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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Right to access to justice for persons with albinism****Report of the Independent Expert on the enjoyment of human rights by  
persons with albinism***Summary*

In her report, the Independent Expert on the enjoyment of human rights by persons with albinism provides an overview of her activities undertaken during the reporting period. The thematic segment of the report focuses on access to justice for persons with albinism. Information for the report was gathered from country visits conducted by the Independent Expert, research, and a questionnaire that was sent to various stakeholders including Member States, civil society organizations and persons with albinism. Barriers to access to justice are highlighted in the report as well as measures to address such challenges. The Independent Expert also identifies best practices in relation to access to justice, including on appropriate redress for human rights violations. The report focuses primarily on sub-Saharan African countries where attacks and trafficking in body parts of persons with albinism have largely been reported. It also provides recommendations to various stakeholders with a view to promoting the right to access to justice, which can ultimately strengthen protection for persons with albinism.



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## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 28/6 and 37/5 concerning the mandate of the Independent Expert on the enjoyment of human rights by persons with albinism.

2. Section II provides an overview of the activities undertaken by the Independent Expert since her last report to the Human Rights Council (A/HRC/ 37/57). Section III focuses on the right to access to justice for persons with persons with albinism, highlighting some challenges to the realization of this right and relevant recommendations to address them.

3. The report is based on research and information compiled by the Independent Expert through her country visits, and a questionnaire<sup>1</sup> sent in May 2018 to Member States, civil society organizations and persons with albinism. Twenty-nine written responses were received, of which three were from Member States: Mauritius, Togo and Uganda. Submissions were received from civil society organizations and persons with albinism (“stakeholders”) in Benin, Burkina Faso, Burundi, Cameroon, the Central African Republic, Fiji, Ghana, Malawi, Mauritius, Mozambique, Nepal, Nigeria, Senegal, South Africa, Togo, Uganda, the United Republic of Tanzania and Zambia. The report focuses primarily on sub-Saharan African countries where attacks and trafficking of body parts of persons with albinism have been reported.

## II. Activities of the Independent Expert

4. During the reporting period, the Independent expert undertook a country visit to Fiji (27 November–7 December 2017) and to Kenya (7–17 September 2018). The reports of these visits are contained in documents A/HRC/40/62/Add.1 and A/HRC/40/62/Add.3 respectively.

5. On 19 and 20 February 2018, the Independent Expert organized a regional strategy meeting for civil society, at which targets were developed for the Regional Action Plan on Albinism in Africa (2017–2021); these were linked to targets of the Sustainable Development Goals.<sup>2</sup>

6. As a follow-up to the expert workshop on witchcraft and human rights, held in Geneva on 21 and 22 September 2017 (A/HRC/37/57/Add.2),<sup>3</sup> the Independent Expert, with the Office of the Special Representative of the Secretary General on Violence against Children and civil society organizations,<sup>4</sup> organized a side event on 7 March 2018 on the impact of witchcraft beliefs and practices on children.

7. On 9 March 2018, the Independent Expert organized a workshop on albinism and human rights during the committee sessions of the Pan-African Parliament, held in South Africa. On 16 May 2018, she was invited to address the plenary of the Parliament. These events led to the Parliament’s endorsement of the Regional Action Plan on Albinism via a resolution<sup>5</sup> in which the Parliament referred to the work of the Independent Expert and called for effective protection of the human rights of persons with albinism.

8. On the margins of the thirty-eighth session of the Human Rights Council, the Independent Expert commemorated International Albinism Awareness Day on 13 June

<sup>1</sup> The questionnaire was drafted in English, French, Portuguese and Spanish. The English version is available at [www.ohchr.org/Documents/Issues/Albinism/Access\\_to\\_Justice\\_Questionnaire.docx](http://www.ohchr.org/Documents/Issues/Albinism/Access_to_Justice_Questionnaire.docx).

<sup>2</sup> See “Regional Action Plan” at [www.actiononalbinism.org](http://www.actiononalbinism.org).

<sup>3</sup> See [www.ohchr.org/EN/Issues/Albinism/Pages/Witchcraft.aspx](http://www.ohchr.org/EN/Issues/Albinism/Pages/Witchcraft.aspx).

<sup>4</sup> Witchcraft and Human Rights Information Network and Lancaster University.

<sup>5</sup> Resolution on persons with albinism in Africa, document PAP.4/PLN/RES/05/MAY.18.

2018 with a photo exhibition titled “Albinism: shining our light to the world”.<sup>6</sup> In September 2018, she organized an exhibition on witchcraft and human rights worldwide.<sup>7</sup>

9. On 20 and 21 September 2018, the Independent Expert collaborated with Trinity Western University to organize a multisectoral round table on albinism and human rights. The meeting’s objective was to build consensus on priorities for research, advocacy and policy.<sup>8</sup>

10. Within the framework of the Addis Ababa road map, the Independent Expert and the African Commission on Human and Peoples’ Rights organized a panel on albinism during the sixty-third regular session of the Commission, held in Banjul, where a progress report was presented on the Regional Action Plan on Albinism. At the same session, the Independent Expert also organized a side event and a photo exhibition, with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

11. Throughout the year, the Independent Expert engaged with scores of media, researchers and conferences, notably the 4th European Days of Albinism, held from 7 to 11 March 2018, and the first international albinism conference in Asia, held on 9 November 2018 in Tokyo. She also collaborated with the Salif Keita Global Foundation on a national symposium on the rights of persons with albinism, held in Mali on 15 November 2018.

### Communications

12. Summaries of allegation letters sent by the Independent Expert during the reporting period are available in the communications reports of special procedures (A/HRC/38/54 and A/HRC/39/27). The Independent Expert continued to focus on earnest, constructive dialogue with States and various stakeholders, through formal and informal channels.

## III. Access to justice

13. Albinism is a relatively rare, non-contagious, genetically inherited condition in which a person lacks the gene for producing melanin, resulting in little to no skin pigmentation, often perceived as “white” skin. It affects people worldwide regardless of ethnicity or gender. Persons with albinism are highly vulnerable to skin cancer and are often categorized as having a disability due to the visual impairment commonly linked to the condition. They have also been recognized by the Committee on the Elimination of Racial Discrimination as persons facing racial discrimination and stigmatization on the ground of colour (CERD/C/ZAF/CO/4-8, paras. 20–21). The physical appearance of persons with albinism has often been the object of erroneous beliefs and myths influenced by either superstition or witchcraft, or both. Myths influenced by witchcraft beliefs have fostered acute marginalization, social exclusion and physical attacks.<sup>9</sup>

14. In addition, studies undertaken by the Independent Expert<sup>10</sup> show that persons with albinism generally suffer from severe forms of persecution and discrimination beyond attacks, and are often without appropriate recourse to effective remedies. Therefore, access to justice for persons with albinism worldwide requires urgent attention and effective measures.

<sup>6</sup> The images included in the exhibition were by photographer Ana Yturralde.

