therefore considers that he has been a victim of violation by the State party of article 5 of the Convention.

3.2 The author further claims that the State party has failed to take effective measures to protect him, as a person with albinism, from the targeted physical, emotional and mental abuse by non-State actors. The hacking off of his arm was a severe form of torture and inhuman treatment and resulted in the loss of his independence, in violation of article 15 of the Convention.

3.3 The author further claims that he has been a victim of a violation of his rights under article 17 of the Convention, since he was exposed to barbaric forms of suffering that injured his dignity and physical integrity, and the State party has failed to take any effective steps against the perpetrators.

### **State party's observations on admissibility**

4.1 The State party's observations on the admissibility of the communication, dated 23 September 2014, were received on 9 March 2015. The State party considers that the communication should be found inadmissible for non-exhaustion of all available domestic remedies. It alleges that an investigation was instituted by the police, based on the author's complaint, on the same day that he was attacked, namely 10 April 2010. On 21 April 2010, a suspect was arrested and arraigned in the District Court of Morogoro for assault causing grievous harm and bodily injury (criminal case No. 257 of 2010). A trial commenced and three witnesses testified, including the author. However, during his testimony, the author informed the Court that the accused person was not one of his attackers. He stated that he knew the assailants who were his neighbours and were both Maasai men. As a result, the prosecution withdrew the case against the accused person under section 98 of the Criminal Procedure Act.

4.2 The investigation of the attack against the applicant is ongoing and efforts are being made to locate and arrest the assailants and bring them to justice. The State party adds that the author has never approached the domestic authorities regarding his claim that criminal investigations were never instituted or that they were delayed, before bringing the matter to the Committee. It considers that the communication is based on an erroneous belief that the State party has failed to act.

4.3 As regards the author's argument that he was unable to pursue and initiate a private prosecution as that is not provided for in Tanzanian criminal law, the State party submits that such a possibility does exist under section 99 of the Criminal Procedure Act, and that there is no evidence that the author attempted to initiate such a procedure and failed.

4.4 The State party also submits that the Basic Rights and Duties Enforcement Act provides for the procedure for the enforcement of basic constitutional rights. The State party notes that the author states that he failed to institute a civil case owing to his limited economic resources. The State party argues that that reasoning has no basis since there are a number of legal aid centres and non-governmental organizations assisting indigents to

pursue their cases in the Courts. The author did not attempt to seek legal aid and failed to secure any. The State party contests the author's arguments relating to his failure to initiate a civil case owing to the distance of 300 kilometres from Morogoro (where the author resides) to Dar es Salaam (where the High Court is located). It considers that the advocate who assisted the author to pursue this communication before the Committee, which is located in a different continent, could not have failed to assist him in filing a constitutional case in Tanzania.

4.5 The State party therefore considers that the author's communication should be found inadmissible under article 2 (d) of the Optional Protocol, for lack of exhaustion of all available domestic remedies relating to the complaints that he has brought before the Committee.

#### **Author's comments on the State party's observations on admissibility**

5.1 On 11 March 2015, the author submitted his comments to the State party's observations on admissibility, arguing that the exhaustion of domestic remedies rule should never 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 the African Commission on Human and Peoples' Rights in *Jawara v. the Gambia*, in which the Commission stated that "three major criteria could be deduced ... in determining this rule, namely: the remedy must be available, effective and sufficient".<sup>5</sup> The Commission also stated that "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".<sup>6</sup> The author also refers to the jurisprudence of the European Court of Human Rights in *Sejdovic v. Italy*, according to which, applicants are only required to exhaust domestic remedies which are available in theory and in practice at the relevant time and which they can directly institute themselves, which means that the remedies must be accessible, capable of providing redress in respect of their complaints, and offering reasonable prospects of success.<sup>7</sup> Where domestic remedies are non-existent, or unduly and unreasonably prolonged, or unlikely to bring effective relief, a resort to international measures is required. The author considers that this is the case for the acts of murder and attacks of 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 he was attacked, namely, 10 April 2010, and that one suspect was arrested on 21 April 2010, the author acknowledges that the prosecutor withdrew the matter after he testified that the wrong person had been arrested. He submits that he knew the perpetrators, who were his neighbours, and had no other option but to clarify that the suspected person had not taken part in the assault. He did not think that his testimony would have resulted in blocking the investigation of his case. The author considers that, as the State party failed to carry out further investigation and to seek additional clarification, it breached its duty under section 90 (1) of the Criminal Procedure Act and under the Convention in not carrying out an effective investigation and prosecuting the perpetrators.

