
INTERNATIONAL HUMAN RIGHTS LAW AND THE PROTECTION OF THE RIGHTS OF PERSONS WITH ALBINISM IN AFRICA

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ABSTRACT

Albinism is a rare, non-contagious and genetically inherited condition that affects millions of people globally. It results in the lack of melanin pigment in the hair, skin, and eyes and hence, creates significant vulnerability to exposure to ultraviolet radiation. Albinism is present in all racial and ethnic groups throughout the world. People with albinism have, for centuries, been stigmatized, discriminated against, and violently attacked because of various misguided beliefs. Individuals in various African communities believe that the body parts of persons with albinism have magical powers, that they can make one who possesses them extremely wealthy, and that they can cure various diseases. As a consequence, persons with albinism are hunted and killed and their body parts harvested and sold in illicit markets. Violence, which includes ritual attacks, killings, and discrimination against persons with albinism, touches on several human rights issues, including the rights of these individuals to the enjoyment of the highest standards of health, the right to life, trafficking of their body parts for witchcraft purposes, infanticide, and the abandonment of children with albinism by their parents. In 2015, the U.N. Human Rights Council recognized the need to protect the rights of persons with albinism by establishing the mandate of an Independent Expert on the enjoyment of human rights by persons with albinism. Since then, the Independent Expert has produced reports that have identified ways to prevent violence against persons with albinism and enhance their ability to realize their human rights and fundamental freedoms. It is within the purview of African governments to eliminate violence against persons with albinism within their jurisdictions. These governments can accomplish this by ensuring that their laws (constitutional, statutory and customary) conform to the provisions of international and regional human rights instruments, criminalizing violence against persons with albinism, and fully bringing to justice individuals who violate the rights of persons with albinism. Internationalizing national laws, however, is a complex and time-consuming process. In the interim, courts in African countries can enforce laws against the violation of the rights of persons with albinism and ensure that existing laws reflect and conform to

international human rights law. In doing so, they can contribute to Africa's emerging jurisprudence on the rights of persons with albinism.

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I. INTRODUCTION

According to the Office of the U.N. High Commissioner for Human Rights, “[a]lbinism is a rare, non-contagious, genetically inherited condition which occurs worldwide regardless of ethnicity or gender.”¹ Albinism generally “results

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in the lack of melanin pigment in the hair, skin and eyes (oculocutaneous albinism), causing vulnerability to sun exposure.”² Throughout the world, the condition is usually misunderstood “socially and medically,” and persons with albinism are often subjected to “erroneous beliefs and myths influenced by superstition, which foster their marginalization and social exclusion.”³

The human rights of persons with albinism, noted the U.N. Commissioner for Human Rights, “have generally gone unnoticed for centuries” and, instead, this group of persons has been faced with “deeply engraved stigma, discrimination and violence against them across various countries,” including those in Africa.⁴ For example, Human Rights Watch has determined that in several African countries, the body parts of persons with albinism are believed to have “magical powers” and that they “bring good fortune”—as a consequence, persons with albinism are hunted and killed and their body parts sold.⁵ Research has revealed that in Tanzania, people with albinism “have a price on their heads—whether dead or alive, adults, children” and that Tanzania, which has the largest rate of people with albinism globally, is also home to the largest market for the body parts of persons with albinism.⁶

The U.N. High Commissioner for Human Rights states that “[t]he complexity and uniqueness of [albinism] means that [the] experiences [of persons with albinism] significantly and simultaneously touch on several human rights issues including, the right to the enjoyment of the highest standards of health, the right to life which should guarantee them protection against harmful traditional practices, violence including killings and ritual attacks, trade and trafficking of body

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¹ Office of the U.N. High Comm’r for Hum. Rts., About Albinism and Human Rights (March 7, 2024), [hereinafter About Albinism and Human Rights], <https://www.ohchr.org/en/special-procedures/ie-albinism/about-albinism-and-human-rights>.

² *Id.*

³ *Id.*

⁴ *Id.*; see also *Rights of Persons with Albinism*, HUM. RTS. WATCH, <https://www.hrw.org/tag/albinism> (last visited Oct. 6, 2024) (noting that in Africa, persons with albinism are regularly hunted for their body parts).

⁵ About Albinism and Human Rights, *supra* note 1.

⁶ Mohamed Daghar, *Human Trafficking/Buried Alive: Tanzania’s Albinos Pay Price for Superstition*, ENACT OBSERVER (Mar. 17, 2024), <https://enactafrica.org/enact-observer/buried-alive-tanzanias-albinos-pay-the-price-for-superstition>.

parts for witchcraft purposes, infanticide and abandonment of children.”⁷ In June 2013, the U.N. Human Rights Council (“UNHRC”) adopted a resolution calling for “the prevention of attacks and discrimination against persons with albinism.”⁸ In addition, the UNHRC responded to calls from civil society organizations that persons with albinism should be considered a “specific group with particular needs that require special attention” by creating the Mandate of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism.⁹

In its resolution A/HRC/RES/23/13, on June 13, 2013, the UNHRC reaffirmed “the right to health and, education as enshrined in the Universal Declaration of Human Rights and relevant international human rights treaties.”¹⁰ The UNHRC expressed concern about continued attacks against “persons with albinism, including against women and children, which are committed with impunity,” as well as “the widespread discrimination, stigma and social exclusion suffered by persons with albinism.”¹¹ The UNHRC also welcomed the various steps that have been and are being taken by “countries concerned, including the initiation of legal action against the perpetrators of attacks against persons with albinism, public condemnation of attacks against persons with albinism, the provision of temporary shelter to persons with albinism under threat of attack, and public awareness-raising campaigns.”¹²

The UNHRC then called upon all States to take necessary measures to “ensure the effective protection of persons with albinism, and their family members” and to foster “accountability through the conduct of impartial, speedy and effective investigation into attacks against persons with albinism falling within their jurisdiction, and to bring those responsible to justice, and to ensure that victims and family members have access to appropriate remedies.”¹³ States were also instructed by the UNHRC to take “effective measures to eliminate any type of discrimination against persons with albinism, and to accelerate education and public awareness-raising activities.”¹⁴ Finally, the UNHRC requested the Office of the U.N. High Commissioner for Human Rights “to submit a preliminary

⁷ About Albinism and Human Rights, *supra* note 1.

⁸ U.N., *People with Albinism and Human Rights* (Mar. 7, 2024), <https://www.un.org/en/observances/albinism-day/albinism-and-human-rights> [hereinafter *People with Albinism and Human Rights*].

⁹ *Id.*, see also Human Rights Counsel Res. 23/13, U.N. Doc. A/HRC/RES/23/13 (June 24, 2013).

¹⁰ H.R.C. Res. 23/13, *supra* note 9, at 1.

¹¹ *Id.*

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.*

report on attacks and discrimination against persons with albinism to the [UNHRC] at its twenty-fourth session.”¹⁵

After creating the Mandate of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, the UNHRC appointed Ms. Ikponwosa Ero as the first independent expert in June 2015.¹⁶ In August 2021, Ms. Ero was replaced by Ms. Muluka-Anne Miti-Drummond.¹⁷ In a resolution adopted on September 27, 2013, the UNHRC welcomed “the steps taken and the efforts made by the countries concerned, including the initiation of legal action against perpetrators of attacks against persons with albinism, public condemnation of attacks against persons with albinism, and public awareness-raising campaigns.”¹⁸ The UNHRC then requested the Human Rights Council Advisory Committee “to prepare a study on the situation of human rights of persons with albinism and to submit a report thereon to the Human Rights Council at its twenty-eighth session.”¹⁹

In its resolution appointing, for a period of three years, an Independent Expert on the enjoyment of human rights by persons with albinism, the UNHRC defined the following mandate for such an expert:

- (a) To engage in dialogue and consult with States and other relevant stakeholders, including United Nations agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, the private sector and donors;
- (b) To identify, exchange and promote good practices relating to the realization of the rights of persons with albinism and their participation as equal members of society;
- (c) To promote and report on developments towards and the challenges and obstacles to the realization of the enjoyment of human rights by persons with albinism in all regions of the world, and to make recommendations to the Human Rights Council in this regard;
- (d) To gather, request, receive and exchange information and communications from and with States and other relevant sources, including persons with albinism and their representative organizations and other civil society organizations, on violations of the rights of persons with albinism;

¹⁵ *Id.*

¹⁶ *People with Albinism and Human Rights*, *supra* note 8.

¹⁷ *Id.*; see also U.N. Human Rights Counsel Res. 28/6, U.N. Doc. A/HRC/RES/28/6 (Mar. 26, 2015) (appointing the independent expert on the enjoyment of human rights by persons with albinism).

¹⁸ U.N. Human Rights Counsel Res. 24/33, U.N. Doc. A/HRC/RES/24/33, at 1 (Sept. 27, 2013).

¹⁹ *Id.* at 2.

- (e) To conduct, facilitate and support the provision of advisory services, technical assistance, capacity-building and international cooperation in support of national efforts for the effective realization of the rights of persons with albinism and to prevent violence;
- (f) To raise awareness on the rights of persons with albinism and to combat stereotypes, prejudices and harmful traditional practices and beliefs that hinder their enjoyment of human rights and participation in society on an equal basis with others;
- (g) To promote awareness of their positive contributions and to inform persons with albinism about their rights;
- (h) To report to the Human Rights Council, starting from its thirty-first session, and to the General Assembly.²⁰

In this resolution, the UNHRC also made a request to the U.N. Secretary-General and the U.N. High Commissioner for Human Rights “to provide the Independent Expert with all the human, technical and financial resources necessary for effective fulfilment of the mandate.”²¹ On June 26, 2014, the UNHRC adopted a resolution welcoming “the observance by civil society of 13th June as International Albinism Day.”²² In doing so, the UNHRC made a recommendation to the U.N. General Assembly to declare June 13 as International Albinism Awareness Day and invite “all Member States, organizations of the United Nations system and other international and regional organizations, as well as civil society, including non-governmental organizations and individuals, to observe International Albinism Awareness Day in an appropriate manner.”²³

On March 23, 2021, the UNHRC adopted a resolution extending “the mandate of the Independent Expert on the enjoyment of human rights by persons with albinism for a period of three years, on the same terms as provided by [its] resolution 28/6 of 26 March 2015.”²⁴ The UNHRC noted that it was guided by the Universal Declaration of Human Rights (“UDHR”), as well as provisions of several international human rights instruments, including the International Covenant on Civil and Political Rights (“ICCPR”), International Covenant on Economic, Social and Cultural Rights (“ICESCR”), Convention on the Rights of Persons with Disabilities (“CRPD”), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Torture Convention”), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination

²⁰ H.R.C. Res. 28/6, *supra* note 17 at 2–3.

²¹ *Id.* at 3.

²² Human Rights Council Res. 26/10, U.N. Doc. A/HRC/RES/26/10, at 2 (July 14, 2014).

²³ *Id.*

²⁴ Human Rights Council Res. 46/12, U.N. Doc. A/HRC/RES/46/12, at 2 (Mar. 31, 2021).

against Women (“CEDAW”), and the Convention on the Rights of the Child (“CRC”).²⁵

The UNHRC reaffirmed that “everyone has the right to life, liberty and security of person and that no one shall be subjected to torture and other cruel, inhuman or degrading treatment or punishment” and noted that it was “[d]eeply concerned that, in various parts of the world, persons with albinism continue to face barriers to their participation as equal members of society and face violations and abuse of their human rights, and conscious that greater and more urgent attention is needed to address these challenges.”²⁶ The UNHRC then called upon all States to “effectively implement the 2030 Agenda for Sustainable Development and its principle of leaving no one behind, and calling upon States to reach the furthest behind first, including persons with albinism.”²⁷

The UNHRC also requested that the Independent Expert “integrate a gender perspective throughout the work of the mandate and to pay specific attention to the challenges and needs of women and girls in order to address the multiple and aggravated forms of discrimination faced by women and girls with albinism.”²⁸ Finally, the UNHRC called upon all States to work in cooperation with the Independent Expert in the performance of her mandate, as well as “give serious consideration to responding favourably to her requests to visit their countries and to consider implementing her recommendations, to provide her with all necessary information relating to the mandate and to react promptly to her communications and urgent appeals in order to enable her to fulfil the mandate effectively.”²⁹

The way different societies and communities view albinism has a significant impact on persons with albinism and their human rights.³⁰ However, “[t]hese influences will vary from person to person and at different stages of life.”³¹ Presently, there is not an agreement on whether albinism should be identified as a disability, which leads to struggles for persons with albinism in identifying themselves as a group whose rights require specific protection.³² Nevertheless, many people agree that albinism is a “unique condition,” which often results in “separateness and isolation for [persons with albinism].”³³ The attitudes of many people towards persons with albinism are often similar to those “experienced by

²⁵ *Id.* at 1.

²⁶ *Id.*

²⁷ *Id.* at 2.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Information Bulletin—Social Aspects of Albinism*, NAT’L ORG. FOR ALBINISM AND HYPOPIGMENTATION (Mar. 7, 2024), <https://albinism.org/information-bulletin-social-aspects-of-albinism/> [hereinafter *Information Bulletin*].

³¹ *Id.*

³² *Id.*

³³ *Id.*

other disability and minority groups.”³⁴ Throughout the world, societal attitudes towards persons with albinism usually include “a lack of understanding, fear of the unknown, and prejudice based on appearance.”³⁵

With respect to an individual, the Americans with Disabilities Act defines disability as “a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.”³⁶ Given that albinism involves “a visual impairment,” it has been suggested that albinism should be considered a disability.³⁷ In the United States, a person is considered legally blind if “his or her vision cannot be corrected with glasses or contacts to better than 20/20 in his or her better eye.”³⁸ Based on this definition, some persons with albinism “fit the legal category of visual impairment and some do not.”³⁹ Nevertheless, even after taking into consideration the fact that persons with albinism suffer from varying degrees of visual acuity, the problems that they encounter are quite similar.⁴⁰ For example, those who discriminate against persons with albinism and murder them for their body parts do so based on their physical characteristics and not on their visual acuity.⁴¹

In many parts of eastern and southern Africa, persons with albinism, regardless of whether they are blind or have 20/20 vision, are considered “a valuable commodity,” which, like “elephants and rhino,” are “hunted and killed for their body parts, which can fetch thousands of dollars and are often trafficked across borders.”⁴² The murder of persons with albinism is quite common in Tanzania, Malawi and Mozambique and their body parts are sold for use in “witchcraft rituals because of superstitions that they can bring riches, success, power or sexual conquest.”⁴³ Since November 2014, at least 20 persons with albinism in Malawi have been killed, according to Amnesty International.⁴⁴ However, some observers believe that the number may actually be much higher as many people with albinism in Malawi have simply disappeared and no one has been able to determine whether they are in hiding or dead.⁴⁵ It is reported that in Tanzania,

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Robyn Dixon, *In Parts of Africa, People with Albinism are Hunted for their Body Parts*, L.A. TIMES (June 15, 2017), <https://www.latimes.com/world/africa/la-fg-malawi-albinos-hunted-2017-story.html>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

at least 75 persons with albinism have been murdered since 2000 for their body parts.⁴⁶

The threat against the human rights and lives of persons with albinism in eastern and southern Africa has become so great that the U.N.'s refugee agency, the U.N. High Commissioner for Refugees ("UNHCR"), has actually started relocating the families of persons with albinism from Malawi to Canada and other countries.⁴⁷ According to Sebastian Herwig, the associate resettlement officer for the UNHCR in Malawi, traditional beliefs about the body parts of persons with albinism have instilled great fear in albino individuals who "are regularly referred to as [a] money or cash machine."⁴⁸

When people meet persons with albinism, they initially notice their unique appearance.⁴⁹ According to the National Organization for Albinism and Hypopigmentation ("NOAH"), "[t]he white hair and skin of oculocutaneous albinism is a powerful factor from the moment of birth" and the new baby "will often be much lighter in color than any family member."⁵⁰ The coloring of the baby with albinism, particularly in Africa, "is a dramatic contrast to the family and community."⁵¹ Skin color is "a highly charged characteristic" in most of today's cultures, including those in Africa, and non-family members are likely to make "unwanted and unkind comments about the appearance of a child," especially if the child's color is significantly different from that of most members of the community in which he or she lives.⁵²

A child with albinism may also have to "squint, tilt his or her head, and hold things close in order to see them."⁵³ In addition, children with albinism often must use "glasses and optical aides to enhance their vision" and thus usually feel isolated because they are different from the other children in their communities.⁵⁴ The perception that children with albinism are different from other children in their communities often imposes a burden on them "to act as much like 'normal' as possible."⁵⁵ That is, children with albinism "can feel a lot of

⁴⁶ *Id.*

⁴⁷ *Id.*; see also Lameck Masina, *U.N. Resettles Albino Refugees Due to Threats in Malawi*, VOA NEWS (June 12, 2017), <https://www.voanews.com/a/un-resettles-albino-refugees-threats-malawi/3897282.html> (noting that since June 2014, the U.N. High Commissioner for Refugees has been relocating albino refugees to North America in order to protect them from the violation of their human rights, which include "abductions and grave exhumations").

⁴⁸ *Id.*

⁴⁹ *Information Bulletin*, *supra* note 30.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

pressure, both from themselves and from other people, to minimize the differences albinism causes.”⁵⁶ This constant struggle to be “normal” can produce a lot of stress and may even force a person with albinism to “deny that he or she has albinism, thereby losing touch with a very important aspect of one’s identity.”⁵⁷

Persons with albinism are often referred to as “albino.”⁵⁸ Although some persons with albinism embrace the word “albino” as an integral part of their identity, others feel that it is used in hurtful and dehumanizing ways and thus, prefer not to be designated as such.⁵⁹ Some argue that referring to people in terms of a condition is not appropriate and that “*persons* with albinism” or “*people* with albinism” is more appropriate because these expressions “put the person first and the condition second.”⁶⁰ Throughout the world, people use language to dehumanize others through “name-calling and teasing.”⁶¹ For example, in school, children use “racist and dehumanizing” language to describe certain categories of students, including learners with disabilities, girl students, and members of minority ethnic groups.⁶²

School learners with albinism are particularly prone to dehumanization by other children, teachers, and administrators. For example, a study of the challenges faced by persons with albinism in Lilongwe District, Malawi, revealed that “teachers, school administrators, and educational supervisors also have a limited understanding of the learning needs of students with albinism.”⁶³ Without such understanding, teachers and school administrators are not able to provide learners with albinism the unique instructional materials that they need to succeed in school.⁶⁴ For example, many students with albinism are usually

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See *Addressing Racist and Dehumanising Language*, FACING HIST. & OURSELVES (U.K.) (Sept. 13, 2021), <https://www.facinghistory.org/en-gb/resource-library/addressing-racist-dehumanising-language>; see also Adam Strom, *Dehumanization and Indifference: Responding to Anti-Immigrant Narratives in Schools*, AM. FED’N OF TCHRS.: SHARE MY LESSON (June 25, 2019), <https://sharemylesson.com/blog/dehumanization-and-indifference-responding-anti-immigrant-narratives-schools> (narrating the dehumanization of learners in U.S. schools).

⁶³ Thandiwe Tambala-Kaliati, et al., *Living with Albinism in an African Community: Exploring the Challenges of Persons with Albinism in Lilongwe District, Malawi*, HELIYON 1, 2 (2021).

⁶⁴ Afr. Comm. of Experts on the Rts. and Welfare of the Child, *Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)—Working Group on Children with Disabilities in Africa—On the Fact-Finding Mission on the Situation of Children with Albinism in the Republic of Malawi and Status*

visually impaired and may need “optical aids, special textbooks, modified tests, and other learning materials with enlarged prints” that enhance learning.⁶⁵

In a study of the Tete Province of Mozambique, Human Rights Watch found that children living with albinism are “widely discriminated against, stigmatized, and often rejected at school, in the community, and, at times, by their own families.”⁶⁶ In school, these children struggle to overcome many barriers, including general “insecurity, bullying, and lack of reasonable adjustments in the classroom, which violates their right to education.”⁶⁷ As a consequence, many learners with albinism are likely to perform poorly in school, drop out before they complete their education, or not register for school at all.⁶⁸ According to a study published in U.N. News, children with albinism in Malawi fear going to school because doing so puts them in grave danger.⁶⁹

Even on their way to school, learners with albinism in Malawi may be abducted or killed for their body parts, which many Malawians erroneously believe “possess magical powers.”⁷⁰ As reported by the Voice of America (“VOA”), since 2014, over 120 persons with albinism have been killed or have faced human rights violations in Malawi based on the “false beliefs that potions made from their body parts bring good luck and wealth.”⁷¹ In fact, many parents of children with albinism in Malawi are afraid to send their children to school and, because of this, fewer such children currently access education in the country.⁷²

of Implementation of ACERWC’s Decision on Communication No. 004/COM/001/2014 Submitted by the IHRDA Against the Republic of Malawi, para. 38 (Aug. 29–31, 2022) [hereinafter *ACERWC*] (noting that the ACERWC delegation was “strongly concerned that the lack of reasonable accommodation in classrooms [in Malawi] including the lack of adequate teaching and learning materials for learners with albinism in resource centres that have boarding facilities for students with albinism are among the barriers that are hindering [children with albinism] from fully enjoying their right to education”).

⁶⁵ Tambala-Kaliati, *supra* note 63, at 2.

⁶⁶ *Mozambique: Education Barriers for Children with Albinism*, HUM. RTS. WATCH (June 13, 2019), <https://www.hrw.org/news/2019/06/13/mozambique-education-barriers-children-albinism>.

⁶⁷ *Id.*

⁶⁸ ACERWC, *supra* note 64 (noting that “the barriers and challenges faced by [children with albinism] in accessing their right to education [in Malawi] worsen their school experiences and educational performance, which is likely to lead them to school dropouts”).

⁶⁹ U.N. News, *Making Education Safe for Children with Albinism in Malawi*, AFR. RENEWAL (June 1, 2020), <https://www.un.org/africarenewal/news/coronavirus/making-education-safe-children-albinism-malawi>.

⁷⁰ *Id.*

⁷¹ Masina, *supra* note 47.

⁷² *Id.*

In addition to the fear of being kidnapped while on their way to school, learners with albinism in Malawi must live with the fact that most of their schools usually do not have or provide instructional facilities that are geared towards meeting their needs.⁷³ For example, a study of Malawi by Pat Lund and Paul Lynch at the University of Birmingham determined that despite the country's large population of people with albinism, including a significant number of children, Malawi is failing to meet the educational needs of this important population.⁷⁴ This is because Malawi has yet to provide schools that can deal adequately with albinism-related problems, which include "eye problems that often go unrecognized, but cause reading and writing difficulties in the classroom, making mobility, seeing the chalkboard, reading and writing difficult and limiting participation in outdoor sporting and leisure activities."⁷⁵

It is not only schools that require accurate information on albinism; parents, members of the community, and government officials at all levels, also need to be informed about what albinism is and the challenges that people with albinism face on a daily basis. Governments should make an effort to educate citizens on the human rights and fundamental freedoms of persons with albinism, including bringing to justice those who kill or carry out attacks on this group of people. Traditional and customary practices that harm persons with albinism should be abolished and all laws, including the national constitution, statutory, and customary laws, should be brought into conformity with provisions of international and regional human rights instruments.

To more effectively understand and appreciate the rights and fundamental freedoms of persons with albinism, it is necessary to examine the "international human rights standards pertaining to the human rights violations faced by persons with albinism and the correlating obligations of States."⁷⁶ In the section that follows, this article will examine various reports of the Independent Expert on the enjoyment of human rights by persons with Albinism in an effort to provide more insight into the relationship between international and regional human rights instruments and the rights of persons with albinism.

⁷³ ACERWC, *supra* note 64, at 16 (noting that schools in rural Malawi are poorly constructed and that "some classrooms do not have roofs, which is highly exposing [children with albinism] to the sun, and as a result, to a high risk of developing skin cancer").

⁷⁴ Pat Lund & Paul Lynch, *Barriers to Access: Why Some Children with Albinism in Malawi Are not Attending School*, UNIVERSITY OF BIRMINGHAM (Mar. 8, 2024), https://www.birmingham.ac.uk/research/victar/research/barriers-to-access_

⁷⁵ *Id.*

⁷⁶ Ikponwosa Ero (Independent Expert on the enjoyment of human rights by persons with albinism), *Applicable International Human Rights Standards and Related Obligations Addressing the Issues Faced by Persons with Albinism*, U.N. Doc. A/72/131, at 2 (July 14, 2017).

