



SOUTHERN AFRICA LITIGATION CENTRE

INTRODUCTION

This submission has been compiled by the Association of Persons with Albinism (APAM) and the Southern Africa Litigation Centre (SALC). It addresses issues relevant to Malawi's Universal Periodic Review relating to the human rights situation of persons with albinism.

SITUATION ANALYSIS

Malawi has been for many years a hotspot for attacks and violence against people with albinism, causing people with albinism to live in fear¹ and impacting the enjoyment of their human rights.

The African Commission on Human and Peoples' Rights has specifically acknowledged its condemnation of what it describes as "continuing systematic attacks and killings against persons with albinism in Malawi."² The Working Groups on Death Penalty, Extra-Judicial, Summary and Arbitrary Killings in Africa and on the Rights of Older Persons and Persons with Disabilities in Africa of the African Commission on Human and Peoples' Rights have strongly condemned attacks and killing against persons with albinism regionally and in Malawi which they noted are "often motivated by the use of body parts for ritual purposes".³

A 2018 UNICEF-funded Report states that the "nature and pervasiveness of these offences in Malawi and surrounding countries suggest that there must be an organised criminal syndicate of some form, and an organised market for human tissue of persons with albinism".⁴

Amnesty International in 2018 stated that "An accountability strategy will require more concerted efforts in identifying criminal gangs, including tracing and identifying the source of demand for the body parts of people with albinism and cooperation with neighbouring countries where there is reason to believe that people or body parts are being trafficked across borders."⁵

The UN Independent Expert on the Rights of Persons with Albinism cautions that reported cases of violence and attacks in Malawi are likely "only a fraction of the overall attacks" as many cases

¹ See for example, news reports and civil society statements, <https://mwnation.com/phalombe-people-with-albinism-still-living-in-fear/>; <https://www.southernafricalitigationcentre.org/2018/03/23/a-call-for-an-end-and-a-holistic-response-to-attacks-on-persons-with-albinism-the-macdonald-masambuka-case/>; <https://www.maravipost.com/chrr-cedep-apam-and-hrdc-condemn-the-gruesome-murder-of-yasin-phiri-in-nkhatabay-district/>

² African Commission on Human and Peoples' Rights, Resolution on the Attacks on Persons with Albinism in Malawi - ACHPR/Res. 349 (EXT.OS/XX) 2016, www.achpr.org/sessions/20th-eo/resolutions/349.

³ Joint Statement by the Working Group on Death Penalty, Extra-Judicial, Summary and Arbitrary Killings in Africa and the Working Group on the Rights of Older Persons and Persons with Disabilities in Africa, www.achpr.org/press/2015/03/d251.

⁴ Kapindu, RE (March 2018) 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), available at: <https://www.ohchr.org/Documents/Countries/MW/StudyInvestigationsProsecutionCasesMarch2018.pdf>, p 52.

⁵ Amnesty International (2018) "Towards Effective Criminal Justice for People with Albinism in Malawi", available at: <https://www.amnesty.org/download/Documents/AFR3686342018ENGLISH.PDF>, p8.



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may take place in remote areas and implicate family members so are unlikely to be reported.⁶ The UN Independent Expert states, however, that considering “the relatively small size of the population of persons with albinism in the country, attacks against a few ... constitute a danger to all” persons with albinism.⁷

Furthermore, the Committee on the Elimination of Discrimination against Women stated in relation to Malawi:

“The Committee urges the State party to reinforce its measures to protect women and girls with albinism from all forms of violence and address the discrimination, stigmatization and social exclusion faced by them. In particular, it calls upon the State party to effectively investigate, prosecute and punish those responsible for such crimes, expand its awareness-raising efforts to combat those superstitious beliefs that are detrimental to the well-being of women and girls with albinism and ensure that those women and girls have access, without discrimination or fear, to education, employment, health care and other basic services.”⁸

The Committee on the Rights of Persons with Disabilities (CRPD Committee) has recognised that the failure of a state to prevent violence against persons with albinism (including the failure to take “preventative and protective measures”) is direct discrimination on the basis of disability contrary to article 5 of the Convention on the Rights of Persons with Disabilities.⁹

The UN Independent Expert’s report on Malawi affirms these concerns:

“Persons with albinism, and parents of children with albinism, live in constant fear of attack. Many do not sleep peacefully and have deliberately restricted their movements to the necessary minimum, during daylight hours and when escorted by trustworthy persons. Mothers have sent their children to live with relatives or to boarding schools. Yet, even there, fear remains. Staff of boarding schools are concerned for the safety of their students and such establishments are in immediate need of security measures. Other children have dropped out of school to remain under the protection of their parents. Such insecurity among Malawians with albinism leads to a vicious circle of poverty because the livelihoods of parents of children with albinism are directly affected. Owing to the need to stay at home and protect their children, parents do not attend to their crops or go to the market. Adults with albinism are unable to go to their gardens alone as they used to. This has driven families already living in poverty into dire straits.”¹⁰

⁶ United Nations General Assembly, “Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism on Her Mission to Malawi” A/HRC/34/59/Add.1, 14 December 2016, available at: <https://undocs.org/A/HRC/34/59/Add.1>, para 43.

⁷ *ibid*, para 45.

⁸ Concluding Observations on the Seventh Periodic Report of Malawi, CEDAW/C/MWI/CO/7, 24 November 2015, para 45.

