



## Convention on the Rights of Persons with Disabilities

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### Committee on the Rights of Persons with Disabilities

#### Communication No. 22/2014\*\*

Views adopted by the Committee at its eighteenth session  
(14 August - 1 September 2017)

<i>Communication submitted by:</i>	Mr. X (represented by counsel [anonymity requested])
<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, inhumane and degrading treatment and 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, inhumane and degrading treatment; violation of the right to respect for intellectual and mental integrity
<i>Articles of the Convention:</i>	1, 5, 15, 17
<i>Article of the Optional Protocol:</i>	2

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\*\* 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.

1. The author of the communication is Mr. X, a Tanzanian national with albinism born on 12 January 1969. He has had his left arm cut off by two strangers at the age of 41 due to his condition of albinism. He is not self-sufficient anymore. He claims to be victim of violations by Tanzania of articles 5, 15, 17 of the Convention. Tanzania signed and ratified the Optional Protocol to the Convention on 29 September 2008 and 10 November 2009 respectively. The author is represented by a counsel<sup>1</sup>.

## **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 12 January 1969. He is from Merda village, Mvomero District, in the Region of Morogoro in Tanzania. He is a person with albinism. Until the age of 41 when he had his left arm chopped off, he was a farmer and was self-sufficient.

2.2 On 10 April 2010, between 2.00 pm and 3.00 pm, the author was fetching firewood from the bush in Mbelela Kibaoni area, within the Mvomero District, when two Maasai-Morans 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, the author was in great pain and screamed for help. Villagers took him to the 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 these 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 to 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", or 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 United Republic of Tanzania, such as killings and mutilations, fuelled by the set-up of a successful black market for the selling of the body parts. Body parts are usually cut off brutally by using machetes, leaving the victims who survive with severe pain and suffering. In some instances, buried bodies of persons with albinism have also been exhumed and dismembered.

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

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

2.6 The author further submits that other persons with albinism who suffered similar facts, filed a constitutional petition against the State before the High court of Tanzania on

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

<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 that regard.

<sup>4</sup> Tanzania has one of the highest rates of albinism in the world estimated at 1 in 1,429 people. See Albinos in Africa: A population at Risk. Available at: [http://www.stiefel.com/content/dam/stiefel/globals/images/products/HatsOnSkinHealth/Hats\\_On\\_For\\_Skin\\_Health\\_Fact\\_Sheet.pdf](http://www.stiefel.com/content/dam/stiefel/globals/images/products/HatsOnSkinHealth/Hats_On_For_Skin_Health_Fact_Sheet.pdf).

20 March 2009, with the help of the LHRC, Tanzania Albino Society (TAS) and Tanzania Federation for Disabled People Organization. At the date of the presentation of the author's complaint to the Committee, the matter still has not been heard by the High court due to the intermittent changes of panel of judges which has unduly prolonged and delayed the matter.

2.7 In this connection, the author notes that, according to the Basic Rights and Duties Enforcement Act which sets out the procedures for an aggrieved person to bring a case before the courts in Tanzania, a bench of three judges has to be composed to decide on the merits of each application. The author claims that this procedure usually leads to undue delays because, due to the limited number of judges, it is difficult to constitute the bench of three in many regional branches of the High Court and 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 as a disability because of the different impairments and conditions that it entails. In this connection, the author recalls that albinism is a rare genetically inherited difference 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 big majority of cases. The author further argues that the violence and the non-access to justice that he has suffered are generalized practices against people with albinism in the State party. He considers that State authorities have not taken any preventive or protective measures in that regard because they consider that it is linked to witch craft and that it is a cultural practice which is generally accepted and with regard to which lots of prejudices still prevail in society. The author therefore considers that he has been a victim of a 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 of his arm subjected him to severe forms of torture and inhuman treatment and made him lose his independence, in violation of article 15 of the Convention.

3.3 The author further argues 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 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 held inadmissible for the non-exhaustion of all available domestic remedies. It alleges that an investigation was instituted by the police on the author's complaint the same day that he was attacked, namely on 10 April 2010. On 21 April 2010, a suspect was arrested and was arraigned in the District Court of Morogoro for assault causing grievous harm and bodily injury in 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 among his attackers. He stated that he knows the assailants who are his neighbours and are both Masai 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 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 are being delayed before bringing this 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 has been unable to pursue and initiate a private prosecution as this is not provided for by Tanzanian criminal law, the State party submits that such possibility exists under section 99 of the Criminal procedure act, Cap 20, and that there is no evidence that the author attempted to initiate this procedure and failed.