II. APPLICABLE INTERNATIONAL HUMAN RIGHTS STANDARDS AND THE RIGHTS OF PERSONS WITH ALBINISM

A. Introduction

In her 2017 report to the U.N. Secretary General for further transmission to the U.N. General Assembly, Ms. Ikponwosa Ero, the Independent Expert on the enjoyment of human rights by persons with albinism (“Independent Expert”), shared her vision for her mandate and noted that it included identifying the “applicable human rights legal framework and the key international human rights instruments that could both comprehensively and effectively address the human rights-related issues faced by persons with albinism in a sustainable way.”⁷⁷ The Independent Expert identified “relevant international human rights treaties of general and specific application”—these are instruments that address human rights issues that are faced by or affect persons with albinism.⁷⁸ The Independent Expert then identified various obligations that have been imposed on states by several international human rights instruments to ensure that persons with albinism fully enjoy their human rights.⁷⁹

She began her report by explaining that albinism can be found throughout many countries around the world but that its impact “on human rights and its perception by others, including its effect on social inclusion, vary by region.”⁸⁰ Albinism, noted the Independent Expert, is “non-contagious, genetically inherited and affects people regardless of race, ethnicity or gender” and “results from a significant deficit in the production of melanin and is characterized by the partial or complete absence of pigment in any or all of the skin, hair and eyes.”⁸¹ Generally, persons with albinism usually appear significantly “pale in comparison with members of their family” and those in the communities that they live.⁸² In sub-Saharan Africa, the frequency of albinism “ranges from 1 in 5,000 to 1 in 15,000, with prevalence rates of 1 in 1,000 for selected populations.”⁸³

Although there are many types of albinism, the most well-known one is “oculocutaneous albinism, which affects the skin, hair and eyes.”⁸⁴ Among persons with albinism, the lack of melanin in the eyes “results in high sensitivity to bright light and significant visual impairment,” which cannot be completely eliminated or corrected.⁸⁵ The U.N. Independent Expert explained that “[a]ll violations of

⁷⁷ *Id.* at 3.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

civil and political rights relating to albinism reported to date have been linked to its oculocutaneous form, which is also the most visible type of albinism.”⁸⁶

In the sub-section that follows, this article will examine international human rights standards of general and specific application and other sources of international law which have an impact on the rights of persons with albinism.

B. International Human Rights Law and the Rights of Persons with Albinism

International human rights law grants persons with albinism the same fundamental rights as all other groups of people.⁸⁷ For example, Article 2 of the Universal Declaration of Human Rights (“UDHR”) states as follows: “*Everyone* is entitled to all the rights and freedoms set forth in this Declaration, *without distinction of any kind*, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁸⁸ Similarly, other international human rights instruments, which include the International Covenant on Civil and Political Rights (“ICCPR”), and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), “recognize human rights of general applicability to all people, including persons with albinism.”⁸⁹ The rights recognized by these international human rights instruments include “the rights to life, physical integrity, liberty, security, equality and non-discrimination, the highest attainable standard of physical and mental health and an adequate standard of living.”⁹⁰

Sources of international human rights law also include “internationally recognized standards providing protection to specific groups through the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities [“CRPD”].”⁹¹ The CRPD is critical for the rights of persons with albinism “in particular because of the duty set out therein to provide reasonable accommodation.”⁹² Other international human rights instruments may also “be invoked to ensure the full enjoyment of human rights by persons with albinism” and these include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, the U.N. Convention

⁸⁶ *Id.*

⁸⁷ *Id.* at 4.

⁸⁸ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at art. 2 (Dec. 10, 1948).

⁸⁹ Ero, *supra* note 76, at 3.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*; see also U.N. Convention on the Rights of Persons with Disabilities art. 5, Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter *CRPD*].

against Transnational Organized Crime and the Protocols Thereto, and the Convention relating to the Status of Refugees.⁹³

Two core principles of international law that relate to or affect the rights of persons with albinism are *equality* and *non-discrimination*. These rights are enumerated in all international and regional human rights instruments and these are “enforced on the basis of a non-exhaustive list of status or grounds set-out in every international and regional human rights instrument.”⁹⁴ The Independent Expert notes that persons with albinism “are a constituency of persons with disabilities” and the reports that she received “indicate that access to this protection framework is often granted to [persons with albinism] on the basis of their visual impairment alone.”⁹⁵ However, research has revealed that persons with albinism are often discriminated against based on their “unusual appearance, in particular their colouring.”⁹⁶ In other words, persons with albinism usually “encounter multiple and intersecting discrimination,” which is a situation in which an individual “can experience discrimination on two or more grounds, in the sense that discrimination is compounded or aggravated.”⁹⁷ On the other hand, “[i]ntersecting discrimination refers to a situation where several grounds for discrimination operate and interact with one another at the same time in such a way that they are inseparable.”⁹⁸ The CRPD “recognizes multiple and aggravated forms of discrimination” and “does so substantively for women and children with disabilities.”⁹⁹ The Independent Expert has concluded that “an approach based exclusively on the disability framework would fail to encompass the complexity of intersecting discrimination faced by persons with albinism based on colour.”¹⁰⁰ However, if the CRPD and the International Convention on the Elimination of All Forms of Racial Discrimination are combined, they can provide a “more comprehensive protection and promotion of the human rights of persons with albinism.”¹⁰¹

The Independent Expert also noted that in the past, human rights law has relied on “various conventions to provide the most adequate protection” for people whose rights have been violated.¹⁰² This is due to “an increasing recognition of multiple and intersecting violations that may affect a person or group.”¹⁰³ For

⁹³ Ero, *supra* note 76, at 4.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 5.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

example, this approach has been recognized and stressed by the Committee on the Rights of Persons with Disabilities (“CRPD Committee”) in the context of persons with albinism.¹⁰⁴ In its concluding observations on Uganda’s initial report on the CRPD, the CRPD Committee commented on the convention’s Article 5 (equality and non-discrimination).¹⁰⁵ The CRPD Committee indicated that it was “concerned about persisting discrimination against persons with disabilities, including in particular persons with albinism” and that it was also concerned about Uganda’s “insufficient legal remedies to protect [persons with disabilities, including those with albinism],” as well as “the non-recognition of reasonable accommodation in the legislation of [Uganda].”¹⁰⁶

Approaches, which recognize and emphasize “multiple and intersecting violations,” noted the Independent Expert, “have been used in human rights law to better map out violations faced, to grasp the depth of the consequences and to design practical and useful interventions.”¹⁰⁷ They can prove very useful for analyzing, understanding and appreciating the rights of a group, such as persons with albinism, “who in several countries had little or no practical protection until the past decade.”¹⁰⁸ In addition, noted the Independent Expert, “the notion of multiple and intersecting discrimination affecting persons with albinism is firmly rooted in international human rights jurisprudence” and many international treaty bodies have “applied non-discrimination provisions of [international] human rights treaties to the situation of persons with albinism.”¹⁰⁹

For example, the Committee on the Rights of the Child (“CRC Committee”) in its concluding observations on the second periodic report of Côte d’Ivoire, addressed the issue of “non-discrimination.”¹¹⁰ The CRC Committee then noted that it was “deeply concerned about persistent de facto discrimination, inter alia, against girls, children living in rural areas and children living in poverty, particularly with regard to literacy, access to education, vocational training, health care and sanitation, as well as development measures” and that “girls, children with disabilities and children with albinism are subject to multiple forms of discrimination.”¹¹¹ The CRC Committee then specifically addressed children with

¹⁰⁴ Comm. on the Rts. of Pers. with Disabilities, *Concluding Observations on the Initial Report of Uganda*, U.N. Doc. CRPD/C/UGA/CO/1, para. 8 (May 12, 2016).

¹⁰⁵ CRPD, *supra* note 92, at art. 5; *see also* Ero, *supra* note 76, at 5.

¹⁰⁶ CRPD, *supra* note 92, at art. 8.

¹⁰⁷ Ero, *supra* note 76, at 5.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Comm. on the Rts. of the Child, *Concluding Observations on the Second Periodic Report of Côte d’Ivoire*, U.N. Doc. CRC/C/CIV/CO/2, para. 19 (July 12, 2019).

¹¹¹ *Id.*

albinism.¹¹² The CRC Committee indicated that it was seriously concerned that children with albinism are and continue to be “victims of ritual killings, abductions, abandonment and stigmatization, that the policy aimed at protecting the rights of children with albinism is inadequately implemented and that the violations against child victims are not identified as such for the purpose of data collection and further interventions.”¹¹³

In addition, the Human Rights Committee (“HRC”), in its concluding observations on Ghana’s initial reports,¹¹⁴ specifically addressed the issue of discrimination against vulnerable groups, including persons with albinism.¹¹⁵ The HRC highlighted its concern over the “stigmatization of and discrimination against persons with albinism.”¹¹⁶ The HRC then recommended that all States Parties to the International Covenant on Civil and Political Rights (“ICCPR”) should continue their efforts to ensure that “persons with albinism are protected against discrimination and find lasting solutions that will give [persons with albinism] access, without discrimination, to health care, social services, employment and education.”¹¹⁷ The Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) has also addressed the discrimination, social exclusion, and stigmatization faced by persons with albinism, particularly women.¹¹⁸

In its concluding observations on the combined fifth and sixth periodic reports of Burundi,¹¹⁹ the CEDAW Committee noted that “[w]omen who are older, belonging to the Batwa,¹²⁰ internally displaced, refugees, with albinism or/and with disabilities are at an increased risk of violence committed with impunity in the absence of specific measures of protection.”¹²¹ The CEDAW Committee

¹¹² *Id.* para. 35.

¹¹³ *Id.*

¹¹⁴ Hum. Rts. Comm., *Concluding Observations on the Initial Reports of Ghana*, U.N. Doc. CCPR/C/GHA/CO/1 (Aug. 9, 2016).

¹¹⁵ *Id.* para. 13-14.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Comm. on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Burundi*, U.N. Doc. CEDAW/C/BDI/CO/5-6 (Nov. 25, 2016) [hereinafter *CEDAW*].

¹¹⁹ *Id.*

¹²⁰ The Batwa are “nomadic hunter-gatherers who once roamed widely across the forest areas stretching across most of what is now Uganda, Rwanda, Burundi, and the Democratic Republic of Congo.” See Jason Burke, *At Home with the Batwa People of Uganda—a Photo Essay*, THE GUARDIAN (May 24, 2021), <https://www.theguardian.com/world/2021/may/24/at-home-with-the-batwa-people-of-uganda-a-photo-essay>.

¹²¹ CEDAW, *supra* note 118, para. 24.

also reported that in Burundi, the Batwa in general, and girls with albinism in particular, are among groups that face extremely limited access to education due to discrimination and the inability of these groups to pay the necessary fees.¹²² The CEDAW Committee raised concerns about various disadvantaged groups of women and faulted Burundi for not having a strategic plan to specifically address the needs and rights of disadvantaged groups of women, who include Batwa women and women with albinism.¹²³ The CEDAW Committee then recommended that Burundi “[e]nact a comprehensive law on the social protection of persons with disabilities, the Batwa and persons with albinism and establish a mechanism to monitor its enforcement, ensuring that the perpetrators of discrimination and gender-based violence against them are adequately punished and victims adequately compensated.”¹²⁴ In addition, Burundi was also instructed to “[c]arry out a census to establish the number of persons with disabilities, Batwa and persons with albinism in the State [P]arty, disaggregated by sex, age and region.”¹²⁵

Recently, the Committee on the Rights of Persons with Disabilities (“CRPD Committee”) commented on Zambia’s report pursuant to the CRPD.¹²⁶ Although the CRPD Committee commended Zambia on its disability legislation, it nevertheless raised questions about the continued violation of the rights of persons with albinism.¹²⁷ For example, the CRPD Committee questioned Zambia about what measures the government was putting in place to confront the murder of persons with albinism for their body parts.¹²⁸ The Committee noted that since 2014, there were 11 killings of persons with albinism and wondered what measures the State Party (i.e., Zambia) had put in place to “combat stigma, harmful practices, bullying and hate crimes against persons with albinism.”¹²⁹

In response, Zambia’s delegation revealed that the country did not have any specific legislation protecting persons with albinism but that the Penal Code “clearly protected persons with albinism.”¹³⁰ The Zambia delegation reported that in the country’s 10 provinces, certain offices provided various services to persons with disabilities and worked cooperatively with the police to ensure “all

¹²² *Id.* para. 34

¹²³ *Id.* para. 46.

¹²⁴ *Id.* para. 46.

¹²⁵ *Id.* para. 47.

¹²⁶ Comm. on the Rts. of Persons with Disabilities, *Experts of the Committee on the Rights of Persons with Disabilities Commend Zambia on Disability Legislation, Raise Questions on Persons with Albinism and Land Bursaries for Persons with Disabilities* (Mar. 7, 2024), <https://www.ungeneva.org/en/news-media/meeting-summary/2024/03/experts-committee-rights-persons-disabilities-commend-zambia>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

killings related to persons with albinism were reported, and that all people who were living with albinism were protected.”¹³¹ In addition to providing persons with albinism free sunscreen, the Government of Zambia established safehouses “for victims of albinism related violence to ensure a recovery plan and their protection.”¹³² The Zambia delegation also noted that the recovery plan for victims of crimes committed against persons with albinism includes “a bimonthly cash transfer, as well as community integration.”¹³³

A member of the CRPD Committee asked the Zambia delegation when the State Party planned to adhere to the African Union Plan of Action to End Attacks and other Human Rights Violations Targeting Persons with Albinism in Africa (“Plan of Action 2021–2031”) and respond more effectively to various attacks on persons with albinism.¹³⁴ In response, the Zambia delegation stated that a representative of the government was assigned to work with the Zambian Police Service “to ensure that harmful practices which affected persons living with albinism were combatted and all perpetrators were prosecuted.”¹³⁵ In addition, the CRPD Committee stated that the government was working to “remove myths and stereotypes around persons with albinism.”¹³⁶

The Independent Expert stated that the right to life and physical integrity of persons with albinism “is systematically violated in the context of attacks, killings, mutilations and abandonment.”¹³⁷ She also explained that the right to life is recognized in and guaranteed by several international human rights instruments, including the UDHR and the ICCPR.¹³⁸ The right to life is non-derogable and is critical for the enjoyment of all other human rights guaranteed by these international and regional human rights instruments.¹³⁹ Protection of the right to life of persons with albinism who live in countries where they are attacked and murdered for their body parts must be a policy priority that should be addressed by all States Parties.¹⁴⁰

The International Expert noted that the failure of governments to fight “the impunity of attacks against persons with albinism is a major issue that has been raised by various [treaty-based] committees [of experts].”¹⁴¹ These committees stated that all States Parties have the obligation to duly “investigate and prosecute all cases of attacks and to ensure the adequacy of the national legislative

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Ero, *supra* note 76, para. 30.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* para. 37.

framework and criminal sanctions.”¹⁴² The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment argued that “impunity continues to be the principal cause of the perpetuation and encouragement of human rights violations and, in particular, torture.”¹⁴³ In its concluding observations on the combined seventh and eighth periodic reports of the United Republic of Tanzania, the CEDAW Committee commended the government of Tanzania for taking “various measures, including the adoption of legislation, to accelerate the elimination of harmful practices and gender stereotypes that discriminate against women.”¹⁴⁴

However, the CEDAW Committee expressed its deep concern about “[t]he high prevalence of harmful practices,” which included “the practice of prescribing sex with girls or women with albinism as a cure for HIV, ritual killings and attacks on persons with albinism, including women and girls, the use of their body parts for purposes of witchcraft, and the stigma and social exclusion suffered by mothers of children with albinism.”¹⁴⁵ The CEDAW Committee then recommended and urged 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.”¹⁴⁶ The Committee also called upon the State Party “to effectively investigate, prosecute and punish those responsible for such crimes, expand its awareness-raising efforts to combat 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.”¹⁴⁷

The Independent Expert also noted that under international human rights law, “every person is entitled to freedom from fear and freedom from want and to equality and non-discrimination.”¹⁴⁸ Most importantly, she noted, that the right to life, and the right to be protected from torture, “may not be derogated from under any circumstance.”¹⁴⁹ Given the principle of the interdependence and indivisibility of human rights, “the right to life serves as an enabling and protection

¹⁴² *Id.*

¹⁴³ Nigel Rodley (Special Rapporteur of the Comm. of Hum. Rts.), *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/54/426 (Oct. 1, 1999), para. 48.

¹⁴⁴ Comm. on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Seventh and Eighth Periodic Reports of the United Republic of Tanzania*, U.N. Doc. CEDAW/C/TZA/CO/7–8 (Mar. 9, 2016), para. 18.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* para. 43.

¹⁴⁷ *Id.*

¹⁴⁸ Ero, *supra* note 76, para. 70.

¹⁴⁹ *Id.*

right necessary for the enjoyment of all other human rights.”¹⁵⁰ Thus, States Parties must ensure that all their citizens, including those with albinism, are able to enjoy their human rights, including especially “minimum essential levels of economic and social rights.”¹⁵¹

At the culmination of the report, the Independent Expert made the following conclusions and recommendations. First, the recognition, protection, and promotion of all the human rights of persons with albinism are deeply rooted and entrenched in international human rights law through important treaties that “give rise to State obligations to respect, protect and fulfil all human rights, as well as positive duties to facilitate the enjoyment of these rights.”¹⁵² The roots for the protection of the rights of persons with albinism, noted the Independent Expert, are “further reinforced by interpretive jurisprudence and continuous guidance issued by international human rights bodies, notably by treaty bodies and regional mechanisms as they continue to address and advocate the enjoyment of human rights by persons with albinism.”¹⁵³

Second, there is a need “to close the implementation gap that subsists and through which egregious human rights violations against persons with albinism have sprouted and thrive, including acts committed against their rights to life and security of person and the failure to provide adequate health care in the face of correlating high fatalities.”¹⁵⁴ To carry out this obligation, States Parties must adopt a human rights approach, which recognizes “the intersecting character of applicable rights and the correlating need to induct multisectoral stakeholders in the process to guarantee both broad issue integration and specific programming to bring the furthest behind into the fold.”¹⁵⁵

Third, in order to enhance the building and sustaining of a partnership “for the implementation of action plans and recommendations made by treaty bodies,” the Independent Expert recommended that governments of States Parties:

- (a) Adopt and implement the regional action plan as endorsed by the African Commission on Human and Peoples’ Rights to ensure the effective protection and promotion of the rights of persons with albinism and members of their families;
- (b) Address as a priority the impunity that prevails with regard to the issue, including through amendments to their legal frameworks, prompt and thorough investigations, prosecution and sentencing;
- (c) Adopt a regional approach against impunity, taking into account the trans-border nature of elements of attacks against persons with albinism;

¹⁵⁰ *Id.* para. 71.

¹⁵¹ *Id.*

¹⁵² *Id.*, para. 100.

¹⁵³ *Id.*

¹⁵⁴ *Id.* para. 101.

¹⁵⁵ *Id.*

- (d) Ensure reasonable accommodation measures and the full enjoyment by persons with albinism of their rights to the highest standards of physical and mental health, education, adequate housing and decent work;
- (e) Combat the stigmatization of and discrimination against persons with albinism through a wide range of methods, including the promotion of positive information and role models and continued awareness-raising campaigns;
- (f) Ensure the full and meaningful participation of persons with albinism in the elaboration and implementation of all measures concerning them, in particular national plans and legislation.¹⁵⁶

The Independent Expert made clear to African governments that it is within their purview to take measures to eliminate violence against persons with albinism and ensure that their rights are recognized, respected and protected.¹⁵⁷ Specifically, the Independent Expert instructed African states to make use of recommendations made by the African Commission on Human and Peoples' Rights to develop and implement national measures to protect and promote the rights of persons with albinism, as well as members of their families.¹⁵⁸ In doing so, States were advised to approach the issue from a regional perspective in order to take into account the transborder nature of the various activities associated with the violation of the rights of persons with albinism.¹⁵⁹

The Independent Expert also made recommendations to civil society and national human rights institutions in Africa.¹⁶⁰ She advised them to "(a) Continue monitoring the implementation of the rights of persons with albinism and report regularly to international mechanisms such as treaty bodies or the Universal Periodic Review [and] (b) Take an active role in the implementation and promotion of action plans on the rights of persons with albinism and the inclusion of relevant action in existing programmes and strategies."¹⁶¹

The International Expert reminded civil society and human rights organizations in Africa of their duties to serve as watchdogs of their national governments to ensure that they are meeting their obligations under international and regional human rights law to safeguard the rights of persons with albinism.¹⁶² In guarding the government and ensuring that it is not neglecting any of its obligations under, for example, the ICRPD, the ICCPR, and the CEDAW, civil society

¹⁵⁶ *Id.* para. 102.

¹⁵⁷ Ero, *supra* note 76, para. 91 (noting that States have "clear obligations under international law to address the human rights violations against persons with albinism").

¹⁵⁸ *Id.*, para. 102.

¹⁵⁹ *Id.*; see also Dagher, *supra* note 6 (examining the transborder nature of the trafficking on the body parts of persons with albinism).

¹⁶⁰ Ero, *supra* note 76, para. 103.

¹⁶¹ *Id.*

¹⁶² *Id.*

and human rights institutions are advised to work closely with and report their findings to international human rights mechanisms, such as the treaty bodies and the Universal Periodic Review.¹⁶³

Finally, the International Expert addressed the international community regarding its role in the promotion and protection of the human rights of persons with albinism in Africa.¹⁶⁴ Specifically, the Independent Expert advised the international community to:

- (a) Continue to address and to prioritize questions relating to the implementation of the human rights of persons with albinism, in particular given the seriousness of the violations;
- (b) Examine and clarify the international legal standards applicable to trafficking in body parts;
- (c) Ensure that, in particular in regions affected by attacks, action for the enjoyment of the rights of persons with albinism [is] incorporated into existing projects and programmes and that specific programmes are designed and given priority.¹⁶⁵

Because the trade of body parts of persons with albinism has become transnational in nature, it is important that the international community, including multilateral organizations, such as the U.N. and the African Union, establish uniform standards to govern trafficking in human body parts. Such standards should make specific reference to the body parts of persons with albinism.

Although international human rights law has an important role to play in the promotion and protection of the rights of persons with albinism, prosecuting and bringing to justice those individuals who violate the rights of persons with albinism is the purview of courts in the African countries.¹⁶⁶ These courts are important, not just to enforce laws against the violation of the rights of persons with albinism, including killing them for their body parts, but also in ensuring that national laws reflect provisions of international and regional human rights instruments, particularly with respect to the human rights and fundamental freedoms of persons with albinism. In the section that follows, this article will examine case law from a few jurisdictions and discuss how courts are contributing to Africa's emerging jurisprudence on the rights of persons with albinism.

¹⁶³ *Id.*

¹⁶⁴ *Id.* para. 104.

¹⁶⁵ *Id.*

¹⁶⁶ *South Africa: Authorities Must Take Immediate Steps to Protect Persons with Albinism Against Discrimination and Advocacy of Hatred Constituting Incitement*, AMNESTY INT'L (Oct. 26, 2023), <https://www.amnesty.org/en/latest/news/2023/10/south-africa-authorities-must-take-immediate-steps-to-protect-persons-with-albinism-against-discrimination-and-advocacy-of-hatred-constituting-incitement/> (noting that the government must take measures to eradicate discrimination against persons with albinism and enhance their ability to realize their human rights).

III. AFRICA'S EMERGING JURISPRUDENCE ON THE RIGHTS OF PERSONS WITH ALBINISM

A. Introduction

Attacks against persons with albinism remain a major human rights concern, particularly in Africa. For example, between 2000 and 2013, the Office of the U.N. High Commissioner for Human Rights received information about more than “200 cases of ritual attacks against persons with albinism in 15 countries.”¹⁶⁷ In her report to the Human Rights Council on the right to access to justice for persons with albinism, the Independent Expert commended the legislative efforts made by several African countries to criminalize various behaviors associated with the violation of the human rights of persons with albinism.¹⁶⁸ For example, in analyzing the replies of Malawi to the list of issues raised in relation to Malawi's combined initial and second reports, the Committee on the Rights of Persons with Disabilities (“CRPD Committee”) noted that the government had taken some legislative measures to deal with the violation of the rights of persons with albinism.¹⁶⁹

Specifically, the Malawi delegation stated that “[t]o protect persons with disabilities, in particular persons with albinism, from different forms of violence, including ritual killings of their body parts,” the government had adopted “some legislative measures.”¹⁷⁰ The legislature amended the Anatomy Act (Cap 34: 03) in 2016 in order to “broaden the offences of removal and unauthorised possession of human tissue and enhance the penalties for offences under the Act.”¹⁷¹ In June 2016, Private Members Bill No. 2 (2016) was enacted by the Parliament of Malawi in order to amend “Section 16 of the Anatomy Act [prohibiting the sale or buying of a dead body or tissue extracted from such body], which previously provided a penalty of a fine of fifteen thousand Kwacha and imprisonment for ten years, by enhancing the punishment to a maximum of life

¹⁶⁷ Rep. of the Off. of the U.N. High Comm’r for Hum. Rts., *Persons with Albinism*, U.N. Doc. A/HRC/24/57 (Sept. 12, 2013), para. 22 [hereinafter *Persons with albinism*].

¹⁶⁸ Hum. Rts. Council (Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism), *Right to Access to Justice for Persons with Albinism*, U.N. Doc. A/HRC/40/62 (Jan. 15, 2019), para. 64 (noting measures by African countries to criminalize crimes against persons with albinism).

