

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

REFERENCE:
AL ZMB 2/2020

21 May 2020

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, 35/15 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the killing and dismemberment of Mr. Emmanuel Phiri, a person with albinism in the Chipata district, and the desecration of a grave to steal the body parts of a deceased person with albinism in the Kaoma district.**

According to the information received:

On 24 March 2020, the dismembered body of Mr. Emmanuel Phiri, 43 years old, was found near Yamene Farms in a field near Lundazi Road in Chipata district, in eastern Zambia, close to the border with Malawi. The body was missing the eyes, tongue and both hands. The body was found by a local person in the area and could not be immediately identified. Efforts were made through announcements in the local radio to determine the identity of the deceased and to locate his family. As a result, Mr. Phiri's body lay unclaimed in the local mortuary for over two weeks.

Reportedly, family members were eventually located and were able to confirm Mr. Phiri's identity. They apparently had heard of the radio announcements concerning the unclaimed body, but they did not think it was Mr. Phiri, as the announcements estimated the age of the deceased to be between 19 to 20 years old, when Mr. Phiri was in fact 43 years old. His small physical stature may have given the mistaken impression that he was younger.

Due to the lapse of time before the family came forward to identify Mr. Phiri's body, a local group which included persons with albinism, organized a burial for Mr. Phiri. The grave was marked in a particular way to ensure family members would be able to later identify it.

According to the information received, Mr. Phiri is married with three children. He was a carpenter and lived in Navutika compound in Chipata. Mr. Phiri had 8 siblings, one of whom had albinism and has passed away due to skin cancer.

Mr. Phiri was the principal income earner for his family. A few weeks before his body was found, Mr. Phiri informed his wife and mother that he had received a job offer from a regular customer in Chipata. He said he was going to stay at the job site and return after two weeks when his work would finish. He left to take on this job offer and never returned. Mr. Phiri's family initially assumed that he was working and had no knowledge that he had been killed.

After two weeks had passed, the family began to be concerned for Mr. Phiri. Reportedly, they tried to call Mr. Phiri but someone else would answer his phone and say he was a friend of the deceased. Eventually the phone was no longer working when the family tried to contact Mr. Phiri. The family went to look for Mr. Phiri and spoke to the customer who confirmed that Mr. Phiri had indeed come to work for him and that he was no longer there at the job site. The family again contacted Mr. Phiri's customer some days later to enquire about his whereabouts, and were advised to check the mortuary because of the announcements concerning an unclaimed body. It was at this point that the family checked with the Chipata police, and were able to identify Mr. Phiri's body, clothes, and shoes through photographs. They were also taken to Mr. Phiri's grave site.

Reportedly, the police has since arrested Mr. Phiri's customer, but was unable to identify the person who was using his telephone. Mr. Phiri is reported to be a victim of a ritual killing based on false beliefs and dangerous myths that the body parts of persons with albinism can bring wealth and luck.

Desecration of a grave to steal body parts of a person with albinism

Between 19 and 27 April 2020, unidentified perpetrators desecrated a grave in the Kaoma district in western Zambia, and dug out the body of an unidentified person with albinism and stole some of the body parts. There is no information on the cause of death, or the precise duration of time from when the deceased was buried to when the grave robbery took place. Reportedly, local media outlets are being used to call for more information on this case and police are also investigating this case.

Grave concerns are expressed over the killing and dismemberment of Mr. Phiri and the desecration of the grave in Kaoma district. Further concerns are expressed at the occurrences of these two incidents in close proximity.

In this context, we wish to refer to a previous communication dated 1 March 2018, which was sent by the Independent Expert on the enjoyment of human rights by persons with albinism to your Excellency's Government, concerning the dismembering

and trafficking of body parts of Mirriam Kumwenda, a 19 year old student of Chama district in Zambia.¹ Reference is also made to a previous communication dated 9 March 2016, sent by the Independent Expert on the enjoyment of human rights by persons with albinism, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on violence against women, concerning the killing and dismembering of three persons with albinism, namely Ms. Charity Zimba (age 37), Mr. Billy Chulu (age 46), Mr. Jefferey Sikanyai (age 36), and the kidnapping of a 15 year old boy with albinism.² To date, we have not received any responses to these communications from your Excellency's Government. The reported purposes for these human rights violations have been linked to harmful practices related to witchcraft beliefs also referred to as ritual killings.

We would like to express serious concern that these cases highlight the likelihood of further attacks and human rights violations being perpetuated against persons with albinism. This is further compounded by the impending national elections in Zambia scheduled for February 2021. The Independent Expert on the enjoyment of human rights of persons with albinism has found that attacks and killings of persons with albinism increase during election periods.³ In this regard, we strongly urge that all necessary and immediate measures be taken to protect persons with albinism in Zambia, particularly in light of the forthcoming national elections in 2021.

While we welcome reports that police personnel are currently investigating the cases in Chipata and Kaoma, we would like to reiterate that State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors have to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors (CAT/C/GC/2, 24 January 2008, para 18).

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 above. Please refer to the Annex attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 be grateful for your observations on the following matters:

¹<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23682>

²<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19654>

³ A/HRC/31/63 and A/71/255 accessible at <https://www.ohchr.org/EN/Issues/Albinism/Pages/Reports.aspx>

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 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.
4. 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.
5. Please provide information on regional or international cooperation mechanisms that are in place to assist in investigating attacks and killings related to 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.

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

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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

We wish to draw your Excellency's Government's attention to articles 3 of the Universal Declaration of Human Rights, 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), to which Zambia acceded on 10 April 1984, and article 10 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Zambia on 1 February 2010, which guarantee the right to life and security of person and that no one is to be arbitrarily deprived of the right to life. Furthermore, under the CRPD, States must take all appropriate measures to protect persons with disabilities from all forms of exploitation, violence and abuse (article 16), and to protect their integrity on an equal basis with others (article 17)

We further wish to refer your Excellency's Government to Article 2(3) ICCPR, 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 No. 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 No. 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.

General Comment No. 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

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.

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, as well as in article 15 of the CRPD.

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).