<sup>7</sup> The exhibition was organized by the Independent Expert, Lancaster University, Witchcraft and Human Rights Information Network and Under the Same Sun, with the support of the Special Representative of the Secretary-General on Violence against Children, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the rights of persons with disabilities, the Committee on the Rights of Persons with Disabilities, the Permanent Mission of Sierra Leone to the United Nations Office at Geneva and the Permanent Mission of Portugal to the United Nations Office at Geneva.

<sup>8</sup> A report on the outcome of the meeting will be issued as an annex to the present report.

<sup>9</sup> See <http://albinism.ohchr.org/human-rights-dimension-of-albinism.html>.

<sup>10</sup> See [www.ohchr.org/EN/Issues/Albinism/Pages/Reports.aspx](http://www.ohchr.org/EN/Issues/Albinism/Pages/Reports.aspx).

## Key components

15. Access to justice is an essential right and a key prerequisite for the protection and promotion of all other human rights (A/HRC/25/35, para. 3). It is a critical component of the rule of law,<sup>11</sup> incorporating the right to a fair trial, equal access to and equality before the courts, and the seeking and obtaining of just, enforceable and timely remedies for human rights violations (A/HRC/37/25). Thus, access to justice ensures that everyone, without discrimination, shall have the right to an effective remedy for human rights violations, the determination of which should be carried out by a competent authority within the relevant State's legal system.<sup>12</sup>

16. Access to justice is an evolving concept which must embrace the needs of the population that it serves. In this regard, the Convention on the Rights of Persons with Disabilities calls for the elimination of barriers faced by persons with disabilities in accessing justice on an equal basis with others (art. 13). It is this conceptualization of access to justice that proves particularly critical for persons with albinism, a group that continually experiences social ostracism, structural discrimination and, in various countries, violent attacks and killings.

17. Though it is generally recognized that criminal justice is a pressing issue, legal surveys have found that the most frequent legal problems faced by people are civil ones.<sup>13</sup> Civil cases usually involve private disputes between persons, in which the claim is instigated by a private party against another for harm suffered, as opposed to criminal cases, which are often instigated by a prosecutor or other agent of Government. Discourse on justice for persons with albinism has been largely premised upon a criminal justice response to physical attacks. However, persons with albinism also continue to suffer many violations of their social and economic rights and are often treated as second-class citizens.<sup>14</sup> For instance, they often face discrimination in accessing employment, due to their disability and colour.<sup>15</sup>

18. In addition, in its submission a civil society organization in Nepal noted that access to education and skills training for persons with albinism was limited due to discrimination based on their visual impairment and skin condition. Lack of government support for persons with albinism often results in lack of education and unemployment. These persons are thus considered to be a burden by family members and society. It is therefore critical to recognize access to justice as an important avenue for persons with albinism for holding Government accountable for the provision of, and removal of barriers to, socioeconomic services.

19. Access to justice requires the adoption of deliberate measures to reach those who are most vulnerable, including devoting particular attention to the needs of women and children with albinism, who bear the brunt of human rights violations (A/71/255). States need to take all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for persons with albinism. Such efforts need to encompass procedural access to justice, such as effectively engaging in and using the established legal system; substantive access, such as equitable and beneficial judicial outcomes; and promotional access, such as understanding the needs of persons with albinism and ensuring their empowerment within the legal system.<sup>16</sup>

<sup>11</sup> General Assembly resolution 67/1, paras. 14 and 16.

<sup>12</sup> International Covenant on Civil and Political Rights, art. 2 (3).

<sup>13</sup> Organization for Economic Cooperation and Development and Open Society Justice Initiative, background paper for the expert workshop "Understanding effective access to justice", Paris, 3–4 November 2016.

<sup>14</sup> Submission from a stakeholder in Malawi.

<sup>15</sup> Submission from a stakeholder in Cameroon.

<sup>16</sup> Julinda Beqiraj, Lawrence McNamara and Victoria Wicks, *Access to Justice for Persons with Disabilities: From International Principles to Practice* (International Bar Association, 2017).

### International and regional human rights framework

20. Key elements that are prerequisites for the attainment of effective access to justice for persons with albinism are safeguarded in international and regional human rights law. The Universal Declaration of Human Rights states that all persons are equal before the law and are entitled, without any discrimination, to equal protection by the law (art. 7). It further states that everyone has the right to an effective remedy by competent national tribunals for acts violating his or her fundamental rights, and is entitled to a fair and public hearing by an independent and impartial tribunal (arts. 8 and 11). These rights are also stipulated in the International Covenant on Civil and Political Rights (arts. 2 and 14). The Human Rights Committee has stressed that equal access to courts applies in both criminal and civil matters.<sup>17</sup>

21. The Committee on Economic, Social and Cultural Rights recognizes the principle of access to justice, including the notion of equality before the law without any discrimination, as a basic and cross-cutting principle relating to the protection of human rights.<sup>18</sup> The International Covenant on Economic, Social and Cultural Rights obliges States to respect, protect and fulfil the right to non-discrimination in the enjoyment of economic, social and cultural rights. The Committee has therefore urged States, such as the United Republic of Tanzania (E/C.12/TZA/CO/1-3), to guarantee persons with albinism access to health care, social services and education. The Committee has also emphasized the provision of appropriate mechanisms for remedying violations of human rights, noting that an effective judicial or administrative remedy is indispensable.<sup>19</sup>

22. Persons with albinism suffer intersecting discrimination, often on the basis of disability and colour. Article 13 of the Convention on the Rights of Persons with Disabilities obliges States to ensure effective access to justice for persons with disabilities on an equal basis with others, while the International Convention on the Elimination of All Forms of Racial Discrimination recognizes that persons with albinism face a manifestation of racial discrimination (A/72/131, paras. 17–21). In this regard, the latter Convention requires States to ensure effective protection and provision of remedies, including just and adequate reparation or satisfaction for any damage suffered as a result of any unlawful racial discrimination (art. 6).

23. Women and girls with albinism in particular face multiple and intersectional discrimination. The Convention on the Elimination of All Forms of Discrimination against Women recognizes equality before the law and the courts, irrespective of gender (art. 15). Access to justice is also recognized within the context of children's rights,<sup>20</sup> and this is particularly critical in the light of the attacks and violations that disproportionately impact children with albinism. The Committee on the Rights of the Child has held that States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives in order to access independent complaints procedures, the courts and necessary legal assistance.<sup>21</sup>

24. It is also worth mentioning that although the International Covenant on Civil and Political Rights protects the freedom of thought, conscience, religion or belief, witchcraft-related beliefs, which are often the basis of attacks on persons with albinism, must not violate the rights of others.<sup>22</sup> The Independent Expert emphasizes that harmful practices can never be justified by invoking freedom of religion or belief (A/HRC/34/59). Restrictions on

<sup>17</sup> General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

<sup>18</sup> See General comments No. 13 (1999) on the right to education; No. 14 (2000) on the right to the highest attainable standard of health; and No. 18 (2005) on the right to work.

<sup>19</sup> General comment No. 9 (1998) on the domestic application of the Covenant. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

<sup>20</sup> Convention on the Rights of the Child (arts. 12, 37 and 40); and African Charter on the Rights and Welfare of the Child (art. 4 (2)).