⁹ United Nations Committee on the Rights of Persons with Disabilities, Communication No 22/2014 CRPD/C/18/D/22/2014, 31 August 2017, para 8.4.

¹⁰ UN Independent Expert (n 6), paras 58-9.



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THE STATE'S RESPONSE

Various arms of Government have, however, begun to taken decisive action to address the crisis.

For example:

- On 3 May 2016, the Chief Justice issued Practice Direction No 1 of 2016: Handling of Cases Concerning Persons with Albinism by Magistrates. Issued in terms of section 364A of the Criminal Procedure and Evidence Code and sections 59 and 67 of the Courts Act, the Practice Direction states that all cases dealing with persons with albinism should be handled by Chief Resident, Principal Resident and Senior Resident Magistrates only (thus excluding lay magistrates) in order to ensure consistency and speedy disposal of cases.
- A handbook was developed for investigators, prosecutors and magistrates to guide prosecutions of cases involving persons with albinism in December 2016.
- A private Members Bill 2 of 2016 was passed by Parliament in June 2016 to amend the Anatomy Act (Cap 34:03) to broaden the offence of removal and unauthorised possession of human tissue and to enhance penalties under the Act.
- Parliament passed the Penal Code (Amendment) Act in July 2016 providing for the protection and reasonable accommodation for persons with disabilities and to strengthen penalties for crimes relating to tampering with gravesites and possession of human tissue.

Following the persistent work of persons with albinism to assert their rights, Malawi is also showing signs of regional leadership in the inclusion of persons with albinism in mainstream development.

For example:

- For the first time in Malawi's history, the National Statistical Office published data in the 2018 National Census on persons with albinism. Amongst other things, the report sheds light not only on the number of people with albinism in Malawi but also on the socio-economic and human development index of persons with albinism.
- In the same year, the Malawi government launched the National Action Plan on Persons with Albinism in response to the calls for African countries to develop national action plans in the regional Action Plan on Albinism 2017-2021.
- In 2019, the Malawi Government has taken a further progressive step to allocate specific budgetary support to the amount of K400 million for the implementation of the National Action Plan. In addition, K600 million has been allocated for the construction of houses for persons with albinism. Persons with albinism are further eligible to benefit from 50% deductible allowances given to employers who recruit persons with disabilities.



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These concrete actions are welcome steps in the right direction to ensure the protection and fulfilment of the rights of persons with albinism. However, significant gaps remain.

Persons with albinism continue to be discriminated against and live in fear of violence, abduction, mutilation and murder. This has countless effects on the ability of children and adults to lead full and productive lives, to learn and work and access services on an equal basis with others. Moreover, recent efforts by persons with albinism to assert and defend their human rights through peaceful protest has been met with violence and arbitrary arrest by the State.¹¹ These actions exacerbate the barriers faced by persons with albinism to assert and defend their rights due to the risk of violence from non-State actors when presenting and gathering in public spaces.

In order for the Malawi government to continue building towards a broader social consensus and unwaivering commitment to achieve an inclusive society for all, we make the following recommendations.

RECOMMENDATIONS

- a. *There continue to be delays in the delivery of justice in the criminal justice system:*
 - The Malawi Police Service should conduct effective, independent and prompt investigations into crimes against persons with albinism with rigour and efficiency appropriate to the nature of the crimes and the context in which they are committed.
 - The Judiciary should ensure consistent sentencing where offences have been committed against persons with albinism, in particular in relation to acts of intimidation and threats.
 - The Malawi government should provide adequate protection to witnesses and victims, to ensure the participation of persons with albinism in trials leads to successful prosecutions in certain cases without risk of repercussions against witnesses and victims.
- b. *Few, if any, investigations have led to the successful prosecution of individuals or organisation profiting from markets that sustain the trade in the body parts of persons with albinism:*
 - The Malawi Police Service should investigate the drivers of the market or trade in human tissue including to expand regional cooperation to improve the investigation and prosecution of crimes across national borders.
- c. *Persons with albinism continue to lack access to adequate sun protection and sunscreen and continue to suffer and die from skin cancer at high rates as a result. These circumstances contribute to a cycle of poor socio-economic circumstances that perpetuate isolation, violence and discrimination against persons with albinism in Malawi:*

¹¹ See, for example, news reports at: <https://malawi24.com/2019/03/05/apam-insists-state-house-vigil-is-still-on/>.



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- The Malawi government should, at a minimum, provide free sunscreen of an appropriate protective spectrum to enable persons with albinism to participate as equal members of society in daily life, and to enjoy their rights to health and life.
 - Adequate, accessible and affordable diagnostic, preventative and curative skin cancer treatment should be provided to all persons with albinism who need it.
- d. *The real threat of violence against persons with albinism inhibits the equal participation in every day life activities including the attendance of school, employment and accessing healthcare and other social services:*
- The Malawi government, in consultation with civil society and community-based organisations, should provide improved support and protection to persons with albinism to protect them from violence in their communities and enable persons with albinism to conduct their daily activities free from the fear of violence.
- e. *The rights to freedom of association and expression of persons with albinism must be respected and realized by the State:*
- The Malawi government should ensure that laws regulating public assemblies are not overly broad.
 - The Malawi government should protect the right to freedom of assembly and provide sufficient police resources to protect participants in such assemblies.
 - The Malawi government should protect human rights defenders from violence and investigate threats of violence against human rights defenders.
 - The Malawi Police Service should refrain from arbitrarily arresting persons exercising their rights to freedom of association and expression.