

The killing of persons with albinism in Tanzania: A social-legal inquiry

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Declaration

I, Salewi Diana, Henry declare that the work presented in this dissertation is original. It has never been presented to any other university or institution. Where other people's works have been used, references have been provided, and in some cases, quotations made. In this regard, I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LLM Degree in Human Rights and Democratisation in Africa.

Signed.....

Date.....

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Signature.....

Date.....

Dedication

I dedicate this work to my dad and mom (Henry & Veilla) who has always been my pillar of strength. It is them who cultivated within me an appreciation of history, past and present. This Masters has cemented that appreciation. Thank you Baba na Mama for believing and investing on me. I will always strive to make you proud.

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Acronyms

The following abbreviations stand for

| | |
|---------|----------------------------------------------------------------------------------------------|
| ACHPR | Africa Charter on Human and Peoples' Rights |
| CAT | The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment |
| CESCR | The International Covenant on Economic, Social and Cultural Right |
| CERD | International Convention on the Elimination of all Forms of Racial Discrimination |
| CEDAW | Convention on the Elimination of all form against Women. |
| CHRGG | Commission for Human Rights and Good Governance |
| DOP | Disabled People's Organisations |
| ICCPR | The International Covenant on Civil and Political Rights. |
| UDHR | United Nations General Assembly's Universal Declaration of Human Rights |
| TACAIDS | Tanzania commission for AIDS |
| PWD | People with Disability |
| ZACDID | Zanzibar Centre for Disability and Inclusive Development |

Chapter One

1.1 Background to the Problem

Albinism is an inherited condition affecting at least 1 in 4000 people in Africa. It is thought to be more common among black Africans although it affects the entire human populations.¹ In most African societies, albinism is regarded to be a disability and the social attitudes against albinos are characterised by lack of understanding, fear, and also of prejudice based on the appearance of albinism.² There are various myths surrounding albinos such as that they are born as a punishment, that it is a curse to give birth to albinos and that albinos are immortal and that they are in fact spirits. This causes them to be seen as outcasts in society.³ Albinism is an inherited, congenital condition resulting in reduced synthesis of melanin pigment in the hair, skin and eyes.⁴ It leads to a host of lifelong physical health problems, in particular visual impairment and ultraviolet induced skin damage.⁵ In Africa such problems are exacerbated by exposure to harsh sunlight and reduced access to adequate health care, especially in rural areas.

There is no cure for albinism, although with careful management⁶ a reasonable quality of life can be enjoyed. The hypo pigmented skin of people with albinism makes them vulnerable to sun induced skin lesions and cancers⁷ and people with albinism require life-long protection from exposure to ultraviolet light.⁸

In Tanzania the negative attitudes towards albinos are based on fear due to the lack of knowledge about albinism. Historically there have been killings of albinos performed by the family or the tribe. In recent years the killing of albinos have escalated to an extent that the media and the government have raised attention to the problem with the purpose to stop it.⁹ These killings have caused tension in a country which is estimated to have approximately 170,000 people with albinism according to World Health

¹ N Blankenberg *That Rare and Random Tribe: Albino Identity in South Africa* (2000)19.

² S Mesaki, "Albinos: Scientific explanation, causes and tragic consequences(2006)22.

³ BBC News "Tanzania fear over albino killing" 17July 2007.

⁴ Biswas, S & I Lloyd, *Oculocutaneous Albinism. Archives of Disease in Childhood*(1999)25.

⁵ JF Okulicz,RS Shah,RA Schwartz,CK Janniger,'*culocutaneous albinism*'(2003)31 *Journal of the European Academy.*

⁶ R Abadi, & E Pascal,*The Recognition and Management of Albinism.*(1989)9.

⁷ Lookingbill, D.P., Lookingbill, G.L., Leppard, B., 1995. *Actinic damage and skin cancer in albinos in northern Tanzania*(1995)48 *Journal of the American Academy of Dermatology* 32.

⁸ Okulicz(n 5 above)8.

⁹ The Harvard Foundation, Panel discussion on "*Prejudice and Violence against People with Albinism: An International Concern,*" (2010).

Organisation.¹⁰ For example, the Tanzania, the Albinos Society reported that at least 35 albino people were murdered in 2008 alone, the main reason for their killing in order to was to supply witch doctors with limbs, organs and hair for their potions.¹¹

The number of murders and mutilations of albino bodies that have occurred are difficult to estimate. Different figures are mentioned when claiming both how many albinos live in Tanzania as well as how many albinos have been killed during the past years. However, reports of attacks and mutilation occur daily, with thousands of albinos living under threat or at risk.¹² In Tanzania the killings of hundreds of persons with albinism across the country is a widely discussed topic.¹³ The killing of albinos in Tanzania has been linked to witchcraft where it is believed that an organ or body part of an albino can be used by a witchdoctor to manufacture a charm that will make a person wealthy.¹⁴ These charms are believed to increase a person's success in activities, such as fishing and mining.

These are violations of human rights regarding people with disabilities as documented in the Universal Declaration of Human Rights¹⁵ which provides for protection of human rights of all human beings on earth, including albinos. According to Article 3 of the Declaration¹⁶, "everyone has the right to life, liberty and security as a person." Therefore the killing of albinos is undoubtedly a serious violation of their right to life, to which they are inherently entitled to have protected, recognised and respected. This study attempts to investigate the overall scenario of violation of human rights for people with albinism in relation to the legislature and government efforts employed to address the problem.

1.2 Problem Statement

The brutal killings, amputations and trafficking in body parts of albinos in East Africa is a disrespect of the dignity and sanctity of the human body as provided for under international human rights law as Tanzanian law. The murder of persons with albinism

¹¹ 'The Economist' *An international weekly Newspaper* 17 January 2009.

¹² As above.

¹³ The World, The murder of albinos in Tanzania (June 10, 2010).

¹⁴ 'Attackers kill albino girl 5, in night raid' *The Citizen* (Tanzania) 25 January 2008.

¹⁵ United Nations General Assembly's Universal Declaration of Human Rights of 10 December 1948 (hereafter "the 1948 Declaration").

¹⁶ Art 3, the 1948 Declaration.

experienced recently, especially in Tanzania, has alerted the entire world of the threats which albinos face.¹⁷

While it is known that the government of Tanzania has taken several measures to arrest and prosecute the individuals responsible for these killings, much remains to be done before the killing of albinos in Tanzania is put to an end. The central problem of this study questions how effective the national framework is towards protection of people with disabilities, more specifically, albinos and how this framework conform to international agreements on human rights?

1.2 Research Objectives

This research will seek to identify how the national legal framework accommodates the international agreements or standards for protecting human rights. Specifically, the research will address the following issues:

- Discussing the current national legal framework with regard to protection of the right to life for people with albinism
- Conformity of national legal framework conform to international standards on the protection of the right of life to people with albinism
- Efforts taken by the government to protect or end the mutilation or killings of albinos in Tanzania
- Recommending legal steps and other measures to protect persons with albinism.

1.4 Research questions

This study will seek to address the following questions:

- (i) What are the social reasons for the killing albinos?
- (ii) What does Tanzania's current legal framework state regarding international human rights relevant to persons with albinism as a disability?

¹⁷ *Persons with albinism in Tanzania face several major challenges* <<http://www.underthesamesun.com/home.php>>(accessed 6 July 2011).

- (iii) Does the current national legal framework effectively protect the right to life for people with albinism?
- (iv) What efforts have been taken by the government to protect or end the mutilation or killings of albinos in Tanzania, and are they sufficient and effective?

1.5 Literature Review

There are various studies that have been carried out in East Africa, which have a direct bearing on people with albinism. For example, studies about skin cancers in Tanzania have been carried out.¹⁸ There are also various studies from Africa which indicate that the prevalence of albinism is approximately one in 4000.¹⁹

Albinos in Tanzania are a vulnerable group of people who are under the threat of extinction as they are being killed with impunity, based on the belief that the potion made from their body parts can bring good luck, wealth and success.²⁰ This has sparked angry protests, condemnations and outcries by the citizens who perceive that the government's response to the threat against the lives of the albinos is inadequate as the number of trials and convictions have not been commensurate with the number of killings. The phenomenon is also attracting international attention as there is a public and international outcry against it. This means that efforts need to be intensified both locally and internationally to check the scourge.²¹

There are various studies conducted with regard to albinism in Africa particularly in Tanzania. Lookingbill et al. (1995) conducted a study on the skin cancer for albinos in Tanzania. The results of the study suggested that due to the nature of their skins, albinos are susceptible to cancer. The hypo pigmented skin of people with albinism makes them vulnerable to sun induced skin lesions and cancers and people with albinism require life-long protection from exposure to ultraviolet light.

¹⁸ Lookingbill(n 7 above)42.