5.3 The author further refers to the jurisprudence of the Inter-American Commission of Human Rights in the case of *Greco v. Argentina*, in which the Commission stated that, "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

---

<sup>5</sup> See African Commission on Human and Peoples' Rights, *Jawara v. the Gambia*, communications Nos. 147/95 and 146/96, decision of 11 May 2000, para. 31.

<sup>6</sup> *Ibid.*, para. 32.

<sup>7</sup> See European Court of Human Rights, *Sejdovic v. Italy*, application No. 56581/00, judgment of 1 March 2006, paras. 31 and 34.

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 Convention.”<sup>8</sup>

5.4 The author argues that, 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, for the State party has a duty to maintain public order and therefore to set the criminal law system into motion and to process the matter until the end. The author refers to additional jurisprudence of the Inter-American Court of Human Rights, according to which, the obligation to investigate “‘must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his 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>9</sup> The author submits that, in his case, the State party failed to conduct effective investigation and prosecution. Rather, it discontinued the investigation before identifying the perpetrators, as domestic jurisdictions usually do in similar cases.

5.5 As regards the State party’s statement that investigations are ongoing to bring his attackers to justice, the author submits that there is no sign of any concrete action taken or of any result of the alleged investigative process. The author has never been contacted and he has never received any information as to the procedures and investigations allegedly under way.

5.6 Regarding the State party’s argument that he should have submitted a human rights petition before the local courts under the Basic Rights and Duties Enforcement Act, the author submits that such procedure is extremely prolonged. He refers to the jurisprudence of human rights bodies, according to which, there is no need to exhaust unduly prolonged remedies, which by their very nature are ineffective.<sup>10</sup> He also submits that, even if no hard and fast rule exists to establish if remedies are unduly prolonged, human rights bodies usually consider the conduct of the States and the complexity of the case to determine whether the length of time is reasonable.<sup>11</sup> The author further submits that applicants can rely on this rule when, as in his case, investigations have been pending for years without any evidence of progress or when judicial proceedings have dragged on for years, or when remedies have been used as “delaying instruments”.<sup>12</sup>

5.7 The author refers to the petition submitted by persons with albinism who had been victims of acts of violence to the High Court of the United Republic of Tanzania on 20 March 2009 as Miscellaneous Civil Application No 15 of 2009, in accordance with the Basic Rights and Duties Enforcement Act. Section 4 of the Act states that an aggrieved person may apply to the High Court for remedies; the bench in charge of determining the merits of the application shall be composed of three judges (sect. 10). The constitutional petition was submitted with the support of the Legal and Human Rights Centre, Tanzania Albino Society and Tanzania Federation of Disabled Peoples’ Organizations. More than six years later, the matter has still not been heard (see para. 2.6 above). The author argues that that procedure 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. That matter

<sup>8</sup> See Inter-American Commission of Human Rights, *Greco v. Argentina*, case No. 11.804, decision of 10 October 2001, para. 51.

<sup>9</sup> *Ibid.*, *Sequeira Mangas v. Nicaragua*, case No. 11.218, conclusions of 18 February 1998, para. 96.

<sup>10</sup> See, for example, Human Rights Committee, communication No. 612/1995, *Vicente et al. v. Colombia*, Views adopted on 29 July 1997; and African Commission on Human and Peoples’ Rights, *Association of the Victims of Post-electoral Violence and INTERIGHTS v. Cameroon*, communication No. 272/03, decision of 25 November 2009.

<sup>11</sup> See European Court of Human Rights, *Todorov v. Bulgaria*, application No. 38299/05, judgment of 5 November 2009, para. 45.

