



Assemblée générale

Distr. générale
14 décembre 2016
Français
Original : anglais

Conseil des droits de l'homme

Trente-quatrième session

27 février-24 mars 2017

Point 3 de l'ordre du jour

**Promotion et protection de tous les droits de l'homme,
civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

Rapport de l'Experte indépendante sur l'exercice des droits de l'homme par les personnes atteintes d'albinisme sur sa mission au Malawi

Note du secrétariat

Dans son rapport, l'Experte indépendante sur l'exercice des droits de l'homme par les personnes atteintes d'albinisme examine les questions liées aux droits des personnes atteintes d'albinisme au Malawi. Sur la base des informations recueillies avant et pendant sa visite, l'Experte indépendante met l'accent sur les difficultés qui subsistent dans le contexte de la récente vague d'attaques visant des personnes atteintes d'albinisme dans le pays. L'Experte indépendante traite aussi des problèmes qui se posent dans le domaine des droits de l'homme pour les personnes atteintes d'albinisme, tels que la discrimination, notamment dans le domaine des droits à la santé, et l'accès à l'éducation. Elle souligne les mesures importantes que le Gouvernement a prises pour régler un certain nombre de ces problèmes et formule des recommandations en vue de renforcer les efforts, de combler les lacunes dans la mise en œuvre des initiatives pertinentes et d'éliminer les obstacles à la jouissance des droits de l'homme par les Malawiens atteints d'albinisme.

GE.16-22123 (F) 090117 100117



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Report of the Independent Expert on the enjoyment of human rights by persons with albinism on her mission to Malawi*

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* Circulated in the language of submission only.

I. Introduction

1. In accordance with the mandate set out in Human Rights Council resolution 28/6 and at the invitation of the Government of Malawi, the Independent Expert on the enjoyment of human rights by persons with albinism, Ikponwosa Ero, conducted an official visit to Malawi from 18 to 29 April 2016. The objective of the visit was to assess the human rights situation of persons with albinism throughout the country, with particular attention to the increasing number of reports of attacks against them.

2. During her visit, the Independent Expert travelled to the cities of Lilongwe and Blantyre as well as to the districts of Machinga, Zomba, Phalombe and Kasungu. She met with the Minister of Gender, Children, Disability and Social Welfare; the Minister of Foreign Affairs and International Cooperation; the Minister of Justice and Constitutional Affairs; the Minister of Education, Science and Technology; the Minister of Health; the Minister of Home Affairs and Internal Security; the Minister of Local Government and Rural Development; the Chief Justice; the Inspector General of Police; the Second Deputy Speaker of the Malawi National Assembly; the Member of Parliament for Machinga East; the members of the Malawi Human Rights Commission; the Malawi Law Commission; the Malawi Council for the Handicapped; the Registrar of the Zomba High Court; the officer in charge of prosecuting attacks against persons with albinism at the Ministry of Justice and Constitutional Affairs; representatives of the District Commissioner of Police; community police; and social service workers in Machinga, Zomba, Phalombe and Kasungu. She also met with traditional authorities in Machinga, Zomba, Phalombe and Kasungu, representatives of the National Initiative for Civic Education, the director of the Chilanga School for the Blind in Kasungu, the director of the Montfort Special Needs Education College in Chiradzulu and prison officers at Zomba prison as well as detainees held for alleged involvement in crimes against persons with albinism.

3. In addition, the Independent Expert met with the Association of People with Albinism in Malawi (APAM), as well as with many victims of attacks and their family members. She also held meetings with various civil society organizations, academia, the United Nations country team in Malawi, the heads of cooperation and foreign missions resident in Malawi and the donor community.

4. The Independent Expert expresses her sincere gratitude to the Government of Malawi for its full cooperation. She is also grateful to all her interlocutors, especially persons with albinism who freely shared their collective experiences as well as their individual perspectives with her. She looks forward to a fruitful and continued dialogue with the Government and other stakeholders on the implementation of the recommendations contained in the present report.

5. The Independent Expert is grateful for the effective logistical, administrative and substantive support she received from the United Nations country team, and in particular the Senior Human Rights Adviser. She would also like to thank the Department of Disability of the Ministry of Gender, Children, Disability and Social Welfare for coordinating all official meetings and APAM for their support in coordinating meetings with victims of attacks.

6. The present report focuses on the impact of attacks against persons with albinism in the light of the recent increase in such crimes in Malawi.

II. Background

A. General overview

7. Malawi is a landlocked country surrounded by the United Republic of Tanzania, Zambia and Mozambique. It gained its independence from the United Kingdom of Great Britain and Northern Ireland on 6 July 1964 and became a republic in 1966, with Dr. Hastings Kamuzu Banda as President. The first multiparty elections were held in 1994 and the current President, Prof. Arthur Peter Mutharika, was elected in 2014. The next elections are due in 2019.