¹⁶⁹ Comm. on the Rts. of Pers. with Disabilities, *Replies of Malawi to the List of Issues in Relation to its Combined Initial and Second Reports*, U.N. Doc. CRPD/C/MWI/RQ/1–2 (Apr. 28, 2023), para. 25.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*; see also Anatomy Act (2017) Cap. 34 § 18 (Malawi).

imprisonment.”¹⁷² The bill also amended Section 18 of the Anatomy Act, which deals with, *inter alia*, “possession of a body of a deceased person or human tissue” and enhanced the penalty from a “fine of five thousand Kwacha and to imprisonment for a period of three years, to life imprisonment without the option of a fine.”¹⁷³ In addition, the country also launched a Handbook for Investigators, Prosecutors and Magistrates concerning offenses against persons with albinism (“Handbook”).¹⁷⁴ The Handbook was designed to help strengthen the government’s response to crimes committed against persons with albinism.¹⁷⁵

However, despite the strengthened legislation against “murder and causing grievous bodily harm,” the Independent Expert on the enjoyment of human rights by persons with albinism, in her report on the right to access to justice for persons with albinism, raised concerns “that weak enforcement of such laws have led to limited progress on the ground.”¹⁷⁶ In addition, the Independent Expert noted dissatisfaction with the sentences that are being handed down by domestic courts in Malawi against individuals convicted of attacking and/or killing persons with albinism.¹⁷⁷ Malawi’s report also revealed that “a lack of guidelines and standardization of sentencing principles has led to general mistrust in the judicial system.”¹⁷⁸ The report also showed that “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.”¹⁷⁹

Nevertheless, Malawi appears to be making significant progress as evidenced by significantly improved conviction rates—of the 45 cases that have been prosecuted, 38 of them have resulted in convictions.¹⁸⁰ In addition, judges have been handing down relatively harsher sentences in cases that involve crimes against persons with albinism.¹⁸¹ While there are many issues, such as “an overall backlog of cases, investigation and evidentiary delays as well as limited resources, including lack of resources to undertake forensic assessments,” many of the countries with large populations of persons with albinism, such as Malawi, Tanzania, and South Africa, are making progress in their efforts to eliminate violence against persons with albinism and prosecute those who commit crimes

¹⁷² MINISTRY OF JUST. AND CONST. AFFS. (Malawi), HANDBOOK FOR INVESTIGATORS, PROSECUTORS AND MAGISTRATES CONCERNING OFFENCES AGAINST PERSONS WITH ALBINISM para. 1.25 (2016).

¹⁷³ *Id.*

¹⁷⁴ Comm. on the Rts. of Pers. with Disabilities, *supra* note 169 para. 25; *see also* MINISTRY OF JUST. AND CONST. AFFS., *supra* note 172 para. 1.25.

¹⁷⁵ Comm. on the Rts. of Pers. with Disabilities, *supra* note 169 para. 25; *see also* MINISTRY OF JUST. AND CONST. AFFS., *supra* note 172 para. 1.25.

¹⁷⁶ *Right to Access to Justice for Persons with Albinism*, *supra* note 168 para. 65.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* para. 66.

¹⁸¹ *Id.* para. 65.

against this vulnerable group of people.¹⁸² Below, this article will examine the contributions of courts in these countries to the emerging jurisprudence on the rights of persons with albinism.

B. Republic v. Kenneth Moses and 10 Others (High Court of Malawi)

In *R v Moses and 10 Others*, Kenneth Moses and 10 other persons were “jointly and severally charged with the offence of murder, contrary to Section 209 of the Penal Code (Cap 7:01 of the Laws of Malawi).”¹⁸³ According to the particulars of the case before the High Court of Malawi, Zomba Registry, the prosecutor alleged that the 11 defendants, on or about May 24, 2016, “caused the death of Fletcher Masina . . . at Zintambira Village in Ntcheu district.”¹⁸⁴ Masina, the deceased, was a person with albinism.¹⁸⁵ Writing for the High Court of Malawi, Zomba Registry, Kapindu J began his analysis of the case by indicating that the first and fourth accused persons pled guilty and were convicted “on their own respective pleas of guilt.”¹⁸⁶

Justice Kapindu explained that the Court was informed that towards the end of 2020,¹⁸⁷ the 4th accused person, Mr. Herbert Maloni, was found dead outside the Ntcheu Prison and suggested that the circumstances surrounding Mr. Maloni’s death should be thoroughly investigated by the appropriate authorities in order to definitively and legally establish “the cause and circumstances of the death of the 4th accused person.”¹⁸⁸ Justice Kapindu referred to Section 6 of Malawi’s Inquests Act which makes mandatory an official inquest into the death of “any prisoner, or any person in custody, or any patient in a mental hospital.”¹⁸⁹ Justice Kapindu then concluded that because Maloni had died, the case against him was “permanently abated by reason of such death.”¹⁹⁰ Justice Kapindu then noted that of the two defendants who pleaded guilty, only the first accused, Kenneth Moses, was awaiting sentencing.¹⁹¹

The nine remaining defendants, Justice Kapindu explained, pleaded not guilty to the charge of murder and hence the matter against them could proceed to “full

¹⁸² *Id.* para. 67.

¹⁸³ *R v. Moses*, MWHC 366 (High Ct. of Malawi 2021).

¹⁸⁴ *Id.* para. 2.

¹⁸⁵ *Id.* Ntcheu District is an administrative district in the Central Region of Malawi, and borders Mozambique.

¹⁸⁶ *Id.* para. 3.

¹⁸⁷ *Id.* para. 129 (The High Court rendered its decision in this case in January 2021).

¹⁸⁸ *Id.* para. 4.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* para. 6.

¹⁹¹ *Id.* para. 7.

trial.”¹⁹² Therefore, the State proceeded to provide the Court with the evidence that it believed would establish guilt for the nine remaining defendants.¹⁹³ After the Court received and analyzed the prosecution’s evidence against the remaining nine defendants, Justice Kapindu stated that the Court found defendants 5, 6, 8, and 9 had no case to answer and “therefore acquitted them in terms of section 254(1) of the Criminal Procedure and Evidence Code (Cap 8:01) (CP & EC).”¹⁹⁴ The Court then declared that the 2nd, 3rd, 10th, and 11th accused persons had a case to answer, pursuant to section 254(2) of the Criminal Procedure and Evidence Code.¹⁹⁵ Justice Kapindu declared that the issue before the Court was to determine whether the four remaining defendants, Steven Lipiyasi, Ulemu Mwangomba, Francisco Kamtsitsi, and Manuel Masitala, were guilty of the murder of the late Fletcher Masina, a person with albinism.¹⁹⁶

Kapindu J began the analysis of the case against the four remaining defendants by examining the evidence adduced by the prosecution’s first witness, Mrs. Tabitha Fletcher Masina, who was the widow of the murdered victim—Fletcher Masina.¹⁹⁷ She testified that she and a neighborhood search group found her husband’s corpse after he went missing from his garden the day before.¹⁹⁸ The second prosecution witness was Melisiya Mayeso from the village of Zintambira in Ntcheu District. She testified that she was the wife of the 8th defendant, Jussab Saiton Ngozo.¹⁹⁹ This witness previously gave a signed statement to the police, stating that she discovered that one of her husband’s shirts was soaked in blood

¹⁹² *Id.* para. 8.

¹⁹³ *Id.*

¹⁹⁴ *Id.* para. 9. §254(1) of the Criminal Procedure and Evidence Code states: “If, upon taking all the evidence referred to in section 253 and any evidence which the court may decide to call at that stage of the trial under section 201, the court is of opinion that no case is made out against the accused sufficiently to require him to make a defence, the court shall deliver a judgment in the manner provided for in sections 139 and 140 acquitting the accused.” Criminal Procedure and Evidence Code, 2014 (Act 36 of 1967) § 254(1) (Malawi).

¹⁹⁵ §254(2) of the Criminal Procedure and Evidence Code states as follows: “If, when the evidence referred to in subsection (1) has been taken, the court is of opinion that a case is made out against the accused sufficiently to require him to make a defence in respect of the offence charged or some other offence which such court is competent to try and in its opinion it ought to try, it shall consider the charge recorded against the accused and decide whether it is sufficient and, if necessary, shall amend the same, subject to section 151.” Criminal Procedure and Evidence Code, *supra* note 194, § 254(2).

¹⁹⁶ *Moses*, MWHC, at 366 paras. 10–11.

¹⁹⁷ *Id.* para. 12.

¹⁹⁸ *Id.* paras. 13–15.

¹⁹⁹ *Id.* para. 16.

and that she suspected that her husband may have been involved in the death of the deceased, Fletcher Masina.²⁰⁰

Justice Kapindu explained that during her oral testimony before the Court Melisiya Mayeso renounced the testimony contained in the signed statement that she had given to the police.²⁰¹ Despite efforts by counsel for the State to refresh her memory by showing her a copy of the signed statement, she insisted that she had not made the testimony contained therein and “categorically disowned the statement and stated that she was completely illiterate and that she did not know how to read and write.”²⁰² After further interrogation, the Court concluded that this witness was not credible and ruled that it would not attach any weight to her oral testimony.²⁰³

The third prosecution witness was Kenneth Moses, the first defendant, who pled guilty earlier and had been convicted “on his own plea.”²⁰⁴ He testified before the Court that it was him, along with Herbert Maloni (4th accused), Ulemu Mwangomba (3rd accused), and Steven Lipiyasi (2nd accused), who killed Fletcher Masina.²⁰⁵ He claimed that it was Sergeant Mizere, a member of the Malawi Defence Force, who gave him instructions to “find a person with albinism, have him killed and get his private parts and bones.”²⁰⁶ Moses testified that Sergeant Mizere had promised to pay him MK40 million for the private parts and bones of a person with albinism.²⁰⁷

Moses testified that after he informed the 2nd accused person, Steven Lipiyasi, about Sergeant Mizere’s offer, the former was quite enthusiastic and noted that this was an excellent opportunity to make money.²⁰⁸ In addition to stating that he would keep the matter a secret, Moses testified that Lipiyasi promised to secure “some brave young men to assist [Moses] do the job.”²⁰⁹ Moses testified further that Lipiyasi called him to his house and introduced him to Herbert Maloni and Ulemu Mwangomba, the 4th and 3rd accused persons respectively.²¹⁰ According to Moses’ testimony, the defendants were told by Lipiyasi

²⁰⁰ *Id.*

²⁰¹ *Id.* para. 17.

²⁰² *Id.*

²⁰³ *Id.* para. 20.

²⁰⁴ *Id.* para. 21.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* para. 22. In January 2021, 1 Malawi Kwacha (MK) was 0.001251 U.S. dollar. Hence 40 million MK was about U.S. \$50,040. See *Malawi Kwacha (MK) to US Dollar (USD) Exchange Rate History for 2021*, EXCHANGE-RATES.ORG (2024), <https://www.exchange-rates.org/exchange-rate-history/mwk-usd-2021>.

²⁰⁸ *Moses*, MWHC 366 para. 25.

²⁰⁹ *Id.* para. 25.

²¹⁰ *Id.* para. 26.

that it would not be difficult for them to find a person with albinism since the village had a lot of them.²¹¹ They settled on the deceased, Fletcher Masina.²¹²

Moses told the Court that on their way to search for Masina, they came across the deceased's widow, who told them that her husband was at "the dambo garden."²¹³ After they found Fletcher Masina at the garden, Moses testified, Lipiyasi, the 2nd accused person, left the three defendants—Kenneth Moses, Herbert Maloni, and Ulemu Mwagomba—at the garden and asked them to kill the defendant and implied that once the deceased was killed, he should be informed so that he could come and collect the necessary body parts.²¹⁴ Moses informed the Court that after they found Masina in the garden, they called Sergeant Mizere and informed him that they found an individual with albinism and asked him to confirm that they could proceed with the killing.²¹⁵ He testified that Sergeant Mizere provided the confirmation and instructed them to proceed.²¹⁶

Moses explained that defendant Ulemu Mwagomba was the first person to attack Masina.²¹⁷ After Mwagomba hit the deceased on the head with a hammer and caused him to fall to the ground, Moses testified, defendant Herbert Maloni joined the assault upon the body of Masina.²¹⁸ They subsequently took the deceased's body to the stream where they proceeded to cut off his limbs and put some of the body parts in a sack, Moses testified.²¹⁹ He told the Court that Sergeant Mizere insisted that the body parts harvested from the deceased be brought to him right away at Golomoti.²²⁰ Moses testified that a few days later Sergeant Mizere called and they told him that the body parts were buried at a graveyard.²²¹ Subsequently, they met at Golomoti, retrieved the body parts and proceeded to "Salima in Sergeant Mizere's vehicle where they were told they would be paid."²²²

On their way, however, their car was stopped by the police, who searched it and discovered the body parts.²²³ Subsequently, the police arrested defendants Moses and Maloni on June 1, 2016.²²⁴ The only man with them, whom defendant

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* para. 27.

²¹⁴ *Id.* para. 28.

²¹⁵ *Id.* para. 29.

²¹⁶ *Id.*

²¹⁷ *Id.* para. 30.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* para. 33.

²²¹ *Id.* para. 35.

²²² *Id.*

²²³ *Id.* para. 36.

²²⁴ *Id.*

Moses testified he did not know, and Sergeant Mizere, were not arrested.²²⁵ However, during questioning at the police station, Moses told the Court that Lipiyasi (2nd accused person) and Mwagomba (3rd accused person) were involved in the killing of the deceased and the police subsequently arrested these two individuals.²²⁶

The fourth prosecution witness was Herbert Maloni, the 4th accused, who passed away.²²⁷ He presented evidence to the Court that was essentially identical to that which had been adduced by the third witness, Kenneth Moses.²²⁸ Both the third and fourth witnesses—defendants Kenneth Moses and Herbert Maloni—emphasized to the Court that the people who were involved in the “conspiracy to kill and who participated in the actual killing of the late Fletcher Masina were Kenneth Moses, Herbert Maloni, Steven Lipiyasi and Ulemu Mwagomba.”²²⁹

The fifth prosecution witness, Molisyo Abele, a 54-year man from Dedza District, testified that he knew 3 of the 11 accused persons—Manuel Masitala (11th accused person), Francisco Kamtsitsi (10th accused person), and Don Mkwaila (9th accused person).²³⁰ Abele testified that both Kamtsitsi and Masitala were frequent visitors to his shop and that a day after the death of Masina, the two had come to his shop to drink beer.²³¹ The witness testified that Masitala began to cry and Kamtsitsi asked him why he was crying and he answered that he was “very scared about what had happened, the death of the young man.”²³² Abele concluded his testimony by stating that he surmised from the conversation between the two young men that “they were talking about the late Masina because he was the only person who had recently been killed around the area.”²³³

The sixth prosecution witness was Superintendent Arnold Sikumbiri, a police investigator who was, at the time, the Officer-in-Charge of Jenda Police Post.²³⁴ He testified that he was working at the Salima Police Station on May 30, 2016 when he received information that “the informant was being offered bones of a person with albinism for sale.”²³⁵ Officer Sikumbiri testified that they secured a

²²⁵ *Id.*

²²⁶ *Id.* para. 37.

²²⁷ *Id.* para. 40.

²²⁸ *Id.* paras. 42–55.

²²⁹ *Id.* para. 55.

²³⁰ *Id.* para. 56.

²³¹ *Id.* paras. 56–57.

²³² *Id.* para. 57.

²³³ *Id.* para. 58.

²³⁴ *Id.* para. 59.

²³⁵ *Id.*

civilian vehicle and gave it to the informant and his team was monitoring the situation at the Chipoka Roadblock.²³⁶

Officer Sikumbiri later testified that the civilian vehicle approached the Chipoka Roadblock and they stopped it, searched it, and found human bones and that, upon interrogation, the suspects admitted that they killed the deceased.²³⁷ On cross-examination, counsel for the defense pressed Officer Sikumbiri to name the informant and he revealed that his name was Sergeant Mizere and that although the State took a statement from the informant, that statement was not made part of the disclosures.²³⁸ Kapindu J then stated that because Sergeant Mizere's name was featured so "prominently in evidence" in the case before the Court, he was surprised that the State had not included his statement in the disclosures made to the Court.²³⁹

Speaking for the State, Counsel Masanjala stated that an examination of Sergeant Mizere's statement showed that it was materially the same as the evidence that he proffered in court and, as a consequence, the State had taken "a prosecutorial decision" not to include Sergeant Mizere's statement in its disclosures to the Court.²⁴⁰ The Court then held that while it is left to the prosecution to determine who to call to testify as a witness, it would have been proper for the prosecution to call Sergeant Mizere to testify so that he could be cross-examined by the defense and perhaps clear his name, since the testimonies of the 3rd and 4th prosecution witnesses appeared to incriminate him.²⁴¹

Regarding whether the Court should have called Sergeant Mizere to testify, Kapindu J cited the case of *R v. Dawson*, in which Spencer-Wilkinson CJ declared that "it must be left to the prosecuting officer to decide when he will close his case and he must take the responsibility if at that stage there is insufficient evidence to support a conviction."²⁴² With respect to Sergeant Mizere's statement, the Court concluded that all it knows "is that the statement was made but the Court has no idea what Sergeant Mizere states in it."²⁴³ In conclusion, the Court held that:

since the exclusion of Sergeant Mizere's evidence was a deliberate prosecutorial strategy, if the Court were to proceed to call him to testify, such a prospect would, in all probability, have fallen foul of the guidance provided by the Supreme Court of Appeal in *Namata vs Republic* as conduct

²³⁶ *Id.* para. 60.

²³⁷ *Id.* para. 61.

²³⁸ *Id.* paras. 64-65.

²³⁹ *Id.* para. 66.

²⁴⁰ *Id.* para. 67.

²⁴¹ *Id.* para. 68.

²⁴² *Id.* para. 70. See also *R v. Damson*, 1923-60 ALR Mal 526, 527 (Malawi).

²⁴³ *Moses*, MWHC 366 para. 73.

amounting to a hijacking of the State's prosecutorial strategy or other otherwise seeking to patch up the prosecution's case.²⁴⁴

In addition, Justice Kapindu concluded that the Court "decided not to call Sergeant Mizere to come and give evidence in terms of section 201(1) of the [Criminal Procedure and Evidence Code]."²⁴⁵ The prosecution's last witness was Detective Sergeant John Semu who testified that on May 24, 2016, the Ntcheu Police Station received a complaint from Tabitha Masina, the deceased's wife, that her husband, a person with albinism, had gone missing.²⁴⁶ Additionally, Detective Sergeant Semu testified that the body of the deceased was recovered the following day, May 25, 2016, near the stream and that the body was subsequently taken to the Ntcheu District Hospital for a "postmortem examination" after which investigations began.²⁴⁷

After the Court found that the four defendants—Steven Lipiyasi, Ulemu Mwangomba, Francisco Kamtsitsi, and Manuel Masitala—had a case to answer, the defendants testified in their own defense.²⁴⁸ Mwangomba was the defense's first witness. He admitted that on the day Masina was killed, he and defendants Lipiyasi, Maloni, and Moses, agreed to kill the deceased on the following day.²⁴⁹ However, Mwangomba testified that his friends, Maloni and Moses, carried out the murder of Masina on the same day without his knowledge or participation.²⁵⁰ He testified further that Moses and Maloni came to his house and informed him that they already killed Masina and that "his duty was to skin the deceased's body."²⁵¹ Mwangomba admitted to the Court that he complied and proceeded with the skinning of the deceased's body but that he was not aware of "where the body parts were to be taken to."²⁵²

However, during cross-examination, Mwangomba's attention was directed to the statement that he filed with the Court, where he stated that "he was together with Kenneth Moses and Herbert Maloni, when they killed the deceased person."²⁵³ In response, however, Mwangomba testified that although he, Moses, and Maloni, agreed to kill the deceased, he denied taking part in the actual killing of Masina.²⁵⁴

²⁴⁴ *Id.* para. 74.

²⁴⁵ *Id.*

²⁴⁶ *Id.* para. 75.

²⁴⁷ *Id.* para. 76.

²⁴⁸ *Id.* para. 80.

²⁴⁹ *Id.* para. 81.

²⁵⁰ *Id.*

²⁵¹ *Id.* para. 82.

²⁵² *Id.*

²⁵³ *Id.* para. 85.

²⁵⁴ *Id.* para. 86.

The second defense witness was Steven Lipiyasi, the second accused person.²⁵⁵ In his testimony, this witness denied all allegations that he participated in the killing of Fletcher Masina.²⁵⁶ Although in the statement that he signed, filed by his legal practitioner, this witness admitted that he discussed how to kill the deceased with Kenneth Moses (the first accused person) and Herbert Maloni (the fourth accused person), he stressed in his oral testimony that he was not present when the actual crime was committed.²⁵⁷ Francisco Kamtsitsi, the tenth accused person, was the defense's third witness. He testified that although he told the police that he did not have anything to do with the murder of the late Fletcher Masina, he was still arrested and taken to the Ntcheu Police Station.²⁵⁸ The fourth and final defense witness, Manuel Master, testified that although he participated in the search for the body of the deceased, he did not take part in his killing.²⁵⁹

After reviewing all the evidence presented to the Court, Kapindu J then proceeded to examine the applicable law.²⁶⁰ He began his analysis by providing an overview of the concept of "the burden of proof," which is codified in Section 187(1) of Malawi's Criminal Procedure and Evidence Code ("CP & EC").²⁶¹ He cited to the Supreme Court of Appeal (Malawi) case, *Constable Stonard Chalusu v. Republic*, in which Ansah JA interpreted Section 187(1) of the CP and EC.²⁶² Justice Kapindu then discussed the standard of proof, which is codified in Section 188(1)(b) of the CP and EC.²⁶³ Kapindu J further cited the High Court of Malawi case, *R v. Msosa*, in which Chatsika J (as he was then) held that "at the end of the trial the Court must subject the entire evidence to such scrutiny as to be satisfied, beyond reasonable doubt, that all the important elements placed on the prosecution by the substantive law are proved," and that "even where all the important elements required to be proved by the prosecution have been proved beyond reasonable doubt, the Court must consider the [defense evidence],"²⁶⁴ and if the evidence presented by the defense "creates a reasonable doubt as to guilt, the court must resolve the doubt in the favour of the accused."²⁶⁵

²⁵⁵ *Id.* para. 87.

²⁵⁶ *Id.* para. 93.

²⁵⁷ *Id.* para. 94.

²⁵⁸ *Id.* para. 97.

²⁵⁹ *Id.* paras. 98-101.

²⁶⁰ *Id.* para. 102.

²⁶¹ *Id.* para. 103.

²⁶² *Id.* para. 104.

²⁶³ *Id.* para. 105.

²⁶⁴ *R v. Msosa*, MWHC 22 (High Ct. of Malawi 1993), at 4.

²⁶⁵ *Moses*, MWHC 366 para. 106 (quoting *Msosa*, MWHC 22, at 4).

With respect to both the *burden of proof* and the *standard of proof*, Kapindu J cited *Viyaviya v. Republic*,²⁶⁶ a case of the Supreme Court of Appeal (Malawi), in which Tembo JA stated that:

It is trite that the *burden of proof* rests on the prosecution throughout the trial and the *standard of proof* required in order for a conviction to be had in any criminal case is proof beyond reasonable doubt. Whenever and wherever there is a reasonable doubt as to whether the accused committed the alleged offence, such doubt is resolved in favour of the accused.²⁶⁷

After establishing what the burden of proof and the standard of proof mean in Malawian law, Kapindu J examined the offense of murder as provided for under Section 209 of the Penal Code (Cap 7:01) of Malawi.²⁶⁸ According to Section 209, “[a]ny person who of malice aforethought causes the death of another person by an unlawful act or omission shall be guilty of murder.”²⁶⁹ The concept “malice aforethought” is defined in Section 212.²⁷⁰ Justice Kapindu then cited to two cases from Malawi’s Supreme Court of Appeal which deal with the issue of “malice aforethought” in the law of Malawi.²⁷¹ After dealing with these three issues—burden of proof, standard of proof, and malice aforethought, Justice Kapindu moved on to examine the issue of *participation in crime*, which is defined by Section 21 of the Penal Code.²⁷²

Justice Kapindu explained that the Court’s duty with respect to the case at bar is to determine whether or not the accused persons committed the offense of murder.²⁷³ The first and fourth accused persons, recalled Kapindu J, were already convicted pursuant to their guilty pleas.²⁷⁴ However, noted Justice Kapindu, the case against the fourth defendant, Herbert Maloni, “permanently abated” after his death.²⁷⁵ The Court proceeded to analyze the case against the remaining defendants, beginning with accused person number 2: Steven Lipiyasi.²⁷⁶ After reviewing the totality of the evidence presented during the Court proceedings, Kapindu J concluded that “the evidence unmistakably points to [Lipiyasi’s] direct involvement in the killing of the deceased person” and that

²⁶⁶ *Moses*, MWHC 366 para. 107.

²⁶⁷ *Republic v. Moses & 10 Others (Judgment)*, at para. 107 (quoting *Viyaviya v. Republic* [2002–2003] MLR 423, (SCA) (Malawi)).

²⁶⁸ Penal Code, 2018 Cap. 7:01, § 209 (Malawi).