¹⁹ Lund,& Gaigher 'A health intervention programme for children with albinism at a special school in South Africa', in Health Education Research,(2001)(2002) vol. 17, no. 3.

²⁰ IDEAS,„Providing Safe and Clean Water to The Vulnerable Albino Families in Kagera Region, N.W Tanzania.: A Project Proposal Submitted to The GlobalGiving Open Challenge On-Line Fund raising Opportunity" www.globalgiving.com/pfil/3567/projdoc.doc(2009)(Accessed 27 July 2011).

²¹ Kiishweko, Orton (2008) „JK Orders Crackdown to Stem Murder of Albinos", accessed on March 28, 2010 at <http://allafrica.com/stories/200810200901.html>.(Accessed 27 July 2011).

Goffman (1997)²² conducted a study on stigmatization of Albino people. To date, this study has remained influential on the topic of stigma in the social sciences context. Goffman argues that societies create categorizations, where some personalities are considered to be normal within a category, the outcome can be referred to as social identity. Goffman differentiates among people who are dishonoured and people who are dishonourable. A dishonoured person is someone whose distinctions are obvious on the spot, while a person who is dishonourable possesses unwanted characteristics that are not instantly perceivable to those present. Goffman identifies three types of stigma namely abominations of the body, blemishes of individual character, and tribal stigma. He further argued that a person who is stigmatized is seen as a victim, inferior, and someone who is not quite human. He concludes that Albinos undergo stigmatization in societies hence being perceived as inferior and due to this act they run away from the tasks of those considered normal, hiding behind their stigma

Kromberg, J.G.R., Zwane, E.M. and Jenkins, T. (1987), conducted a research on albinism focusing on the African history with regard to stories, myths and tales.²³ The study found that attitudes tales and myths have developed and changed over time. The results also indicated that some stories and tales suggest that albinism is the product of a Negress-gorilla or Negress-water spirit mating. Some of the societies in Africa refer to people with Albinism as monkey. Other studies have revealed existence of myths about albinism that regard them as blessings as well as punishments, and skills in sorcery as well as healing.²⁴

Lund and Gaigher (2002) conducted a study on the health intervention programme for children with albinism at a special school in South Africa. The results of the study revealed that albinism is the result of witchcraft. The study also found similar myths that advocate that families with babies that have albinism are victims of witchcraft and that it is because of this that these babies are born with albinism.²⁵ Lund and Gaigher (2002) concluded that the lack of knowledge about albinism can lead to many superstitions. Although the study focused on health interventions for children with albinism, it was concluded that the existence of poverty in the society combined with superstitions would magnify problems related to skin and eyesight for children in special schools.

²² E Goffman, 'Selections from Stigma', in (ed.) Lennard J. Davis; *The Disability Studies Reader* (Routledge, NY), (1997) 10.

²³ JGR Kromberg, EM Zwane, & T Jenkins, 'The Response of Black Mothers to the Birth of an Albino Infant', in *American Journal of Disease of Children*, (1987) vol. 141.

²⁴ As above.

²⁵ Lund, & Gaigher (n 19 above) 17.

Kelly Allen (2010) conducted a research on oppression through omission looking on the human rights for persons with albinism in Uganda focusing on employment opportunities. The research findings showed that persons with albinism face challenges of discrimination while looking for employment. The results of the study suggest that while it is possible for persons with albinism to complete schooling, the attempt to find employment presents additional challenges of discrimination²⁶. Studies have found that an albino can complete the initial stages of interview which are conducted through written approach. However albinos found it difficult to survive a face-to-face interview particularly due to their inferiority.²⁷

Nyirinkindi, Laura (2007) conducted a study on the Economic and Social rights as well as service delivery at the local government lever in Uganda. The findings of these studies suggest that albinos are compelled to avoid various professions due to their medical condition²⁸. Such professions involve those which expose albinos to the sun or bright lights which impair their vision such as welding. Nyirinkindi²⁹ argues that because of this discrimination and limitations of professions due to albinism, Many albinos struggle to get employment.

The review of current literature suggests that most studies on albinism have been conducted in the area of stigmatisation, discrimination, myths and tales, employment opportunities and economic hardships facing albino people. No previous research in the field of albinism in Tanzania or East African countries has been carried out with regard to the killing of albino specific focus on the national legal framework and how it accommodates the international agreements or standards for protecting human rights for people with albinism. This study therefore intends to address this gap.

1.6 Research Methodology

The research was conducted based on secondary sources hence it can be regarded as desk and library based research. With this methodological approach, the study has entirely relied on both published and unpublished material mostly originating from internet sources such as journal articles, newspapers, magazines and official reports, international agreements and declarations on human rights together with various

²⁶ K Allen 'The Human Rights Case of Persons with Albinism in Uganda'(2010) 19.

²⁷ As above.

²⁸ L Nyirinkindi, "Economic and Social Rights, Service Delivery and Local Government in Uganda. HURIPPEC. Kampala, Uganda. (2007).

²⁹ As above.

country statutes namely, the Constitution United Republic of Tanzania and the Penal code.

To enhance what will be found from these sources, an informal telephonic interview was conducted with NGOs dealing with human rights issues in Tanzania, specifically with the Legal and Human Rights Centre. The researcher believes that having an informal interview with this particular organisation will help the study in understanding the real situation on ground and measures taken so far by the government as well as roles and function of NGOs operating in Tanzania in protecting albinos' rights in the country.

1.7 Scope of the study

The study focuses on the killing of albinos in Tanzania. The key focus is on how the current legal framework protects albinos and the measures taken so far by the government of Tanzania in curbing such brutal killings.

1.8 Overview of the Chapters

The dissertation is divided into five chapters. Chapter one consists of the introduction, statement of the problem, aims and objectives, research questions, research methodology and limitations of the study, literature review and general introduction of what the dissertation is about. Chapter two discusses the social reasons for killing of albinos. Chapter three analyses international treaties protecting human rights relevant to persons with albinism. Chapter four addresses the Tanzanian legal framework with regard to the protection of the right to life and measures taken to ensure protection of people with disability particularly albinos and the gaps or weaknesses of the legal framework. Chapter five presents conclusions and recommendations to the government and civil society aimed at protecting and improving the human rights of persons with albinism in Tanzania.

Chapter Two

Social Reasons for the killing of Albinos

2.1 Introduction

Albinos are found in all societies in the world. However, there is the lack of knowledge on albinism. This has resulted in the insecurity caused by negative attitudes towards albinos. Recently, people with albinism have grown to be vulnerable to attacks and unwarranted killings from persons who believe that their body parts and limbs of people with albinism can be superstitiously used to generate income.³⁰ In Tanzania, albino organs, particularly genitals, limbs, breasts, fingers and the tongue are reportedly on high demand by people involved in mining and fishing activities in the Lake Victoria Zone, especially Mwanza, Shinyanga and Mara regions.³¹ This is due to the rumors that the albino organs possess mystical powers that can make a person fabulously rich within a short time. Since the mining and fishing industries are currently enjoying an unprecedented boom, so the two sectors are attracting people from all walks of life and cultures and this factor has increased the albino risks.

A common myth about albinism is that all people with albinism have red eyes, but this is very often not the case. Some people with albinism have very light skin and hair, but not all. This depends on the type of albinism, and some types are only classified as albinism due to eye problems.³² African history contains stories and myths describing albinism. Like many other things in Africa's diverse cultures, albinism is surrounded by many cultural beliefs, superstitions and stereotypes. These attitudes, tales and myths have developed and changed over centuries. Other myths about albinism refer to blessings as well as punishments, and skills in sorcery as well as healing.³³

It is estimated that over 150,000 albinos living in Tanzania, only 8,000 are registered with the Tanzania Albino Society (TAS).³⁴ A number of albinos have fled to the Dar es Salaam area as they feel safer in an urban setting. Tanzania is thought to have the largest population of albinos in Africa.³⁵

³⁰ Gettleman, Jeffrey, "Albinos, long shunned, face threat in Tanzania" *New York Times* <http://www.nytimes.com/2008/06/08/world/africa/08albino.html> (2008)(accessed 27 July 2011).

³¹ TR Magobe, "Superstitious Albino Killings in Tanzania Must Stop." Retrieved from <http://www.groundreport.com/Opinion/Superstitious-Albino-Killings-in-Tanzania-Must> (Accessed 21 September 2011).

³² Rachael Pollock, "Albino Killings in Tanzania related to Ancient Tribal Beliefs" www.mediaglobal.org/.../albino-killings-in-tanzania-related-to-ancient-tribal-beliefs(2008)(accessed 12 July 2011).

³³ Kromberg (n 21 above) 14.

³⁴ BBC News (27 July 2008). "Tanzania Albinos Targeted Again" (27 July 2008). <http://news.bbc.co.uk/2/hi/africa/7527729.stm>. (access 15.07. 2011).