<sup>21</sup> General comment No. 5 (2003) on general measures of implementation of the Convention, para. 24.

<sup>22</sup> Committee on the Rights of Persons with Disabilities, *X v. United Republic of Tanzania* (CRPD/C/18/D/22/2014).

the freedom to manifest beliefs are permitted if such restrictions are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.<sup>23</sup>

25. At the regional level, the African Charter on Human and Peoples' Rights encompasses essential elements of the right to fair trial. The African Union has adopted the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, which set forth the right to equal access to lawyers and free legal aid.

26. Article 9 of the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa obliges States to undertake appropriate and effective measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedurally and age- and gender-appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings.

27. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) provides in article 23 for special protection for women with disabilities by specifically noting that such women have the right to freedom from violence, including sexual abuse, freedom from discrimination based on disability and the right to be treated with dignity. Article 8 emphasizes effective access to justice and equal protection of the law for women.

28. The Charter of Fundamental Rights of the European Union and the American Convention on Human Rights both echo the above-mentioned regional and international standards on access to justice and reiterate that this right encompasses free and equitable legal assistance.

29. Globally, Member States have consented to ensure equal justice for all (Sustainable Development Goal 16) and pledged to leave no one behind, beginning with the furthest behind first. This aspiration is critical for persons with albinism, who constitute some of the poorest and most marginalized and are often left out of policy decisions for critical sectors, including access to justice.

30. The potential of international and regional human rights frameworks in ensuring equal access to justice for persons with albinism remains underutilized. There is therefore ample opportunity to use the current human rights framework to develop specific State policies and practices that address the specific needs of persons with albinism within the justice system, as well as to strengthen the efficacy with which the concerns of persons with albinism are addressed.

## IV. Barriers in accessing justice

### Social and cultural barriers

31. Various sociocultural and financial barriers inhibit access to justice for persons with albinism, including stigma and discrimination, lack of family support as well as the direct and indirect costs of accessing justice, all of which lead to social ostracism. Such societal exclusion and stigmatization inhibit knowledge of and access to the justice system. Social stigma within society also predisposes key stakeholders in the justice system against persons with albinism. Hence, some key actors in the justice system have prejudices and respond to stereotypes that prevent a safe and enabling environment for persons with albinism to access justice. Consequently, persons with albinism are more likely to experience poverty arising from social exclusion. In some countries, the stigma also affects their families, further hindering their socioeconomic opportunities.

32. In this context, limited financial capacity has been cited as a critical factor hindering persons with albinism from accessing justice, including from reporting or availing

<sup>23</sup> Human Rights Committee, general comment No. 22 (1993) on freedom of thought, conscience and religion.

themselves of judicial processes.<sup>24</sup> The present study has attracted numerous testimonies of cost-related barriers. For instance, the cost of transportation to courts of law was repeatedly cited, including by a stakeholder from Uganda who gave the example of a case in the town of Kabale where the mother of a child with albinism was attacked and was unable to attend court processes on the case, which had many adjournments.

33. Another frequently reported barrier was illiteracy and low educational qualifications, which affect the self-confidence and self-esteem of persons with albinism in using a justice system that is largely, in its nature and structure, more accessible to the educated elite.<sup>25</sup> It was also noted that because relatives are often the perpetrators of crimes against persons with albinism,<sup>26</sup> their families often face a dilemma, as seeking recourse through the formal justice system is deemed to be embarrassing to the family. There is also often direct or indirect family coercion to settle the matter quietly.

34. Witchcraft beliefs and practices which facilitate misconceptions about persons with albinism, including the misbelief that their body parts can be used by witchdoctors for potions that bring good luck, are also socially common.<sup>27</sup> Some judicial and law enforcement officers are therefore apprehensive about investigating or adjudicating cases involving persons with albinism for fear of being attacked by witchdoctors or fear of retaliation from powerful users of body parts.

### **Legal and normative barriers**

35. Though many countries have legislation on accessing justice, some lack specific articulation of access to justice in the context of persons with albinism.<sup>28</sup> Other laws that specifically provide for disability rights overlook the right to access justice, or neglect to provide for reasonable accommodation in the context of access to justice. For instance, in a submission from Burkina Faso, the stakeholder pointed out that national law No. 012-2010 on the protection and promotion of the rights of persons with disabilities did not address the issue of access to justice.

36. It has also been noted that some laws fail to comprehensively address the dynamics of attacks against persons with albinism. For instance, in spite of the fact that most attacks on persons with albinism involve the extraction/removal and selling of body parts, some laws still do not specifically recognize the offence of trafficking of body parts that are not organs as a felony. In addition, there is also often a lack of clarity on the applicable legal instruments in this regard.

37. Another significant gap in legislation has been the inability of the law to address witchcraft (A/HRC/34/59). Where such laws exist, there is usually a problem of definition and, therefore, enforcement as well as an absence of regulation of the practice of witchcraft. In addition, some countries have outdated legislation on witchcraft, and there are very few efforts to review them. Governments should initiate reviews of and amendments to relevant laws to reflect human rights standards and proscribe and prosecute harmful witchcraft-related practices (A/HRC/37/57/Add.2).

38. As noted in a preliminary survey on root causes of attacks (A/71/255), witchcraft remains one of the most challenging and complex phenomena in the human rights context. Compared to other root causes of attacks against persons with albinism such as poverty and ignorance, it receives little attention in legal systems even though its manifestation is highly correlated with several forms of harmful practice. At the 2017 workshop on witchcraft and human rights, it was underscored that multiple strategies need to be adopted in combating witchcraft-related harmful practices, including implementing awareness-raising

<sup>24</sup> Submission from a stakeholder in Zambia.

<sup>25</sup> Submission from a stakeholder in Ghana.

<sup>26</sup> See Human Rights Committee, general comment No. 36 (2018) on the right to life; and submission by the Independent Expert to the Committee dated 6 October 2017.

<sup>27</sup> See International Bar Association, *“Waiting to Disappear”: International and Regional Standards for the Protection and Promotion of the Human Rights of Persons with Albinism* (London, 2017).

<sup>28</sup> Submissions from stakeholders in Burkina Faso and Fiji.

programmes and activities that support the process of social change and promote positive practices and beliefs.

39. Another legal barrier consists of failed attempts to trigger legal protection in all instances of rights violations beyond attacks. For instance, in almost all the submissions received stakeholders expressed concerns about the failures of the State to fulfil the socioeconomic rights of persons with albinism, in particular in the areas of health, education and employment. In addition, it was indicated that these socioeconomic rights cannot be enforced in most courts, which is not in line with international human rights jurisprudence.

40. Some stakeholders also indicated that there was limited judicial recourse for violations of the bodily integrity or privacy of a person with albinism. For instance, there were reports of a number of cases in which the hair of a person with albinism was forcibly cut off for ritual purposes, which the police tended to ignore as “there was no real harm” caused to the victim.