4.4 The State party further submits that the Basic Rights and Duties Enforcement Act (CAP 3 R.E. 2002) provides for the procedure for the enforcement of Constitutional basic rights. It also notes that the author failed to institute a civil case due to his limited economic resources. The State party argues that this 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 also contests the author's arguments relating to the failure to initiate a civil case due to the distance of 300 kilometers 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 held inadmissible under article 2(d) of the Optional Protocol, for lack of exhaustion of all available domestic remedies in connection with the complaints which 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 sent his comments to State party's observations on admissibility. He submits that the exhaustion of domestic remedies rule should never be used as a protective shield by states which have not established 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 in *Jawara v. The Gambia*, in which it stated that "three major criteria could be deduced in determining [the exhaustion] rule, namely: the remedy must be available, effective and sufficient."<sup>5</sup> The African Commission further 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 to persons with albinism, which are systemic and continuous in the State party, and amount to a grave violation of their rights, and remain unpunished.

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<sup>5</sup> *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000) para 31.

<sup>6</sup> *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000) para 32.

<sup>7</sup> *Sejdovic v. Italy* Grand Chamber (*Application no. 56581/00*), para. 31: "The Convention allows the Contracting States considerable discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of article 6, while at the same time preserving their effectiveness. The Court's task, however, is to determine whether the result called for by the Convention has been achieved. In particular, the resources available under domestic law must be shown to be effective..."; para 34: "the Court observes, however, that in its decision on the admissibility of the application it dismissed an objection by the Government that domestic remedies had not been exhausted, finding that the remedy in question would have had little chance of success and that the Applicant would have encountered objective difficulties in using it. The Court sees no reason to revise that conclusion."

5.2 As to the State party's submission that the investigation on the author's case began the same day when he was attacked, namely on 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. He submits that he knew the perpetrators, who were his neighbours, and that he therefore had no other option but to clarify that the suspected person had not taken part to the assault. He did not think that his testimony would have resulted in the blockade of the investigation of his case. The author considers that as the State party failed to carry further investigation and to seek additional clarification, it breached its duty under section 90(1) of the Criminal procedure act of the United Republic of Tanzania and under the Convention to carry out an effective investigation and prosecute the perpetrators.

5.3 The author further refers to the jurisprudence of the Inter-American Commission of Human Rights in the case of *Juan Angel Greco v. Argentina*, where it 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 oficio. 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 Convention".<sup>8</sup>

5.4 The author argues that in the case of crimes of public action, and even in those which 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 has 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 referred investigative process. The author has never been contacted and he has never received any information as to the procedures and investigations allegedly in course.

5.6 Regarding the State party's argument that the author should have submitted a human rights petition before Tanzanian Courts under the Basic Rights and Duties Enforcement Act (Cap 3 R.E 2002), 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 submits that even if no hard and fast rule exist 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 submits that applicants can rely on this rule when, as in his case, investigations have been pending for years without

<sup>8</sup> See ICHR, Report 72/01, Case 11.804, para 51.

<sup>9</sup> See ICHR, *Arges Sequeira Mangas v. Argentina*, Report 72/01, Case 11.804, para. 51.

<sup>10</sup> See CCPR, *Vicente v. Colombia*, communication No. 612/1995, Views adopted on 29 July 1997; ACHPR, *Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon* (2009) AHRLR 47, 2009.

<sup>11</sup> The author refers to ECHR, *Todorov v. Bulgaria* (2005), para 45.

any evidence of progress or when judicial proceedings have dragged on for years, or when remedies have been used as a “delaying instruments.”<sup>12</sup>

5.7 The author further refers to the petition submitted by persons with albinism who have been victims of acts of violence in the High Court of Tanzania on 20 March 2009 as “Miscellaneous Civil Application No 15 of 2009”, in compliance with the Basic Rights and Duties Enforcement Act. According to Section 4 of the Act, an aggrieved person can apply to the High Court for remedies, and that the bench in charge of determining the merits of the application is composed of three judges. The constitutional petition was submitted with the support of the Legal and Human Rights Centre (LHRC), Tanzania Albino Society (TAS) and Tanzania Federation for Disabled People Organization (TFDPO) and more than six years later, the matter still has not been heard. The author argues that this procedure usually leads to undue delay, because the limited number of judges in many regional branches of the High Court complicates the conformation of the bench. The matter has therefore been unduly delayed and prolonged,<sup>13</sup> and the local remedy before the High Court was therefore not available.

5.8 The author further reiterates that since 2000, there has been an increase in the number and scale of attacks on persons with albinism in Tanzania, many of which remain unreported. He also submits that the State party has been unable to prosecute the reported cases so far,<sup>14</sup> and that the judicial system in Tanzania 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, in the premises 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 them.<sup>16</sup> The author submits that in his case, the State was notified of the grave violations of human rights he has suffered, but that 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 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 further refers to the jurisprudence of the European Court of Human Rights according to which applicants need not exhaust domestic remedies “where an administrative practice considering 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>

<sup>12</sup> The author refers to: *Las Dos Erres Massacre v Guatemala*, Preliminary Objection, merits, reparations and costs, judgment of 24 November 2009.