8. Malawi is ranked 173 out of 188 countries in the 2015 United Nations Development Programme Human Development Index. Its real gross domestic product grew by 5.7 per cent in 2014 but growth slowed to 2.8 per cent in 2015 as the country suffered from dual challenges of adverse weather conditions and macroeconomic instability. The economy of Malawi relies largely on agriculture, with the sector contributing more than one third of its gross domestic product and 90 per cent of export revenues. In January 2015, a state of emergency was declared in response to heavy rainfall and flooding in southern Malawi. In April 2016, a state of national disaster was also declared owing to a shortage of rainfall. This resulted in a sharp decline in the production of maize — a staple product — rendering 6.5 million people in 25 districts in need of food assistance.

9. In addition, the economy, which had been supported by international aid, was heavily affected by the “cashgate” affair in 2013, a public financial management scandal that triggered a drastic reduction of on-budget development assistance to Malawi. Today, the economy continues to operate in a difficult fiscal environment characterized by a large budget deficit and rising debt service costs, both of which constrain the Government’s ability to deliver on its obligations as a human rights duty bearer.

10. With persistently high birth rates and more than half of its population under the age of 18, Malawi is growing rapidly. Between 1966 and 2008, the population grew from 4 million to 13.1 million. As of 2015, the population stood at 15.7 million. The United Nations Population Fund has designated Malawi as one of the 15 “population hotspots” across the globe as its population is expected to triple to over 40 million by 2040.

11. According to the Office of the United Nations High Commissioner for Refugees, over 27,000 asylum seekers and refugees were residing in Malawi in September 2016. Of this group, about 25,000, mostly from the Great Lakes region and the Horn of Africa, are in Dzaleka.

B. Persons with albinism

12. Albinism is a relatively rare, non-contagious, genetically inherited condition that affects people worldwide regardless of ethnicity or gender. It results from a significant deficit in the production of melanin and is characterized by the partial or complete absence of pigment in the skin, hair and eyes. In order for a person to be affected by albinism, both parents must carry the gene and, in that case, there is a 25 per cent chance, at each pregnancy, that a child will be born with albinism. The proportion of persons affected by albinism in the world varies by region. In Europe and North America, the frequency reported is 1 in 17,000 to 1 in 20,000. The frequency in certain parts of the Pacific is reported to be 1 in 700. Among some indigenous groups in South America, the reported frequency is 1 in 70. In Sub-Saharan Africa, the estimated frequency ranges from 1 in 5,000 to 1 in 15,000, with particular subgroups in southern Africa exhibiting prevalence rates of 1 in 1,000.

13. There are different types of albinism. The most common and visible type is oculocutaneous albinism, which affects the skin, the hair and the eyes. Subtypes within this type reflect varying degrees of melanin pigment deficiency in an individual.

14. All human rights issues relating to albinism reported to date have been linked to the oculocutaneous form of albinism. The physiological impact of albinism includes vision impairment in nearly all cases. The severity of impairment varies from person to person. This is because it is proportionate to the amount of residual pigmentation in each individual. The other key physiological consequence is vulnerability to skin cancer, which is fatal when left untreated and kills a significant number of persons with albinism, particularly in Africa.

15. Under international human rights law, persons with albinism have normative protection covering all their fundamental human rights, including the right to life, physical integrity, liberty and security, the right to the highest attainable standard of physical and mental health and the right to an adequate standard of living. Further protection can be found in the Convention on the Rights of Persons with Disabilities as well as the International Convention on the Elimination of All Forms of Racial Discrimination, which proscribes “racial discrimination” on the basis of colour.

16. There is little information and data available on persons with albinism in Malawi as the 2012 census did not include a variable on persons with albinism. APAM estimates that there are between 7,000 and 10,000 persons with albinism in the country.

17. In certain regions of Malawi, traditional authorities have gathered information on persons with albinism. Although this is a useful way of arriving at a general indication of the number of persons with albinism living in a particular community, such information is only partially reliable because the methodology for gathering data is informal and not always clear. The current lack of accurate data on the number of persons with albinism should be rectified, at the latest, in the next national census, scheduled for 2018.

18. That being said, the Independent Expert is acutely aware of the sensitive nature of information and data regarding persons with albinism, in particular where such information may lead to locating them, and calls for high standards of data protection in this regard.

III. Legal and institutional framework

A. Legal framework and policies

Attacks

19. Malawi has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

20. These conventions complement the national legal framework, including the Constitution, which, in chapter IV, “Human rights”, recognizes a wide range of civil, political, economic, social and cultural rights, including the rights to life, to human dignity, to equality and to education. The Child Care, Protection and Justice Act 2010 and the Gender Equality Act 2015 also provide a useful framework for protection, as many of the victims of attacks are children and women.