³⁵ "Tanzania in witchdoctor crackdown". *BBC News* BBC (3 April 2008) (access 15 July 2011).

In addition, the albino killings the three regions mentioned above are also famous for the killing of people believed to be witches or wizards. In these region, mere rumors about one being a witch is sufficient justification for an angry mob to kill a suspect of witchcraft. So, killings associated with superstition are not new in the country especially in rural areas. For albinos, who are already considered outcasts in society, the situation is worse for them because they end being victims of witchcrafts. This is because in situations of witchcraft, the demand for their body parts becomes high.

A clear and detailed map of Tanzania which also shows the regions of Mwanza, Shinyanga and Mara where killing of albinos has been famously experienced is presented below:



This section discusses the stimulus to conduct the study based on the frequency of killings of persons with albinism.

2.2 The Society and Stigmatisation of Albinos: An Overview

The existence of misconceptions and myths about persons with albinism in many parts of Africa, Tanzania inclusive has led to stigmatization and discrimination right from birth and in their day to day lives and activities. These acts of discrimination have led to infringements on their fundamental human rights and basic freedoms which can be deduced in various forms as presented below:

2.3 Social Stigmatization and Discrimination

Albinos continue to suffer from discrimination and insults from societies in their day to day lives. The stigma against albinos discredits their reputation. This affects them socially and because of societal construction about them, as being outcasts, they are considered undesirable and a disgrace to society, rather than being accepted. According to Virginia³⁶ there is negative stigma connected to albinism where albinos are associated with, and classified as a blemish, mark, stain. This has made society to look at albinos with suspicion and fear. Many societies consider albinos mysterious, evil and in fact, incapable of doing the things that other 'normal' human being can do

People with albinism also suffer socially and psychologically because of negative family and societal attitudes.³⁷ Societies have been using offensive names for persons with albinism which has resulted to the injustice and stereotypes leading communities to denounce them based on their conditions rather than appreciating their humanity. This has been commonly experienced in East Africa, Tanzania in particular where various derogatory names such as *Zeru Zeru* meaning 'ghost like creature' and '*mzungu*' connoting 'white man' are normally heard spoken by different people irrespective of age.

Further to this, the advent of divorces is on the increase in several societies in Tanzania. Women happened to be the most affected by divorce, with some being rejected by their husbands. The situation is even worse for women who give birth to children with albinism. They are rejected by both their husbands and families, for

³⁶ Virginia Small, *Gender and Witchcraft Killings in Tanzania*(1998)13.

³⁷ As above.

bringing 'objects of disgrace' in this regard albino children in society.³⁸ The birth of albino children is based on the myths that albino children are conceived when women engage in sexual intercourse with men of other races or men who are cursed and unclean and of being witches. In fact Some children with albinism are hidden from the public or forbidden from socialising with others because they treated as outcasts while the unfortunate ones are killed at an infant age.³⁹

The social discrimination of persons with albinism has been extended to the marriage affairs where albinos are denied the right to found a family. According to Virginia, people who are pigmented find it relatively easy to find partners while those with albinism are routinely forced to lead their lives single because no one wants them. Even their own families have been constantly refusing to sanction relationships. Male albinos struggle to get wives while female albinos struggle to get husbands.⁴⁰ As such, it is pertinent to note that the long history of social discrimination against persons with albinism has impacted negatively on their right to found a family. The right to found a family is guaranteed under the UDHR. Although it may be contended that the state does not have a direct obligation to chose partners for its citizens, a broad and generous interpretation of this right supports the argument that states have an obligation to sensitise the public in order to ensure a change in the negative attitude about people with albinism. It is contended that promoting the right to found a family on the part of the state in situations of discrimination such as this, enjoins the state to create an environment that is conducive for the right to found a family to be exercised. One way of doing this is by raising awareness and sensitising the public about albinism.

2.4 Albinos Gender Based sexual Assaults against Albinos

A number of countries in Sub-saharan Africa including Zimbabwe, Swaziland, South Africa and Tanzania, continue to be plagued with ritual defilement and rape of girls and women with albinism because of a strongly held belief that their body parts have magic or medicinal qualities⁴¹. This has been caused by the myth that having sex with a woman with albinism can cure HIV/AIDS, thus fuelling this form of violence. This has

³⁸ Natukunda, Carol & Ngatya, Kikonyogo (2008) „Ritual killings: Albinos hunted“ The New Vision, December 5, [http://www.newvision.co.ug/D/8/12/663061\(2008\).](http://www.newvision.co.ug/D/8/12/663061(2008).) (Accessed 19 September 2011).

³⁹ As above.

⁴⁰ Magobe, Telesphor Remigius (2008), Superstitious Albino Killings in Tanzania Must Stop, accessed at [http://www.groundreport.com/Opinion/Superstitious-Albino-Killings-in-Tanzania-Must-Sto/2860945.\(Accessed](http://www.groundreport.com/Opinion/Superstitious-Albino-Killings-in-Tanzania-Must-Sto/2860945.(Accessed) 11 July 2011).

⁴¹ F Ng'wanakilala, *Albinos in Tanzania murdered or raped as AIDS "cure". Ernest Kimaya, head of the Tanzania Albino society and a sufferer of the pigment disorder, said social stigma prevented many girls from reporting rape, making it difficult to say how many albinos had been sexually abused*(2011).

made persons with albinism more susceptible to HIV infections because some people view them as a gateway to their healing. For women and girls with albinism, sexual violence makes theirs a case of multiple tragedies. Firstly, women rights are yet to be realized in largely patriarchal traditional communities. Secondly, being born with albinism means stigma from birth which is normally accompanied by skin and sight problems and poverty. Being targeted for ritual rape as a cure for HIV/AIDS, and the infections that follow thereafter aggravates the situation of the victims.⁴² This has threatened their lives as currently there is around 1.4 million Tanzanians among a population of 40.7 million having the HIV virus that leads to AIDS. Although it may be contended that not all infections are result from sexual violence against albinos. It can be argued reasonably that sexual violence against albinos has partly contributed to the increase in the HIV infections in Tanzania.

2.5 Albinos Massacre

Recently, the killing of persons with albinism in East Africa and southern Africa, especially in Tanzania, has brought to the fore the threats facing people with the condition.⁴³ The brutal killings, amputations and trafficking in body parts of albinos in East Africa is a disrespect of the dignity and sanctity of the human body as provided for under international human rights law as well as national laws of the countries. Various sources suggest that more than 100 persons with albinism have been murdered in Tanzania and Burundi in the past few years.⁴⁴

These killings are done in order to obtain body parts which are used in the making of charms by traditional witchdoctors. There is a belief that charms made with body parts of persons with albinism, particularly hair, genitals, limbs, breasts, fingers, the tongue and blood make strong magic portions which sell for more.⁴⁵ Sources suggest that the price for albino organs is sold on higher prices in Tanzania ranging from US\$1,000 to US\$3,000. The documented price is regarded higher compared to the annual average of income which is estimated to be \$800.⁴⁶

⁴² Color foundation, *Life of Albinos in East Africa threatened: A most bizarre and dramatic consequence of having a skin color disease*, <http://www.colorfoundation.org/> (access 12 July 2011).

⁴³ UTSS, Persons with albinism in Tanzania face several major challenges: <http://www.underthesamesun.com/home.php>. (accessed 12 July 2011).

⁴⁴ Rachael Pollock, Albinos Killings in Tanzania related to Ancient Tribal Beliefs www.mediaglobal.org/.../albino-killings-in-tanzania-related-to-ancient-tribal-beliefs (accessed 12 July 2011).

⁴⁵ As above.

⁴⁶ J Delaney, *Albinos under Siege in Tanzania: Witchcraft behind rash of killings*, (3 Dec 2008,)38.

The demand for body parts of persons with albinism has also prompted inhumane attacks where victims are attacked and their limbs hacked off and left to die. Trade in organs of persons with albinism has also led to human trafficking among East African countries particularly Tanzania. According to international human rights law human trafficking of persons with albinism is an offence on the sanctity and dignity of the human body. The international law provides for rights to safety and security despite being an albino or not.

2.6 Conclusion

This chapter discussed the key issues concerning the society and stigmatisation of albinos particularly the social stigmatisation and discrimination. Issues on Albinos gender based sexual assaults against Albinos and massacre were also covered during the discussion. Various sources suggest that more than 100 persons with albinism have been murdered in Tanzania and Burundi in the past few years. The reasons revealed for such killings are obtaining body parts which are used in the making of charms by traditional witchdoctors which is estimated to cost US\$1,000 to US\$3,000 for an organ.

