

Mandates of the Independent Expert on the enjoyment of human rights by persons with albinism; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Independent Expert on the enjoyment of human rights by persons with albinism; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 37/5, 35/6, 36/6, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning human rights violations against two persons with albinism, namely, the killing of Mr. Yassin Phiri on 31 December 2018, and the abduction of one-year old Eunice Nkonjera, on 22 January 2019, for the alleged purpose of witchcraft rituals.**

According to the information received:

On the night of 31 December 2018, Mr. Yasin Phiri, a person with albinism, was dismembered and murdered in his house at Mundiyege Village in the area of Fukamapiri in Nkhatabaya district. Allegedly, two men, armed with machetes, broke into Mr. Phiri's house, and went into his room where they started attacking him. They stabbed Mr. Phiri in the stomach, removed his intestines and cut off both his arms. Mr. Phiri's scream for help was heard by his nine-year old son who came into the room and witnessed the killing of his father. The two men assaulted the boy and threatened him to keep silent. The men then dumped Mr. Phiri's body in a drain near his house. Mr. Phiri was a single father to five children and was the sole provider for the family.

Reportedly, four individuals have been arrested in connection with the murder and one suspect is believed to have been in possession of Mr. Phiri's arms.

A few weeks after Mr. Phiri's murder, on 22 January 2019, one-year-old Eunice Nkonjera of Karonga, was abducted in the early hours of the morning, while her mother went outside of the house to use the restroom. When she returned to the bedroom, the baby was missing. Investigations have reportedly been undertaken to find the missing child and her abductors. There is concern that she may have been abducted for the purpose of witchcraft rituals and that her life may be at risk.

Grave concern is expressed over the killing of Mr. Phiri and the abduction and risk to the life of Eunice Nkonjera. Grave concern is equally expressed that these two recent cases are part of a larger disturbing pattern in Malawi where ritual killings and egregious human rights violations of the worst kind are instigated specifically against persons with albinism. This pattern of attacks prompted the Independent Expert on the enjoyment of human rights by persons with albinism to undertake a visit to Malawi in 2016, where she held extensive dialogue with State interlocutors, representatives of the United Nations, civil society organizations and persons with albinism in various regions of the country. To date, Malawi has witnessed a spate of killings and attacks against persons with albinism numbering around 150 since 2014. These are the reported cases alone. The frequent role played by family members as perpetrators in these crimes means that cases are often not reported.

Grave concern is also expressed that the impending national elections in Malawi, scheduled for May 2019, may exacerbate the situation. Election periods, particularly in some countries in Sub-Saharan Africa, can be a dangerous time for persons with albinism as this is when killings and the risk of attacks against persons with albinism often spike. This is due to false beliefs that the body parts of persons with albinism can bring good luck and political power when used in witchcraft related rituals. As a result, body parts of persons with albinism are often trafficked across borders, to satisfy the demands of so-called witchdoctors and those seeking their services.

We welcome information that efforts are already underway by your Excellency's Government to investigate these two cases. We also welcome the statement made by President Mutharika on 23 January 2019, in which he condemned violence against persons with albinism and directed all security forces to provide protection for them.

However, we remain seriously concerned about these continuous attacks and killings in spite of the many efforts that have been taken to raise awareness of the plight of persons with albinism in Malawi and in the region. Serious concerns are also expressed at the reported backlog of cases of human rights violations and crimes against persons with albinism, as to date, there have been only very few prosecution against perpetrators concerning these cases, particularly those with more serious criminal charges. This has led to an impression of impunity which could potentially fuel further human rights violations.

We are also concerned at reports that there are inadequate security and law enforcement personnel in place to protect persons with albinism where they reside, further exacerbating the fear and threats they are currently experiencing. We are further concerned about the impact of the situation on the physical and mental integrity of persons with albinism in Malawi. The above cases and ongoing risks faced by persons with albinism are strongly suggestive of ongoing de-prioritization of the experiences and suffering of persons with albinism, and strongly indicate that urgent concrete and effective measures are needed to address the situation in Malawi.

While we do not wish to prejudge the accuracy of these facts, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues described above. Please refer to the Annex attached to this letter which cites international human rights instruments and standards relevant to these allegations.

We urge all necessary and immediate measures be taken to protect persons with albinism as Malawi heads towards the presidential elections in 2019. We urge the immediate financing and implementation of the measures in the National Action Plan on the prevention and protection of persons with albinism, which inter alia, addresses the root causes of attacks on persons with albinism, and calls for nationwide awareness-raising campaigns, strengthened investigations and prosecutions, and protection and assistance for victims.