41. The tendency to seemingly “prioritize”, through registration, investigation or prosecution of cases of certain forms of violation, raises significant difficulties. In a submission from Zambia it is noted that while there are few reported murder cases, persons with albinism continue to experience dehumanizing practices, including being spit on. Law enforcement officials rarely act on these cases.

42. Furthermore, the formal justice system is not always accessible to many, especially those living in rural areas. Therefore, the informal justice system has at times been used as an alternative but effective avenue for seeking justice. However, informal justice mechanisms are not suitable to address some of the offences committed against persons with albinism, including kidnappings, abductions and killings, as offences of such gravity would normally attract severe penalties which the informal justice systems usually do not have jurisdiction to administer. Hence, the option of accessing justice remains centred on the formal system, which remains inaccessible for many.

## V. Barriers in the administration of justice and law enforcement

### Structural issues

43. Poor coordination and lack of clarity about the referral mechanism within the justice system negatively affect the ability of persons with albinism to expeditiously access justice.<sup>29</sup> In a submission from Malawi it is stated that there were numerous instances of a case docket reaching the Director of Public Prosecutions, who then would refer it back to the police for further investigation despite the fact that police officials reported that the investigation had concluded; this causes serious delays.

44. Further, many persons with albinism are not aware of the procedures to follow when trying to seek justice in the formal justice system.<sup>30</sup> In cases where this information is available, such as in flyers, manuals and procedural guides, it is challenging to understand because it is often written in technical language. Law enforcement officials have also been criticized for lacking resources and the requisite skills to undertake meticulous investigations, including ensuring proper storage and/or utilization of evidence.<sup>31</sup> For instance, there have been “serious concerns on ... cases where police did not thoroughly investigate how suspects obtain bones”.<sup>32</sup> This lack of capacity to carry out thorough investigations is a core factor in the failure to arrest and prosecute suspects in cases of

<sup>29</sup> Submission from a stakeholder in Togo.

<sup>30</sup> Submission from a stakeholder in Uganda.

<sup>31</sup> Submissions from stakeholders in Malawi, Uganda and the United Republic of Tanzania.

<sup>32</sup> Redson E. Kapindu, *Study on Challenges and Best Practices in Investigations, Prosecutions and Sentencing in Offences against Persons with Albinism in Malawi*, final report, submitted to: United Nations Children’s Fund (UNICEF), March 2018, p. 22.

attacks against people with albinism.<sup>33</sup> There have also been frequent failures to meet the evidentiary standard of “beyond a reasonable doubt” in many cases of attacks against persons with albinism. Some stakeholders cited the high standard of proof in criminal cases as a challenge that not only inhibits the effective conclusion of cases, but also adversely affects willingness to pursue the case in civil court for other remedies.

45. There have also been several incidents of cross-border trading of body parts of persons with albinism.<sup>34</sup> Unfortunately, international cooperation to address such trade remains limited. Malawi police have complained that once suspects flee to Mozambique, their Mozambican counterparts often fail to cooperate, due to the absence of a detailed memorandum of understanding or workable plan to give effect to standards in regional extradition instruments.<sup>35</sup> Hence, investigations and attempts to investigate cases are hindered. Commendable actions have since been initiated among Malawi, Mozambique and the United Republic of Tanzania in the form of a plan of action on preventing and combating trafficking of persons with albinism in the three countries.<sup>36</sup> However, there is little indication that the plan is being effectively implemented.

### **Lack of access to information, education and training for people with albinism**

46. In almost all the submissions received, stakeholders stated that most people with albinism have limited information and awareness regarding their rights and avenues for seeking justice in instances of violations. Where legal aid is available by law, persons with albinism lack this information, including where to go to access such services. While many are aware of the police as an entry point to the justice system, exchanges with the police are often not helpful and tend to require tremendous follow-up on the part of the person with albinism. Interaction with police seems to be a missed opportunity for providing crucial information to persons with albinism to improve their access to justice.<sup>37</sup> Therefore, along with training justice responders on human rights, it is also imperative to ensure that persons with albinism have the opportunity to learn to advocate for themselves and for other persons with albinism.<sup>38</sup>

47. Persons with albinism also require information about legal processes, which must be provided at all phases of the administration of justice. The Convention on the Rights of Persons with Disabilities provides that access to justice requires individual and public awareness of how persons are entitled to and can access justice. In their submissions stakeholders indicated that persons with albinism (or their families) face many challenges in terms of seeking and receiving legal support and receiving information on the length and costs of the process, existing procedures and possible outcome, including remedies.

48. The concept of access to information not only necessitates that information be made available, but that it be in an accessible format for users,<sup>39</sup> especially because persons with albinism often have visual impairment. This point was reported in nearly all submissions received by the Independent Expert. In the present era of technological advancements, deliberate efforts are required to ensure that information on justice is visually accessible to persons with albinism.<sup>40</sup>

<sup>33</sup> Amnesty International Southern African Regional Office, *Towards Effective Justice Reform for People with Albinism in Malawi* (Johannesburg, 2018).

<sup>34</sup> *Ibid.*

<sup>35</sup> Southern African Development Community, Protocol on Extradition.

<sup>36</sup> Submission from a stakeholder in the United Republic of Tanzania.

<sup>37</sup> This situation is reflected in various submissions, in particular those from Uganda and Zambia.

<sup>38</sup> See David Allen Larson, “Access to justice for persons with disabilities: an emerging strategy”, *Laws*, vol. 3, No. 2 (2014), particularly p. 221.

<sup>39</sup> See Maurits Barendrecht, “Legal aid, accessible courts or legal information? Three access to justice strategies compared”, *Global Jurist*, vol. 11, No. 1 (2011), pp. 1–26.

<sup>40</sup> Larson, “Access to justice for persons with disabilities:”. See also article 7 of the Convention on the Rights of Persons with Disabilities.

### Underreporting and monitoring of cases

49. There are indications that there are more attacks against persons with albinism than are formally recorded. According to information received from civil society organizations in Zambia most of the attacks and violations against persons with albinism are perpetrated by friends and close relatives, and are rarely reported. Incidents of non-reporting are also due to fear related to witchcraft beliefs. In Southern Africa, attacks often go unreported and undocumented due to the code of silence surrounding such crimes.<sup>41</sup>

50. Underreporting has also been attributed to the location of such attacks. In instances where attacks occur in remote settings that are a considerable distance away from law enforcement offices, they are likely to remain unreported; it often takes a long time for the public to learn about the violations, if they ever do.

51. Particularly notable in the submissions was the fact that data on attacks against persons with albinism remain largely unconsolidated. A stakeholder from Benin stated that the police have no precise data on cases of attack. Similarly, a respondent organization from South Africa stated that between 2009 and 2016, it was unable to obtain extensive public reporting on these cases by the South African Human Rights Commission and to date the situation has not changed. This makes it difficult to determine the exact nature of the problem and to identify the type of measures that would be most effective in dealing with it.<sup>42</sup>

52. The foregoing demonstrates that significant challenges and gaps remain in ensuring protection for persons with albinism and their families as a constituent element of their right to access justice. These challenges and gaps persist owing to existing barriers in the legal system, as well as to the deep and historical disenfranchisement of persons with albinism and their families, who remain ill-equipped to access the justice system even where laws and policy may provide opportunities to do so.