Chapter Three

International Legal Protection of Persons with Albinism

3.1 Introduction

This chapter covers various international conventions which provide for the protection of human rights. Although most treaties do not address specific issues of persons with albinism, a generous and broad interpretation of the provisions in these treaties can be used to protect the rights of persons with albinism in Tanzania. This is because, under article 26 of the Vienna Convention on the law of treaties, Tanzania is bound to adhere to the values enshrined in the various international treaties in good faith by virtue of ratifying these treaties.

3.2 Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights (UDHR) provides for recognises the inherent right to dignity and of the right to equal and inalienable rights of all members of the human family as a foundation for freedom, justice and peace in the world. Therefore the common understanding of these rights and freedoms is vital for the full realisation of this pledge. The UDHR requires peoples and nations, to the end that every individual and every organ of society to understand and strive to teaching and education in order to promote respect for these rights and freedoms to the community.⁴⁷

Being an Albino does not justify the infringement of the rights of albinos. As such, albinos are entitled to enjoy all the rights guaranteed under the various human rights instruments, by virtue of being part of the human race in society. The Universal Declaration of Human Rights⁴⁸ protects human rights of all human beings, including albinos Tanzania is bound to teach and educate its people about human rights issues so that it can promote respect for these rights and freedoms and by progressive measures or actions among its citizens.

⁴⁷ Preamble to the UN Declaration of Human Rights of 1948.

⁴⁸ United Nations General Assembly's Universal Declaration of Human Rights of 10 December 1948 (hereafter "the 1948 Declaration").

Article 1 of the Declaration⁴⁹ provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. According to this article humans are born with human rights. Albinos being part of the people in the society have their human rights which need to be protected from all sorts of violations such as killings and torture as it is seen currently in Tanzanian societies.⁵⁰

Article 2 of the Declaration⁵¹ provides that everyone is entitled to all the rights and freedoms set forth in the 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. This provision suggests that a person's status as albino should not be used against them for their rights to be restricted. Regardless of one's status as an albino, they are to enjoy all rights and freedoms contained in the Declaration.

Article 3⁵² provides that "everyone has the right to life, liberty and security of person." In this article, the killing of albinos in the interest of their body organs is the violation of their right to life, which they are naturally allowed to have protected, recognised and respected. People with albinism have the right to be free and to be protected from any kind of violation against their bodies. The misconception that albino body parts and skins have magical powers suggests those albinos are not normal human beings.

3.3 The International Covenant on Civil and Political Rights (ICCPR) 1966

The International Covenant on Civil and Political Rights provides for protection of civil and political rights. Most of these provisions are relevant to the protection of the rights of persons with disabilities, including albinos.⁵³

For instance, article 6 provides for the right to life. This right may be violated when life-saving treatment is denied on account of disability. Similarly, article 7 provides for the right to freedom from torture and cruel, inhuman or degrading treatment and punishment, which may be violated when persons with disabilities are placed in an inappropriate environment or when a person with a mental or psychiatric disability is

⁴⁹ The 1948 Declaration.

⁵⁰ As above.

⁵¹ The 1948 Declaration.

⁵² Art 3, the 1948 Declaration.

⁵³ The International Covenant on Civil and Political Rights provides for protection of civil and political Rights.

subject to medical or scientific experimentation without his/her prior informed consent. With regard to albinos, this right may be violated when albinos are exposed to conditions that put their lives at risk through the violation their rights including their right to life, livelihood, freedom from discrimination, to mention but a few rights. In the study at hand, the killing of albinos is a violation of the several rights guaranteed under the ICCPR.⁵⁴

3.4 The International Covenant on Economic, Social and Cultural Right⁵⁵ (CESCR)(1966)

The ICESCR aims at the protects and promotes of a wide range of economic, social and cultural rights. Many of its rights are undoubtedly of great importance in responding to the plight of persons with disabilities, including albinos. For instance, article 11 which provides for the right to an adequate standard of living can be interpreted to require states to adopt measures necessary to ensure physical and economic access to adequate food, housing and clothing and respect for the specific needs of this group of individuals (e.g. particular clothing needs or housing in a location which allows access to employment options, health care services, schools and other social facilities.⁵⁶ It is argued that for persons with disabilities, the prioritisation of this right is based on the premise that the discrimination against them reduces their ability to access the basic services and goods necessarily for them to enjoy an adequate standard of living. Accordingly, there is a positive obligation to respond to the plight of albino people as part and parcel of promoting their right to an adequate standard of living. One way of doing this is by affirmative action in favour of persons with disabilities.

3.5 International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of all form against Women (CEDAW)

The CERD and the CEDAW deal with particular groups or categories of persons who are at risk of discrimination. These treaties generally serve two purposes. First, they establish the principle of non-discrimination with respect to the enjoyment of all human rights for the categories of persons covered. Secondly, and to the extent required, they add specificity to the general provisions against discrimination in the ICCPR and the

⁵⁴ As above.

⁵⁵ The International Covenant on Economic, Social and Cultural Rights.

⁵⁶ As above.

ICESCR , tailoring them more directly to the circumstances of the individuals belonging to these groups. These group-specific conventions are of obvious importance in the context of the discrimination of Albinos. People with albinism suffer discrimination because they are disabled and they belong to the category which is regarded as a curse in most African societies.

CERD aims at the elimination of discrimination in all its forms including Albinos. The Convention prohibits “any form of distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.⁵⁷ There is need for measures to be taken for the sole purpose of securing adequate security and non discrimination of Albinos in order to ensure that they enjoy and exercise equal human rights which are fundamental for their freedoms.

Discrimination against persons with disabilities may take various forms, these range from “blatant” discrimination, such as the denial of educational opportunities, to more “subtle” forms of discrimination, such as *de facto* exclusion and isolation deriving from physical and social barriers.⁵⁸ “Disability-based discrimination” may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights by persons with disabilities. As for Albinos, because of their killing creates a barrier for them to be socially integrated, hence being denied opportunities to education and other social services.

3.6 Africa Charter on Human and Peoples’ Rights(1981/1986)⁵⁹

Article 2⁶⁰ of African Charter on Human and Peoples’ Rights provides for the protection of human rights for people in Africa. The article states that “every individual shall be entitled to the enjoyment of the rights and freedoms in the Charter without distinction of any kind, based on the listed grounds”.⁶¹ Another provision in the Charter states that “human beings are inviolable and that every human being shall be entitled respect for

⁵⁷ Article 1 (1).

⁵⁸ As above.

⁵⁹ Also known as the “Banjul Charter”, the African Charter was adopted in Nairobi, Kenya on the 27th June 1981 and entered into force on 21st October 1986. In this paper, the charter will be African Charter instead of Banjul Charter.

⁶⁰ Article 2 of The African Charter.

⁶¹ In this case the listed grounds Include, inter alia, ethnic group, colour, social origin and birth.

his life and the integrity of his person and no one may be arbitrarily deprived of this right”.⁶² The word ‘inviolable’ as used in the Charter means that these rights cannot be derogated from. Since albino people are normal like other human beings, their right to life must not be violated under any circumstance. The interpretation of this Charter in this case is, the killing of albino people hence depriving their right to life is against these provisions and it is violation of human rights as stated by the Charter.

Article 5 of the African Charter further provides that, “every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of their legal status and that all forms of exploitation and degradation of man particularly, [inter alia], torture, cruel, inhumane or degrading treatment shall be prohibited”. This provision is crucial at this particular time where the community is experiencing the cruel killing of Albino people which according to the Charter is inhumane and degrading. It is inhuman to see heartless people kidnapping Albinos without any wrong doing and amputate their limbs and thereafter leave them bleeding to death. These acts are degrading, inhuman and are a savage conduct which these cruel people show to other fellow human beings.

Article 19 of the African Charter states that “all people shall be equal, they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another”.⁶³ The article entails respect for human life and other fundamental human rights which among others include dignity, freedom and security of a person which will guarantee a person’s protection and non-violation of his / her rights as provided by the Charter. Article 27⁶⁴ imposes a duty on individuals and present that “the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.” This being the case, human beings are supposed to behave in a manner that guarantees the rights of others. Killing of Albino people does not ensure their freedoms nor guarantee their rights in community which is comprised of different people with different status.

⁶² Art 4 of the African Charter.

⁶³ Art 19 of the African Charter.

⁶⁴ Art 27 of the African Charter.

3.7 The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)(1984)⁶⁵

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is of importance to persons with disabilities. Article 1⁶⁶ of the Convention defines the term "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Torture is often the result of stern physical or mental disability. Persons with disabilities are particularly vulnerable to torture or other forms of inhuman or degrading treatment. While this Convention may appear to be directly related to government or public officials, its relevance emanates from the torture as prohibited by the Convention.

3.8 Vienna Declaration and Human Rights 1993⁶⁷

The Vienna Declaration on human rights, in its preamble provides that, "...recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of the rights and freedoms..." This provision is aimed at reaffirming what has already been stated in the 1948 Declaration⁶⁸, that human beings are vested with human rights which are inherent to them by virtue of being human. The part which needs emphasis is this, "... human person... should be the principal beneficiary of the rights and freedoms." The provision sheds light on the

⁶⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1).