²⁶⁹ *Id.*

²⁷⁰ *Id.* § 212.

²⁷¹ These cases are *Constable Stonard Chalusa v. R* [2013] MLR 43 (Supreme Court of Appeals) and *R v. Bandawe*, MWHC 10 (High Ct. of Malawi 1997).

²⁷² *Moses*, MWHC 366 para. 111. *See also* Penal Code, 2018 Cap. 7:01 § 21 (Malawi).

²⁷³ *Moses*, MWHC 366 para. 112.

²⁷⁴ *Id.* para. 113.

²⁷⁵ *Id.*

²⁷⁶ *Id.* para. 114.

it was Lipiyasi who encouraged Kenneth Moses to “proceed with the plot to kill a person with albinism.”²⁷⁷

Justice Kapindu stated that the Court acknowledged that although the first accused, Kenneth Moses, was the person who “brought the initial idea of killing a person with albinism to the 2nd, 3rd and 4th accused persons, it was the 2nd accused person who, contrary to his denials before the Court, which this Court has concluded were false denials, he was in fact the main mind, the nerve centre, behind the commission of this grisly murder.”²⁷⁸ Justice Kapindu continued that the Court found that it was the second accused person (i.e., Lipiyasi) who gave the third accused person (Ulemu Mwangomba) the tools to commit the murder.²⁷⁹ In terms of Section 21(1)(b) of the Penal Code, the Court concluded Lipiyasi “enabled and aided the other accused persons to commit the murder herein” and that in so doing, Lipiyasi “clearly intended for the deceased person to be killed.”²⁸⁰ Thus, as a participant in the crime, concluded the Court, Lipiyasi had “the requisite malice aforethought under the circumstances.”²⁸¹ Justice Kapindu then held that “the evidence in the instant case proves, beyond reasonable doubt, that the 2nd accused person herein is guilty of the murder of Fletcher Masina, contrary to section 209 of the Penal Code” and hence, is convicted accordingly.²⁸²

With respect to accused person number three, Ulemu Mwangomba, the Court concluded that the evidence against this defendant was overwhelming, particularly the evidence presented by the 3rd and 4th prosecution witnesses, which implicated Mwangomba “as the one who [had] hit the deceased first with a hammer to the head.”²⁸³ That evidence, concluded the Court, was duly corroborated by the voluntary statement that Mwangomba “freely made to his lawyers without even the request from or any prompting of the Court or the prosecution, where he clearly stated that he was present at the scene when the deceased was killed.”²⁸⁴ In that statement, noted Justice Kapindu, the defendant stated “we killed him.”²⁸⁵

Kapindu J concluded that the prosecution proved before the Court, beyond a reasonable doubt, that Ulemu Mwangomba directly participated in the actual killing of Fletcher Masina.²⁸⁶ The Court held that, not only did Mwangomba commit “the actual act constituting the offence,” but he also intended to kill

²⁷⁷ *Id.*

²⁷⁸ *Id.* para. 118.

²⁷⁹ *Id.* para. 119.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.* para. 120.

²⁸³ *Id.* para. 123.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

Fletcher Masina in terms of “section 212(a) of the Penal Code.”²⁸⁷ Hence, the Court found him guilty of murder and convicted him of the offense of murder, contrary to section 209 of the Penal Code.²⁸⁸

With respect to the 10th and 11th accused persons (i.e., Francisco Kamtsitsi and Manuel Master, respectively), the Court reviewed the evidence proffered against them and concluded that the prosecution failed to establish beyond a reasonable doubt that these two defendants committed the offense of murder, contrary to section 209 of the Penal Code.²⁸⁹ Hence, the Court found Francisco Kamtsitsi and Manuel Master not guilty of the offense of murder in relation to the killing of Fletcher Masina.²⁹⁰

The High Court’s judgment in the killing of Fletcher Masina was delivered on January 8, 2021 and the judgment on sentencing was delivered on April 19, 2021.²⁹¹ Concluding that the three convicted persons—Kenneth Moses, Steven Lipiyasi, and Ulemu Mwangomba—must spend the rest of their lives “under incarceration, in prison, with hard labour, until when they shall die therein,” Justice Kapindu sentenced each one of them to a sentence of life imprisonment pursuant “to the provisions of section 210 of the Penal Code.”²⁹²

Justice Kapindu ended his sentencing judgment by advising the State to thoroughly examine the reasons offered by the first and fourth accused persons regarding why they decided to kill Fletcher Masina.²⁹³ The Court, in stating this, referenced the testimony by these two defendants that Masina was killed because he was a person with albinism and there was money to be made selling his body parts.²⁹⁴ Hence, while the High Court’s conviction removed three murderers from their communities and put them behind bars, the Court was not able or equipped to deal with the underlying erroneous beliefs that continue to threaten the human rights and fundamental freedoms of people with albinism in Malawi. The State, then, must take measures pursuant to its obligations under international human rights law, notably the CRPD, to which Malawi is a State Party, to ensure that the rights of its citizens with albinism are fully protected. In addition to making sure that those who commit crimes against persons with albinism are fully brought to justice, the State of Malawi must also develop and implement an education program to rid the country of the erroneous beliefs that concoctions made with the body parts of persons with albinism have healing or magical powers or grant people good luck.

²⁸⁷ *Id.*

²⁸⁸ *Id.* para. 124.

²⁸⁹ *Id.* para. 129.

²⁹⁰ *Id.*

²⁹¹ *Id.* paras. 15, 55

²⁹² *Id.* para. 52.

²⁹³ *Id.* para. 5.

²⁹⁴ *Id.* para. 22.

According to the Institute for Security Studies in Pretoria (“ISS”), South Africa, “[p]eople with albinism in Tanzania have a price on their heads—whether dead or alive, adults or children.”²⁹⁵ Additionally, Tanzania “is a source for all the trafficking routes in East and Southern Africa, where markets for [the body parts of persons with albinism] prosper.”²⁹⁶ Globally, the country has the highest number of people with albinism.²⁹⁷ The ISS study also determined that in Tanzania, “[a] complete set of organs . . . is priced at about US\$75,000 by criminal networks” and that “[a] person living with albinism is valued at US\$340,000.”²⁹⁸ While crimes committed against persons with albinism in Tanzania are usually underreported, the ISS study determined that “the high values attached to the illicit trade [in the body parts of persons with albinism] make this form of human trafficking one of the most lucrative and harmful.”²⁹⁹ In recent years, the government of Tanzania has “moved to combat impunity for ritual crimes, notably by investigating, arresting and prosecuting those who attack or sponsor attacks against people with albinism.”³⁰⁰ In the sub-section that follows, this article will examine how courts in Tanzania are contributing to the jurisprudence on the rights of persons with albinism.

C. Murimi and Others v. The Republic (Court of Appeal of Tanzania)

Murimi and Others v. The Republic is an appeal from the High Court of Tanzania in the District Registry of Mwanza at Mwanza to the Court of Appeal of Tanzania at Mwanza.³⁰¹ Writing for the Court of Appeal, Mziray JA stated that before the High Court of Tanzania sitting at Mwanza in Criminal Sessions Case No. 231 of 2014, the four appellants, Chacha Jeremiah Murimi, Methew Jeremiah Daud, Paschal Ligoye Mashiku, and Alex Joseph @Bugwema, were convicted of the offense of murder contrary to Section 196 of the Penal Code (Cap 16 of the Revised Edition, 2002).³⁰² They were subsequently sentenced to death

²⁹⁵ Mohamed Daghar, *Tanzanians Hard Hit by Trafficking in People with Albinism*, INST. FOR SEC. STUD. (Apr. 19, 2022), <https://issafrica.org/iss-today/tanzanians-hard-hit-by-trafficking-in-people-with-albinism>.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ “*It Felt Like a Punishment*”: Growing Up with Albinism in Tanzania, HUM. RTS. WATCH (Feb. 9, 2019), <https://www.hrw.org/news/2019/02/09/it-felt-punishment-growing-albinism-tanzania>.

³⁰¹ *Murimi and Others v. Republic* (Criminal Appeal 551 of 2015) [2019] TZCA 33 (April 4, 2019).

³⁰² *Id.* at 1–2.

by hanging.³⁰³ The four convicts then appealed both their convictions and sentences to the Court of Appeal.³⁰⁴

Based on the facts adduced in the High Court, Mziray JA explained that on June 26, 2009, at the village of Ibanda in the Nyamagana District (Mwanza Region) of Tanzania, “the appellants jointly and together murdered one Aron s/o of Nongo, a person with albinism.”³⁰⁵ Justice of Appeal Mziray then proceeded to review the facts that led to the conviction of the four appellants.³⁰⁶ According to these facts, on the night of June 26, 2009, the wife of the deceased and the prosecution’s first witness, Maria Mazuri Mafula, went to sleep with her husband after they had had dinner.³⁰⁷ In response to dogs barking outside their home, the deceased went to the “sitting room to see what was happening.”³⁰⁸

While in the sitting room, five men who were armed with machetes and axes forced themselves into the house, captured the deceased and forcefully dragged him outside the house.³⁰⁹ Mafula, who remained in the house and watched the attack on the husband through “a meshed window,” testified that she saw “three of the killers mercilessly cutting the deceased with machetes.”³¹⁰ With the help of “bright moonlight,” Mafula testified that she saw and could identify the second appellant, Methew Jeremiah Daud, as one of the killers, and was able to identify and describe him to the police.³¹¹

Mziray JA explained that after Mafula made her report to the police, the police began a formal investigation of the matter.³¹² While the investigation was in progress, the police were informed, on July 17, 2009, that the body parts of a person with albinism were being sold in the community.³¹³ With the help of prosecution witness number 6 (“PW6”), Police Inspector David, “a trap was set” and he reached out as an individual who was “a dealer and buyer of human body parts.”³¹⁴ On July 18, 2009, PW6 (i.e., Inspector David) met with Murimi and Daud, the first and second appellants, respectively.³¹⁵

³⁰³ *Id.* at 2.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.* at 2–3.

³¹² *Id.* at 3.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

The two appellants agreed to sell PW6 “human body parts for a bargained rate of 200 million shillings.”³¹⁶ The following day, as agreed earlier, the parties, accompanied by the fourth appellant, met at “Kijereshi in Igoma area.”³¹⁷ The fourth appellant brought a human bone with him.³¹⁸ At this point, the first, second, and fourth appellants were arrested. During interrogation, they confessed to having killed the deceased Aron s/o Nongo.³¹⁹ They also admitted that the human bone that they were selling was taken from the corpse of Nongo.³²⁰ Murimi, the first appellant, however, told the police interrogators that there were other people involved in the killing of Nongo and that these people were at “their witchdoctor’s house at Mahina Village,” waiting to receive their share of the money derived from the sale of the body parts of Nongo.³²¹

Based on the information obtained from the interrogations, Inspector David (PW6) led the team of police investigators to the witchdoctor’s house and there, the third appellant (Mashiku) was arrested in connection with the killing of Nongo.³²² After the Chief Government Chemist confirmed that the bone in question belonged to the deceased, Aron s/o Nongo, the appellants were then charged and prosecuted for the offense of murder contrary to Section 196 of the Penal Code.³²³ Under oath, the appellants denied that they were involved in the alleged murder of Nongo.³²⁴ However, after scrutinizing the evidence “adduced both in support and against the charge, the trial judge was satisfied that the case against the appellants was proved beyond reasonable doubt.”³²⁵ The High Court subsequently convicted the appellants of murder and pursuant to Section 197 of the Penal Code (Cap 16), sentenced each and every one of them to death.³²⁶

The appellants then appealed their convictions and sentences to the Court of Appeal at Mwanza.³²⁷ Mziray JA then explained the five major complaints that were deduced from the memoranda presented to the Court of Appeal by the

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.* at 4.

³²³ *Id.* at 1–2, 4. Section 196 states as follows: “Any person who, with malice aforethought, causes the death of another person by an unlawful act or omission commits an offence of murder.” Penal Code § 196 (2002) (Tanz.).

³²⁴ *Murimi*, [2019] TZCA 52 at 4.

³²⁵ *Id.* at 4–5.

³²⁶ *Id.* at 5.

³²⁷ *Id.*

appellants.³²⁸ Based on what they argued were “shortcomings in the proceedings and on the weakness of evidence adduced before the trial Court, the learned counsel prayed for the appellants’ convictions to be quashed, the sentences imposed be set aside and the appellants be released from jail.”³²⁹ Counsel for the State, Mr. Kiria, submitted to the Court that “there was no substance in any of the grounds of complaint and prayed for the dismissal of the appeal.”³³⁰ After examining and responding to each one of the grounds adduced by the counsel for the appellants in support of their application to the Court of Appeal for the convictions to be quashed and the sentences imposed set aside, the Principal State Attorney and Counsel for the State, Mr. Kiria, concluded that the appeal did not have merit and therefore, should be dismissed.³³¹

The Court of Appeal then “dispassionately considered the rival arguments by the parties to [the] appeal in the light of the record of appeal, the grounds of appeal as well as the substance of the oral submissions in the hearing of the appeal.”³³² The Court then proceeded to examine each of the five grounds of appeal and concluded that it did “not find any basis for which to fault the findings of the trial court on all substantive matters considered herein” and that “[t]he appeal [was] patently wanting in merit.”³³³ The Court of Appeal then dismissed the appeal in its entirety.³³⁴

On July 22, 2019, three of the appellants, who were now on death row in Tanzania after their appeal failed at the Court of Appeal, each filed an application with the African Court on Human and Peoples’ Rights (“African Human Rights Court”), asking the African Human Rights Court to “find in their favour, quash their conviction and sentence and set them free.”³³⁵ The applications were filed by Chacha Jeremiah Murimi (Application No. 039/2019); Methew Jeremiah Daud (Application No. 040/2019); and Paschal Ligoye Mashiku (Application N. 041/2019).³³⁶ After deliberating and considering the facts supporting the applications, the claims made by the applicants, and pursuant to Rule 54 of its Rules of Court, the African Human Rights Court unanimously ordered the

³²⁸ *Id.* at 5–6.

³²⁹ *Id.* at 11.

³³⁰ *Id.*

³³¹ *Id.* at 11–14.

³³² *Id.* at 14.

³³³ *Id.* at 26.

³³⁴ *Id.*

³³⁵ *Murimi v. United Republic of Tanzania*, Nos. 039/2019, 040/2019 & 041/2019, Case Summary, African Court on Human and Peoples’ Rights [Afr. Ct. H.P.R.], para. 2 (July 28, 2022) [hereinafter *Murimi* Case Summary].

³³⁶ *Murimi v. United Republic of Tanzania*, Nos. 039/2019, 040/2019 & 041/2019, Order for Joinder, African Court on Human and Peoples’ Rights [Afr. Ct. H.P.R.], paras. 1–3 (Sept. 26, 2019) [hereinafter *Murimi* Order for Joinder].

joinder of “cases and pleadings in the Applications filed by the Applicants against the Respondent State.”³³⁷ The Court held that the applications would, henceforth, be referred to as *Consolidated Applications No. 039/2019, 040/2019 and 041/2019 Chacha Jeremiah Murimi and 2 Others v. United Republic of Tanzania*.³³⁸

The African Human Rights Court explained that the first Applicant Chacha Murimi, second Applicant Methew Daud, and third Applicant Paschal Ligoye, are all nationals of the United Republic of Tanzania (“Tanzania” or “Respondent State”), who, at the time they filed their applications with the Court, were sitting on death row at Butimba prison after they were convicted and sentenced to death by the High Court of Tanzania sitting at Mwanza.³³⁹ The Court then noted that the Respondent State became a State Party to the African Charter on Human and Peoples’ Rights (“Banjul Charter”) on October 21, 1986 and to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (“African Court Protocol”) on February 10, 2006.³⁴⁰ Subsequently, the Court noted that the Respondent State deposited an Article 34(6) Declaration with the African Union Commission on March 29, 2010, which effectively empowered the Court to receive and consider applications from NGOs and individuals in the United Republic of Tanzania.³⁴¹

However, on November 21, 2019, the Respondent State deposited an instrument withdrawing its Article 34(6) Declaration with the Chairperson of the African Union Commission.³⁴² The African Human Rights Court held, however,

³³⁷ *Id.* at 3 para. 4.

³³⁸ *Id.* at 3 para. ii.

³³⁹ *Murimi* Case Summary, *supra* note 335, at 1 para. 1.

³⁴⁰ *Id.* para. 2.

³⁴¹ *Id.* An Article 34(6) declaration grants the African Human Rights Court the competence to receive cases under Article 5(3) of the African Court Protocol from the State Party making the declaration. *See* Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights art. 34(6), June 10, 1998 [hereinafter African Court Protocol]. Article 5(3) entitles nongovernmental organizations (NGOs) with observer status before the African Commission on Human and Peoples’ Rights and individuals to bring cases directly to the African Human Rights Court, in accordance with article 34(6) of the African Court Protocol. *See* African Court Protocol, *supra*, at art. 5(3).

³⁴² *See, e.g.,* Luke Anami, *Tanzania in the Spotlight for ‘Withdrawal’ from Arusha-Based Human-Rights Court*, E. AFR. (Nov. 6, 2021), https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-withdrawal-from-arusha-based-human-rights-court-3609834#google_vignette (noting Tanzania’s decision to withdraw its Article 34(6) declaration, which allowed individuals and NGOs within its jurisdiction to directly access the African Human Rights Court); Letter from Palamagamba J.A.M. Kabudi, Tanz. Minister Foreign Aff., to Sec’y Gen., Afr. Union Comm’n (Nov. 21, 2019).

that the Respondent State's withdrawal decision did not have any bearing on cases that were pending before the Court, as well as new cases filed before the Respondent State's withdrawal went into effect on November 22, 2020, one year after its filing.³⁴³

With respect to the facts of the matter before it, the African Human Rights Court explained that on June 26, 2009, the applicants jointly murdered "one Aron s/o Nongo." The wife of the deceased, who was in the house at the time the crime was committed, identified the second Applicant as one of the persons who killed her late husband.³⁴⁴ After the killing, the first and second Applicants tried to sell the deceased's body parts for "200 million shillings" and prosecution witness number 6 ("PW6"), who was also an undercover police officer, "set a trap by posing as a buyer" of human body parts.³⁴⁵ The parties agreed to carry out the transaction on July 19, 2009, and on that date the first and second applicants were arrested by the police.³⁴⁶ During interrogations, these two Applicants confessed to the crime of murdering Aron s/o Nongo and implicated other persons who participated in the crime.³⁴⁷ They subsequently revealed that these other persons were currently at the house of a witch doctor in Mahina Village.³⁴⁸ The third Applicant was subsequently arrested at the witch doctor's house and, on June 18, 2012, the Applicants were charged for the murder of Aron s/o Nongo.³⁴⁹

After a trial at the High Court of Tanzania sitting at Mwanza, the applicants were found guilty of the offense of murder and subsequently sentenced to death by hanging.³⁵⁰ Because they were not satisfied with both the conviction and the sentence, the Applicants appealed to the Court of Appeal of Tanzania sitting at Mwanza on September 14, 2018.³⁵¹ On April 4, 2019, the Court of Appeal dismissed their appeal for lack of merit.³⁵² Before the African Human Rights Court, the Applicants alleged that the respondent state violated Articles 3, 5, 7(1)(a) and (c) of the African Charter on Human and Peoples' Rights in relation to the proceedings that took place in the courts of the United Republic of Tanzania, the

³⁴³ *Murimi Case Summary*, *supra* note 335, at 1 para. 2.

³⁴⁴ *Id.* para. 3.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 1-2 para. 3.

³⁴⁹ *Id.* at 2 para. 4.

³⁵⁰ *Id.*

³⁵¹ *Id.* para. 5.

³⁵² *Id.*

respondent state.³⁵³ They asked the African Human Rights Court to find in their favor, quash their conviction and sentence, and free them.³⁵⁴

In 2022, the Applicants filed a request pursuant to Rule 47 of the African Human Rights Court's *Rules of Court*, requesting permission from the Court to amend their application.³⁵⁵ The Applicants' request for leave to amend the pleadings was grounded on the basis that, "the Applicants seek to substantiate their pleadings by amending paragraphs 1 through 4, prayers of the Applicants and submitting supplementary affidavits through counsel as they were previously unrepresented."³⁵⁶ The Court noted that the Respondent State did not file any observations in response to the Applicants' request to amend the pleading.³⁵⁷ After citing to Rule 47 of the Rules of Court and noting that the Applicants' request was filed before the close of the pleadings as required by Rule 47(1), and after noting that other requirements were met, the Court granted the Applicants' request for leave to file the amended pleadings.³⁵⁸ On July 28, 2022, the Court issued the following ruling: "THE COURT *unanimously*, Grants the request by the Applicants for leave to amend the Application and orders that the amended Application be filed within thirty (30) days of notification of this Order."³⁵⁹

³⁵³ *Id.* para. 6.

³⁵⁴ *Id.* para. 7. Article 3 of the African Charter on Human and Peoples' Rights (Banjul Charter) states as follows: "1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law." African Charter on Human and Peoples' Rights art. 3, June 27, 1981, 1520 U.N.T.S 217 [hereinafter Banjul Charter]. Article 5 states as follows: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of many particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." *Id.* art. 5. Article 7(1)(a) and (c) set as follows: "Every individual shall have the right to have his cause heard. This comprises: a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; c) the right to be tried within a reasonable time by an impartial court or tribunal." *Id.* art. 7(1)(a) & (c).

³⁵⁵ Rules of Court, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.] (2020). According to Rule 47, "[a] party may, subject to the approval of the Court, amend its pleadings before the close of pleadings." *Id.* at Rule 47(1).

³⁵⁶ In the Matter of Chacha Jeremiah Murimi & Others v. United Republic of Tanz., African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], Consol. Applications No. 039, 040, 041/2019, Order (Amendment of Pleadings), para. 12 (July 28, 2022).

³⁵⁷ *Id.* at 3.

³⁵⁸ *Id.* at 4.

³⁵⁹ *Id.* at 4–5 (emphasis in original).

As of April 2024, *In the Matter of Chacha Jeremiah Murimi & Others v. United Republic of Tanzania*, is still pending before the African Human Rights Court and thus, has yet to be decided. However, when it is decided, it is not likely that the Court will disturb the High Court of Tanzania's conviction of the Applicants for the murder of Aron s/o Nongo, a person with albinism, allowing the High Court's decision to remain a part of the emerging African jurisprudence on the recognition, promotion and protection of the rights of persons with albinism. In *Marthine Christian Msuguri v. United Republic of Tanzania*, the African Human Rights Court held that "although it does not exercise appellate jurisdiction with respect to claims already examined by national courts, it retains the power to assess the propriety of domestic proceedings as against standards set out in international human rights instruments ratified by the State concerned."³⁶⁰ Thus, with respect to *Murimi & Others*, the African Human Rights Court can consider and rule on the matter of the mandatory death penalty as it implicates Article 4 of the Banjul Charter.³⁶¹ That is, the African Human Rights Court can "assess the propriety" of the proceedings in *Murimi & Others* "as against standards set out" in Article 4 of the Banjul Charter.³⁶² However, the Court is likely to leave the Applicants' conviction standing for the murder of Aron s/o Nongo.³⁶³

Although domestic courts in Africa are critical to the protection of the rights of persons with albinism, sustainability requires a comprehensive and holistic approach, which emphasizes, not just courts, but other national and international instruments that are essential parts of a comprehensive framework for the protection of the human rights and fundamental freedoms of persons with albinism. In the section that follows, this article will outline and examine a suggested way forward for the protection and enjoyment of human rights by persons with albinism in Africa.

IV. PROTECTION AND ENJOYMENT OF HUMAN RIGHTS BY PERSONS WITH ALBINISM IN AFRICA

A. Introduction

In a series of resolutions, beginning in 2013, the U.N. Human Rights Council ("UNHRC") "expressed concern about the situation of the human rights of

³⁶⁰ *Marthine Christian Msuguri v. United Republic of Tanz.*, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], Application No. 052/2016, Judgment, at 7 (Dec. 1, 2022) [hereinafter *Msuguri Judgment*].

³⁶¹ Article 4 of the Banjul Charter guarantees the right to life. *See* Banjul Charter, *supra* note 354, at art. 4.