## VI. Specific measures

### Protection of victims and relatives

53. In order to ensure protection from human rights violations, the State assumes a three-fold duty: the duty to prevent human rights violations; the duty to investigate alleged human rights violations; and the duty to provide domestic remedies, including the duty to prosecute those suspected of having committed such violations and to punish those found guilty, as well as the duty to provide restitution or compensation to victims of human rights violations.<sup>43</sup>

54. The duty to prevent human rights violations involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose life is at risk from the criminal acts of another individual.<sup>44</sup>

55. However, civil society organizations for persons with albinism have pointed out that efforts by law enforcement are more reactive than proactive, despite the increased

<sup>41</sup> M.M. Masanja and others, "Albinism: awareness, attitudes and level of albinos' predicament in Sukumaland, Tanzania", *Asian Journal of Applied Science and Engineering*, vol. 3, No. 4 (2014), pp. 382–395. See also M. Mswela, "Violent attacks against persons with albinism in South Africa: a human rights perspective", *African Human Rights Law Journal*, vol. 17, No. 2 (2017), pp. 114–133.

<sup>42</sup> Mswela, "Violent attacks against persons with albinism in South Africa", p. 124.

<sup>43</sup> See OHCHR, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series No. 9 (United Nations, 2003), in particular chapter 15, sect. 3 – Protection and redress for victims of human rights violations, pp. 773 ff.

<sup>44</sup> European Court of Human Rights, *Kaya v. Turkey* (application No. 22535/93), Judgment of 28 March 2000, para. 85.

awareness of the systemic violations that persons with albinism face. Even where certain areas have been deemed “hot spots” for attacks against persons with albinism, limited police patrols have been instituted; only limited strategic and sustainable efforts have been made to deploy adequate officers in communities where persons with albinism are at risk.

56. In addition, in their submissions stakeholders underscored a serious lack of psychological support, medical support, safe shelters, livelihood or financial support and counselling for persons with albinism.<sup>45</sup> Where such support is available, it is often within the ambit of a donor-funded project.<sup>46</sup> This adversely affects sustainability, as initiatives often phase out upon completion of the project. In a submission from Malawi it was noted that no psychosocial services are provided by the Government, despite survivors struggling to live with trauma and families failing to cope with the disappearance of their loved ones.

57. Stakeholders also indicated that even when initiatives are primarily spearheaded by the State, holistic support is often lacking. For instance, shelters for child victims of attacks often do not meet the minimum standards to be safely occupied by children.<sup>47</sup>

### Legal aid

58. In their submissions stakeholders referred to the availability of legal aid services, often operated by the State through a specified legal aid department with full-time lawyers, but with the possibility of outsourcing private lawyers for support when necessary. However, legal aid systems are often overwhelmed and face significant resource constraints. Hence, the quality of legal aid service provided is compromised.

59. In Ghana, a stakeholder reported that the State has established a legal aid scheme with professional staff to provide free legal services to the indigent and vulnerable. However, the scheme is too weak and inadequately equipped to ensure that justice is accessible to the poor, including persons with albinism. The scheme has a limited number of lawyers and is not available in rural areas. In addition, there is limited public awareness about how to access its services. Other stakeholders stressed the fact that legal aid is sometimes available in the form of legal advice, and most persons with albinism or their families remained without legal representation during court sessions.<sup>48</sup>

60. It is also concerning to note that the legal knowledge and awareness of legal aid providers regarding the rights of persons with albinism continues to be limited. In a submission from Uganda a stakeholder noted that legal practitioners are not fully aware of the issues faced by persons with albinism and how to provide legal services to them. This has affected the quality and effectiveness of the legal aid support provided.

61. Initiatives are under way in some countries to specifically provide legal aid services for persons with albinism. For instance, in Uganda, the Legal Action on Persons with Disabilities and the National Union of Disabled Persons of Uganda offer free legal services to persons with disabilities, including those with albinism, who have suffered violations.<sup>49</sup> In a submission from Zambia, a stakeholder noted that Disability Rights Watch followed up with a number of cases on behalf of persons with disabilities and has proven to be more effective than the legal support from Government.

62. Commendable efforts were particularly noted with regard to the Government of Fiji in the provision of legal aid for persons with albinism. It was reported that the Government has established approximately 15 legal aid commissions in rural and urban centres, including on outer islands, which has facilitated access to justice for many, including persons with albinism.

<sup>45</sup> Submission from a stakeholder in Zambia.

<sup>46</sup> Submissions from stakeholders in Senegal and Uganda.

<sup>47</sup> African Committee of Experts on the Rights and Welfare of the Child, *Report on Investigative Mission on the Situation of Children with Albinism in Temporary Holding Shelters – Tanzania* (Addis Ababa, 2016).

<sup>48</sup> Submission from a stakeholder in the United Republic of Tanzania.

<sup>49</sup> Submission from a stakeholder in Uganda.

63. In this context, what seems to be missing is the opportunity to think beyond lawyers as the sole providers of legal aid services. Meaningful engagement with community members to seek alternative but equally effective avenues for legal aid services is critical.<sup>50</sup>

### Judicial response

64. The Independent Expert observes that, regarding and following heightened attacks against persons with albinism, commendable efforts in legislative reform have been initiated in several countries. For instance, an amendment to the Penal Code in Zambia now criminalizes the possession of human body parts. Malawi amended the Anatomy Act in 2016 in order to better regulate matters relating to possession of human tissue, and provides for stiff sentences. Furthermore, the Penal Code in Malawi was amended to specifically penalize attacks against persons with albinism.

65. However, in spite of existing legislation, including general provisions against murder and causing grievous bodily harm, there are concerns that weak enforcement of such laws have led to limited progress on the ground.<sup>51</sup> Dissatisfaction with sentences issued by the courts against those convicted of attacking or killing persons with albinism are common. In a report from Malawi it is noted that a lack of guidelines and standardization of sentencing principles has led to general mistrust in the judicial system. Furthermore, the charges brought and penalties imposed often have not matched the gravity of the crimes, creating a climate of impunity as well as deep fear. However, there seems to be progressive change as magistrate courts have recently handed down harsher sentences than in the past in cases that involved crimes against people with albinism.<sup>52</sup>

66. In spite of inconsistencies in terms of sentencing in Malawi, it is worth noting that the majority of cases of attacks against persons with albinism that are prosecuted result in a conviction: of the 45 cases that have been prosecuted, 38 have resulted in convictions, while 3 were acquittals. However, in comparing the number of cases reported with the number concluded, it was reported that “the majority of crimes remain unresolved due to failure in the administration of justice”.<sup>53</sup>

67. In addition, significant concerns about delays in concluding cases of attacks against persons with albinism remain widespread. Almost all responding organizations representing persons with albinism attributed this to several factors, including an overall backlog of cases, investigation and evidentiary delays as well as limited resources, including lack of resources to undertake forensic assessments. In order to address the challenge of limited resources, it is reported that some civil society actors sometimes fund the prosecution of cases involving attacks against persons with albinism to expedite the process. While this has been effective in some instances, it is not a sustainable measure.