⁶⁶ Article 1 of the CAT.

⁶⁷ Vienna Declaration, 14-15 June 1993, United Nations Document. A /CONF. 157/24 (Part I) at 20 (1993) (hereafter the "Vienna Declaration").

⁶⁸ Art 1 of the 1948 Declaration.

situation of albinos killing since they are unable to benefit from rights and freedoms provided to them by this Declaration.⁶⁹

The preamble to the Vienna Declaration also states that, also emphasises the responsibilities of all states, in conformity with the Charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion etc.” The Declaration intends to stresses the vital role that states need to play in making sure that rights and freedoms of all its citizens, including its albino citizens are protected and respected.

Paragraph one of the Vienna Declaration states that, “human rights and fundamental freedoms are the birthright of all human beings, their protection and promotion is the first responsibility of government”. This provision imposes an obligation to all governments to ensure the protection of its citizens’ human rights with no distinction.

3.9 The Convention on the Rights of Persons with Disabilities⁷⁰

The Convention on the Rights of Persons with Disabilities states that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights. It also highlights the circumstances under which the rights of PWDs are violated as well as the ways of reinforcing their rights.

Article 1 of the Convention provide that the purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Article 1 states that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. This article is relevant in the protection of the rights of albino people as it

⁶⁹ The 1948 Declaration.

⁷⁰ The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. The Convention entered into force on 3May 2008.

does not exclude them from enjoying all human rights and freedoms. The kill of Albinos is deny them the opportunity to enjoy the prescribed rights listed under the Convention.

Article 5 of the Convention provides for equality and non-discrimination. Article 5 (1) provides for nations to recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. The failure of the government to give special protection to Albinos exposes them discrimination and reduces them to un equal members of society. Since Tanzania is a signatory to this Convention, it is bound to eliminate all discrimination on the basis of disability. It follows then that since albinos fall within the ambit of disabled persons, the Republic of Tanzania is obliged to offer them effective legal protection against discrimination and stigmatisation. As earlier intimated, such protection includes among others, sensitising the public about albinism with a view of ensuring a change from the negative attitudes about albinism.

Article 10 of the Convention provides for the right to life for people with disability by stating that “every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others”. This article implies that no one is required to deprive another’s right to life since it inherited. The killing of albino people based on their skin disability contravenes this provision which Tanzania has reaffirmed and signed for the same.

Article 15 (1) provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” and Article 15 (2) provides that “states parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment”. Arguably, Albino people have continue to be tortured through cruel killings resulting from amputation of limbs and other body parts. This is not only inhuman, it is also cruel and since Tanzania is party to this Convention, it is bound to take measures to promote the rights of persons with disabilities.

3.10 Conclusion

This chapter covered the discussion of various international conventions which provides for the protection of human rights. However, it was found that there was no treaty which specifically addressed the issues of persons with albinism. The presented

treaties revealed that the cited provisions in these treaties are useful if applied in Tanzania to protect the rights of persons with albinism.

Chapter four

National Legal Framework on the protection of Persons with albinism in Tanzania

4.1 Introduction

This chapter discusses the compliance of the national legal framework in Tanzania with international standards as set out in Chapter Three above. It examines the national laws protecting the rights of persons with albinism in the country. Specifically, it reviews the constitutional provisions on the relevant rights accorded to persons with albinism. Further, it discusses the penal provisions that can be used to prosecute and punish perpetrators of the killing of albinos. It analyses whether the national legislative frame is adequate to protect the rights of albinos in Tanzania and identifies the gaps and the need for them to be filled by the government. The suggestions or remarks on the said gaps are presented in Chapter five and recommendations and conclusion.

4.2 The Constitutional Protection of Persons with Albinism

The Constitution of Tanzania⁷¹ from Article 12 to 26 provides for the bill of rights. Article 12⁷² provides that “all human beings are born free and are all equal.” Equality as presented under this article does not exclude Albino people. Albino people are also human beings hence are also born free and are equal to other human beings. However, in Tanzania due to discrimination, albino people fall short of being free.

Article 13(1)⁷³ of the Constitution provides that all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law. This article implies that albino people, without distinction,⁷⁴ are by virtue of this provision entitled to protection and equality before the law. The Constitution provides in Article 13(5) that the term ‘discriminate’ means to satisfy the needs, rights or other requirements of different persons on the basis of their, *inter alia*, nationality, tribe, colour or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantages outside

⁷¹ The 1977 Constitution.

⁷² Sect 12 of the 1977 Constitution.

⁷³ Sect 13(1) of the 1977 Constitution.

⁷⁴ Since it is not mentioned whether the discrimination is fair or unfair.

the specified conditions or the prescribed 'discrimination' shall not be construed in a manner that will prohibit steps aimed at rectifying disabilities in the society.

Article 14 of the Constitution provides for every person to have the right to live and to the protection of his life by the society in accordance with law. The phrase 'to live' and 'to the protection,' in relation to albino people implies that regardless of the fact that a person is born an albino, that person is entitled to all the rights and freedoms enshrined in the constitution.

Article 15 of the constitution declares that every person has the right to, and to freedom to live as a free person. The current situation where albinos are killed in Tanzania contravenes their right to live and to be protected as provided by the constitution. Due to the risk of being victimised and preyed on by the cruel people, albino persons are deprived their right to live freely.

Article 16(1) of the Constitution⁷⁵ states that "every person is entitled to, inter alia, respect and protection of his person, the privacy of his own person, his family and respect and protection of his residence". This provision goes further in demanding families and parents of albino people to provide protection and security for their endangered life. However, as noted in various reports, some of these family members are suspected to be associating with the albino killing.

While the Constitutions provides for a bill of rights from Articles 12 – 16, there is little has been done to make sure that such provisions protect the rights of Albino people in Tanzania. It is agreed principally that the human rights are encompassed in the Constitution if generously interpreted and applied can go so far in protecting persons with albinism. However, in order to protect and ensure that the said rights are enjoyed by all citizens irrespective of their status in the community, there must be strong machinery for coordinating and supervising the implementation of the laws enacted to address the human rights. In Tanzania the remedial bodies or enforcement machineries include the police, prisons, the judiciary and human rights institutions with specific statutory powers to enforce promotion of human rights. It is therefore prudent for, whoever wants to evaluate the state of human rights in a country like Tanzania to consider first the strength of the above mentioned bodies in protecting and promoting human rights at domestic stratum. In order to protect albino people through the already existing bill of right, it is prudent to first consider the strength of the above mentioned

⁷⁵ Article 16 of the 1977 Constitution.

bodies. This is important because these bodies play a central role in protecting albino people.

However, one can say that it is apparent since the inception of the above remedial bodies in Tanzania, the state of human rights in the country poses many questions than answers. Noting from the killing of Albino people, it is my observation that the government has failed to honour some of its promises relating to the promotion and protection of human rights as documented in the Constitution. This has negatively prevented Tanzania from fulfilling its obligations under the Universal Declaration of Human Rights; 1948 and other major International Human rights Instruments. These negative trends are significantly becoming a barrier to development due to the fact that Albino people are found struggling for their rights instead of engaging in development process. Indeed the continuous exclusion of albino reflects in their level of development. It is evident that most of the albinos are poor because they struggle to protect their lives while sparing very little time to engage in developmental processes. Moreover, their discrimination in terms of access to basic goods and services makes their already vulnerable situation more appalling.

In broad-spectrum, the increase rate of human rights violation in Tanzania particularly against Albinos has mainly been as a result of the failure of the government institutions responsible for promotion and protection of human rights to undertake their responsibilities and functions as indicated in their establishment legislation effectively. For example, in Tanzania the Police Force is continuously condemned as the leading violator of human rights in Tanzania. With specific reference to cases concerning albinos, the police is criticised for taking bribes in order to delay investigations or the arrest of suspects.

The judicial system is responsible of ensuring that these killers or perpetrators are brought to justice. To date, there are only 9 cases in the High Court for hearing and only two cases have been already decided.⁷⁶ The principal question is how many of these arrested people have been charged and sentenced? The obvious answer which any one could tell is "not many of them". It is my observation that the steps taken by the enforcement agencies responsible for protecting and promoting human rights are still not enough and not as effective as they are supposed to be as mandated by the laws. This is based on the fact that fundamental human rights of albinos are still being violated regardless of the existence of these government machineries in place. The

⁷⁶ As above.

number of murders against albino people has been increasing day after day and the government has been responding in an unsteady manner.