³⁶² *Id.*

³⁶³ *Republic v. Murimi & Others*, Crim. Sessions Case No. 213 of 2014, High Ct. of Tanz. (Dist. Registry of Mwanza 2014).

persons with albinism.”³⁶⁴ The first of these resolutions was adopted on June 13, 2013 and in it, the UNHRC condemned attacks and discrimination against persons with albinism.³⁶⁵ In Resolution 23/13, the UNHRC also requested that the Office of the U.N. High Commissioner for Human Rights “submit a preliminary report on attacks and discrimination against persons with albinism to the Human Rights Council at its twenty-fourth session” in September 2013.³⁶⁶ The UNHRC adopted the second resolution (24/33) in September 2013 and in it, the Council requested that its Advisory Committee “prepare a study on the situation of human rights of persons living with albinism and to submit a report thereon to the Human Rights Council at its twenty-eighth session.”³⁶⁷ Finally, in its third resolution (26/10), adopted on June 26, 2014, the UNHRC recommended that the U.N. General Assembly proclaim June 13 as International Albinism Awareness Day.³⁶⁸ Subsequently, on December 18, 2014, the U.N. General Assembly adopted a resolution (69/170) declaring June 13 as International Albinism Awareness Day.³⁶⁹

Taking into consideration the obligation imposed on it by the UNHRC’s Resolution 24/33, the Human Rights Advisory Committee (“HRAC”) sought input from “States and other stakeholders” on the treatment of persons with albinism around the world.³⁷⁰ The HRAC’s report provides information that can be used to outline a comprehensive and holistic approach to recognizing and protecting the rights of persons with albinism in Africa. The discussion will begin with an examination of the special needs and challenges facing persons with albinism in Africa.

B. Special Needs and the Human Rights Challenges of Persons with Albinism in Africa

Albinism can be defined as “a rare, non-contagious, genetically inherited difference present at birth” and which “results in a lack of pigmentation (melanin) in the hair, skin and eyes, causing vulnerability to the sun and bright light.”³⁷¹ Consequently, virtually “all people with albinism are visually impaired and are prone to developing skin cancer.”³⁷² Unfortunately, “[t]here is no cure for the

³⁶⁴ Human Rights Council, Rep. of the H.R.C. Advisory Comm. on the Study on the Situation of Human Rights of Persons Living with Albinism at 3, U.N. Doc. A/HRC/28/75 (Feb. 10, 2015) [hereinafter Human Rights Council Study on the Situation].

³⁶⁵ See generally H.R.C. Res. 23/13, *supra* note 9.

³⁶⁶ *Id.* at 2.

³⁶⁷ H.R.C. Res. 24/33, *supra* note 18, at 2.

³⁶⁸ H.R.C. Res. 26/10, *supra* note 22, at 2.

³⁶⁹ G.A. Res. 69/170, at 2 (Dec. 18, 2014).

³⁷⁰ Human Rights Council Study on the Situation, *supra* note 364, at 3.

³⁷¹ *Id.* at 4.

³⁷² *Id.*

absence of melanin that is central to albinism.”³⁷³ Although albinism is present in virtually all parts of the world, the condition is “much more prevalent in sub-Saharan Africa, with estimates of 1 in 1,400 people being affected in Tanzania and prevalence as high as 1 in 1,000 reported for select populations in Zimbabwe and for other specific ethnic groups in Southern Africa.”³⁷⁴

According to the International Federation of the Red Cross and Red Crescent (“IFRC”), persons with albinism have special needs and these include, *inter alia*:

- (a) Security;
- (b) Help with reintegration into society after displacement or time spent in hiding;
- (c) Health education on how to prevent skin cancer;
- (d) Protective clothing;
- (e) Optician services;
- (f) Assistance in participating in mainstream primary and secondary education;
- (g) Vocational training to maximize the chance of indoor work out of the sun.³⁷⁵

With respect to security, various international institutions (e.g., the U.N. Human Rights Council) and non-governmental organizations in Africa (e.g., Under the Same Sun (UTSS) in Tanzania) have raised concerns about continued attacks and discrimination against persons with albinism.³⁷⁶ In many countries in Africa, persons with albinism are often not treated as human beings and regularly subjected to various types of attacks that are based on “false and harmful myths,” particularly in various countries in east and southern Africa.³⁷⁷ As reported by the Office of the U.N. High Commissioner for Human Rights (“OHCHR”), “in some communities, erroneous beliefs and myths, heavily influenced by superstition, put the security and lives of persons with albinism at constant risk.”³⁷⁸ In addition, noted the OHCHR, “[t]hese beliefs and myths are centuries old and are present in cultural attitudes and practices around the world.”³⁷⁹ In African countries, such as Burundi, Malawi, Tanzania, South Africa, and Zimbabwe,

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.* at 4–5.

³⁷⁶ *Id.* at 5. See also Azad Essa & Sorin Furcoi, *Malawi: People With Albinism ‘Living in Fear,’* ALJAZEERA (June 7, 2017), <https://www.aljazeera.com/news/2017/6/7/malawi-people-with-albinism-living-in-fear> (noting the pervasiveness of crimes against persons with albinism and the failure of the government to bring the offenders to justice).

³⁷⁷ Human Rights Council Study on the Situation, *supra* note 364, at 5.

³⁷⁸ *Id.*

³⁷⁹ *Id.*

people in some communities believe that the body parts of persons with albinism “possess magical powers that can be used to gain wealth and prosperity and/or to gain power via winning elections.”³⁸⁰

Customary beliefs and myths about persons with albinism often lead to significant levels of violence against this group of persons.³⁸¹ In many African countries, violence against persons with albinism include, inter alia, “the killing of, and attacks against, persons with albinism with a view to using their body parts for ritual purposes.”³⁸² Research has documented many attacks against persons with albinism, some of which have resulted in death, in countries, such as Tanzania, Malawi, Burundi, and South Africa.³⁸³

In many African countries, a lot of people with albinism are forced to go into hiding as a way to avoid being subjected to violent attacks.³⁸⁴ For example, the UNHRC determined that in Burundi, as a result of “a spate of killings and attacks” that occurred in the country during the period 2008–2012, the government was forced to move persons with albinism from their homes and accommodate them at police stations and houses in the vicinity of police stations in order to guarantee their safety and security.³⁸⁵ The UNHRC noted these concerns in its 2014 concluding observations on Burundi and requested the Burundian government “to continue its efforts to protect persons with albinism and to find lasting solutions to their situation.”³⁸⁶

In the sub-section that follows, this article will examine ways in which African countries can eliminate violence against persons with albinism and enhance their ability to exercise their human rights and fundamental freedoms. Each African country must begin by undertaking comprehensive reforms of its legal system and laws in order to safeguard the rights of persons with albinism.

³⁸⁰ *Id.* See also Lindsey Bever, *Where Albino Body Parts Fetch Big Money, Albinos Still Get Butchered*, WASH. POST (Mar. 13, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/03/13/how-tanzanias-upcoming-election-could-put-albinos-at-risk-for-attack/> (noting that in East Africa, persons with albinism are thought to “possess special powers, but not in a good way”).

³⁸¹ I. Kajiru & I. Nyimbi, *The Impact of Myths, Superstition and Harmful Cultural Beliefs Against Albinism in Tanzania: A Human Rights Perspective*, 23 POTCHEFSTROOM ELEC. L. J. 1, 3 (2020) (noting the harmful effects of traditional beliefs about persons with albinism).

³⁸² Human Rights Council Study on the Situation, *supra* note 364, at 5.

³⁸³ *Id.* at 5–6. See also Pavithra Rao, *Ending Albino Persecution in Africa*, AFRICA RENEWAL (Dec. 2017–Mar. 2018), <https://www.un.org/africarenewal/magazine/december-2017-march-2018/ending-albino-persecution-africa#:~:text=There%20have%20also%20been%20reports,old%20woman%20living%20with%20albinism.>

³⁸⁴ Dixon, *supra* note 41, at 2 (noting that people with albinism in Tanzania “are often forced to hide in their houses to avoid attack, abduction and slaughter”).

³⁸⁵ Human Rights Council Study on the Situation, *supra* note 364, at 7.

³⁸⁶ *Id.*

C. Reforming African Legal Systems to Safeguard and Protect the Human Rights of Persons with Albinism

Although international law and institutions have a significant role to play in the protection of the human rights and fundamental freedoms of persons with albinism in Africa, criminalizing violence against persons with albinism and prosecuting those who violate their rights is the responsibility of the legal systems of each African country. The legal system of each African country is the key to determining the prevalence of behaviors and practices that harm persons with albinism, eradicating these behaviors and practices, and protecting the rights of people with albinism. National laws in each African country must expressly prohibit all forms of violence against persons with albinism, provide legal penalties for those who violate these laws, and empower the appropriate institutions (e.g., the police and the judiciary) to bring to justice individuals who commit crimes against persons with albinism. No one must be allowed to violate, with impunity, the rights of persons with albinism.

For each African country, reforms should begin with a comprehensive examination of the existing legal system with emphasis on how it deals with crimes against persons with albinism. Reformers may begin by examining the national constitution, statutes governing the rights of persons with albinism, and religious and customary and traditional practices that harm persons with albinism.³⁸⁷ Specifically, reforming each country's legal system to recognize and protect the rights of persons with albinism must begin with an examination of the national constitution to ensure that all its provisions "conform to or align with international and regional human rights instruments."³⁸⁸ African countries have international obligations under binding treaties and customary international law in the field of human rights which prohibit all forms of unfair discrimination. Some of these treaties, to which many African countries are States Parties, include the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), African Charter on the Rights and Welfare of the Child ("African Child Charter"), African Charter on Human and Peoples' Rights ("Banjul Charter"), Convention on the Rights of the Child ("CRC"), Convention on the Rights of Persons with Disabilities ("CRPD"), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention").

Where necessary, the national constitution should be amended to provide for a Bill of Rights, which deals with issues specific to the recognition and

³⁸⁷ See, e.g., Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 GN 136 of GG 20876 (9 Feb. 2000) (which prohibits discrimination on various grounds, chapter 2 is devoted to the prevention, prohibition and elimination of unfair discrimination, hate speech and harassment amended by Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002).

³⁸⁸ John Mukum Mbaku, *International Standards Regarding Child Marriage and African Legal Systems*, 54 CAL. W. INT'L L. J. 91, 146 (2023).

protection of the rights of all citizens, including persons with albinism. These include (i) equality before the law; (ii) the role that the State must play in “recognizing, respecting, promoting, and protecting” the human and fundamental rights of persons with albinism;³⁸⁹ (iii) the inherent dignity of all human beings, including persons with albinism; (iv) the right of every individual to life and to freedom and security of the person; and (v) prohibition against harmful customary and traditional practices (e.g., muti or ritual murder).³⁹⁰ However, if an African country’s constitution already contains a Bill of Rights, reformers should review it in order to ensure that it has provisions that guarantee the right of all citizens to “bodily integrity.”³⁹¹

Today, in countries such as Burundi, Malawi, Namibia, South Africa, Tanzania, and Zimbabwe, violence and discrimination against persons with albinism remain crucial threats to their enjoyment of various rights and fundamental freedoms. According to Transparency International, “[p]ersons with albinism endure structural and systemic discrimination across southern Africa.”³⁹² In addition, most of them “continue to live in fear for their lives, as they are actively hunted for their body parts in many countries across the region.”³⁹³ Even when persons with albinism die from natural causes and are buried, their graves are regularly “tampered with and their remains stolen.”³⁹⁴ Thus, each African country must consider the right of citizens, including especially persons with

³⁸⁹ John Mukum Mbaku, *International Human Rights Law and the Tyranny of Harmful Customary and Traditional Practices on Women in Africa*, 52 CAL. W. INT’L L. J. 1, 29 (2021).

³⁹⁰ H. J. Scholtz et al., *Muti or Ritual Murder*, 87 FORENSIC SCI. INT’L 117, 117 (1997) (examining the South African traditional practice of muti, which involves the murder of persons with albinism and their body parts are extracted and used for ritual sacrifices, supposedly “to rid the community of evil, or to confer special privileges on the murderers”).

³⁹¹ See Mbaku, *supra* note 389. Violence against persons with albinism often involves gross violations of their body integrity—many of them are murdered and their body parts are harvested for sale to those seeking to use them for various traditional practices. In some cases, the body parts of persons with albinisms are harvested while the people are still alive. See also Kizito Makoye, *Tanzanian Court Sentenced Six to Prison for Cutting Off the Hand of Albino Boy*, GLOB. CITIZEN (Sept. 5, 2017), <https://www.globalcitizen.org/en/content/six-jailed-in-tanzania-for-chopping-off-hand-of-al/#:~:text=Tanzanian%20Court%20Sentenced%20Six%20to,the%20Hand%20of%20Albino%20Boy&text=DAR%20ES%20SALAAM%2C%20Sept%204,it%20as%20a%20witchcraft%20charm> (noting the “severing [of] the left hand of 12-year old Mwigulu Matonange in February 2013 and running away with it . . .”).

³⁹² See AMNESTY INT’L, *supra* note 166.

³⁹³ *Id.*

³⁹⁴ *Id.*

albinism, to be free from traditional and customary practices that violate their bodily integrity, a fundamental right that must be inserted into the Bill of Rights.³⁹⁵

After making certain that all laws (national constitution, statutory and customary laws) conform with the provisions of international and regional human rights instruments, it is critical for each African country to then criminalize violence against persons with albinism, including the violation of their bodily integrity. This can be accomplished by either enacting a new Criminal Code or amending an existing one to prohibit harmful practices, including those like ritual or *muti* murders, which often implicate the killing of persons with albinism for the purpose of harvesting their body parts to be used for medicinal purposes.³⁹⁶ The new or revised/amended Criminal Code should, at the minimum, criminalize the following acts: infanticide and abandonment of children with albinism; discrimination against individuals solely because they are living with albinism; trafficking in persons and sale of children with albinism or their body parts; abduction and snatching of persons and children with albinism; accusations of witchcraft; ritual attacks and/or murders.³⁹⁷

In her report to the Human Rights Council on harmful practices and hate crimes targeting persons with albinism, the Independent Expert on the enjoyment of human rights by persons with albinism, Ms. Muluka-Anne Miti-Drummond, noted that “[w]hile violations and abuses have been categorized under harmful practices against persons with albinism,” she “also views such cases as *hate crimes* under the same rubric.”³⁹⁸ She states further that “[t]he egregiousness of these violations and their ongoing occurrence against this specific group of people with their particular physical characteristics are vital factors in understanding the situation of persons with albinism as targets of hate crimes.”³⁹⁹

As made clear by the former Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Agnes Callamard, “witchcraft-related violations of the right to life [are] arbitrary killings that should trigger State responsibility whenever the State has failed to act to prevent killings that were foreseeable and preventable.”⁴⁰⁰ She then recommended that “witchcraft-related killings, which also affect persons with albinism,” should “be treated as hate crimes, requiring

³⁹⁵ The Bill of Rights in each African constitution must conform to the provisions of international and regional human rights instruments.

³⁹⁶ M. Steyn, *Muti Murders from South Africa: A Case Report*, 151 FORENSIC SCI. INT’L 279, 279 (2005) (examining muti murders in South Africa).

³⁹⁷ Rep. of the Independent Expert on the Enjoyment of Human Rights by Persons With Albinism, Muluka-Anne Miti-Drummond, *Harmful Practices and Hate Crimes Targeting Persons with Albinism*, at 11, U.N. Doc. A/HRC/49/56, (Jan. 4, 2022) (examining harmful practices and hateful targeting persons with albinism).

³⁹⁸ *Id.* at 5 para. 18.

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* at 5 para. 19.

States to adopt a range of additional legal, investigatory, sentencing and protection measures whenever there were suspicions that a killing could be related to witchcraft.”⁴⁰¹ It is incumbent upon each African State to criminalize these hate crimes and provide the wherewithal for the domestic legal system to prosecute and bring to justice those who violate the rights of persons with albinism.

The next step in the reform process requires each African country to sign and ratify all the major regional and international human rights treaties and conventions. For African countries, these include the CEDAW, CRC, ICCPR (and its two protocols), the ICESCR, the Banjul Charter, the Convention on the Rights of Persons with Disabilities, the Maputo Protocol, and the African Charter on the Rights and Welfare of the Child.⁴⁰² Once an African country has signed and ratified an international or regional human rights instrument, it must then domesticate it and create rights that are justiciable in domestic or national courts.⁴⁰³ African countries, such as Cameroon, have used their national constitutions to affirm their attachment to various international human rights instruments.⁴⁰⁴ Unfortunately, these affirmations do not create rights that are justiciable directly in domestic courts. To ensure that rights enumerated in international human rights instruments are “directly justiciable in its domestic courts, a country can make reference to these instruments in its national constitution and specifically include a statement to the effect that ‘these instruments form part of this constitution’ or that they are ‘an integral part of this constitution and of national law.’”⁴⁰⁵

When the Republic of Kenya adopted a new constitution in 2010, the drafters wrote provisions that dealt directly with the applicability of international law within Kenya and in its domestic courts. For example, Article 2(5) states as follows: “The rules of international law shall form part of the law of Kenya.”⁴⁰⁶ Pursuant to this provision, the “general rules of international law” are rendered justiciable in the domestic courts of Kenya.⁴⁰⁷ In addition, Kenya’s 2010 Constitution provides a way for international conventions and treaties that the country has ratified to be domesticated.⁴⁰⁸ According to Article 2(6), “[a]ny treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”⁴⁰⁹ Thus, each African country can, through its constitution, “put

⁴⁰¹ *Id.*

⁴⁰² Although these international and regional human rights instruments do not specifically address violence against persons with albinism, they seek to eliminate various practices that harm persons with disabilities, including those that interfere with the body integrity of persons with albinism. *See*, Mbaku, *supra* note 389, at 30.

⁴⁰³ *Id.*

⁴⁰⁴ *See* CONSTITUTION June 2, 1972, pmbl. (Cameroon).

⁴⁰⁵ *See* Mbaku, *supra* note 389, at 30.

⁴⁰⁶ *See* CONSTITUTION Aug. 4, 2010, art. 2(5) (Kenya).

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.* art. 2(6).

⁴⁰⁹ *Id.*

to rest any doubts as to whether international law, including customary international law, is law within its national jurisdiction.”⁴¹⁰

Each African country must engage in a systematic and purposeful process of reviewing the traditions and customs of all its ethnocultural groups in order to modify or abolish those practices that are harmful to persons with albinism. Each African country must understand that its laws, “whether [they are] based on statute, custom, or the constitution, must conform with and reflect provisions of international human rights instruments.”⁴¹¹ Most importantly, prohibitions against these practices, “whether based on tradition, custom, religion or other ascriptive factors” and which harm persons with albinism and/or threaten their human rights and fundamental freedoms, or “interfere with their physical [or bodily] integrity, must be entrenched in the constitution.”⁴¹² Constitutionally entrenching these laws will ensure that they cannot easily be abrogated through ordinary legislation, for example, in response to lobbying by special-interest groups.⁴¹³

The enforcement of laws that criminalize violence against persons with albinism requires a judiciary that is independent and has the capacity to perform its functions without interference from the political branches. Hence, in order to enhance the ability of a legal system in an African country to fully enforce the laws, including those that criminalize practices that harm persons with albinism, it is necessary that each country provide itself with “institutional arrangements that guarantee judicial independence, enhance the ability of the judiciary to withstand interference from other branches of government, especially the executive, and provide the judiciary with the legal tools to act independently as a check on the exercise of government power.”⁴¹⁴ Thus, in the sub-section that follows, this article will examine the concept of judicial independence and its relevance to the protection of the rights of persons with albinism.

D. Independence of the Judiciary as a Critical Factor in the Protection of the Rights of Persons with Albinism

Many African countries currently have governing processes that are characterized by “imperial or reinforced presidencies, relatively weak legislatures, and civil societies that are not politically active enough to fully serve as a guard on

⁴¹⁰ See John Mukum Mbaku, *International Law and Limits on the Sovereignty of African States*, 30 FLA. J. INT’L L. 43, 72 (2018).

⁴¹¹ Mbaku, *supra* note 389, at 31.

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ See John Mukum Mbaku, *African Courts and International Human Rights Law*, 48 BROOK. J. INT’L L. 445, 478 (2023).

the exercise of government power.”⁴¹⁵ In countries with such governing processes, the courts represent an important institution that can fight impunity by both state and non-state actors and effectively protect the rights of vulnerable groups, such as women, girls, ethnic minorities, and persons with albinism.⁴¹⁶ Unfortunately, in many African countries, the executive controls both the judicial and legislative branches of government.⁴¹⁷ For example, in a recent study conducted by the Africa Center for Strategic Studies (Washington, D.C.), Paul Nantulya determined that “[t]he widespread politicization, corruption, and co-optation of courts, electoral commissions, and other institutions is one reason why more than half of Africa’s 19 elections this year [2024] are likely to be largely perfunctory formalities where election results are known in advance.”⁴¹⁸

Nantulya also found that in recent elections in the Democratic Republic of Congo (“DRC”), Zimbabwe, Egypt, Gabon, Sierra Leone, Madagascar and Uganda, most opposition leaders declined to petition the courts to adjudicate their post-election grievances because they believed that the judiciary system was not independent but was beholding to the incumbent regime.⁴¹⁹ Courts are a very important democracy-promoting institution and more importantly, they are critical for the protection of human rights and fundamental freedoms. However, to fulfil this important role, the judiciary must be granted necessary independence. If courts are co-opted by the executive, “they can rubber-stamp illegalities, entrench impunity, and weaken oversight institutions.”⁴²⁰

According to a 2017 survey on the judiciary in Africa, Afrobarometer determined that courts are among the most distrusted institutions in the continent.⁴²¹

⁴¹⁵ *Id.*; See also John Mukum Mbaku, *Protecting Human Rights in African Countries: International Law, Domestic Constitutional Interpretation, the Responsibility to Protect, and Presidential Immunities*, 16 S. C. J. INT’L L. & BUS. 1, 164–65 (2019).

⁴¹⁶ See Mbaku, *supra* note 414.

⁴¹⁷ See, e.g., U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices for 2018: Cameroon 11 (2018) (noting that in Cameroon, “[t]he court system is subordinate the Ministry of Justice, which in turn is under the president”); see also Gabon: *Freedom in the World 2021 Country Report*, FREEDOM HOUSE (2021), <https://freedomhouse.org/country/gabon/freedom-world/2021#:~:text=The%20courts%20are%20subordinate%20to,to%20appoint%20and%20dismiss%20judges> (noting that the courts are subordinate to the president and the “[t]he judiciary is accountable to the Ministry of Justice, through which the president has the power to appoint and dismiss judges”).

⁴¹⁸ Paul Nantulya, *Regime Capture of the Courts in Africa*, AFR. CTR. FOR STRATEGIC STUD. (Feb. 27, 2024), <https://africacenter.org/spotlight/regime-capture-courts-africa/>.

⁴¹⁹ See *id.*

⁴²⁰ *Id.*

⁴²¹ See Carolyn Logan, *Ambitious SDG Goal Confronts Challenging Realities: Access to Justice is Still Elusive for Many Africans*, AFROBAROMETER 1, 5 (Mar.

For example, across 36 African countries, Afrobarometer found that 43% of respondents trusted the courts “not at all,” while 33% of respondents believed the majority of judges and magistrates were corrupt.⁴²² Many African executives use various tactics to “control and co-opt courts.”⁴²³ While national constitutions may grant the chief justice the power to “lead the judiciary,” the “real power lies with the justice minister and attorney general—trusted members of the executive, and often the ruling party.”⁴²⁴ These members of the executive “exercise outsized influence on how judiciaries function, including budgets, administration, and even the types of cases they can hear.”⁴²⁵

Many of today’s francophone African countries have governing processes characterized by separation of powers with what are supposed to be checks and balances.⁴²⁶ However, in these political systems, the executive branch of government dominates the legislature and the judiciary.⁴²⁷ For example, Cameroon’s 1996 Constitution introduced the concept of separation of powers with checks and balances into the country’s governance architecture.⁴²⁸ However, the executive dominates and controls the other two branches of government.⁴²⁹ Cameroon’s legislative branch, the Parliament, consists of two chambers—the

2017), https://www.afrobarometer.org/wp-content/uploads/2022/02/ab_r6_polycypaperno39_access_to_justice_in_africa_eng.pdf.

⁴²² *Id.* at 5–6.

⁴²³ Nantulya, *supra* note 418.

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ *See* CONSTITUTION DE LA RÉPUBLIQUE TOGOLAISE Oct. 14, 1992 (rev. 2007), art. 51 (Togo); CONSTITUTION DE LA REPUBLIQUE DU CAMEROUN June 2, 1972 (rev. 2008), pmbl. (Cameroon); CONSTITUTION DE LA RÉPUBLIQUE DE CÔTE D’IVOIRE Nov. 8, 2016, pmbl.; CONSTITUTION DE LA REPUBLIQUE DU BENIN Dec. 2, 1990, arts. 41–42.

⁴²⁷ JOHN MUKUM MBAKU, PROTECTING MINORITY RIGHTS IN AFRICAN COUNTRIES: A CONSTITUTIONAL POLITICAL ECONOMY APPROACH 132 (2018).

⁴²⁸ *Id.* at 137.

⁴²⁹ *See* U.S. Dep’t of State, *supra* note 417, at 11 (noting that in Cameroon, “[t]he constitution designates the president as ‘first magistrate,’ thus ‘chief’ of the judiciary, making him the legal arbiter of any sanctions against the judiciary”). In addition, the president’s political party controls both the National Assembly and the Senate, the two chambers of Parliament. *See, e.g.,* Tansa Musa, *Cameroon Assembly Clears Way for Biya Third Term*, REUTERS (Apr. 10, 2008), <https://www.reuters.com/article/economy/cameroon-assembly-clears-way-for-biya-third-term-idUSL10840480/> (noting the domination of the National Assembly by the ruling Cameroon People’s Democratic Movement).