<sup>12</sup> See Inter-American Court of Human Rights, “*Las Dos Erres*” *Massacre v. Guatemala*, (preliminary objection, merits, reparations and costs), judgment of 24 November 2009, para. 119.

has therefore been unduly delayed and prolonged<sup>13</sup> so that the local remedy before the High Court is not available.

5.8 The author reiterates that, since 2000, there has been an increase in the number and scale of attacks on persons with albinism in the State party, many of which remain unreported. He submits that the State party has been unable to prosecute the reported cases so far,<sup>14</sup> and that the judicial system in the State party is ill-equipped to handle the high number of cases related to persons with albinism.<sup>15</sup> The author refers to the jurisprudence of the African Commission on Human and Peoples' Rights, according to which, when, in the premise of "massive" and "serious" violations of human rights, a State is aware of such violations, it is expected to take appropriate action to prevent them.<sup>16</sup> The author submits that, in his case, the State was notified of the grave violations of human rights that he has suffered, but the State party's authorities have not taken the necessary steps to investigate the case, prosecute and punish the perpetrators, and prevent similar acts of violence against persons with albinism in the United Republic of Tanzania.

5.9 The author submits that a remedy is considered available only if it is accessible in theory and in practice<sup>17</sup> and can be "pursued without any impediment".<sup>18</sup> Domestic remedies are also said to be effective when they offer some prospects of success, such as redress for the violations complained of. In cases of serious violations, such as alleged violations of the right to life or the prohibition of torture, purely administrative or disciplinary proceedings cannot be claimed to be sufficient or effective.<sup>19</sup> Remedies must then be of a judicial nature, and States should be able to establish the criminal responsibilities of the culprits. The author refers to the jurisprudence of the European Court of Human Rights, according to which, applicants need not exhaust domestic remedies "where an administrative practice consisting of a repetition of acts ... and official tolerance by State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective".<sup>20</sup>

5.10 The author therefore considers that, in the particular circumstances of his case, the local remedies in the State party are unavailable, and even if available, they are ineffective and insufficient.<sup>21</sup> He therefore requests the Committee to examine the case on the merits, reiterating that the acts of which he has been victim, the fact that they have not been investigated and the non-prosecution of those responsible amount to a violation of his rights under articles 5, 15 and 17 of the Convention.

#### **Lack of reply from the State party on the merits of the communication**

6. On 12 May 2015, 27 November 2015, 4 March 2016, and 9 May 2016, the State party was requested to submit its observations on the merits of the communication. The Committee notes and regrets that no information has been received from the State party in that regard. In the absence of a reply from the State party, the Committee must give due weight to the author's allegations, to the extent that they have been substantiated.<sup>22</sup>

<sup>13</sup> See *Association of Victims of Post-electoral Violence and INTERIGHTS v. Cameroon*, para. 63.

<sup>14</sup> See A/HRC/28/75.

<sup>15</sup> The author refers to cases that had been reported in 2015 only, at the time of his submission to the Committee. He refers to the example of a 1-year-old albino boy, who was abducted from his home in the north-western part of the country in January 2015 and was found murdered with his arms and legs hacked off. The victim, Yohana Bahati, was kidnapped from his family home in the Geita Region by an armed gang. His mother, Esther, was struck with a machete as she tried to protect him.

<sup>16</sup> See African Commission on Human and Peoples' Rights, *World Organisation against Torture et al. v. Zaire* (Zaire mass violation case), communications Nos. 25/89, 47/90, 56/91 and 100/93, decision of March 1996, para 55.

<sup>17</sup> See European Court of Human Rights, *Akdivar and others v. Turkey*, application No. 21893/93, decision of 16 September 1996, para. 66.

<sup>18</sup> See *Jawara v. the Gambia*, para. 32.

<sup>19</sup> See *Vicente et al. v. Colombia*, para. 5.2.

<sup>20</sup> See *Akdivar and others v. Turkey*, para. 67.

<sup>21</sup> See, for example, European Court of Human Rights, *D.H. and others v. the Czech Republic*, application No. 57325/00, judgment of 7 February 2006.