68. Delays in concluding cases involving attacks against persons with albinism are more notable when murder is involved. An analysis of 23 murder cases in Malawi involving persons with albinism established that the average trial period was 20 months, and as of March 2018, only 1 of the 23 cases had been concluded. This means that in the remainder of the cases the trials would last even more than 20 months. In contrast, lesser offences, such as those involving verbal abuse, threats, trespass of burial places, exhumation of human tissue and selling of human tissue, were found to have been concluded relatively quickly.<sup>54</sup>

69. The effective administration of justice is also hampered by lack of cooperation from witnesses, largely due to fear of witchcraft. These superstitious fears have also been associated with prosecutors. An organization representing persons with albinism from the United Republic of Tanzania noted that some prosecutors withdraw from proceedings out

<sup>50</sup> See, generally, Peter Chapman and Alejandro Ponce, “How do we measure access to justice? A global survey of legal needs shows the way”, Open Society Foundations, 16 March 2018.

<sup>51</sup> Submission from a stakeholder in Zambia.

<sup>52</sup> Amnesty International, *Towards Effective Justice Reform*.

<sup>53</sup> *Ibid.*

<sup>54</sup> Kapindu, *Study on Challenges*, p. 38.

of fear of witchdoctors accused of crimes against persons with albinism. Some judicial officers are also fearful for the personal safety and welfare of their family. Redson Kapindu, from Malawi, noted that the heightened sense of insecurity among magistrates was also a factor of concern in cases involving attacks on persons with albinism. Magistrates expressed fear that in some cases, especially when a suspect was acquitted, there was a heightened sense of personal and family insecurity due to anger within the community. Magistrates are not provided with any form of security.<sup>55</sup>

70. In several of the submissions received stakeholders noted that in instances of human rights violations against persons with albinism, remedies provided by the judicial system beyond the prosecution of perpetrators have provoked an outcry of dissatisfaction.<sup>56</sup> There is need for Government to establish a “special fund” to facilitate compensation for those who have suffered attacks and other violations. This proposal is, however, not intended to negate the importance of successfully holding perpetrators to account through the criminal justice system. States need to consider other forms of reparation with the intention of restoring the dignity of the victims and their role in society.

71. The delays and challenges in the logical conclusion of cases of attacks against persons with albinism have led to members of the public becoming increasingly frustrated with, and suspicious of, the justice system and taking matters into their own hands, through mob violence in some cases. Furthermore, these challenges often breed a culture of impunity, appealing to would-be offenders.

#### **Curricula and training: increasing legal awareness for law enforcement and judicial practitioners**

72. There has been some progress in increasing legal awareness and knowledge regarding the protection of the rights of persons with albinism. For instance, the United Nations in Malawi has developed a handbook for investigators, prosecutors and magistrates that outlines the legal provisions that can be used in responding to attacks on persons with albinism. Following the production of this handbook, the United Nations conducted training of 148 police officials, prosecutors, investigators and magistrates.<sup>57</sup> Despite these efforts, a considerable number of offences continue to be “charged under general provisions and not the provisions specific to persons with albinism”, which offer greater protection.<sup>58</sup>

73. It has also been reported that lack of knowledge is more common among magistrates of lower jurisdiction as compared to professional magistrates. Ironically, the former are more accessible to people. Similarly, lack of knowledge is also reported among court administrators and court clerks who register cases and are usually the first points of contact for those seeking justice through the courts. Thus, some clerks send persons with albinism away or encourage them to mediate as opposed to utilizing the court process in instances of rights violations.

74. Training opportunities should therefore not be limited to a particular cadre of the justice system; they should cut across all levels of the hierarchy of the legal system, with prioritized focus on those who are first points of contact. It is the response of these critical entry points, such as clerks and registry officers, that will largely determine whether persons with albinism whose rights have been violated or their relatives will seek to proceed with a case. If these critical actors have particular biases, are disrespectful or provide insufficient or misleading information, it can adversely affect the progress of the case.

75. In order to address challenges associated with the poor capacity of magistrates of lower jurisdiction, some countries have ordered that cases of serious violations of persons with albinism be handled by magistrates of a higher grade. Subsequent to the country visit of the Independent Expert to Malawi, the Chief Justice issued a practice direction to this

<sup>55</sup> Ibid., p. 43.

<sup>56</sup> Submissions from stakeholders in Malawi and the United Republic of Tanzania.

<sup>57</sup> Submission from a stakeholder in Malawi.

<sup>58</sup> Kapindu, *Study on Challenges*, p. 15.

effect.<sup>59</sup> Although this action is commendable, it has been reported that due to the limited number of resident magistrates in the country, the practice direction has only magnified delays in the prosecution of cases.

76. The jurisprudence on the rights of persons with albinism is still developing and case consolidation and analysis, as has recently been done in Malawi, are rare. This signals the need for more efforts to consolidate information, share best practices and use evidence for better interventions in justice reform.

### **Barriers regarding testimonies**

77. Negative attitudes and stereotypical assumptions about persons with albinism can sometimes result in their being viewed as unreliable witnesses incapable of giving evidence, making legal decisions or participating in legal proceedings.<sup>60</sup>

78. Barring one case reported from the United Republic of Tanzania, where counsel for the defence used the visual impairment of the victim to raise a reasonable doubt about her ability to recognize the accused, information received reveals that there are largely no direct barriers to admitting the testimony of people with albinism and their family members. However, in a report compiled by the African Committee on the Rights and Welfare of the Child during its on-site visit to shelters housing children with albinism in the United Republic of Tanzania, the Committee noted concerns around testimony from witnesses, with witnesses refusing to provide evidence in court “out of fear of reprisal from witchdoctors”.<sup>61</sup> Others also fear the social ostracism that comes with participating in a trial as a witness, especially in instances where the perpetrator is a “popular figure” within the community.<sup>62</sup>

79. Other stakeholders have cited instances in which potential witnesses face threats and reprisals, thus adversely affecting their participation in the trial process. It was repeatedly cited in responses from various countries that the unavailability of witness protection programmes results in cases being lost that would otherwise have been won. A stakeholder from Uganda stated that in Rukiga District, a person with albinism was attacked with a machete but the attacker was released because of threats made to the family of the victim, resulting in the case being withdrawn. A stakeholder from Benin also referred to difficulties during investigations and prosecutions due to threats made against families. In addition, in a submission from Malawi a stakeholder referred to the lack of appropriate protection of witnesses.<sup>63</sup>

### **Accountability, enforcement and oversight**

80. Submissions received have largely attested to the availability of norms and standards, often in the form of laws and policies guaranteeing accountability and legitimate conduct by formal justice actors. However, there is a lack of resources and weak capacity to exercise effective accountability and oversight measures in the delivery of justice.