Senate (*le Sénat*)⁴³⁰ and the National Assembly (*l'Assemblée nationale*).⁴³¹ The government controls the National Assembly (with 162 out of 180 members)⁴³² and the Senate (with 96 out of 100 members).⁴³³ In addition, Cameroon's president is also granted the power by the Constitution, to guarantee the independence of the judiciary.⁴³⁴ According to Article 37(3), "[t]he President of the Republic shall guarantee the independence of judicial power."⁴³⁵ In addition, this provision also states that the President "shall appoint members of the bench and of the legal department."⁴³⁶

In a study of the human rights situation in Cameroon, the U.S. Department of State determined that "[d]espite the judiciary's partial independence from the executive and legislative branches, the president of the republic appoints all members of the bench and legal department of the judicial branch, including the president of the Supreme Court, and may dismiss them at will."⁴³⁷ The U.S. Department of State also determined that in Cameroon, "[t]he court system is subordinate to the Ministry of Justice, which in turn is under the president."⁴³⁸ The constitution designates the president as the "'first magistrate,' thus 'chief' of the judiciary, making him the legal arbiter of any sanctions against the judiciary."⁴³⁹

The imbalance in power among the three branches of government in Cameroon and other African countries represents a major obstacle to the effective protection of human rights generally and the rights of persons with albinism in particular.⁴⁴⁰ Since the judiciary is often called upon "to adjudicate matters or

⁴³⁰ The Senate is made up of 100 Senators. CENTRAL INTELLIGENCE AGENCY, *Cameroon*, THE WORLD FACTBOOK 13 (last updated Oct. 28, 2024), <https://www.cia.gov/the-world-factbook/countries/cameroon/>.

⁴³¹ The National Assembly is made up of 180 MPs. *Id.*

⁴³² Of these, the President's party, the Cameroon People's Democratic Movement (CPDM) accounts for 152 members, and two other parties, which are part of the government, the National Union for Democracy and Progress (UNDP) and the Front for the National Salvation of Cameroon (FNSC) account for 7 and 3 members, respectively. *Id.* at 14.

⁴³³ The CPDM, UNDP, and FNSC account for 94, 1, and 1 member(s), respectively. *Presentation of the Cameroonian Senate*, SENAT (last visited Sept. 15, 2024), https://senat.cm/?page_id=2246&lang=en.

⁴³⁴ CONSTITUTION DE LA REPUBLIQUE DU CAMEROUN June 2, 1972 (rev. 2008), art. 37(3) (Cameroon).

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices for 2022: Cameroon 13 (2022).

⁴³⁸ U.S. Dep't of State, *supra* note 417.

⁴³⁹ *Id.*

⁴⁴⁰ Mbaku, *supra* note 414, at 479. See also Amnesty International, *Malawi: Impunity Fuels Killings of People with Albinism for Their Body Parts* (June 28, 2018),

conflicts bearing directly on the protection of human rights,” including, of course, those of persons with albinism,⁴⁴¹ it is important that its independence be constitutionally guaranteed in order to minimize interference by the political branches of government in its activities.⁴⁴²

The Constitutional Court of South Africa (“ZACC”), the country’s highest court, ruled on judicial independence. In *De Lange v. Smuts*, the ZACC held that “judicial independence . . . is foundational to and indispensable for the discharge of the judicial function in a constitutional democracy based on the rule of law.”⁴⁴³ In addition, the ZACC ruled that judicial independence “of which structural independence is an indispensable part, is expressly proclaimed, protected and promoted by subsections (2), (3) and (4) of section 165 of the Constitution.”⁴⁴⁴ The ZACC guaranteed judicial independence in the following manner:

(2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

(3) No person or organ of state may interfere with the functioning of the courts.

(4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.⁴⁴⁵

Writing for the ZACC, Justice O’Regan cited *Valente v. The Queen*, a case of the Supreme Court of Canada where Le Dain J held as follows:

It is generally agreed that judicial independence involves both individual and institutional relationships: the individual independence of a judge, as reflected in such matters as security of tenure, and the institutional independence of the court or tribunal over which he or she presides, as reflected

<https://www.amnesty.org/en/latest/news/2018/06/malawi-impunity-fuels-killings-of-people-with-albinism-for-their-body-parts/>.

⁴⁴¹ Mbaku, *supra* note 414, at 479. For example, a study by Amnesty International found that in Malawi, civil society was quite concerned about the government’s “‘laissez-faire’ attitude towards combating attacks against people with albinism.” See Amnesty International, *End Violence Against People with Albinism: Towards Effective Criminal Justice for People with Albinism in Malawi* (June 28, 2018) at 20, <https://www.amnestyusa.org/wp-content/uploads/2018/06/Malawi-2018Albinism-briefing.pdf>.

⁴⁴² Mbaku, *supra* note 414, at 479. See also *Valente v. The Queen*, [1985] 2 S.C.R. 673, 675 (Can.) (enumerating the minimum requirements for judicial independence, which include freedom from “arbitrary interference by the Executive”).

⁴⁴³ *De Lange v. Smuts NO and Others* 1998 (3) SA 785 (CC) at 50–51 para. 59 (S. Afr.).

⁴⁴⁴ *Id.* at 51 para 59.

⁴⁴⁵ S. AFR. CONST., 1996, § 165 (2)(4).

in its institutional or administrative relationships to the executive and legislative branches of government. . . . The relationship between these two aspects of judicial independence is that an individual judge may enjoy the essential conditions of judicial independence but if the court or tribunal over which he or she presides is not independent of the other branches of government, in what is essential to its function, he or she cannot be said to be an independent tribunal.⁴⁴⁶

Through *De Lange*, the ZACC effectively endorsed the requirements for judicial independence spelled out by the Supreme Court of Canada in *Valente*.⁴⁴⁷ Justice Le Dain, writing for the Court in *Valente*, held that “[s]ecurity of tenure” is the “first of the essential conditions for judicial independence” and that “the essentials of security of tenure may be provided by constitutional or legislative provision.”⁴⁴⁸ Le Dain J emphasized that the critical factor in security of tenure is “that the judge be removable only for cause, and that cause be subject to independent review and determination by a process at which the judge affected is afforded a full opportunity to be heard.”⁴⁴⁹ In conclusion, “[t]he essence of security of tenure . . . is a tenure, whether until an age of retirement, for a fixed term, or for a specific adjudicative task, that is secure against interference by the Executive or other appointing authority in a discretionary or arbitrary manner.”⁴⁵⁰

Although African countries do not have to adopt Canada’s approach to the security of tenure for judicial officers, including judges, the ruling in *Valente* can provide them with important lessons on how to structure their governing processes to fully and effectively guarantee the security of tenure for judicial officers. First, each African country must recognize security of tenure as an essential and indispensable element of judicial independence.⁴⁵¹ Second, the political branches (the legislature and the executive) must not be allowed to arbitrarily interfere with the execution of the judicial function.⁴⁵² Third, if it becomes necessary for a judicial officer to be removed from office, this must be undertaken through an open and transparent process, one that provides the affected individual the “opportunity to be heard, in person or by counsel, and to cross-examine witnesses and adduce evidence.”⁴⁵³

Given the fact that the legislative branch is most likely to be involved in the process of removing a judicial officer, it is critical that the legislature be

⁴⁴⁶ *Valente*, *supra* note 442, at 687.

⁴⁴⁷ The standard for judicial independence was set out by the Supreme Court of Canada in *Valente v. The Queen*. See *id.* at 694–712.

⁴⁴⁸ *Id.* at 694–95.

⁴⁴⁹ *Id.* at 698.

⁴⁵⁰ *Id.*

⁴⁵¹ Mbaku, *supra* note 414, at 483.

⁴⁵² *Id.*

⁴⁵³ *Id.*

independent enough of the executive so that it can perform its constitutional functions without interference by the president or other high-ranking officials.⁴⁵⁴ That is, parliament should and must not be a “rubber stamp” that serves only to do the “bidding of the president.”⁴⁵⁵ The National Assembly in today’s Cameroon, for example, is generally considered a “rubber stamp Parliament which is governed by party discipline” and “not the rule of law or the common interest.”⁴⁵⁶

The second essential element of judicial independence, as enumerated in *Valente*, is financial security, which can be interpreted as “security of salary or other remuneration, and, where appropriate, security of pension.”⁴⁵⁷ As held by Justice Le Dain, “[t]he essence of such security [to a judicial officer] is that the right to salary and pension should be established by law and not be subject to arbitrary interference by the Executive in a manner that could affect judicial independence.”⁴⁵⁸ The decision in *Valente* distinguishes “between a right to a pension and a pension that depends on the grace or favor of the Executive.”⁴⁵⁹ There are discussions in the legal literature over whether compensation for judicial officers should be determined by the legislature instead of by “the executive government and whether these salaries should be made a charge on the account into which taxes and revenue are deposited (i.e., the Consolidated Revenue Fund) instead of requiring an annual appropriation.”⁴⁶⁰

While Justice Le Dain states that this distinction is not critical for judicial independence in Canada, “it can actually have a significant impact on the independence of the judiciary in African countries, particularly those such as Cameroon, which have imperial presidencies.”⁴⁶¹ For example, Professor Charles Manga Fombad, an expert on judicial independence in Cameroon, stated that incumbent President Paul Biya has, during most of his tenure as the country’s chief executive, routinely manipulated judicial officers’ compensation packages in order to improve his chances of being declared the winner of presidential elections.⁴⁶² The key to enhancing judicial independence and hence, its ability to bring to justice individuals or groups that violate the rights of persons with

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*

⁴⁵⁷ *Valente*, *supra* note 442, at 704.

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ Mbaku, *supra* note 414, at 484.

⁴⁶¹ *Id.*

⁴⁶² CHARLES MANGA FOMBAD, *Endemic Corruption in Cameroon: Insights on Consequences and Control*, CORRUPTION AND DEVELOPMENT IN AFRICA: LESSONS FROM COUNTRY CASE STUDIES 234, 247–48 (Kempe Ronald Hope, Sr. & Bornwell C. Chikulo eds., 2000).

albinism, is to make sure that the judiciary is independent and free from manipulation by the political branches.

In its study of the role played by the judiciary in controlling corruption in Ghana, Global Integrity determined that “the lack of judicial independence from the executive is one of the root causes of a judiciary’s inability to uphold the law.”⁴⁶³ In its 2016 report, Global Integrity concluded that “judicial independence is not guaranteed in about half of the 54 African countries.”⁴⁶⁴ Thus, significantly improving the legal environment where the human rights and fundamental freedoms of persons with albinism can be recognized and protected requires constitutionally guaranteeing the independence of the judiciary.⁴⁶⁵

The third essential element for judicial independence, as provided in *Valente* by Le Dain J, is “institutional independence of the tribunal with respect to matters of administration bearing directly on the exercise of its judicial function.”⁴⁶⁶ In many countries, an important issue that has to be decided is “[t]he degree to which the judiciary should ideally have control over the administration of the courts.”⁴⁶⁷ Courts in several countries, including Canada, have made a clear distinction “between adjudicative independence and administrative independence.”⁴⁶⁸ In countries, such as the United States, however, “the federal judiciary is a separate branch which includes judicial administration.”⁴⁶⁹

Whether the judiciary is granted the power of adjudication and administration by the constitution or whether these functions “are split between the Judiciary and the Executive, the key to judicial independence is that the law adequately constrains the State so that the Executive is not able to⁴⁷⁰ ‘interfere with, or . . . influence the adjudicative function of the judiciary.’”⁴⁷¹ If the judiciary is not granted full responsibility for and control of judicial administration, then it is important that judicial officers work closely with the Executive and its representatives. Under this type of institutional arrangement, it is important that judicial officers are not “captured” by the Executive and his or her representatives, a process that can effectively place the judiciary “in a position to be unduly and arbitrarily influenced.”⁴⁷²

⁴⁶³ Franck Kuwonu, *Judiciary: Fighting Graft Needs Muscle*, 30 AFR. RENEWAL 10, 10 (2016), <https://www.un-ilibrary.org/content/journals/25179829/30/2/5/read>.

⁴⁶⁴ *Id.*

⁴⁶⁵ Mbaku, *supra* note 414, at 485.

⁴⁶⁶ *Valente*, *supra* note 442, at 708 para. VI.

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ Mbaku, *supra* note 414, at 485 (quoting *Valente*, [1985] 2 R.C.S. 673, 709 para. VI).

⁴⁷¹ *Valente*, *supra* note 442, at 709 para. VI.

⁴⁷² Mbaku, *supra* note 414, at 486 (quoting *Valente v. The Queen*, [1985] 2 S.C.R. 673, 709 (Can.))

In the case of collective or institutional independence, the Canadian Supreme Court has held that at the minimum, the judiciary should be granted control over the “assignment of judges, sittings of the court, and court lists—as well as the related matters of allocation of court rooms and direction of the administrative staff engaged in carrying out these functions.”⁴⁷³ Among the issues that bear directly on institutional independence are “the financial aspects of court administration—budgetary preparation and presentation and allocation of expenditure—and in the personnel aspects of administration—the recruitment, classification, promotion, remuneration, and supervision of the necessary support staff.”⁴⁷⁴

In *Valente*, Justice Le Dain also held that there are other elements that are critical or desirable for judicial independence and these include “independence in budgeting and in expenditure of an approved budget, and independence in administration, covering not only the operation of the Courts but also the appointment and supervision of the supporting staff.”⁴⁷⁵ In addition, held Justice Le Dain, “[b]udget independence does not mean that Judges should be allowed to fix their own salaries; it means simply that the budget should not be part of any departmental budget but should be separately presented and dealt with.”⁴⁷⁶

Canada’s former Chief Justice, Brian Dickson CJ, held in *The Queen v. Beauguard* that “[p]reparation of judicial budgets and distribution of allocated resources should be under the control of the Chief Justice of the various courts, not the Ministers of Justice” and that “[c]ontrol over finance and administration must be accompanied by control over the adequacy and direction of support staff.”⁴⁷⁷ In *Bauregard*, Dickson CJ summarized the principle of judicial independence as follows:

Historically, the generally accepted core of the principle of judicial independence has been the complete liberty of individual judges to hear and decide the cases that come before them: no outsider—be it government, pressure group, individual or even another judge—should interfere in fact, or attempt to interfere, with the way in which a judge conducts his or her

⁴⁷³ *Valente*, supra note 442, at 709 para. VI.

⁴⁷⁴ *Id.* at 709–10 para. VI.

⁴⁷⁵ *Id.* at 710 para. VI (quoting Bora Laskin, Chief Just., Sup. Ct. of Can., Address to the Canadian Association of Provincial Court Judges, New Judges Programme, Ottawa, Some Observations on Judicial Independence (Nov. 1, 1980) (unpublished manuscript available in The Library, Supreme Court of Canada, Ottawa)).

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.* at 711 para. VI (quoting Brian Dickson, Chief Just., Sup. Ct. of Can., Address to the Canadian Bar Association, Halifax, The Rule of Law: Judicial Independence and the Separation of Powers, (Aug. 21, 1985) (unpublished manuscript available in The Library, Supreme Court of Canada, Ottawa)).

case and makes his or her decision. This core continues to be central to the principle of judicial independence.⁴⁷⁸

Dickson CJ stated further that “[t]he ability of individual judges to make decisions in discrete cases free from external interference or influence continues, of course, to be an important and necessary component of the principle [of judicial independence]. Today, however, the principle is far broader.”⁴⁷⁹ Legal scholars argue that “[t]he judiciary has developed from a dispute-resolution mechanism, to a significant social institution with an important constitutional role which participates along with other institutions in shaping the life of its community.”⁴⁸⁰ Today, “judicial independence involves both individuals and institutional relationships: the individual independence of a judge, as reflected in such matters as security of tenure, and the institutional independence of the court or tribunal over which he or she presides, as reflected in its institutional or administrative relationships to the executive and legislative branches of government.”⁴⁸¹ According to Chief Justice Dickson:

[t]he rationale for this two-pronged modern understanding of judicial independence is recognition that the courts are not charged solely with the adjudication of individuals cases. That is, of course, one role. It is also the context for a second, different and equally important role, namely as protector of the Constitution and the fundamental values embodied in it—rule of law, fundamental justice, equality, preservation of the democratic process, to name perhaps the most important.⁴⁸²

While it is true that judicial independence is critical for “the effective and fair adjudication of individual cases,”⁴⁸³ it can also be considered “the lifeblood of constitutionalism in democratic societies.”⁴⁸⁴ The recognition and protection of the rights and fundamental freedoms of persons with albinism in African countries requires not just ensuring that all national laws (the constitution, statutory and customary laws) conform to the provisions of international human rights instruments, but also that the country is provided with “a judiciary that is independent enough to be able to enforce [human rights] without arbitrary interference from the other branches of government, particularly, the executive.”⁴⁸⁵

⁴⁷⁸ *The Queen v. Beauregard* [1986] 2 S.C.R. 56, 69 (Can.).

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.* at 69 (quoting PROFESSOR SHIMON SHETREET, *The Emerging Transnational Jurisprudence on Judicial Independence: The IBA Standards and Montreal Declaration*, JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE 393, 393 (S. Shetreet & J. Deschênes eds., 1985)).

⁴⁸¹ *Beauregard*, *supra* note 478, at 70 (quoting *Valente v. The Queen*, [1985] 2 S.C.R. 673, 687 (Can.)).

⁴⁸² *Id.*

⁴⁸³ Mbaku, *supra* note 414, at 488.

⁴⁸⁴ *Beauregard*, *supra* note 478, at 70.

⁴⁸⁵ Mbaku, *supra* note 414, at 488.

Securing such an independent judiciary should begin with holistic and comprehensive constitutional reforms undertaken through a participatory and inclusive process to provide each African country with a governing process undergirded by the separation of powers with checks and balances. The independent judiciary should be considered one of the checks and balances.

The full protection of the human rights and fundamental freedoms of persons with albinism in African countries should involve three important inter-related steps. First, each African country must sign and ratify relevant international and regional human rights instruments (e.g., the Banjul Charter; the African Child Charter; the Maputo Protocol; CEDAW; ICCPR; ICESCR; International Convention on the Rights of Persons with Disabilities). Second, the country must domesticate each instrument to create rights that are justiciable in its domestic courts. Finally, the country must undertake robust and holistic institutional reforms to provide itself with a governing process that is undergirded by separation of powers with checks and balances, including an independent judiciary.⁴⁸⁶

Undertaking the necessary institutional reforms to provide each African country with a governing process characterized by an independent judiciary is complex and will take time. However, in the short term, judges in several African countries “are challenging the status quo and using their powers to interpret their respective constitutions and determine the constitutionality of laws, including customary laws, to invalidate and declare null and void, those laws and customs that violate the national constitution and international human rights instruments.”⁴⁸⁷ Judges in Botswana,⁴⁸⁸ Nigeria,⁴⁸⁹ and South Africa,⁴⁹⁰ for example,

⁴⁸⁶ John Mukum Mbaku, *International Law, Corruption and the Rights of Children in Africa*, 23 SAN DIEGO INT’L L.J. 195, 227 (2022).

⁴⁸⁷ Mbaku, *supra* note 414, at 488.

⁴⁸⁸ See *Ramantele v. Mmusi and Others* (CACGB-104-12) [2013] BWCA, at 67 (ruling that the Ngwaketse customary law of inheritance does not prohibit female children from inheriting as intestate heirs to their deceased parents’ family homestead).

⁴⁸⁹ In *Ukeje v. Ukeje* and *Anekwe v. Nwekwe*, the Supreme Court of Nigeria declared unconstitutional and hence, null and void, the prohibition, by customary law, of the female child’s right to inherit the property of her deceased father’s estate). See *Ukeje v. Ukeje* (2014) 11 NWLR (PT 1418) 384 (Nigeria); *Anekwe v. Nweke* (2014) 9 NWLR (PT 1412) 392 (Nigeria).

⁴⁹⁰ In *Government of the Republic of South Africa v. Grootboom*, the Constitutional Court of South Africa ruled that the country’s housing authorities violated the constitution by failing to develop and adopt a housing plan that would have provided for the immediate needs of persons who had been evicted from their informal housing units). See *Gov’t of the Republic of S. Afr. v. Grootboom* 2000 (1) SA 46 (CC) at 66 para. 95 (S. Afr.).

are performing this function and directing the legislative branch to cure the defect in the law.⁴⁹¹

The recognition and protection of the rights of persons with albinism also requires the participation of various international and domestic institutions. For example, NGOs within each African country can educate members of various communities about violence against people with albinism, encourage political leaders to publicly condemn attacks against and killings of persons with albinism, and help the police investigate crimes against persons with albinism. In the sub-section that follows, this article will provide an overview of the importance of civil society advocacy activities, as well as those of international organizations, on behalf of persons with albinism in African countries. All these activities and actions are designed to minimize violence against persons with albinism and significantly improve the promotion and protection of their human rights and fundamental freedoms.

E. International and Domestic Advocacy on Behalf of Persons with Albinism in Africa

Advocacy by both domestic and international organizations who promote the rights of persons with albinism is critical to the recognition and protection of the rights of this extremely vulnerable group of persons. Without such strong and robust advocacy, violence against persons with albinism in the African countries is likely to continue.⁴⁹² For example, the Office of the U.N. Commissioner for Human Rights (“OHCHR”) adopted initiatives to promote “awareness and promote the protection of the rights of persons with albinism, thus increasing the visibility of violations against the group, which until then had received little attention from the international community.”⁴⁹³

The OHCHR has numerous mechanisms that could be used to enhance the protection of the rights of persons with albinism. For example, the OHCHR can use his or her voice, press statements, “side-events on the margins of Human Rights Council sessions,” and “online public information campaigns,” to increase understanding and raise awareness of albinism.⁴⁹⁴ At both the international and domestic levels, artists can be used to reach a greater audience through their “voices and work.”⁴⁹⁵ For example, in 2018, singer-songwriter and albino activist Salif Keita “assembled an international forum on protecting albino people in Africa and dedicated a benefit concert to a 5-year-old albino girl who was

⁴⁹¹ Mbaku, *supra* note 388, at 169.

⁴⁹² Human Rights Council Study on the Situation, *supra* note 364, at 11–12.

⁴⁹³ *Id.* at 12 para. 45.

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.* at 12 para. 46.

kidnapped, tortured and killed in Mali in May [2018].”⁴⁹⁶ Also, on December 5, 2013, in celebration of Human Rights Day, Keita performed a concert as part of his advocacy work for persons with albinism in Africa at the Palais des Nations in Geneva, Switzerland.⁴⁹⁷

While international advocacy is important, it is equally critical that work is done at the domestic and regional levels to create awareness of albinism. With respect to domestic advocacy, civil society and its organizations can and should play a very important role. They can engage with regional human rights mechanisms and institutions, such as the African Commission on Human and Peoples’ Rights (“African Commission”), the African Court on Human and Peoples’ Rights (“African Human Rights Court”), and the ECOWAS Community Court of Justice.⁴⁹⁸ For example, in 2021, Blind South Africa (“Blind SA”), an NGO that advocates on behalf of the blind, “felt that the issue of access to literary works for the blind could be delayed no longer, and approached the High Court for an order declaring the Copyright Act to be unconstitutional to the extent that it unjustifiably fails to make proper provision for blind people to access books.”⁴⁹⁹

Besides advocating on behalf of persons with albinism, international and domestic organizations can provide *assistance* to persons with albinism who are victims of crimes, violence, and discriminatory practices. For example, the U.N. Voluntary Fund for Victims of Torture (“VFVT”), which is managed by the OHCHR, provides direct assistance to “victims of torture and their family members through grants awarded to non-governmental channels of assistance,” which include “NGOs, rehabilitation centres, [and] associations of victims and family members.”⁵⁰⁰ For example, in 2014, the VFVT granted an emergency grant to the Tanzanian NGO, Under The Same Sun, to provide prosthetic services and psychological assistance to many men and women with albinism who

⁴⁹⁶ Baba Ahmed, *African Singer Makes Persecution of Fellow Albinos Visible*, AP NEWS (Nov. 18, 2018, 2:58 PM), <https://apnews.com/general-news-arts-and-entertainment-music-ea9f85f7418b437bb36e66dd21452d3c>.

⁴⁹⁷ *Human Rights Day Event Celebrates the 20th Anniversary of the Office*, U.N. Off. of the High Comm’r of Hum. Rts. (Dec. 4, 2013), <https://www.ohchr.org/en/stories/2013/12/human-rights-day-event-celebrates-20th-anniversary-office>.

⁴⁹⁸ See, e.g., John Mukum Mbaku, *The Emerging Jurisprudence of the African Human Rights Court and the Protection of Human Rights in Africa*, 56 VAND. J. TRANSNAT’L L. 367, 381–394 (2023) (noting the role played by various NGOs in bringing cases to the African Commission for Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights).

⁴⁹⁹ Jeremy de Beer, *South Africa: Copyright and the Rights of Blind People*, ENSAFRICA (Nov. 1, 2022), <https://www.ensafrika.com/news/detail/6365/south-africa-copyright-and-the-rights-of-blin>.