<sup>22</sup> See, inter alia, Human Rights Committee, communications No. 1422/2005, *El Hassy v. Libyan Arab*

## 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 case 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 The Committee notes 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 State party noted in particular that the author had not submitted his case to the domestic courts under the Basic Rights and Duties Enforcement Act. The State party also noted that 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 the possibility of civil action and private prosecution do not constitute effective remedies in his case. The Committee also notes that the author submitted a complaint to the police on the day that he was attacked, namely, 10 April 2010; that the prosecution was withdrawn under section 98 of the Criminal Procedure Act after the author testified that the accused person was not one of his attackers; 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. The Committee recalls that, under Tanzanian criminal procedure, the magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, including the victim.<sup>23</sup> However, in cases of violations of such gravity as those of which the author has been victim, the primary responsibility to prosecute lies in the hands of the authorities of the State party,<sup>24</sup> which have a non-delegable duty and obligation to investigate, prosecute and punish perpetrators.<sup>25</sup>

7.4 The Committee notes that, on 20 March 2009, other victims of similar violent acts brought their case to the Constitutional Court of the United Republic of Tanzania under the Basic Rights and Duties Enforcement Act, and that, at the time of the examination of the present complaint more than eight years later, the matter has still not been heard. The Committee also notes that the lengthy proceedings initiated by the author before the judicial authorities have not had any result to date. In that connection, the Committee notes the difficulties faced by the High Court to compose a bench of three judges to decide on the merits of each application submitted under the Basic Rights and Duties Enforcement Act. In such circumstances, the Committee does not find it reasonable to require that the author should have gone to court to initiate additional proceedings of unpredictable duration, such

---

*Jamahiriya*, Views adopted on 24 October 2007, para. 4; and No. 1295/2004, *El Alwani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 4; and Committee on Enforced Disappearances, communication No. 1/2013, *Yrusta and del Valle Yrusta v. Argentina*, Views adopted on 11 March 2016, para. 10.1.

<sup>23</sup> See 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>24</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 of the United Republic of Tanzania (1977) states that "The Director of Public Prosecutions shall have powers to institute, prosecute and supervise all criminal prosecutions in a country." See also the National Prosecution Services Act (2008).

<sup>25</sup> See, for example, *Greco v. Argentina*, para 51; and *Sequeira Mangas v. Nicaragua*.

as civil proceedings or additional proceedings before the High Court under the Basic Rights and Duties Enforcement Act.

7.5 The Committee considers that, in the circumstances of the present case, a civil claim and an award of compensation, by itself, would not be an effective remedy. In the light of the foregoing, the Committee concludes that the remedies referred to by the State party would not have been effective. Accordingly, it is not precluded, under article 2 (d) of the Optional Protocol from considering the author's complaint.

7.6 Moreover, the Committee recalls that article 1 of the Convention states that persons with disabilities include, but are not limited to, 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 by the Independent Expert on the enjoyment of human rights by persons with albinism that 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. 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.<sup>26</sup> The Committee notes that a human rights-based model of disability requires that the diversity of persons with disabilities (see Convention, preamble, para. (i)) and the interaction between persons with impairments and attitudinal and environmental barriers (ibid., preamble, para. (e)) be taken into account.<sup>27</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.

7.7 There being no other obstacles to admissibility, the Committee finds the communication admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the present 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 its rules of procedure. Since the State party has not submitted any observations on the merits of the communication, due weight must be given to the authors' claims insofar as they have been substantiated.<sup>28</sup>

8.2 As regards the author's complaint under article 5 of the Convention, the Committee notes his argument that he has been discriminated against on the basis of his disability, because the kind of violence that he has suffered is a generalized practice in the State party that only affects people with albinism. The Committee also notes the author's submission that he has also been a victim of disability-based discrimination owing to the impunity of the violent acts that he has suffered, which remains 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 with regard to which a lot of prejudice still prevails in society. The Committee finally notes 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 and that no preventive or protective measures have been implemented with regard to violence against persons with albinism.

---

<sup>26</sup> See A/HRC/34/59, paras. 15-16.

<sup>27</sup> See Committee on the Rights of Persons with Disabilities, communication No. 10/2013, *S.C. v. Brazil*, decision adopted on 2 October 2014, para. 6.3.

