

Mandate of the Independent Expert on the enjoyment of human rights by persons with albinism

REFERENCE:
AL ZMB 1/2018

1 March 2018

Excellency,

I have the honour to address you in my capacity as Independent Expert on the enjoyment of human rights by persons with albinism, pursuant to Human Rights Council resolution 28/6.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the attack, dismembering, and trafficking of body parts of **Mirriam Kumwenda**, a 19 years old student with albinism.

According to the information received:

Ms. Mirriam Kumwenda, a 19 years old student with albinism, was attacked at her home in Chikwa village in Chama district during the night of 4 November 2017. She was woken up in the middle of the night by a knock on the door and the familiar voice of her teacher calling her in the middle of the night. She got up and opened her door and was then forcibly dragged away from her house into the bush.

Initially, the assailant attempted to cut off her right hand, leaving a deep cut, but stopped after one of the perpetrators indicated that they were cutting the "wrong hand". She was then hit on the head with an unknown object, her right hand was chopped off and she was left unconscious, bleeding heavily. She later regained consciousness and dragged herself back to the village where she received assistance.

Her mutilated hand was later recovered in Malawi. The person in possession of the hand, who was attempting to sell it, was arrested.

Mirriam Kumwenda was five months pregnant at the time, despite her heavy loss of lot of blood, after spending a month in Chama District Hospital, both herself and her baby survived.

Five suspects were arrested in connection with this attack, including the teacher of Mirriam Kumwenda and a witchdoctor. The case is being investigated. It is important to note that both Mirriam and her sister with albinism continue to fear for their safety and are currently protected by a civil society organization in a refuge home.

Concern is expressed at the pattern of attacks and killings directed at persons with albinism. While I commend efforts already brought forward by your Excellency's

Government in taking action against perpetrators, serious concerns are expressed about the information received regarding the attack, and the subsequent international trafficking of a body part, as these acts appear to have had the purpose of selling a body part to be used for witchcraft purposes. In this context, further concerns are expressed about the physical and mental integrity of persons with albinism who are at risk of attacks resulting in death and mutilation, as well as in the trafficking of body parts.

While I do not wish to prejudge the accuracy of these facts I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above information and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

In line with the information received on the trafficking of a body part from Zambia to Malawi, the information above was also brought to the attention of the Government of Malawi.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Provide detailed information on, and where available the results of, investigations, medical and other forensic examinations, and judicial or other inquiries carried out in relation to the information above, as well as on the criminal charges laid against the alleged perpetrators.
2. Provide information on the law enforcement and judicial mechanisms for international cooperation used in this framework.
3. Provide the full details of any protective measures put in place by your Excellency's Government to ensure the physical and mental integrity and security of persons with albinism.
4. Provide information on comprehensive strategies adopted by the national authorities to prevent abduction, killing and dismembering of persons with albinism, including awareness raising campaigns and education programs, training of professionals dealing with survivors and potential victims.
5. Provide information on initiatives to foster international cooperation in the framework of the trafficking of body parts.

I would appreciate receiving a response within 60 days.

While awaiting a reply, I encourage your Excellency's Government to continue applying due diligence in investigating and prosecuting the above allegations, as well as to take all necessary interim measures to prevent the re-occurrence of such alleged violations, protect the life, physical and mental integrity of persons with albinism, and to fight against the trafficking of body parts.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Ikponwosa Ero
Independent Expert on the enjoyment of human rights by persons with albinism

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, I wish to draw your Excellency's Government's attention to articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights, to which Zambia acceded on 10 April 1984, which guarantee the right of every individual to life and security and no to be arbitrarily deprived of his life.

Article 26 of the International Covenant on Civil and Political Rights stresses that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law". Additionally in its General Comment No. 31, the Human Rights Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities. States Parties permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by private persons or entities could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

I would also like to draw your Excellency's Government attention to article 1 of the Convention on the Elimination of All Forms of Discrimination against Women to which Zambia acceded on 21 June 1985, as clarified by general recommendation No. 35 of the Committee on the Elimination of Discrimination against Women on gender-based violence against women, updating general recommendation No. 19. It stresses that discrimination against women –as defined in article 1 of the Convention- includes gender-based violence, that is, 'violence which is directed against a woman because she is a woman or that affects women disproportionately', and, as such, is a violation of their human rights. "States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women" (paragraphs 1 and 24).

The Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices defining them as "persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering". (CEDAW/C/GC/31/CRC/C/GC/18)

I would also like to draw your attention to the provisions of the Convention on the Rights of Persons with Disabilities, ratified by Zambia on 1 February 2010, and in particular on articles 10, 13 and 16. Article 10 reaffirms "that every human being has the inherent right to life" and requires State Parties to "take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others". Article

16 paragraph 1 of the Convention requires State Parties to “protect persons with disabilities (...) from all forms of exploitation, violence and abuse, including their gender-based aspects”. In addition paragraph 4 stresses that “States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services.” Article 13 of the Convention requires State Parties to “ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages”.

The Convention against Transnational Organized Crime, to which Zambia acceded on 24 April 2005 requires State Parties, in its article 5, to criminalize the participation in an organized criminal group. The Convention also stresses in its article 18 that “States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention” and in its article 27 that “States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention”.