⁵⁰⁰ Human Rights Council Study on the Situation, *supra* note 364, at 11–12 para. 49.

were mutilated through brutal attacks.⁵⁰¹ This type of victim-focused financial assistance was renewed by the VFVT in 2015 in an effort to meet the needs of additional numbers of persons with albinism who were attacked and mutilated for the purpose of extracting their body parts for sale to people who believe, albeit erroneously, that they could use them to successfully heal various diseases, seek wealth, power or sexual conquest.⁵⁰²

There are also international human rights institutions that can advocate, even if indirectly, for the rights of persons with albinism. For example, the Human Rights Council, through the mandatory universal periodic review (“UPR”) and the treaty monitoring bodies (e.g., the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities), which interpret their respective treaties and monitor their implementation by States Parties, can make recommendations that can be used to improve the protection of the rights of persons with albinism.⁵⁰³ For example, in the April 2014 UPR of Côte d’Ivoire, “Spain expressed concern regarding discrimination against persons with albinism” and recommended that authorities in Côte d’Ivoire “take concrete steps to protect the rights of people with albinism, in accordance with the recommendations made by the Office of the High Commissioner, and raise awareness among society about their situation.”⁵⁰⁴

In addition, during the UPR of the Democratic Republic of Congo (“DRC”) in June 2014, Guatemala “shared the concern of the Committee on Economic, Social and Cultural Rights about the killing of persons with albinism and the use of their organs for witchcraft ceremonies” and a recommendation was made to the DRC “[t]o combat all forms of discrimination against persons with albinism.”⁵⁰⁵ In addition, in June 2014, the U.N. Human Rights Council, without a vote, adopted Resolution 26/10 recommending that the U.N. General Assembly (“UNGA”) declare June 13 as International Albinism Awareness Day and, on November 18, 2014, the UNGA made the suggested declaration.⁵⁰⁶ At the regional level, the African Commission on Human and Peoples’ Rights (“African Commission”) adopted Resolution 263 on the prevention of attacks and discrimination against persons with albinism.⁵⁰⁷ The resolution requires, among other

⁵⁰¹ *Id.* at 12–13 para 49.

⁵⁰² *Id.* See also *Tanzanian Children with Albinism, Hunted for Their Body Parts, Receive Prosthetic Limbs and a New Lease on Life*, ABC NEWS (Dec. 28, 2017, 9:36 AM), <https://abcnews.go.com/International/tanzanian-children-albinism-hunted-body-parts-receive-prosthetic/story?id=49496498>.

⁵⁰³ Human Rights Council Study on the Situation, *supra* note 364, at 13 para. 50.

⁵⁰⁴ *Id.* at para. 51.

⁵⁰⁵ *Id.* at para. 52.

⁵⁰⁶ G.A. Res. 69/170, *supra* note 369, at 2.

⁵⁰⁷ African Commission on Human and Peoples’ Rights, *Resolution on the Prevention of Attacks and Discrimination Against Persons with Albinism*, ACHPR

things, Member States of the African Union “to include in their reports to the African Commission information on the situation of persons with albinism, including good practices in protecting and promoting their rights.”⁵⁰⁸ Finally, in November 2013, the African Committee on the Rights and Welfare of the Child, the committee of experts that monitors the implementation of the African Charter on the Rights and Welfare of the Child (“ACRWC”), held its twenty-second ordinary session in Addis Ababa.⁵⁰⁹ At that meeting, the ACRWC discussed the situation of albinism in the continent and adopted a Declaration on Ending Discrimination and Violence against Girls in Africa.⁵¹⁰

The struggle to recognize and protect the rights of persons with albinism in Africa is complex and requires a holistic approach, one that involves the participation of all relevant stakeholders. Although countries, such as Malawi, Namibia, Tanzania, and South Africa, have made significant progress in bringing to justice people who violate the rights of persons with albinism, a lot of challenges remain. In the sub-section that follows, this article will examine some of those challenges.

F. Challenges to the Protection of the Rights of Persons with Albinism in Africa

One of the most important challenges to the protection of the rights of persons with albinism in African countries is the lack of knowledge about albinism, what it is, and the struggles and challenges faced by people with albinism in their daily lives.⁵¹¹ Oculocutaneous albinism (“OCA”) is defined as encompassing “a heterogeneous group of genetic conditions with an autosomal recessive inheritance” and is “characterized by hypopigmentation of the skin, hair and eyes due to a reduced or lack of cutaneous melanin pigment production.”⁵¹² Persons with albinism in Africa usually have “sandy coloured hair, white chalky skin and light brown or blue eyes” and these traits make them “more susceptible to the harmful effects of ultraviolet (UV) radiation.”⁵¹³

/Res.263(LIV)2013 (Nov. 5, 2013), <https://achpr.au.int/index.php/en/adopted-resolutions/263-resolution-prevention-attacks-and-discrimination-against-persons>.

⁵⁰⁸ Human Rights Council Study on the Situation, *supra* note 364, at 14 para. 57.

⁵⁰⁹ Rep. of the Twenty-Second Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), ACERWC/RPT (XXII) (Nov. 4–8, 2013), at 1, https://www.acerwc.africa/sites/default/files/2022-07/Report-22nd-ACERWC-Session_Eng.pdf.

⁵¹⁰ Human Rights Council Study on the Situation, *supra* note 364, at 14 para. 58.

⁵¹¹ Esther S. Hong, Hajo Zeeb & Michael H. Repacholi, *Albinism in Africa as a Public Health Issue*, BMC PUB. HEALTH *passim* (2006), <https://bmcpubli-chealth.biomedcentral.com/counter/pdf/10.1186/1471-2458-6-212.pdf>.

⁵¹² *Id.*

⁵¹³ *Id.*

Medical researchers have determined two types of OCA, namely, (i) tyrosinase negative (OCA1); and (ii) tyrosinase positive (OCA2).⁵¹⁴ OCA1 is characterized by “little or no melanin production due to the lack of a functional tyrosinase, the critical enzyme required in the melanin biosynthetic pathway.”⁵¹⁵ OCA2 is the more prevalent type of albinism and it exhibits “some level of tyrosinase activity, thereby producing some red-yellow photomelanin pigment that gives rise to sandy coloured hair and light brown irises.”⁵¹⁶ This population continues to suffer significant levels of “social discrimination and stigmatization” throughout many countries in Africa.⁵¹⁷ Human Rights Watch has determined that persons with albinism in Africa “are often denied the chance to go to school, get a job, have a family and face discrimination for their entire lives, simply because of their appearance.”⁵¹⁸

Maureen Mswela, a lecturer in law at the University of South Africa, has noted that “South Africans living with albinism are among the most marginalised and vulnerable of the country’s citizens.”⁵¹⁹ A study of Ghana determined that “Albinos are a visible minority and they are subjected to prejudice, stigmatization, discrimination and superstitions.”⁵²⁰ The Catholic Church and other NGOs have intensified efforts, “especially in rural areas [of African countries, such as Malawi] to sensitize communities on the rights of those with albinism and construct houses for them that are safe from burglary.”⁵²¹ For Africans living with albinism, life is not only dangerous but can be extremely deadly—they face numerous challenges, which include “attacks, social alienation and lack of medical care.”⁵²² In addition, persons with albinism continue to “endure structural and systematic discrimination across southern Africa,” are subjected to significantly high levels of violence, “and are actively hunted and killed for their

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.*

⁵¹⁸ HUMAN RTS. WATCH, *Rights of Persons with Albinism* (Apr. 12, 2024), <https://www.hrw.org/tag/albinism#:~:text=They%20are%20often%20denied%20the,the%20skin%2C%20hair%20and%20eyes>.

⁵¹⁹ Maureen Mswela, *Violent Attacks Against Persons with Albinism in South Africa: A Human Rights Perspective*, 17 AFR. HUM. RTS. L. J. 114, 114 (2017).

⁵²⁰ Francis Benyah, Equally Ale, *Differently Looking: Discrimination and Physical Violence Against Persons with Albinism in Ghana*, 30 J. STUD. OF RELIGION 161, 166 (2017).

⁵²¹ Tony Onyulo, *In Africa, Albinism Can Feel Like a Death Sentence; the Church is Trying to Change That*, DETROIT CATHOLIC (Apr 14, 2023), <https://www.detroitcatholic.com/news/in-africa-albinism-can-feel-like-a-death-sentence-the-church-is-trying-to-change-that>.

⁵²² *Id.*

body parts . . . in countries such as Malawi, Mozambique, Tanzania and Zambia.”⁵²³ They also continue to struggle to “access healthcare facilities for skin cancer testing and treatment, get treatment for visual impairments or buy sunscreen lotion, which is not always readily available particularly in rural areas.”⁵²⁴

Thus, the protection of the human rights and fundamental freedoms of persons with albinism in Africa requires not just governmental policy to eradicate violence against this group of citizens, but also the provision of essential services that protect them from the harmful effects of ultraviolet radiation.⁵²⁵ A lot of persons with albinism in Africa are poor and hence, are not likely to have the funds to purchase products, such as sunscreen, that can help protect them from the effects of direct exposure to ultraviolet light.⁵²⁶ According to the U.N. Independent Expert on the Enjoyment of Rights by Persons with Albinism, “[t]he use of broad-spectrum sunscreen in persons with albinism significantly reduces morbidity and mortality due to [various] occupational skin diseases.”⁵²⁷ However, “[a]ccess to these products is often very limited in countries where they are needed the most (i.e., in countries with high incidence of solar radiation), which are often countries with low socioeconomic status.”⁵²⁸ British scientists, Patricia M. Lund and Julie S. Taylor argue that African children “with the inherited condition oculocutaneous albinism (OCA) are especially vulnerable due to their lack of protective melanin” and are “highly susceptible to developing skin lesions

⁵²³ Amnesty International, *Southern Africa: Persons with albinism especially vulnerable in the face of COVID-19*, June 12, 2020, <https://www.amnesty.org/en/latest/news/2020/06/southern-africa-persons-with-albinism-especially-vulnerable-in-the-face-of-covid19/> (Nov. 8, 2024).

⁵²⁴ *Id.*

⁵²⁵ Mark T. Carew et al., *Unprotected: the Consequences of Climate Change for the Health of Persons with Albinism*, BMJ GLOB. HEALTH 1, 2 (Sept. 21, 2023) (noting that persons with albinism globally “face a significantly higher risk of developing skin cancer from UV exposure compared with the general population”).

⁵²⁶ Nadja Wipp, *On the African Continent, Discrimination Against People with Albinism is Intensifying*, JUSTICE FOR ALL (Dec. 22, 2021), <https://www.thejfa.com/read/on-the-african-continent-discrimination-against-people-with-albinism-is-intensifying>.

⁵²⁷ *Application to Add Broad-spectrum Sunscreen to the World Health Organization Model List of Essential Medicines and Model Essential Medicines for Children*, WORLD HEALTH ORG. 1, 2 (Dec. 16, 2022), https://cdn.who.int/media/docs/default-source/essential-medicines/2023-eml-expert-committee/applications-for-addition-of-new-medicines/a43_sunscreen.pdf?sfvrsn=3533e0d4.

⁵²⁸ *Id.*

that have both cosmetic and health complications, with a high risk of developing skin cancers.”⁵²⁹

While limiting “exposure to sunlight, wearing appropriate hats and clothing, and using sunscreens diligently,” are suggested ways to protect people with albinism from the harmful effects of ultraviolet light, medical researchers suggest that this may not be enough.⁵³⁰ The U.S.-based National Organization for Albinism and Hypopigmentation (“NOAH”) stated that “the task of preventing damage to the skin over a lifetime is a difficult one” and that while “[p]reventing sunburn is important,” it is, however, “not sufficient to prevent sun-damaged skin.”⁵³¹ First, sunscreen must be applied properly and in the right amount, leaving some parts of the body (e.g., tops of ears, backs of arms and legs) unprotected.⁵³² Limiting sun exposure is the key to providing persons with albinism effective protection from damaging ultraviolet light.⁵³³ One way to limit sun exposure is to plan outdoor activities for children with albinism for “morning or evening” and provide them with appropriate clothing and hats, particularly, “[c]olored clothing and denser-woven clothing,” which “allows less light penetration.”⁵³⁴ The key is to take a more holistic approach to the protection of persons with albinism, which includes sunscreen and other protective mechanisms, such as hats and appropriate clothing.⁵³⁵

The recognition and the protection of the rights of persons with albinism requires that States serve as “prime guardians . . . within their jurisdictions.”⁵³⁶ In the sub-section that follows, this paper will provide an overview of the role that States can play in safeguarding the rights of persons with albinism within their jurisdictions.

G. African States and the Rights of Persons with Albinism

African States should ensure they have the necessary measures to fully and effectively protect persons with albinism against discrimination and violence. These measures, however, must “comply with their international obligations concerning human rights, which are enshrined in both local laws and

⁵²⁹ Patricia M. Lund & Julie S. Taylor, *Lack of Adequate Sun Protection for Children with Oculocutaneous Albinism in South Africa*, BMC PUB. HEALTH (2008), <https://bmcpubhealth.biomedcentral.com/articles/10.1186/1471-2458-8-225>.

⁵³⁰ *Information Bulletin*, *supra* note 30.

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.*

⁵³⁵ *Id.*

⁵³⁶ Human Rights Council Study on the Situation, *supra* note 364, at 16 para. 62.

international human rights legal instruments.”⁵³⁷ With respect to international human rights instruments, it is important to mention specific international treaties and conventions, notably, the Convention on the Rights of the Child,⁵³⁸ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁵³⁹ the African Charter on the Rights of and Welfare of the Child, the African Charter on Human and Peoples’ Rights,⁵⁴⁰ the International Covenant on Civil and Political Rights,⁵⁴¹ and International Covenant on Economic, Social and Cultural Rights.⁵⁴²

The existing body and framework of international human rights law, which include these human rights instruments, viewed in terms of “general human rights, standards on non-discrimination, equality and human dignity[,] require effective implementation so as to protect and preserve the rights to life and to security of persons with albinism, as well as their right not to be subjected to discrimination, torture and ill-treatment.”⁵⁴³ With respect to African States, each of them must enact “[c]lear laws criminalizing and punishing acts of violence against persons with albinism.”⁵⁴⁴ These laws, however, must conform with the provisions of international and regional human rights instruments.⁵⁴⁵ With respect to laws, each African State must ensure that all laws—constitutions, and customary and statutory laws—comply with the provisions of international and regional human rights instruments.

⁵³⁷ *Id.*

⁵³⁸ Convention on the Rights of the Child arts. 19–23, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁵³⁹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁵⁴⁰ African Charter on the Rights and Welfare of the Child art. 26, July 1, 1990, OAU Doc. CAB/LEG/24.9/49.

⁵⁴¹ International Covenant on Civil and Political Rights, Dec. 16, 1996, 999 U.N.T.S. 171.

⁵⁴² International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

⁵⁴³ Human Rights Council Study on the Situation, *supra* note 364, at 16 para. 62.

⁵⁴⁴ *Id.* para. 63.

⁵⁴⁵ For example, the propriety of the mandatory death sentence for persons convicted of murdering a person with albinism has come under scrutiny at the African Court of Human and Peoples’ Rights as it implicates Article 4 of the Banjul Charter. *The Matter of Habyalimana Augustino and Muburu Abdulkarim v. United Republic of Tanzania*, Application No. 015/2016, Judgment, September 3, 2023 (African Court on Human and Peoples’ Rights) (holding that the respondent state—Tanzania—violated the applicants’ right to life in relation to the imposition of the mandatory death penalty by failing to allow the judicial officer discretion to take into account the nature of the offence and the circumstances of the offender).

Each African State must also clarify, either through legislation or other means, any ambiguities in the laws, particularly those related to practices, such as witchcraft and others that harm persons with albinism. In addition, it is necessary to design and implement a licensing program for traditional health practitioners, witchdoctors, and other healers, with the aim of prohibiting or banning practices that harm persons with albinism (e.g., the use of the body parts of persons with albinism to produce “cures” for HIV/AIDS, other diseases, as well as, charms for self-enrichment). Finally, States must consider attacks and various forms of violence directed at persons with albinism as an aggravated form of the crime that should incur “a more severe punishment so that additional deterrence may be achieved.”⁵⁴⁶

Having laws on the books, however, is a necessary, but not sufficient condition for the recognition and protection of the rights of, and the prevention of violence against, persons with albinism. Existing laws must be enforced through a process that is legal and fair. Here, reference can be made to the rule of law, a principle under which all individuals, institutions, and entities are accountable to laws that are: publicly promulgated, equally enforced, independently adjudicated, and consistent with international human rights principles.⁵⁴⁷ If African States are unable or unwilling to fully and effectively implement their laws against violence, including the assault and murder of their citizens and those with albinism, these “States may become complicit in such attacks by enabling a reign of impunity and perpetuating fear of attack in the lives of persons with albinism.”⁵⁴⁸ Thus, the enactment of laws to protect the rights and fundamental freedoms of persons with albinism in each African State must be “accompanied by concrete measures that would facilitate their implementation, such as advocacy and the training of law enforcement personnel and judicial authorities.”⁵⁴⁹

To significantly enhance the protection of the rights of persons with albinism, it is necessary to address the root causes of violence and discrimination against this vulnerable group of citizens. This can be done by adopting “a multipronged and holistic approach,” which involves the “protection and accountability measures in addition to broad public education campaigns.”⁵⁵⁰ Part of the accountability process should include “successful prosecution and the guarantee of redress in the form of compensation and rehabilitation.”⁵⁵¹ Each African State must fight impunity by state- and non-state actors and make sure that all

⁵⁴⁶ Human Rights Council Study on the Situation, *supra* note 364, at 16 para. 63.

⁵⁴⁷ See, e.g., John Mukum Mbaku, *Providing a Foundation for Wealth Creation and Development in Africa: The Role of the Rule of Law*, 38 BROOK. J. INT’L L. 959, 983–1000 (2013).

⁵⁴⁸ Human Rights Council Study on the Situation, *supra* note 364, at 16 para. 64.

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.* at 16–17 para. 65.

violations of the rights of persons with albinism are duly prosecuted and appropriate penalties imposed on those found guilty.⁵⁵²

The family, which includes parents, as well as, members of the extended family, can help protect children with albinism against exploitation, discrimination, and violence.⁵⁵³ The State should provide families with the help that they need to improve the welfare of their children with albinism. It is also important to ensure that parents are prevented from abandoning their children with albinism. For example, Human Rights Watch determined that around 2007, authorities in Tanzania “ordered hundreds, maybe thousands, of children with albinism to be placed in closed government boarding schools that acted as protective shelters, separated from their families.”⁵⁵⁴ However, some parents used these shelters as a place to abandon their children with albinism.⁵⁵⁵

A critical part of the effort to protect persons with albinism involves popular education and “awareness campaigns,” which should be designed to accomplish certain important goals, which include, at a minimum, “dispelling superstition and misinformation about albinism,” as well as, “combating prejudice, superstition, misconception and stigma, with a view to diminishing the multiple and intersecting forms of discrimination affecting persons with albinism.”⁵⁵⁶ States are obligated under international law to ensure that the rights of all their citizens, including those with albinism, are protected and these people are shielded from various forms of violence, directed at them by either state or non-state actors.⁵⁵⁷

Campaigns to raise awareness about issues confronting persons with albinism must be community oriented and, where necessary, should be supported by relevant State agencies (e.g., the police and the courts). For example, States can target important stakeholders, such as “law enforcement officers, members of the judiciary, educators, social workers, medical service providers, and the families and communities of persons with albinism” and provide them with the resources that they need to successfully protect persons with albinism.⁵⁵⁸ In the area of education, from primary to tertiary levels, States must ensure that they

⁵⁵² *Id.* at 17 para. 66.

⁵⁵³ Anita Franklin et al., *Children with Albinism in African Regions: Their Rights to ‘Being’ and ‘Doing,’* BMC INT’L HEALTH & HUM. RTS. 1, 4 (2018) (noting that some African families send “their children away to boarding schools, camps or relations in safer areas” in order to protect them from harm).

⁵⁵⁴ Lea Labaki, *Kids with Albinism Belong at Home and in School*, HUM. RTS. WATCH (June 13, 2018), <https://www.hrw.org/news/2018/06/13/kids-albinism-belong-home-and-school#:~:text=People%20were%20often%20presured%20by,shelters%20to%20abandon%20their%20kids>.

⁵⁵⁵ *Id.*

⁵⁵⁶ Human Rights Council Study on the Situation, *supra* note 364, at 17 para. 68.

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.*

have standardized curricula that can be used to teach students about “the rights of persons with albinism.”⁵⁵⁹

The government and NGOs can use traditional and modern forms of communication to educate citizens on the various issues confronting persons with albinism. Topics covered could include marginalization and stigmatization (most of which are based on customary and traditional beliefs) of and discrimination against persons with albinism. Community radio and theatre can be used to help “demystify perceptions about persons with albinism and promote positive stories about” this historically marginalized and persecuted group of citizens.⁵⁶⁰ Traditional healers or health practitioners often serve as a major conduit through which myths and negative perceptions about persons with albinism are spread in various communities throughout the continent.⁵⁶¹ Thus, they can also be used by the State to help spread positive stories about persons with albinism. Particular attention should be paid to cultural practices and rituals, such as witchcraft, which often lead to the murdering of people with albinism.⁵⁶² It is also important that States provide local communities with financial and other resources to educate the population in general and the communities in which persons with albinism reside about the rights of these persons and why it is important that these rights not be violated.

Finally, African States must recognize that the protection of the rights of persons with albinism requires the development and implementation of a comprehensive strategy that is undergirded by sensitivity to the vulnerabilities suffered by this group of citizens. For example, unlike their “normal” counterparts,

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.* at paras. 69–70.

⁵⁶¹ U.N. Human Rights, *People with Albinism: Hunted for Their Body Parts*, MEDIUM (Apr. 4, 2017), <https://unhumanrights.medium.com/hunted-for-their-body-parts-6715baa8b6b> (noting that traditional healers often place advertisements in newspapers “offering to make clients richer, cure incurable diseases, secure release from prison, and making other claims that are more suggestive of witchcraft than traditional medicine”). See also JuJu Chang, *Albino Black Market Body Part Crimes in Africa Seeing Justice*, DAILY BEAST (July 14, 2017), <https://www.thedailybeast.com/albino-black-market-body-part-crimes-in-africa-seeing-justice#:~:text=Renegade%20witch%20doctors%20have%20convinced,anywhere%20from%20%24500%20to%20%242%2C000> (noting that “[r]enegade which doctors have convinced locals that the blood, bones, and skin of people with albinism possess magical properties” and that this “superstition has created a sickening underground market in which the limb of an albino can bring anywhere from \$500 to \$2,000”).

⁵⁶² See, e.g., Press Release, Office of the U.N. High Commissioner for Human Rights, *Witchcraft Killings of People with Albinism Rose During Pandemic—UN Expert* (July 29, 2021), <https://www.ohchr.org/en/press-releases/2021/07/witchcraft-killings-people-albinism-rose-during-pandemic-un-expert> (noting significant increases in witchcraft-related killings of persons with albinism).

children with albinism cannot go out to play in the sun without taking special precautions to prevent their extremely sensitive skin from being subjected to ultraviolet light.⁵⁶³ Nor, can they walk to school in the sun like other children or go out and play during recess at school without taking various precautions.⁵⁶⁴ In addition to the indignities heaped on them by members of their communities, persons with albinism, including their children, must deal on a daily basis, with a series of health challenges that are often unique to them. Thus, throughout Africa, persons with albinism need the help of their governments (at all levels) and members of the communities in which they live, to recognize their human rights and fundamental freedoms, respect and protect them, as well as help them deal with the challenges of daily living.

V. SUMMARY AND CONCLUSION

Albinism, which results in the “lack of melanin pigment in the hair, skin and eyes,” causes vulnerability to sun exposure.⁵⁶⁵ Unfortunately, throughout the world, albinism is generally misunderstood and persons with albinism are routinely subjected to “erroneous beliefs and myths [that] are influenced by superstition, which foster their marginalization and social exclusion.”⁵⁶⁶ Throughout history, people with albinism have been stigmatized, discriminated against, and the state has violated their human rights and fundamental freedoms with impunity.⁵⁶⁷ In many countries, including those in Africa, persons with albinism are subjected to various beliefs, some of which are benign, but others which are extremely dangerous.⁵⁶⁸ In addition to superstitions that albinism is a form of punishment from God, other superstitions consider the body parts of persons with albinism to have magical powers and that anyone who possesses them can potentially gain significant amounts of wealth and political power.⁵⁶⁹

⁵⁶³ Caroline Bradbury-Jones, et al., *Beliefs About People with Albinism in Uganda: A Qualitative Study Using the Common-Sense Model*, PLOS ONE 1, 2 (Oct. 12, 2018). See also Chang, *supra* note 561 (noting that traditional beliefs about albinism can create a market for the body parts of persons with albinism, resulting in their murder).

⁵⁶⁴ *Id.* at 1, 10.