4.3 The Persons with Disability Act, 2010⁷⁷

The Persons with Disability Act, 2010, was enacted by the Parliament of the United Republic of Tanzania (the Parliament) in April 2010 and assented to by the President of the United Republic of Tanzania on 20 May 2010. The Act makes provisions for Health care; Social support; Accessibility; Rehabilitation; Education and vocational training; Communication; Employment or work protection and, and promotion of basic rights for persons with disabilities

The Act provides for basic principles and obligations for realization of the rights of the persons with disabilities. Article 4 (a) of the Act provides for “respect for human dignity, an individual’s freedom to make own choices and independence of persons with disabilities” However, as noted in the current trends where albino people are brutally killed, the provision is undermined as they do not enjoy respect of their dignity neither do they have freedom make choices.

Article 4 (b) of the Act provides for non discrimination of people living with disabilities. This suggests that people with disabilities are by no means required to be seen as distinct, excluded or restricted on the basis of disability which in the end will affect impair or nullify the recognition, enjoyment or exercise on equal basis of their fundamental rights and freedoms. However, the fact that Albino people in Tanzania are killed implies that they are discriminated against because of their skin colour, hence not being free to enjoy human rights which they are inherently entitled to enjoy.

Article 5 of the Act obliges the Minister responsible (Minister of Health and Social Welfare) to undertake various measures in order to ensure that the rights of persons with disabilities inclusive of Albinos are realized and protected. Some of these responsibilities are:

“Take appropriate steps to ensure the realization of the rights of persons with disabilities in all national policies, programmes and legislations”;⁷⁸

⁷⁷ The Persons with Disability Act, 2010, enacted by Parliament in April 2010 and assented by the President of the United Republic of Tanzania on 20th May 2010.

⁷⁸ Article 5(a).

“Take all appropriate measures to eliminate discrimination on the basis of disability by any person, private or public”;⁷⁹

“Provide accessible information to persons with disabilities on technical aids, devices and assistive technologies, including new technologies as well as other forms of assistance, support services and facilities”;⁸⁰

“Also promote the training of professionals and staff who are working with persons with disabilities on their rights, as recognized in the Act so as to provide better assistance and services guaranteed by those rights”.⁸¹

Article 6 of the Act imposes an obligation on the Government to ensure equality and non discrimination of for people living with disabilities. For example, Article 6 (a) provides that the Government is required to “ensure that all persons with disabilities are equal, and are fully entitled without any discrimination to the equal protection and benefits of this Act; and Article 6 (b) mandates the Government to “prohibit all forms of discrimination on the basis of disability and guarantee the persons with disabilities with equal and effective legal protection against discrimination on all grounds”

The Persons with Disability Act, 2010 has failed to address the critical problems for people with disability in Tanzania. While Article 5 of the Act imposes an obligation on the state to realize the right of persons with disabilities under the supervision of Ministry of Health and Social Welfare, the Act does not establish the measures to be taken against the individuals who fail to assume their responsibilities as stipulated by the Act.

4.4 The Penal Code of the Republic of Tanzania⁸²

Section 25 of the Penal Code provides for various punishment to be imposed by the courts such as death, imprisonment, corporal punishment, fine, forfeiture, payment of compensation finding security to keep the peace and be of good behaviour. These punishments are (provided in order to protect all citizens including Albino people.

⁷⁹ Article 5(b).

⁸⁰ Article 5(a).

⁸¹ Article 5(d).

⁸² The Penal Code (Cap. 16) of the Republic of Tanzania was adopted on 28 September 1945. This Penal Code is an Ordinance to Establish a Code of Criminal Laws.

Section 196 of the Penal Code establishes an offence of murder and provides that “any person who with malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder. Albino people are people like others and according to the Constitution article 14 all people have the right to live and to the protection of their life by the society in accordance with the law. The Penal Code under section 197 stipulates that causing another person’s death leads to death sentence or punishment if found guilty. The heartless people who are killing Albino in this regard are entitled to death penalty.

While there are clear provisions on the Penal Code on what is to be done once a person is found guilty of murder, the judicial system in Tanzania has been reluctant to apply such provisions and in some circumstance has been playing a ‘delaying game’. This has also been the case for Albino killers whom we have evidenced their cases being dragged for a long period despite being found with exhibits of albino organs such as limbs.

It is agreed that these provisions in the Penal Code aim to protect citizens’ life. There are also clear punishments established under the Code for people who contravene various legal provisions in the country. However, the code is silent about people with disabilities despite the fact that they fall within the ambit of vulnerable people in the society. This is one of the weakness of the Code as it fails to address the procedure and punishment of people who commit wrong acts to disabled people such as the killings of Albinos in Tanzania. Clear and severe punishments for such people could have helped to curb down the Albino killings rather than generalizing the punishments.

4.5 The Law of the Child Act, 2009⁸³

This Act provides for protection of a child. Article 4 (1) defines a Child as a person below the age 18 years.

Article 5 (1-2) provides that a child shall have a right to live free from any discrimination and a person shall not discriminate against a child on the grounds of

⁸³ An Act to provide for reform and consolidation of laws relating to children, to stipulate rights of the child and to promote, protect and maintain the welfare of a child with a view to giving effect to international and regional conventions on the rights of the child; to provide for affiliation, foster care, adoption and custody of the child; to further regulate employment and apprenticeship; to make provisions with respect to a child in conflict with law and to provide for related matters.

gender, race, age, religion, language, political opinion, disability, health status, custom, ethnic origin, rural or urban background, birth, socio-economic status, being a refugee or of other status. While this provision highlights the need to protect children against discrimination and their right to life, these rights as guaranteed continue to be violated through the brutal killing of children with albinism.

Article 8(5)&(6) prohibits the treatment of any child in an undignified manner and that a child with disabilities shall be entitled to special care, treatment, affordable facilities for his rehabilitation and equal opportunities to education and training wherever possible to develop his maximum potential and to be self-reliant. Contrary to this provision, children with albinism have been treated in undignified manner and lacks special care and education due to the killings which they are experiencing.

Article 9(1&3) provides that “A child shall have the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents. Under this article, the right to leisure and liberty by the child shall be subject to guidance and ability of a parent, guardian or relative. However, as noted in various trends on Albino killings, guardian, parents or family members are reportedly to involved in the killing of their own children simply because of the existing misconceptions that a body parts of an albinos are a source of wealth.

Further, Article 9 (3) puts responsibilities to the on parents to ensure that children are protected from neglect, discrimination, violence, abuse, exposure to physical and moral hazards. Parents are also obliged to provide guidance, care, assistance and maintenance for children and assurance of children’s survival and development. All these special rights of children are rendered illusory when children with albinism are exposed to conditions that put their lives at risk.

Article 13(1) provides that “[a] person shall not subject a child to torture, or other cruel, inhuman punishment or degrading treatment including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child. However, the killing of Albino children has exposed them to torture and physical injury while those who have escaped this mess are suffering psychological diseases.

The Child Act, 2009 specifies how a child needs to be treated and provides that no child should be discriminated in whatever manner disability being inclusive. However, this Law is inadequate since society continues to experience violation of child rights

with no measures being taken to protect their rights. The punishments established under the Law are often taken lightly by the wrong doers. As such, these penalties do not influence a change of behavior for such persons. The Law also lacks provisions on the punishments for children with disability as a way of protecting them from the bad people. Thus, the continued killing of children with albinism supports the argument that the laws directed at protecting vulnerable groups of people in Tanzania are weak and inadequate.

4.6 Disabled Persons Care and Maintenance Act⁸⁴

The Act also results from Cabinet Paper No. 19 of 1981. This Act provides and designates responsibilities of caring for disabled persons to families, relatives, local government, the central government and non-governmental organizations.

Article 14(1) provides that “Every relative of a disabled person shall have an obligation to care and provide for the maintenance of that disabled person, according to his means” This article suggests that relatives of disabled persons have the responsibility to ensure that they are maintained in accordance with the law.

The Disabled Persons Care and Maintenance Act imposes responsibilities of caring for people with disabilities on relative, families, NGOs and government institutions. However, it has been continuously stressed all through this dissertation that some relatives of persons with albinism are involved in the ritual killing of albinos. Moreover, the Act does not provide for steps or measures to be taken against those who will fail to undertake their responsibility with regard to caring and ensuring that the rights of people with disabilities in regard to albinos are protected and promoted. The government on its own has not played its role effectively no matter why such killings for albinos have taken long to be dealt with.

⁸⁴ An Act to provide for the Care and Maintenance of disabled persons and for purposes connected with those matters and is referred as Act No. 3 of 1982 (Disabled Persons Care and Maintenance).