<sup>28</sup> See *Yrusta and del Valle Yrusta. v. Argentina*, para. 10.1

8.3 The Committee recalls that, under article 5 (1) and (3) of the Convention, States parties 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 shall take all appropriate steps to ensure that reasonable accommodation is provided to promote equality and eliminate discrimination. The Committee considers that discrimination can result from the discriminatory effect of a rule or measure that is not intended to discriminate, but that disproportionately affects persons with disabilities.<sup>29</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 10 April 2010, he was attacked by two men while he was fetching firewood; they hit him on the head with clubs; hacked off half of his left arm, from below the elbow; and took it 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 first prosecution, and his case remains in total impunity more than eight years after the criminal attack that he suffered.

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, such as the District Court of Morogoro and the Constitutional Court, 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 him to live independently again after the loss of his arm and that, generally speaking, the State party has not adopted any measures to prevent this form of violence against persons with albinism and to protect them therefrom. In the absence of any explanation from the State party on these issues, 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 putting the author and other persons with albinism in a situation of particular vulnerability and preventing them 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 his disability, in violation of article 5 of the Convention.

8.5 As regards the author's allegations under articles 15 of the Convention, the Committee notes his argument that the acts he has suffered amount to torture and a violation of his physical integrity. The Committee recalls that, under article 15 (1) and (2) of the Convention, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and States parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment. The Committee also recalls that, under 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; as such, they do not constitute acts of torture.

8.6 Nonetheless, the Committee recalls that States' obligation to prevent and punish torture and inhuman and degrading treatment violations applies to acts committed by both State and non-State actors.<sup>30</sup> Expedition and effectiveness are particularly important in the adjudication of such cases. The Committee considers that the suffering experienced by the author, owing to the lack of action by the State party that would allow the effective

<sup>29</sup> See *S.C. v. Brazil*, para. 6.4.

<sup>30</sup> See Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 13.

prosecution of the suspected authors of the crime, has become a cause of revictimization and amounts to psychological torture and/or ill-treatment.<sup>31</sup> For those reasons, the Committee finds that, in the circumstances of the present case, the State party has violated articles 15 of the Convention.

8.7 As regards the author's complaint under article 17 of the Convention, the Committee recalls that every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others. 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 each person's physical and mental space should be protected; it includes the prohibition of physical and mental torture, 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. The violent acts suffered by the author clearly fall within the category of acts that violate the affected person's physical and mental integrity. The Committee also recalls that, in accordance with article 4 of the Convention, States parties have the 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 any measures to prevent and punish the acts suffered by the author and to support him so that he can live independently again after the loss of his arm. Furthermore, to date, the author's case remains in total impunity. 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 those acts in the author's case amount to a violation of the author's rights under article 17, read in conjunction with article 4, 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 and 17, read in conjunction with article 4, 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 him with an effective remedy, including compensation, redress for the abuses suffered, and the support necessary to enable him to live independently again;
- (ii) Conduct an impartial, speedy and effective investigation into the attack that he suffered, and to prosecute the perpetrators;
- (iii) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In this regard, the Committee refers to the recommendations made by the Independent Expert on the enjoyment of human rights by persons with albinism<sup>32</sup> and requires the State party to:

- (i) Review and adapt legal frameworks as needed to ensure that they encompass all aspects of attacks against persons with albinism, including with regard to trafficking of body parts;
- (ii) Ensure prompt investigation and prosecution of cases of attacks against persons with albinism as well as trafficking of body parts;
- (iii) Ensure that the practice of using body parts for witchcraft-related practices is adequately and unambiguously criminalized in domestic legislation;

---

<sup>31</sup> See, for example, Human Rights Committee, communication No. 1956/2010, *Durić and Durić v. Bosnia and Herzegovina*, Views adopted on 16 July 2014, paras. 9.6-9.7; and *Yrusta and del Valle Yrusta v. Argentina*, para. 10.8.

<sup>32</sup> See A/HRC/34/59, paras. 97-99.

(iv) Develop and implement long-lasting awareness-raising campaigns and training based on the human rights model of disability and in compliance with State party's obligations under article 8 of the Convention to address harmful practices and rampant myths affecting the enjoyment of human rights by persons with albinism, as well as training on the scope of the Convention and its Optional Protocol.

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.

---