⁵⁶⁵ About Albinism and Human Rights, *supra* note 1.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

⁵⁶⁹ 5 *Facts About Albinism in Malawi*, AMNESTY INT’L (Dec. 1, 2016), <https://www.amnesty.org/en/latest/campaigns/2016/12/5-facts-about-albinism-in-malawi/> (noting the belief by some Africans that albinism “is caused by infidelity, or that it’s punishment from the gods”); see also Madalitso Kateta, *Magic and Murder: Albinism in Malawi*, THE NEW HUMANITARIAN (May 11, 2016), <https://www.thenewhumanitarian.org/analysis/2016/05/11/magic-and-murder->

Beliefs about persons with albinism touch on several human rights issues, which include the right to the enjoyment of the highest standard of health, the right to life, trafficking in their body parts for witchcraft purposes, infanticide, and the abandonment of children with albinism by their parents.⁵⁷⁰ On April 15, 2015, the U.N. Human Rights Council recognized the need to protect the rights of persons with albinism by adopting a vote to establish the mandate of an Independent Expert on the enjoyment of human rights by persons with albinism.⁵⁷¹ The Independent Expert was empowered, *inter alia*, “[t]o engage in dialogue and consult with States and other relevant stakeholders”; to identify various ways to help persons with albinism realize their rights; to make recommendations to the Human Rights Council on how the latter could help persons with albinism realize their rights; and to support national efforts to prevent violence against persons with albinism and to enhance the realization of their rights.⁵⁷²

Subsequently, the U.N. Human Rights Council (“UNHRC”) made a request to the U.N. Secretary-General and the U.N. High Commissioner for Human Rights “to provide the Independent Expert with all the human, technical and financial resources necessary for the effective fulfillment of the mandate.”⁵⁷³ In addition, the UNHRC recommended to the U.N. General Assembly to declare June 13 as International Albinism Awareness Day.⁵⁷⁴ In its various resolutions concerning the rights of persons with albinism, the UNHRC reaffirmed that all human beings have “the right to life, liberty and security of person and that no one shall be subjected to torture and other cruel, inhuman or degrading treatment or punishment.”⁵⁷⁵ The UNHRC also noted that throughout the world, persons with albinism continue to be subjected to high levels of discrimination and violence and are denied the opportunity to participate as equal members of their communities.⁵⁷⁶ The UNHRC then called upon all Member States of the U.N. to ensure that the human rights of persons with albinism are recognized, respected, and protected.⁵⁷⁷

In various parts of Africa, persons with albinism are considered “a valuable commodity” which, like “elephants and rhino,” are “hunted and killed for their body parts, which can fetch thousands of dollars and are often trafficked across

albinism-malawi (noting that many Africans believe in “the magical properties of [the body parts of persons with albinism]”).

⁵⁷⁰ About Albinism and Human Rights, *supra* note 1.

⁵⁷¹ H.R.C. Res. 28/6, *supra* note 17 at 2.

⁵⁷² *Id.* at 2–3.

⁵⁷³ *Id.* at 3.

⁵⁷⁴ H.R.C. Res. 26/10, *supra* note 22, at 2.

⁵⁷⁵ H.R.C. Res. 46/12, *supra* note 24, at 1.

⁵⁷⁶ *Id.* at 1–2.

⁵⁷⁷ *Id.* at 2.

borders.”⁵⁷⁸ In countries, such as Malawi, Mozambique, and Tanzania, the murder of persons with albinism to harvest their body parts for sale to people who use them in “witchcraft rituals because of superstitions that they can bring riches, success, power or sexual conquest” is quite common.⁵⁷⁹ Since 2000, at least 75 persons with albinism have been murdered in Tanzania and their body parts harvested and sold.⁵⁸⁰ However, some observers have argued that this number may actually be greater since persons with albinism in many countries in eastern and southern Africa quite often, simply disappear.⁵⁸¹

In addition to being hunted for their body parts or perhaps, because of the violence directed at them based on various superstitions, children with albinism often find it very difficult to attend school and participate in learning activities with their classmates.⁵⁸² A study of schools in the Lilongwe District of Malawi found that teachers and other staff members and administrators had virtually no knowledge of the challenges that learners with albinism faced on each school day.⁵⁸³ The lack of basic knowledge about the needs of learners with albinism meant that teachers and school administrators were not able to provide this group of learners with the instructional materials that they needed to successfully complete their courses.⁵⁸⁴ For example, learners with albinism are usually visually impaired and hence, may need “optical aids, special textbooks, modified tests, and other learning materials with enlarged prints” that can significantly enhance their ability to learn.⁵⁸⁵

Research by Human Rights Watch determined that children with albinism are not only discriminated against in school, but also are often stigmatized, rejected,

⁵⁷⁸ Dixon, *supra* note 41.

⁵⁷⁹ *Id.*

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.*

⁵⁸² See, e.g., Charlotte Baker, *Children With Albinism Find It Hard to Navigate School. Teachers Can Help*, THE CONVERSATION (Nov. 21, 2018), <https://theconversation.com/children-with-albinism-find-it-hard-to-navigate-school-teachers-can-help-107108> (examining the challenges that African children with albinism face in their efforts to attend school).

⁵⁸³ Tambala-Kaliati, *supra* note 63, at 2.

⁵⁸⁴ ACERWC, *supra* note 64, at 16-17 (noting that the ACERWC delegation was “strongly concerned that the lack of reasonable accommodation in classrooms [in Malawi] including the lack of adequate teaching and learning materials for learners with albinism in resource centres that have boarding facilities for students with albinism are among the barriers that are hindering [children with albinism] from fully enjoying their right to education”).

⁵⁸⁵ Tambala-Kaliati, *supra* note 63, at 2.

bullied and subjected to other indignities that make learning very difficult.⁵⁸⁶ As a consequence, these learners' right to education is routinely violated, often with impunity.⁵⁸⁷ In addition, on their way to school, children with albinism also risk being kidnapped and perhaps, killed and their body parts harvested and sold.⁵⁸⁸ A study of Malawi determined that despite the country's relatively large population of persons with albinism, it has yet to provide schools that can meet the learning challenges faced by students with albinism, which include eye problems that often go unrecognized and cause reading and writing difficulties in the classroom, mobility issues, struggles seeing the chalkboard, and limit participation in outdoor sporting and leisure activities.⁵⁸⁹

International and regional human rights instruments grant persons with albinism the same human rights as all other groups of persons. For example, everyone, without qualification, is entitled to enjoy the rights enumerated in the Universal Declaration of Human Rights ("UDHR"). This is made clear in Article 2 of the UDHR, which states that "[e]veryone is entitled to all the rights and freedoms set forth in [the UDHR]."⁵⁹⁰ Other international human rights instruments, including the ICCPR and the ICESCR "recognize human rights of general applicability to all people, including persons with albinism."⁵⁹¹ The rights that are recognized by these international and regional human rights instruments include the rights to life, physical integrity, liberty, security, equality and non-discrimination, and the highest attainable standard of physical and mental health, as well as, an adequate standard of living.⁵⁹² Some of these international human rights instruments, such as the CRPD, impose obligations on States Parties to provide "reasonable accommodation."⁵⁹³

The two core principles of international law that affect the rights of persons with albinism are *equality* and *non-discrimination*. These rights are enumerated in and guaranteed by all international and regional human rights instruments and they are expected to be "enforced on the basis of a non-exhaustive list of status or grounds set-out in every international and regional human rights instrument."⁵⁹⁴ The Independent Expert on the enjoyment of human rights by persons

⁵⁸⁶ Samer Muscati, *Breaking Educational Barriers for Children with Albinism*, HUM. RTS. WATCH (Sept. 5, 2023), <https://www.hrw.org/news/2023/09/05/breaking-educational-barriers-children-albinism> (noting that children with albinism in Africa are often subjected to "prejudice, discrimination and even violence").

⁵⁸⁷ Baker, *supra* note 582.

⁵⁸⁸ Tambala-Kaliati, *supra* note 63, at 2 (noting that learners with albinism are kidnapped and killed on their way to or from school).

⁵⁸⁹ *Information Bulletin*, *supra* note 30.

⁵⁹⁰ G.A. Res. 217 A(III), *supra* note 88, at art. 2.

⁵⁹¹ Ero, *supra* note 76, at 4 para. 4.

⁵⁹² *Id.*

⁵⁹³ *Id.* at para. 5.

⁵⁹⁴ *Id.* at para. 7.

with albinism noted that persons with albinism “are a constituency of persons with disabilities” and that they must be provided necessary accommodations to allow them to function as productive members of their communities.⁵⁹⁵ The International Expert also noted that international law has recognized “multiple and intersecting violations that may affect a person or group” and hence, it is recommended that the protection of the human rights of persons with albinism should involve a holistic approach, which engages many international covenants, conventions, declarations, treaties, agreements, and national constitutions.⁵⁹⁶ The Independent Expert notes that this approach is often utilized in international human rights law “to better map out violations faced, to grasp the depth of the consequences and to design practical and useful interventions.”⁵⁹⁷

While international and regional human rights instruments are important for setting the minimum standards that can be used by States Parties to reform and restructure their national laws, including the constitution, to protect the rights of persons with albinism, ensuring that these rights are protected is within the purview of each African government. First, each African State must sign and ratify all relevant international and regional human rights instruments.⁵⁹⁸ Second, the State must then domesticate the instruments to create rights that are justiciable in domestic courts.⁵⁹⁹ Third, each African State must ensure that its laws (constitutional, statutory and customary) conform to the provisions of international and regional human rights instruments.⁶⁰⁰ Fourth, the State must ensure that customary and traditional practices that harm persons with albinism are abolished and all laws and customs are brought into conformity with the provisions of international human rights instruments.⁶⁰¹ Finally, the state must criminalize violence against persons with albinism.⁶⁰²

The process of internationalizing national laws, including the constitution, is quite complex and may take time and significant levels of political will to accomplish. In the interim, courts can serve, not just to enforce the laws against the violation of the rights of persons with albinism, including their murder and the subsequent harvesting of their body parts, but also make sure that existing national laws (constitutional, customary and statutory) reflect and conform to provisions of international and regional human rights instruments. Through the adjudication of cases involving the violation of the human rights and

⁵⁹⁵ *Id.* at para. 8.

⁵⁹⁶ *Id.* at 5 para. 10.

⁵⁹⁷ *Id.*

⁵⁹⁸ These include, at the minimum, the ICCPR, the ICESCR, CEDAW, the CRPD, the Banjul Charter, the Convention on the Rights of the Child, and the Maputo Protocol. *See, e.g.,* Mbaku, *supra* note 414, at 488.

⁵⁹⁹ *Id.*

⁶⁰⁰ *Id.* at 493.

⁶⁰¹ Persons with albinism, *supra* note 167, at 10 paras. 47-48.

⁶⁰² *Id.*

fundamental freedoms of persons with albinism, African courts can contribute to the emerging jurisprudence on the rights of persons with albinism. This article examined cases from the High Court of Malawi (*Republic v. Kenneth Moses and 10 Others*) and the Court of Appeal of Tanzania (*Murimi and Others v. The Republic*), both of which involve the murder of a person with albinism.⁶⁰³

In *Moses & 10 Others*, Kenneth Moses and 10 other persons were “jointly and severally charged with the offence of murder, contrary to Section 209 of Penal Code” (Laws of Malawi).⁶⁰⁴ Specifically, the 11 defendants were accused of the murder of Fletcher Masina, a person with albinism.⁶⁰⁵ Before the deliberations in *Moses & 10 Others* began, the first and 4th (Kenneth Moses and Herbert Maloni, respectively) defendants pleaded guilty and were convicted “on their own respective pleas of guilt.”⁶⁰⁶ However, during the delivery of the judgment on January 8, 2021, Kapindu J noted that Maloni, the 4th defendant, was found dead outside Ntcheu Prison.⁶⁰⁷

Subsequently, the Court found “the 5th, 6th, 7th, 8th and 9th defendants with no case to answer and therefore acquitted them in terms of section 254(2) of the Criminal Procedure and Evidence Code [Malawi].”⁶⁰⁸ The judgment delivered on January 8, 2021, therefore, concerned only the 2nd, 3rd, 10th, and 11th defendants (Steven Lipiyasi, Ulemu Mwangomba, Francisco Kamtsitsi, and Manuel Master, respectively).⁶⁰⁹ After its deliberations, the Court held that Francisco Kamtsitsi and Manuel Master were not guilty of the offense of murder in relation to the killing of Fletcher Masina, a person with albinism.⁶¹⁰ Having found Kenneth Moses, Steven Lipiyasi, and Ulemu Mwangomba guilty of the murder of Fletcher Masina, the Court sentenced each one of them to life imprisonment pursuant to the provisions of section 210 of the Penal Code of Malawi.⁶¹¹

Murimi and Others was an appeal from the High Court of Tanzania at Mwanza to the Court of Appeal of Tanzania at Mwanza.⁶¹² In this case, four appellants were convicted of the offense of murder contrary to Section 196 of the Penal Code (Tanzania).⁶¹³ Specifically, they were convicted of the murder of one Aron s/o of Nongo, a person with albinism.⁶¹⁴ The four convicts were

⁶⁰³ *Moses*, MWHC 366, at para. 2; *Murimi and Others v. Republic* [2019], T.Z.C.A. 33, at 2.

⁶⁰⁴ *Moses*, MWHC 366, at para. 1.

⁶⁰⁵ *Id.* at para. 2.

⁶⁰⁶ *Id.* at para. 3.

⁶⁰⁷ *Id.* at para. 4.

⁶⁰⁸ *Id.* at para. 9.

⁶⁰⁹ *Id.* at para. 10.

⁶¹⁰ *Id.* at para. 129.

⁶¹¹ *Id.* at para. 53.

⁶¹² *Murimi and Others v. Republic* [2019], T.Z.C.A. 33, at 1–2.

⁶¹³ *Id.* at 2.

⁶¹⁴ *Id.*

subsequently sentenced by the High Court to death by hanging.⁶¹⁵ They appealed their convictions and sentences to the Court of Appeal.⁶¹⁶ After thoroughly examining each of the five grounds of appeal submitted before it, the Court of Appeal held that it did “not find any basis for which to fault the findings of the trial court on all substantive matters considered herein” and that “[t]he appeal [was] patently wanting in merit.”⁶¹⁷ The Court then dismissed the appeal in its entirety.⁶¹⁸

On July 22, 2019, three of the appellants, who were now on death row in Tanzania after their appeals failed at the Court of Appeal, filed an application with the African Court on Human and Peoples’ Rights (“African Human Rights Court”) asking the Court to “find in their favour, quash their conviction and sentence and set them free.”⁶¹⁹ After deliberating on and considering the facts supporting the Applications, as well as the claims made by the Applicants, and pursuant to Rule 54 of its Rules of Court, the African Human Rights Court unanimously ordered the joinder of “cases and pleadings in the Applications filed by the Applicants against the Respondent State.”⁶²⁰ The consolidated applications were given the name: *Consolidated Applications No. 039/2019, 040/2019 and 041/2019 Chacha Jeremiah Murimi and 2 Others v. United Republic of Tanzania*.⁶²¹

The African Human Rights Court noted that the Respondent State, Tanzania, became a State Party to the Banjul Charter on October 21, 1986 and to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights on February 10, 2006.⁶²² Subsequently, Tanzania deposited its Article 34(6) Declaration with the African Union Commission on March 29, 2010, effectively empowering the African Court on Human and Peoples’ Rights to receive and consider applications from NGOs and individuals in Tanzania.⁶²³ However, on November 21, 2019, Tanzania deposited an instrument withdrawing its Article 34(6) Declaration with the Chairperson of the A.U. Commission.⁶²⁴ Nevertheless, the African Human

⁶¹⁵ *Id.* at 1–2.

⁶¹⁶ *Id.*

⁶¹⁷ *Id.* at 26.

⁶¹⁸ *Id.*

⁶¹⁹ *Murimi Case Summary*, *supra* note 335, at 2 para. 7.

⁶²⁰ *Murimi Order for Joinder*, *supra* note 336, at 3 paras. 10, i.

⁶²¹ *Id.* at 3 para. ii.

⁶²² *Murimi Case Summary*, *supra* note 335 at 1 para. 2.

⁶²³ African Court on Human and Peoples’ Rights, *Declarations* (July 25, 2024), <https://www.african-court.org/wpafc/declarations/>.

⁶²⁴ *Id.* See also Anami, *supra* note 342 (noting Tanzania’s decision to deposit its Article 34(6) declaration withdrawing from the jurisdiction of the African Human Rights Court); African Court on Human and Peoples’ Rights, *Welcome to the*

Rights Court held that the decision by the Respondent State to withdraw its Article 34(6) Declaration did not have any bearing on cases that were pending before the Court, as well as new cases filed before Tanzania's withdrawal went into effect on November 22, 2020.⁶²⁵

As of this writing (April 2024), the case, *In the Matter of Chacha Jeremiah Murimi & Others v. United Republic of Tanzania*, is still pending before the African Human Rights Court and hence, it has not yet been decided. However, when it is finally decided, the African Human Rights Court is not likely to disturb the High Court of Tanzania's conviction of the Applicants for the murder of Aron s/o of Nongo, a person with albinism.⁶²⁶ This will allow the High Court's judgment to remain part of the emerging jurisdiction on the recognition, promotion and protection of the rights of persons with albinism. In *Marthine Christian Msuguri v. United Republic of Tanzania*, the African Human Rights Court held that "although it does not exercise appellate jurisdiction with respect to claims already examined by national courts, it retains the power to assess the propriety of domestic proceedings as against standards set out in international human rights instruments ratified by the State concerned."⁶²⁷

Thus, with respect to the applications filed by the *Murimi & Others* convicts, who are presently on death row in Tanzania, the African Human Rights Court can consider, deliberate, and rule on the matter of the mandatory death penalty for murder since it implicates Article 4 of the Banjul Charter.⁶²⁸ In other words, the African Human Rights Court can "assess the propriety" of the proceedings in *Murimi & Others* "as against standards set out" in Article 4 of the Banjul Charter.⁶²⁹ While the African Human Rights Court is likely to leave the High Court of Tanzania's conviction of the Applicants for the murder of Aron s/o of Nongo undisturbed, it can, pursuant to Article 4 of the Banjul Charter, determine

African Court (July 25, 2024), <https://www.african-court.org/wpafc/welcome-to-the-african-court/>.

⁶²⁵ See *Declarations*, *supra* note 623.

⁶²⁶ The African Human Rights Court does not have appellate jurisdiction over cases decided by domestic courts in the various States Parties. However, pursuant to Article 4 of the African Court Protocol, the Court can provide "an opinion on any legal matter relating to the [Banjul] Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the [African] Commission." See *generally* Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, June 10, 1998, at arts. 3–4 [hereinafter *African Court Protocol*].

⁶²⁷ *Msuguri Judgment*, *supra* note 360, at 7 para. 25.

⁶²⁸ Article 4 states as follows: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived this right." Banjul Charter, *supra* note 354, at art. 4.

⁶²⁹ *Id.*

whether Tanzania's mandatory death sentence for murder is arbitrary and hence, violative of Article 4 of the Banjul Charter.⁶³⁰

In addition to the fact that the two cases discussed in this article represent important additions to the emerging jurisprudence on the rights of persons with albinism in Africa, one of them, *Murimi & Others*, additionally provides the African Human Rights Court, a continental judicial institution, the opportunity to provide an opinion on the mandatory death penalty for murder.⁶³¹ *Murimi & Others* also provides lessons on why it is important for all African countries to make or retain their Article 34(6) declarations so that the African Human Rights Court can receive cases from NGOs and individuals within the jurisdictions of these countries.⁶³²

What is the way forward for the protection of the human rights of persons with albinism in Africa? First, each African country must start by recognizing the special needs of and the challenges faced by persons with albinism within its jurisdiction. Some of these needs and challenges include insecurity—persons with albinism are constantly subjected to violence or threats of violence, including murder, as individuals search ways to harvest and sell the body parts of persons with albinism. Other needs and challenges of persons with albinism include help to reintegrate into their communities after they emerge from weeks, months, or even years of hiding to escape harassment and even death, health education to prevent various threats to their health (e.g., ultraviolet radiation), protective clothing, the services of an optician/ophthalmologist, since persons with

⁶³⁰ *Id.*

⁶³¹ The African Court Protocol grants the African Human Rights Court the power to provide advisory opinions on “any legal matter relating to the Charter or any other relevant human rights instruments.” See African Court Protocol, *supra* note 626 at art. 4. The mandatory death penalty implicates Article 4 of the Banjul Charter, which guarantees the right to life and prohibits the arbitrary deprivation of life. Hence, the African Human Rights Court can rule on whether the mandatory death penalty conforms with provisions of the Banjul Charter, particularly, article 4. See Banjul Charter, *supra* note 354, at art. 4.

⁶³² Although the African Human Rights Court does not have appellate jurisdiction, it does have the authority to give advisory opinions on legal matters (e.g., the mandatory death penalty) related to the Charter and any other relevant human rights instruments. In addition, the existence of the Court should put pressure on States Parties to the Banjul Charter to ensure that human rights are recognized and protected within their jurisdictions. If they do not do so, citizens and NGOs within their jurisdictions can petition the Court for relief. However, in order for that to happen, those States that have not yet done so must sign and deposit their Article 34(6) declarations with the African Union. Additionally, those who have already done so, should not withdraw these declarations. See generally Mbaku, *supra* note 498 (emphasizing the importance of the African Human Rights Court to the protection of human rights in Africa).

albinism are susceptible to eye problems, assistance for children with albinism to participate fully and effectively in school activities, including attending classes and getting an education, and vocational training to enhance the ability of persons with albinism to secure work indoors in order to minimize their exposure to the sun.

Second, each African country must sign and ratify all relevant international and regional human rights instruments. These include the ICCPR, ICESCR, CEDAW, the Maputo Protocol, the Banjul Charter, the African Child Charter, the Convention on the Rights of the Child, and the CRPD. Third, each country should then domesticate each international human rights instrument and create rights that are justiciable in domestic courts. Fourth, each country should engage in a comprehensive overview of its laws, including its constitution, and statutory and customary laws, to ensure that they comply with or conform to the provisions of international and regional human rights instruments. Specifically, reformers should provide the country with a Bill of Rights, if one does not already exist, which addresses issues specific to the protection of the rights of persons with albinism, which includes: equality before the law, the inherent dignity of all human beings, including persons with albinism, the right of every person to life and to freedom and security of the person, and prohibition against harmful customary and traditional practices (e.g., ritual killings).⁶³³ However, if the constitution already contains a Bill of Rights, reformers should review it to ensure that it contains provisions that guarantee the rights of all citizens to “bodily integrity.”⁶³⁴ Fifth, where it has not already been done, the country should enact legislation criminalizing violence against persons with albinism, including violations of their bodily integrity.

Any African country that has a genuine interest in protecting the human rights of all its citizens, including those of persons with albinism, must welcome and accept international human rights law and see it, “not as an intrusion in its internal sovereignty, but as another tool to ensure domestic peace and security.”⁶³⁵ Africans and their political leaders should see the provisions of international and regional human rights instruments as minimum standards that form the foundation for effective legal and institutional structures for the recognition and protection of human rights and fundamental freedoms generally and the rights of persons with albinism in particular.

Finally, enforcement of laws that criminalize violence against persons with albinism requires a judiciary that is independent enough and has the capacity to perform its functions without political interference. Thus, in order to enhance the ability of each African country’s legal system to fully enforce the laws, including those that criminalize practices that are harmful to persons with

⁶³³ Scholtz, *supra* note 390, at 117.

⁶³⁴ Mbaku, *supra* note 389, at 29.

⁶³⁵ John Mukum Mbaku, *International Law, Sovereignty, and Human Rights in Africa*, 32 J. TRANSNAT’L L. & POL’Y 1, 95 (2022–2023).

albinism, it is necessary that each African country provide itself with a governing process undergirded by separation of powers, with checks and balances. The independent judiciary is part of the separation-of-powers regime. Judicial independence is characterized by at least, three elements, namely, security of tenure, financial security, and institutional independence of the tribunal with respect to matters of administration bearing directly on the exercise of its judicial function.⁶³⁶

It is important that African countries sign, ratify and domesticate various international and regional human rights instruments and reform their national laws to ensure that they comply with or conform to provisions of international human rights instruments. It is important, however, that these laws, which guarantee the rights of persons with albinism, as well as criminalize violence against them, are fully and effectively enforced and done so through a process that is legal and fair. That is, the enactment of laws to protect the human rights and fundamental freedoms of persons with albinism must be accompanied by: (i) concrete measures to ensure and enhance implementation, (ii) advocacy to help citizens understand and appreciate the problems and challenges faced by persons with albinism, (iii) the training of law enforcement personnel and judicial officers and the provision of necessary financial and other resources for them to perform their jobs, and (iv) the design and implementation of institutional structures to guard against political interference with the performance of the judicial function. Finally, the country must fully address the underlying erroneous beliefs that continue to threaten the human rights and fundamental freedoms of persons with albinism.

⁶³⁶ *Valente, supra* note 442, at 708.