81. To illustrate, there is evident frustration with the lack of progress on cases, as indicated in Zambia where few cases have progressed. In a submission from Malawi it was noted that the Ministry of Justice, in a report to the Social Welfare Committee of parliament in September 2017, indicated that 42 per cent of crimes had no identified perpetrators.

82. There appears to be a growing perception that law enforcement and the judicial system fail to successfully conclude cases due to corruption.<sup>64</sup> It was reported that police

<sup>59</sup> Practice direction No. 1 on handling of cases concerning persons with albinism by magistrates, issued by the Chief Justice on 3 May 2016.

<sup>60</sup> See, generally, Australian Human Rights Commission, *Access to Justice in the Criminal Justice System for People with Disability*, Issues Paper (Sydney, 2013).

<sup>61</sup> African Committee of Experts, *Report on Investigative Mission on the Situation of Children with Albinism*.

<sup>62</sup> Submission from a stakeholder in the United Republic of Tanzania.

<sup>63</sup> Similar sentiments were expressed in a submission from a stakeholder in South Africa.

<sup>64</sup> Stipulated by respondents from Malawi and Uganda.

officers were often corrupt and incompetent. It was easy to bribe some police officers to abandon cases.<sup>65</sup> According to recent reports from Malawi, a law enforcement officer has been implicated in the abduction and killing of a 22-year-old man with albinism.<sup>66</sup> In submissions from Uganda and Malawi stakeholders also referred to the disappearance of case files involving attacks against people with albinism, which further entrenched a perception of corrupt collusion. A legislator in Malawi recently told the National Assembly that two case files on the abduction and killing of people with albinism had gone missing in the eastern region of the country while 15 cases “have been suspiciously closed”.<sup>67</sup>

83. In addition, concerns of negligence or laxity in the manner in which investigations into attacks against people with albinism are conducted were expressed. For instance, in a number of submissions stakeholders expressed frustration at the fact that investigations and apprehension of the perpetrators of such attacks are primarily focused upon the immediate perpetrator, as opposed to understanding the masterminds and markets driving the attacks.<sup>68</sup>

84. Stakeholders also dwelt upon the lack of transparency in cases involving people with albinism. Information was not shared, thus fuelling suspicions. Inasmuch as certain information may be withheld by law enforcement officials in order not to jeopardize investigations, there were concerns around “unjustified secrecy”. In a submission from Zambia it was stated that two people had been apprehended for attacking a person with albinism in Kasama, Northern Province, but no further information was available.

85. Another critical challenge is ensuring accountability for “justice” dispensed by informal justice actors such as traditional leaders, especially in instances where such local authorities abuse their positions of power when settling community disputes involving persons with albinism in ways that are deemed unfair or corrupt. Overall, it is imperative that efforts be made to strengthen internal and external accountability within the justice system, as this builds public trust in the system and promotes legitimacy.

### Indicators

86. Submissions received reveal that there is limited evidence that persons with albinism can meaningfully access interventions that adequately meet their specific justice needs. There is therefore a need to strike the correct balance when developing and utilizing indicators, which should adequately monitor access to justice in the context of judicial or legal structures and processes, on the one hand, and within the context of rights holders and their welfare, on the other. Therefore, the set of carefully selected indicators must strive to understand and measure access to justice from the holistic perspective of the rights holder.

87. Generally, three kinds of indicators have been identified for monitoring the status of human rights and of the rights holders. These are structural indicators, which necessitate the existence of normative standards and rules consistent with the international human rights framework; process indicators, measuring the procedural measures that the State has put in place to ensure that policies and laws translate into actual substantive progress with regard to access to justice; and outcome indicators, which relate to the results achieved in terms of the status of enjoyment of the right, with a deliberate focus on meeting the needs of the rights holders as a measure of success.<sup>69</sup>

88. It is equally important to have baseline data for each indicator. Governments therefore need to allocate sufficient resources for continuous data gathering in order to measure whether the indicator has improved, regressed or remained the same. There is a need to institutionalize a structured methodology for conducting assessments of justice-sector interventions or reforms, with an inbuilt monitoring and evaluation framework.

<sup>65</sup> Amnesty International, *Towards Effective Justice Reform*.

<sup>66</sup> Winston Kaimira, “Policeman, medic implicated in albino murder”, *Zodiak Online*, 3 April 2018.

<sup>67</sup> *Daily Times* (Malawi), “Albino case files are missing”, 11 May 2018.

<sup>68</sup> Submissions from stakeholders in Malawi, the United Republic of Tanzania and Zambia.

<sup>69</sup> Ghetnet Metiku Woldegiorgis, “Access to justice under the international human rights framework”, *Abyssinialaw*, 9 June 2018.

89. It is particularly critical that States make optimal use of the Regional Action Plan on Albinism, which lays out specific measures for addressing attacks and discrimination against persons with albinism. In order to assess progress, States can map out key thematic or priority areas from the Regional Action Plan to inform country implementation plans with an inbuilt monitoring mechanism.

## VII. Best practices

### Community engagement and collaboration

90. While informal justice systems cannot preside over serious violations of the human rights of persons with albinism, their role as a referral pathway has proved to be particularly critical. In their submissions various stakeholders commended the formation of village advocacy groups at the community levels, which have facilitated referrals to the formal justice system in cases involving violations against persons with albinism.

91. Meaningful engagement with community structures and agents of the informal justice system has emerged as a best practice. The following insight from South Africa illustrate how good community engagement can help deter attacks. The kidnapping of a 4-year-old boy with albinism in Empangeni, KwaZulu-Natal, led to an investigation and arrest. Police had followed up with the community on information about a woman who was purportedly arranging to sell a child with albinism for R100,000 to a well-known community member who was a traditional healer in Emanguzi. The 28-year-old woman was apprehended by police and the child was reunited with his family.<sup>70</sup>

92. Use of community-based protection structures also led to giving community leaders in the United Republic of Tanzania data on persons with albinism within their respective jurisdictions. The leaders then engage members of the community security and policing unit, the polisi jamii or ulinzi shirikishi, to plan for the safety and security of all persons with albinism within their localities. A respondent from Fiji noted that community-based non-governmental organizations and faith-based organizations had established safe homes and counselling support for women victims.

93. The United Republic of Tanzania has successfully used public inquiries to understand the root causes of violence toward persons with albinism and the dynamics around such attacks. This serves as an easy and flexible means to communicate the opinions and views of persons with albinism to key stakeholders. The success of this process is highly contingent on the absence of reprisals.

### Multisectoral collaboration

94. Multiple organizations have indicated that the corporate sector has been engaged in raising awareness on the rights of persons with albinism. For instance, engaging with telecommunication companies for the provision of toll-free lines to report suspected or actual crimes against persons with albinism has also been key.<sup>71</sup>

95. Having a dedicated mechanism to address the situation of persons with albinism has also been effective. The mechanism often comprises a multisectoral task force, which is often spearheaded and coordinated by the ministry of justice, health or disability, or all of them. This helps to sustain progress and direction on access to justice interventions for persons with albinism.