4.7 Responses to the killing of Albinos

4.7.1 Government Responses to the Killing of Albinos in Tanzania⁸⁵

The Government of the United Republic of Tanzania is committed to stopping the killing of albinos and the (trade in human organs) once and for all and is already taking measures to bring the perpetrators to book. The measures include:

(i) Public awareness campaigns to educate the people that it is only through hard work that one can prosper in life, not through sale or use of body parts of fellow human beings with albinism.⁸⁶

(ii) Formation of the multi-disciplinary National Task Force which has trickled down to the Regional and District levels for the purposes of brainstorming, researching and suggesting ways to deal with the problem.⁸⁷

(iii) There is a country wide campaign intended to identify suspected perpetrators in the Albino killings. There are also plan to conduct a national census to ascertain the number of Albino population, with a view of effectively budgeting and planning for their protection.⁸⁸

(iv) The temporary suspension of all practicing certificates of traditional healers, who are key suspects in the trading of albino parts. In an attempt at curb the killing of albino the Tanzanian government banned and withdrew licenses of traditional witch doctors with a view of stopping them from practicing.⁸⁹ Moreover, it has been reported that many of the witch doctors have been arrested and some have been remanded in custody.⁹⁰ Consequent to banning witchdoctors, the government has made the killing of albinos a principal crime and this has resulted to mass departure of some of the witch doctors to neighbouring countries like Burundi.⁹¹

⁸⁵ United Nations, International Covenant On Civil And Political Rights, replies to the list of issues (CCPR/C/TZA/Q/4) to be taken up in connection with the consideration of the fourth periodic report of the United Republic Of Tanzania (CCPR/C/TZA/4) (17 June 2009).

⁸⁶ As above.

⁸⁷ As above.

⁸⁸ As above.

⁸⁹ United Nations, International Covenant On Civil And Political Rights , replies to the list of issues (CCPR/C/TZA/Q/4) to be taken up in connection with the consideration of the fourth periodic report of the United Republic Of Tanzania (CCPR/C/TZA/4) [17 June 2009]

⁹⁰ British Broadcasting Corporation (2009) „Tanzania 'healers' flout ban" Jan 23, accessed on August, 16, 2011 at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/7851287.stm>.(Access 23 Augyst 211).

⁹¹ L Amri (2009) „Who is defending albino killers?„ *Daily News* November 21, accessed September, 15, 2011 at <http://www.dailynews.co.tz/feature/?n=5829>.

(v) Furthermore, in its bid to check the current wave of albino killings in Tanzania, President Jakaya Kikwete called on Tanzanians to make available any information they might have about the perpetrators of such acts. In a secret referendum, the government invited the citizens to write down the names of suspected albino killers. Such names were gathered and handed over to the police.⁹² The secret ballot has been conducted carefully with strict observance of basic human rights standards. Further to this, the right to fair trial and the notion of the presumption of innocence for suspects, are advocated. However, as earlier noted, the trial process is plagued with unwarranted delays with regard to cases concerning albinos because of poor investigation by police.

(vi) In terms of leadership roles, Al-Shaymaa J. Kwegyir, an albino woman, was sponsored by government and incorporated into the parliament in 2008 to show that albinos can live a normal life like everyone else and she has been active in trying to find lasting solutions to the problem.⁹³ The involvement of persons with albinism in the leadership of the country is a positive step in the right direction of encouraging them to take part in the decision-making processes. This has helped them to contribute and participate in coming up with solutions to their problems. Indeed their role has been central because involving them has helped them with practical solutions to their dilemma. This made possible because they have a better understanding of the areas that need to be targeted in terms of redress. However, it is evident that several albinos, especially in the rural areas continue to be marginalised and discriminated against because, the many policies and reforms arising from their representatives do not trickle down to their appalling situations.

(vii) In Tanzania, the disability movement is rather well established. Different Disabled People's Organizations (DPOs) and SHIVYAWATA—the Tanzania Federation of Disabled People's Organizations regularly take part in discussions with the government on issues affecting the lives of people with disabilities. In fact, official recognition of the federation has increased over the past years and recently led to involvement of the organization within the Coordination and steering of the Non-State Actors support

⁹² European Union @ United Nations (2008) „EU Parliament resolutions on Human Rights issues in Mauritania, Iran, and Tanzania“ September 9, accessed on October, 5th, 2011 at http://www.europa-un.org/articles/fr/article_8123_fr.htm.

⁹³ G Jeffrey (2008) „Albinos, long shunned, face threat in Tanzania“ *New York Times*, <http://www.nytimes.com/2008/06/08/world/africa/08albino.html> (Access 08 September 2011).

programme. This Programme supports development of a constructive dialogue between government, partners and civil society organisations and is managed under the “Programme management and facilitation Unit”. In order to speed up mainstreaming of the rights of persons with disabilities in the development process, the Secretariat of African Decade of Persons with Disabilities conducted a training in August 2009 for all stakeholders, including Zonal Focal Centres, different government institutions, DPOs, the EC delegation to Tanzania and the Office of Deputy National Authorizing Officer. The programme aimed at bringing together different stakeholders in an effort to open up more opportunities for disabled people, albino people being inclusive.⁹⁴

(viii) In Zanzibar, the Association of Disabled Persons representing persons with all types of disabilities has played a central role in shaping policy and legislation. Similarly, the Zanzibar Centre for Disability and Inclusive Development (ZACDID) has played a significant role in improving the lives of children, youths and adults with disabilities.⁹⁵

(ix) The Tanzanian Health Policy guarantees free access to health services by persons with disabilities. However there is no express mention of how people with disabilities can benefit from the services since many people with disabilities have limited access to the services. The lack of access to these services is based on a number of reasons including, the lack of knowledge of the procedures to follow in order to have access. Further to this, the services are characterised by insufficient health facilities and limited number of specialists. In terms of communication with PWDs, the skills of communication are poor especially with regard to the deaf and the blind.

(x) According to the 2008 Disability Survey, access to health information and services is a big challenge for persons with disabilities. This is particularly the case for women with disabilities especially with regard to sexual and reproductive health services. According to Elieza from the Disabled Association of Tanzania, disabled mothers are two or three times more likely to suffer from the lack of the health service than other women looking for pre-natal and ante-natal services, including facing discrimination.⁹⁶ It would be rational to say that the situation is worse for disabled albino women who are already disadvantaged by virtue of being albinos.

⁹⁴ NIDS/MSC, Shia and Annika Nilsson Disability Rights in Tanzania, 30 January, 2011.

⁹⁵ As above.

⁹⁶ United Nations, International Covenant On Civil And Political Rights , replies to the list of issues (CCPR/C/TZA/Q/4) to be taken up in connection with the consideration of the fourth periodic report of the United Republic Of Tanzania (CCPR/C/TZA/4) (17 June 2009).

(xi) There is no reliable data on the number of person with disabilities who are infected by HIV. However, according to a study conducted by TACAIDS in 2009, it was established that 9% of those tested were HIV positive and 40% claimed to know a person with disabilities who had been raped. According to a report on HIV and Disabilities in Tanzania, there are a lot of misconceptions regarding transmission of HIV/AIDS among persons with disabilities, with only 54% being knowledgeable about HIV/AIDS prevention measures.⁹⁷ With the on-going killing of Albino people in Tanzania, this vulnerable group finds it difficult to access the social services inclusive of medicines.

4.7.2 The Role of the Judiciary

The judiciary has also taken stiff steps to address the problem of albinos' killings. For example in September 2009, 3 men were sentenced to death for the killing of 14 year old albino boy. The convicted victims were identified as Charles kalamji, Masumbuko Madata and Emanuel Masangwa.⁹⁸ Also in Shinyanga Region the High Court meet and convint Mboje S/O Mawe, Nchenyenye S/O Kishiwa, Sayi S/O Gamaya S/O Mwanapili and Sayi S/O Mapizi for killing of 54years Lyaku Will. This is the first conviction and while some may see the death sentence as too harsh it may help in deterring the killing of albinos.

By 2011 the Tanzania High Court had sentenced seven people to death after they having been found guilty of taking part in albino killing.⁹⁹ These steps signify the role of the judicial system in curbing the killing of Albino people who are considered a curse to the society. However citizens and the international community have criticised the judicial system for being slow in convicting people who are suspect to the killing of albinos.¹⁰⁰

⁹⁷ As above.

⁹⁸ OL Odera (2009) Killers of albinos in Tanzania are to pay for their heinous crimes with their own lives as court pronounce (sic) death sentence against them" Jaluo.com, <http://blog.jaluo.com/?p=2614> (accessed on September, 29, 2011).

⁹⁹ Shia & A Nilsson Disability Rights in Tanzania, 30 January, 2011.

¹⁰⁰ Death for Tanzania albino killers, <http://news.bbc.co.uk/2/hi/8270446.stm> (Access 29 september 2011).