Finally, we wish to reiterate the findings and recommendations made in the report of the Independent Expert on the enjoyment of human rights by persons with albinism on her visit to Malawi in 2016 (A/HRC/34/59/Add.1) and to request that your Excellency's government provide us with information on the actions taken to implement these recommendations to date.

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

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on, and where available the results of, any investigation, medical and other forensic examinations, and judicial or other inquiries carried out in relation to these cases including efforts made to ensure that perpetrators of the alleged acts are brought to justice.
3. Please provide information on the urgent measures being taken to establish the fate and whereabouts of Ms. Eunice Nkonjera.
4. Please provide detailed information and available data on any court cases that have been concluded on human rights violations or crimes against persons with albinism, to date.
5. Please provide information on the law enforcement and judicial mechanisms for international cooperation used in this framework.

6. Please provide the full details on comprehensive strategies and protective measures adopted by your Excellency's Government to ensure the physical and mental integrity and security of persons with albinism, particularly in light of the forthcoming elections, to prevent abduction, killing and dismembering of persons with albinism, including awareness raising campaign and education programs, training of professionals dealing with survivors and potential victims.
7. Please indicate the status of the implementation of the recommendations, following the visit of the Independent Expert on the enjoyment of human rights by persons with albinism to Malawi.
8. Please provide information on what active measures have been taken since the country visit by the Independent Expert on the enjoyment of human rights by persons with albinism to prevent and protect persons with albinism from crimes such as threats, attacks, killings, abductions, possession and trafficking of body parts of persons and grave exhumations for the purpose of stealing bones and/or body parts.
9. Please provide information on initiatives to foster international cooperation in the framework of the trafficking of body parts.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue in question.

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

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

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex
Reference to international human rights law

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 Malawi acceded on 22 December 1993, which guarantee the human right to life and security of person and that no one is to be arbitrarily deprived of the right to life.

We further wish to refer your Excellency's Government to Article 2(3), which states that ... "Each State Party to the present Covenant undertakes (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy." At this point it is important to note that the Human Rights Committee in its General Comment number 36 has found that "Given the importance of the right to life, States parties must generally refrain from addressing violations of article 6 merely through administrative or disciplinary measures, and a criminal investigation is normally required, which should lead, if enough incriminating evidence is gathered, to a criminal prosecution. Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy."

General Comment 36 on the right to life further states that the duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. This includes persons with albinism, among other vulnerable groups. States parties must respond urgently and effectively in order to protect individuals who find themselves under a specific threat, by adopting special measures such as the assignment of around-the-clock police protection, the issuance of protection and restraining orders against potential aggressors and, in exceptional cases, and only with the free and informed consent of the threatened individual, protective custody.

States parties must enact a protective legal framework which includes effective criminal prohibitions on all manifestations of violence or incitement to violence that are likely to result in a deprivation of life, including, inter alia, ritual killings and death threats. The criminal sanctions attached to these crimes must be commensurate with their gravity, while remaining compatible with all provisions of the Covenant.

General Comment 36 further reminds States that the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. States parties should also develop strategic plans

for advancing the enjoyment of the right to life, which comprise measures to fight the stigmatization associated with disabilities and diseases, including {...} harmful practices

We would like also draw your attention to Article 26 of the International Covenant on Civil and Political Rights which 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).

Furthermore, according to Principle 9 of the Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, there is an obligation to conduct thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death. The Minnesota Protocol on the Investigation of Potentially Unlawful Death which in 2016 updated the original UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions of 1991; and the UN Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989), states that an investigation must be a) prompt; b) effective and thorough; c) independent and impartial; and d) transparent.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, such as defined in the Convention Against Torture, ratified by your Excellency's Government on 11 June 1996.

Further, I draw your attention to the provisions of the Convention on the Rights of Persons with Disabilities, ratified by Malawi on 27 August 2009, and in particular article 10 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 States Parties to 'protect persons with disabilities (...) from all forms of exploitation, violence and abuse'.

In their Concluding Observations addressing the right to life for persons with albinism, the Committee on the Rights of Persons with Disabilities has expressed concern at the different forms of violence perpetrated against persons with albinism, including kidnappings, killings and attacks for the purpose of witchcraft practices, and the absence of measures to protect victims and to prosecute and convict perpetrators. The Committee urged the States where this type of violence was taking place to: (a) Promptly investigate all cases of violence against persons with albinism ensuring that they are appropriately prosecuted and punished; (b) Create shelters and redress services for victims of attacks including healthcare, counseling and free legal aid; and (c) Redouble efforts to raise

awareness about the dignity and rights of persons with albinism and ensure the involvement of organizations of persons with albinism in any campaigns aimed at eliminating stigmatization and myths that underpin violence against persons with albinism (CRPD/C/KEN/CO/1 paras.19 and 20).