### International and regional cooperation

96. Although States are encouraged to have extradition treaties with neighbouring States in order to better address attacks against and trafficking of body parts of persons with albinism, it is the working arrangements between law enforcement agencies in the countries concerned as opposed to the operation of the treaty provisions that have been useful in

<sup>70</sup> Mswela, "Violent attacks against persons with albinism in South Africa".

<sup>71</sup> Submissions from stakeholders in Malawi and South Africa.

ensuring access to justice for persons with albinism in this context.<sup>72</sup> In most cases, extradition processes can be protracted and cumbersome, and hence ineffective in facilitating speedy access to justice. Hence, complementing extradition agreements with ongoing dialogue among concerned countries has a greater impact in countering attacks against people with albinism.

97. National human rights institutions and civil society organizations have utilized regional and international forums to highlight the specific challenges that persons with albinism face. Treaty bodies have also used the examination of States parties reports to make concrete recommendations to Government to improve on specific areas regarding the rights of persons with albinism.

98. The development and endorsement of the Regional Action Plan on Albinism, with specific measures on access to justice, has led, and is leading, to the development of national action plans on albinism in some African countries.

#### **Capacity-building and continuous learning**

99. One-off training sessions with justice responders on the protection of the rights of persons with albinism are rarely effective. The incorporation of the issues in continuous refresher courses to examine what is successful and strategies for addressing challenges not only works better for sustaining efforts and momentum, but also holds justice responders accountable.

#### **Priority setting: leaving no one behind**

100. In submissions from the United Republic of Tanzania stakeholders indicated that cases of attacks against persons with albinism are prioritized in terms of investigations and subsequent legal proceedings as a means of reducing case backlog.

#### **Bringing issues of women and girls with albinism to the fore**

101. Noting the multiple and intersecting discrimination that women and girls with albinism face, the United Republic of Tanzania has set up a gender focal point in various districts which takes note of issues affecting women and girls with albinism. Similarly, another respondent indicated that in Fiji, the Ministry of Women, in partnership with the Fiji Women's Crises Centre, has developed a domestic violence and a child hotline where women and children with albinism can report instances of abuse.

#### **Provision of remedies beyond prosecution and conviction**

102. Promising examples of alternative reparative action include initiatives by Under the Same Sun, which has provided medical rehabilitation and psychological assistance to several identified victims with albinism. The victims were also provided access to economic empowerment opportunities in recognition of the economic hardships that they encountered as a result of being maimed. This has enabled the victims to run small-scale businesses in a bid to sustain their livelihoods.

#### **Access to justice for persons with albinism and their families in hard to reach areas**

103. Provision of mobile courts (circuit courts) in rural/hard to reach areas is critical in expediting justice for persons with albinism in those settings. In submissions received from Fiji stakeholders stated that the resident magistrates from the capital, Suva, sometimes travel to outer islands for court sessions in a bid to ease challenges to accessing justice experienced by communities.

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<sup>72</sup> Kapindu, *Study on Challenges*.

## VIII. Conclusions and recommendations

104. Persons with albinism continue to face serious and deep-rooted obstacles to accessing justice, despite some progress and best practices. Therefore, justice mechanisms should be sensitized and strengthened to enable persons with albinism or their families to obtain redress that is expeditious, fair and accessible. In this regard, a system-wide approach should be applied and should include all forms of human rights violations, from discrimination in economic, social and cultural rights to the right to life and security of person.

105. In order to ensure equal and effective access to justice for all persons with albinism, States – particularly those with records of attacks – should undertake the following actions.

106. With regard to the formal justice system, States should:

(a) Undertake a justice needs assessment that specifically captures the lived experiences of persons with albinism – both victims of attacks and generally – in order to improve their access to justice, particularly accountability;

(b) Incorporate in the training of actors in the justice system, including police, courts, tribunals, national human rights institutions, ombudspersons, forensic investigations and other mechanisms, modules on all barriers to the enjoyment of human rights by persons with albinism and measures to remove them that facilitate justice and human rights protection. Training should highlight those rights beyond the right to be protected from attacks, namely economic, social and cultural rights;

(c) Ensure prompt investigation and prosecution of cases of attacks against persons with albinism, including those involving forcible removal of any body part, from hair to limb;

(d) Continually conduct research and investigations to determine and eradicate the root causes of attacks in order to understand where the markets for body parts are (including cross-border trade) and to capture and prosecute all perpetrators, including masterminds;

(e) Formulate and implement country action plans premised upon the Regional Action Plan on Albinism in Africa;

(f) Ensure that ongoing systemic awareness-raising efforts take place frequently, not only on commemorative days;

(g) Provide competent and affordable legal representation and effective legal aid and waive legal fees if necessary;

(h) Establish a sufficient number of mobile courts and legal aid clinics with experienced legal representatives specifically for rural settings;

(i) Ensure equal access for persons with albinism by providing them with reliable legal information, in accessible format, at various points of entry into the legal system, including police stations, court clerks and registries;

(j) Train and raise the awareness of justice system personnel regarding the multiple discrimination faced by women as well as the principle of equality, including measures to:

(i) Create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in criminal proceedings;

(ii) Protect women against secondary victimization in their interactions with law enforcement and judicial authorities.

107. With regard to the informal justice system, States should:

(a) Train community leaders, including community police and traditional and religious leaders, on the justice system, including where to refer and how to initially address a diversity of cases, including those concerning persons with albinism;

(b) Incorporate into existing training or create specific training on the human rights of persons with albinism, including the particular threats they face at home and in community environments.

108. With regard to participation, States should:

(a) Support persons with albinism and organizations serving them in availing themselves of legal remedies and exercising influence upon law-making and law-implementing processes and institutions;

(b) Review and clarify referral pathways for accessing justice for persons with albinism in order to remove protracted and bureaucratic barriers, including by training organizations of persons with albinism;

(c) Involve persons with albinism in the design and delivery of community education programmes to increase awareness of their rights and legal remedies.

109. With regard to the review and implementation of legal frameworks, States should:

(a) Undertake reviews with a human rights approach and repeal ambiguous legislation on witchcraft if necessary;

(b) Develop, adopt and implement strategies addressing, from a multisectoral perspective, harmful practices linked to witchcraft and their impact on all victims, including persons with albinism, in consultation with civil society;

(c) Regulate the practice of traditional medicine, including through licensing and monitoring regimes in both urban and rural areas, and establish adequate standards for traditional medicine;

(d) Review and adapt legal frameworks as needed to ensure that they encompass all aspects of attacks against persons with albinism, including trafficking of body parts;

(e) Supplement extradition protocols with detailed plans and memorandums of action to effectively address cross-border crimes;

(f) Provide psychological, medical and legal assistance to persons with albinism who are victims of attacks, as well as their families.

110. With regard to the collection and use of data, States should:

(a) In coordination with the Sustainable Development Goals process, in particular the framework of Goal 16, engage diverse stakeholders, including persons with albinism, in developing national indicators and tracking national data on the functionality and effectiveness of access to justice in relation to persons with albinism;

(b) Ensure the systematic collection of disaggregated data on persons with albinism, including through birth and death registers, as well as on attacks against persons with albinism, trafficking in body parts and accusations of witchcraft.