4.7.3 The Role of Police Force

The Tanzania Police Force is the national police force. The core functions of the Police Force are Provided for under section 5 of the Police Force and Auxiliary Services Act Cap 322 which states that “The Force shall be employed in and throughout the United Republic for the preservation of peace, the maintenance of law and order, the prevention and detection of crime, the apprehension and guarding of offenders and the protection of property, and for the performance of all such duties shall be entitled to carry arm”.¹⁰¹

It is therefore the duty of the police to maintain law and order to prevent the commission of offences, to apprehend those believed to be committing or about to commit or to have committed offences and bring them to justice.¹⁰²

In efforts to curb albino killings, the Police has engaged in the fast-tracking of investigation and prosecution of suspected offenders. In 2009, five cases out of nine were already investigated and advanced to the High Court sitting at two different registries for hearing and four cases were awaiting trial and seventeen others are under investigation.¹⁰³ To date, there are 16 cases under police investigation and 9 cases are at the High Court for hearing.¹⁰⁴

Despite the efforts taken by the Police, the police has also been criticized for the slow manner in which they have addressed cases concerning the killing of albinism. Police has been criticised for taking bribes in order to delay or stifle the process of investigation.¹⁰⁵ For example, in 2006, 25 albinos died in suspicious circumstances and the police is reportedly to have failed to effectively investigating and bring the perpetrators to book. It is further reported that in the period October to December of 2007, 20 albinos were murdered, and more than 35 albinos were murdered in the period between January to December 2008.¹⁰⁶ However, despite such incidents within

¹⁰¹ Section 5, Tanzania Police Force and Auxiliary Services Act Cap 322.

¹⁰² Tanzania Police Force: “Challenges of Enhancing Performance and Responsiveness in the Police Force” Paper to be presented at the National Convention on Public Sector Reforms on *Achieving Rapid Results in Public Sector Reforms* at Ubungo Plaza on 18th June, 2008. Presented by Said A. Mwema, Inspector General of Police.

¹⁰³ United Nations, International Covenant On Civil And Political Rights (2009), replies to the list of issues (CCPR/C/TZA/Q/4) to be taken up in connection with the consideration of the fourth periodic report of the United Republic Of Tanzania (CCPR/C/TZA/4).

¹⁰⁴ As above.

¹⁰⁵ Kagero ‘Rights groups blamed over silence on the killing of albinos’ *ThisDay* (Tanzania) 22 March 2008.

¹⁰⁶ Interview with Advocate Abdallah Possi, Advocate for the Tanzania Albino Society (Tanzania) 8 January 2009; F Seleman ‘Human rights watchdog castigates albino killings’ *The Guardian* (Tanzania) 12 February 2008; ‘16 albinos killed in the country, says Kagasheki’ *This Day* (Tanzania) 21 June 2008

a period of two years, police made no arrests in this regard, although their performance improved in October 2008 when 47 people were arrested in connection to the violence against albinos.¹⁰⁷

4.7.3 Conclusion

The discussion on compliance of the national legal framework in Tanzania with international standards was presented in this Chapter Three above. Noted observation was the failure of the country to adopt the ratified treaties in the country laws and further to that failure to ratify other treaties which would have been beneficial to protect the rights of people living with albinism. The responses of various stakeholders in protecting and promoting human rights of albinos have been recorded in Tanzania. But it should be recorded that the pace taken in addressing the killing leaves much to be desired while looking on the efficiency of government machinery on the matter.

quoted from NGO Report on the Implementation of the International Covenant on Civil and Political Rights in Tanzania. This report is a response to the compilation of the fourth periodic report of the state party due in 2008 and submitted by the government of Tanzania to the Human Rights Committee.

¹⁰⁷ F. Seleman 'Human rights watchdog castigates albino killings' *The Guardian* (Tanzania) 12 February 2008; B Kinyori 'Tanzania: Child Abuse 'Is Most Rampant'' *The Citizen* (Tanzania) 10 September 2008.

Chapter five

5.1 Conclusion and Recommendations

The study concludes that although there are legal provisions aimed at protecting and promoting human rights of all citizens in Tanzania, these provisions have not been implemented effectively to curb the killing of Albino people.

The government of Tanzania has taken stringent measures to protect persons with albinism, the President's directive to conduct a nation-wide campaigns on collecting people's opinions about the alleged perpetrators, fast-tracking of criminal investigations and prosecutions of perpetrators, drawing up lists all over the country, banning temporary licenses for witchdoctors who are also suspected to be the source of such brutal killing, nomination of one member of the parliament who is also an albino through special seats arrangement and identifying a boarding school for children with albinism. These measures have dropped the incidences of killings.

Nevertheless, stigmatisation and differential treatment of persons with albinism continue and some filed cases before the courts have taken long to be concluded.

5.2 Recommendations

In order to successfully protect and promote the rights of albinos as stipulated in various statutes, the following recommendations are offered:

Firstly, in order for the government to deal with discrimination effectively, it should not only enact laws promoting equal rights of albinos and challenging all forms of discrimination but also, the government must ensure that there is an effective implementation of these laws. This can be done through allocation of sufficient resources to promote public human rights education aimed at overcoming the prejudices and discrimination against albinos and other disadvantaged groups. Promotion of education and public awareness on human rights can be done through hosting radio or television programmes, public meetings and distribution of simplified publications such as journals, pamphlets and magazines to the populace.

Secondly, the government of Tanzania is urged to continue with its initiatives of providing technical and financial support to enable NGOs, CSOs and other

stakeholders conduct public inquiries, researches and investigations in order to increase awareness and establish the fundamental causes and seek answers to the problems facing albinos in the country.

Thirdly, in order to have proper implementation of laws governing human rights in the country, the government is advised to empower law enforcement agencies such as courts and police in terms of resources as well as human rights education. It should also make sure that these agencies comply with principles of accountability. The government should by all means ensure that the police force is more committed to conducting investigations and prosecuting perpetrators. Timely investigation and prosecution will send a clear signal to perpetrators that the government is serious in protecting its people regardless of their skin appearance. To attain this, the government should make a planned effort to equip the police force with modern working equipments and tools. It should also improve their working conditions and raise their salaries. This will reduce the level of corruption which makes them ineffective in investigating albino killings as claimed by the media in Tanzania.

Fourthly, there is a need for a policy that will recognise persons with albinism as a vulnerable group with special needs. This can be attained by an inclusion of provisions into various statutes such as the persons with disability Act and prohibition of discrimination on the basis of genetic inheritance. These specific provisions will have a massive impact on persons with albinism since it will expose them directly to requirement of the directly to the requirement of law. Currently, the law has generalised the rights and non discrimination not on genetic inheritance hence being invisible or marginalised before the law.

Fifthly, there must be public education programmes that will educate albinos as well as members of society as a whole on the causes and characteristics of albinism. This will reduce the society behaviour or perception of viewing albinos as being cursed. There must be allocation of resources to ensure that each albino person has access to sufficient amounts of sunscreen and optical healthcare so that their life of a Tanzanian albino is optimal and devoid of prosecution, threats, or any other human rights violations.

Sixthly, the government has to ensure that it implements its obligations under the international human rights instruments by guaranteeing and protecting human rights. This can be done by amending the Constitution to provide that where the country

ratifies an international treaty, the treaty should form part of domestic law and override conflicting domestic laws. Also, the government should provide legal assistance to persons who need assistance and lack financial resources to institute and prosecute affiliation proceedings. In addition, the government should provide adequate financial resources, equipment and competent personnel to the judiciary, which will facilitate speedy determination of cases, including affiliation proceedings.

Sixthly, there is a need to reform the law by enacting specific legislation to provide for rights of children in Tanzania similar to those contained in the Convention on the Rights of the Child and African Charter on the Rights and Welfare of the Child. The legislation shall guarantee the rights to Tanzanian children similar to those provided for in the above international human rights instruments, which essentially treat children equally regardless of their status. Such legislation should abolish discrimination against non-marital children based on their birth or marital status of their parents. This will safeguard their right to adequate maintenance from their fathers.

Seventhly, Tanzania should ensure immediate domestication and applicability of ICCPR since there is no any specific law which gives formal recognition and applicability of ICCPR in domestic law. That being the case, Tanzania courts makes use of provisions of the ICCPR as persuasive in decision making processes. Since the ICCR has not been domesticated in to national laws there is no one can be held liable for the breach of any provision of the ICCPR. The government also needs to ratify the international human rights treaties and domestic them in the country' legislations. Some of the human rights treaties which the country has not ratified include Optional Protocol to the International Covenant on Civil and Political Rights (1966); Second Optional Protocol to the International Covenant on Civil and Political Rights (1989); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and its Optional Protocol,; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Eighthly ,since Tanzania has National Human Rights Institution (the Commission for Human Rights and Good Governance – CHRGG). It is recommended that the Parliament to be obliged to discuss the CHRGG's operations and reports in order to ensure that such reports have an impact, especially in the case of matters which need to be followed up.

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Legislation

The Persons with Disability Act

The Penal Code of the Republic of Tanzania

The Law of the Child Act

Disabled Persons Care and Maintenance Act