<sup>13</sup> The author refers to ACHPR, *Association of Victims of Post Electoral Violence & INTERIGHTS v Cameroon*, op.cit., para. 63.

<sup>14</sup> 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 one-year-old albino boy, who was abducted from his home in north-western Tanzania 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 ACHPR, Communications 25/89; 47/90; 56/91 & 100/93 *World Organisation against Torture v. Zaire* (Zaire mass violation case) para 55.

<sup>17</sup> The author refers to *Akdivar and Others v Turkey* (1997), 23 EHRR 143, para 66.

<sup>18</sup> The author refers to *Jawara v The Gambia*, para 32.

<sup>19</sup> The author refers to CCPR, *Vicente et al. v. Colombia*, Communication 612/1995, Views adopted on 29 July 1997, para 5.2.

<sup>20</sup> See 23 EHRR 143, *Akdivar and Others v Turkey* (1997), para. 67.

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 that he has been victim of, 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, 17 of the Convention.

#### **Lack of reply of 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 this information has not been received. In the absence of State party's comments on the merits, the Committee must give due weight to those of the authors' allegations that have been properly substantiated.<sup>22</sup>

### **B. Committee's 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 the Committee's 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 or has been or is 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 held inadmissible, in accordance with article 2 (d) of the Optional Protocol, on the grounds of the failure to exhaust domestic remedies. The State party noted in particular that the author had not submitted his case to the courts of Tanzania under the Basic Rights and Duties Enforcement Act. The State party also noted that the author could have initiated 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 further recalls that the author submitted a complaint to the police the day he was attacked, namely on 10 April 2010; that the prosecution was withdrawn under section 98 of the Criminal Procedure Act after the author had testified that the accused person was not among his attackers; and that since then, the author has never been informed of any new additional steps that would have been taken by the authorities of the State party to investigate the case and bring the culprits to justice. The Committee further recalls that under the 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 which the author has been victim of, the primary responsibility to prosecute remains in the hands of the authorities of the State party,<sup>24</sup> that have a non-delegable duty and obligation to investigate, prosecute and punish.<sup>25</sup>

<sup>21</sup> See *D.H. and Others v. the Czech Republic [GC]*, 116-22.

<sup>22</sup> See, inter alia, CCPR, communication No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 4; communication No. 1295/2004, *El Alwani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 4; CED, communication No. 1/2013, *Yrusta v. Argentina*, Views adopted on 11 March 2016, para. 10.1.

<sup>23</sup> See article 99 of the Criminal Procedure Act: "(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> See section 90 of the Criminal Procedure Act, whereby a director of public prosecution has the duty 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; (b) to take over and continue any criminal proceeding that have been instituted or undertaken by any other person or authority; and (c) to discontinue any criminal proceeding instituted or undertaken by him or any other authority or

7.4 The Committee also notes that on 20 March 2009, other victims of similar violent acts brought their case to the Constitutional court of Tanzania under the Basic Rights and Duties Enforcement Act, and that at the time of the examination of the present complaint, namely more than eight years later, the matter still has not been heard. Furthermore, the Committee notes that the lengthy procedures initiated by the author before the judicial authorities have not had any result to date. In this connection, the Committee notes the difficulties faced by the High Court to compose the bench of three judges that must decide on the merits of each application 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 an unpredictable duration, such as civil proceedings, or additional proceeding before the High Court under the Basic Rights and Duties Enforcement Act.

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

7.6 The Committee recalls that, under article 1 of the Convention, 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 further recalls 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 [of albinism] 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> A human rights-based model of disability requires the diversity of persons with disabilities to be taken into account (preamble, para.(i)) together with the interaction between individuals with impairments and attitudinal and environmental barriers (preamble, para. (e)).<sup>27</sup> In view thereof, and while noting that the State party does not question the competence *ratione materiae* of the Committee to address the author's complaint, the Committee considers necessary to clarify that albinism falls within the definition of disability as enshrined by article 1 of the Convention.

7.7 There being no other obstacles to admissibility, the Committee finds the communication admissible and shall proceed to consider it on the merits.

### C. Committee's 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 the Committee's rules of procedure. Since the State party has not submitted

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person. Under section 59B (2) of the Constitution of United Republic of Tanzania of 1977, "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 ICHR, Report 72/01, Case 11.804, para 51; ICHR, Report N° 52/97, Case 11.218 *Arges Sequeira Mangas v. Nicaragua*, February 18, 1998

<sup>26</sup> See Human Rights Council, 34<sup>th</sup> session, "Report of the Independent Expert on the Enjoyment of Human Rights by persons with albinism", A/HRC/34/59, 10 January 2017, para. 16.

<sup>27</sup> See Communication 10/2013, *S.C. v. Brazil*, decision adopted on 2 October 2014, para. 6.3.

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 he has suffered is a generalized practice in the State party, which only affects people with albinism. The Committee further notes the author's submission that he has been a victim of disability based discrimination also as a result of the impunity in which the violent acts he has suffered have remained to date. In this connection, the author submits that impunity characterizes most cases of violence perpetrated against persons with albinism, as State party authorities consider that they are linked to witch craft and that it is a cultural practice which is generally accepted and with regard to which lots of prejudices still prevail in society. The Committee finally notes that 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 in that regard.

8.3 The Committee recalls that under article 5(1) and (2) of the Convention, States parties must ensure 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 further recalls that discrimination can result from the discriminatory effect of a rule or measure which does not intend to discriminate, but that disproportionately affects persons with disability.<sup>29</sup> In the present case, the Committee notes that the author was victim of a violent crime responding to the characteristics of a practice which exclusively affects persons with albinism: he was attacked on 10 April 2010 while he was fetching firewood. Two men hit him on the head with clubs and 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: 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 he suffered.

8.4 The Committee considers that the State party may not 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. Additionally, 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 a situation putting him 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 a 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 to a violation of his physical integrity. The Committee recalls that under article 15 of the Convention, "1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. [...], and 2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal

<sup>28</sup> CED, communication No. 1/2013, *op.cit.*, para. 10.1

<sup>29</sup> See communication No. 10/2013, *S.C. v. Brazil*, decision of inadmissibility adopted on 2 October 2014, CRPD/C/12/D/10/2013, para. 6.4.

basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.” The Committee further recalls that “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.”<sup>30</sup> It further recalls that the violent acts suffered by the author were perpetrated by private individuals and that, as such, they do not constitute acts of torture.

8.6 Nonetheless, the Committee also recalls that States parties’ obligation to prevent and punish torture and inhuman and degrading treatment violations applies to acts committed by both State and non-State actors.<sup>31</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 that would allow the effective prosecution of the suspected authors of the crime, becomes a cause of re-victimization, and amounts to psychological torture and/or ill-treatment.<sup>32</sup> For these 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 per the author’s complaint under article 17 of the Convention, the Committee recalls that under that disposition, “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 ought to 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 result in a violation of the affected person’s physical and mental integrity. The Committee further recalls that, in compliance 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 this right. 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; and, 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 these 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.

#### **D. Conclusion and recommendations**

9. The Committee, acting under article 5 of the Optional Protocol to the Convention, 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, and therefore makes the following recommendations to the State party:

- (a) Concerning the author: the State party is under an obligation:
  - (i) To provide him with an effective remedy, including compensation, redress for the abuses suffered, and the support that is necessary to enable the author to live independently again;

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<sup>30</sup> See article 1 of the Convention against Torture.

<sup>31</sup> See CCPR, General Comment No. 20, para. 13.

<sup>32</sup> See for example: CCPR, Communication 1956/2010, *Duric v. Bosnia and Herzegovina*, Views adopted on 16 July 2014, para. 9.6 and 9.7; CED, Communication 1/2013, *Yrusta v. Argentina*, Views adopted on 11 March 2016, para. 10.8.

(ii) To conduct an impartial, speedy and effective investigation into the attack suffered by the author, and to prosecute the perpetrators;

(iii) To publish the Committee's Views and circulate them widely in accessible formats so that they are available to all sectors of the population.

(b) General measures: 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 of the Independent Expert on the Enjoyment of Human Rights by persons with albinism as contained in her report to the Human Rights Council<sup>33</sup> and requires the State party:

(i) To 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) To ensure prompt investigation and prosecution of cases of attacks against persons with albinism as well as trafficking of body parts;

(iii) To ensure that the practice of using body parts for witchcraft-related practices is adequately and unambiguously criminalized in domestic legislation;

(iv) To develop and implement long-lasting awareness-raising campaigns based on the human rights model of disability and in compliance with State party's obligations under article 8 of the Convention, and trainings to address harmful practices and rampant myths affecting the enjoyment of human rights by persons with albinism, as well as 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 a written response to the Committee in six months' time that includes information on any action taken in the light of the Views and recommendations of the Committee.

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<sup>33</sup> Human Rights Council, 34<sup>th</sup> session, "Report of the Independent Expert on the Enjoyment of Human Rights by persons with albinism", A/HRC/34/59, 10 January 2017, para. 97ss.