21. The criminal legal framework applicable to attacks against persons with albinism currently consists of general provisions of the Penal Code (Amendment) Act 2016, the Anatomy (Amendment) Act 2016 and the Trafficking in Persons Act 2015. Both the Penal Code and the Anatomy Act were amended after the visit of the Independent Expert to address concerns raised during the visit. The previous legal frameworks of both the Penal Code and the Anatomy Act had not been drafted taking into account the types of horrendous crimes faced by persons with albinism into account. In addition, penalties for crimes against persons with albinism issued under the previous legal frameworks were perceived as weak and inadequate. Further, general provisions of the Penal Code were applied with little room for aggravating factors to reflect the specificities of these crimes, particularly the intent to use the body parts of persons with albinism for witchcraft practices. The possession of body parts, such as bones of persons with albinism, also did not fall under the provisions of the Penal Code. It was therefore necessary for legal practitioners to rely on laws such as the Anatomy Act, which was drafted for a medical context and carried relatively limited penalties, for cases of possession of body parts of persons with albinism. That the amendments to the Penal Code and the Anatomy Act were made swiftly after the visit of the Independent Expert demonstrates the political will of Malawi to address the attacks against persons with albinism as a matter of priority.

22. As a result of the gaps in the legal framework applicable at the time of the visit and prosecutors not being aware of recent developments in legislation, court sentences handed down to convicted criminals did not reflect the gravity of crimes against persons with albinism. As pointed out by various stakeholders, stealing a cow was likely to attract a higher penalty than attacks and other crimes against persons with albinism. In addition, in certain instances, possession of body parts had been punished by a fine amounting to less than the alleged price of body parts on the black market. It also appears that bail had been granted to suspects in several cases. The early return of suspects to their communities, whether owing to the use of bail, fines, light sentences or other measures facilitating early release, increases the fear in which persons with albinism live, sends a message of impunity to affected communities and increases the risks of mob killings aimed at both real and alleged perpetrators. Perceived impunity for crimes against persons with albinism also significantly reduces the deterrent effect of the law and therefore contributes indirectly to the waves of attacks.

23. The judicious use of multiple pieces of legislation is likely to increase sentencing in cases of attacks against persons with albinism. These include the Penal Code (Amendment) Act, the Anatomy (Amendment) Act, the Trafficking in Persons Act, the Disability Act and the Child Care, Protection and Justice Act. However, during her visit, the Independent Expert noticed that a significant number of prosecutors and investigators were neither using combined charges where applicable, nor aware of any legislation beyond the Penal Code.

24. In addition to the legislative amendments adopted after the visit of the Independent Expert, other tools and mechanisms have been engaged to manage the situation. These include a practice direction issued in May 2016 by the Chief Justice to ensure that such cases are handled by senior members of the judiciary such as chief magistrates, principal resident magistrates and senior resident magistrates, who are in the best position to use the existing legal framework, and with a view to ensuring the speedy disposal of these cases and consistency in the way they are handled. Sentencing guidelines could also be an opportunity to facilitate prosecution by clarifying the circumstances of such crimes and the sentences that should be pronounced. In addition, systematic training for practitioners on existing and amended legislation, guidelines and other recommendations on the issue would facilitate the adequate application of existing legislation.

25. As a specific measure in response to attacks against persons with albinism, the Government of Malawi adopted a response plan in March 2015 that includes the

development of an education and awareness programme; the strengthening of community policing structures and the allocation of adequate police forces in the districts most affected by attacks; the undertaking of research to understand the root causes of attacks and trafficking in body parts; making available lawyers to support the prosecution of attacks; the provision of psychosocial support to victims; and the review, amendment and enactment of legislation where necessary to ensure the protection of persons with albinism.

26. The response plan is embedded in a multisectoral approach intended to address albinism as a cross-cutting issue. However, the implementation of the plan has been delayed by de facto deprioritization of the issue as well as the absence of adequate resources.

Persons with disabilities

27. Malawi ratified the Convention on the Rights of Persons with Disabilities in 2009, but at the time of the visit of the Independent Expert, it had not yet ratified the Optional Protocol.

28. The Constitution of Malawi prohibits any form of discrimination, including on the basis of disability (sect. 20), and recognizes that legislation may be adopted to address inequalities in society. It also recognizes the right to development (sect. 30) and the need for special consideration for persons with disabilities in the implementation of this right.

29. In addition, specific legislation for protecting and promoting the rights of persons with disabilities has been adopted, including the Disability Act (2012), which complements the Handicapped Persons Act (1971) and guarantees access to services for persons with disabilities, including persons with albinism. Such services include health, rehabilitation, education and social protection, in line with State obligations under the Convention on the Rights of Persons with Disabilities. Although the Act also provides for the creation of a national coordinating committee on disability issues, it has yet to be established.

30. Further, in 2006, a national policy on equalization of opportunities for persons with disabilities was adopted to promote the rights of persons with disabilities, including by integrating disability issues into all government development strategies, plans and programmes and capacity-building of all actors.

31. Malawi also put in place the National Education Strategic Plan 2008-2017 to ensure that learners with special educational needs are supported through a range of strategies. These include increasing access to schooling for young people with disabilities, enhancing the quality of special needs education in regular schools and improving the supply of teachers and learning materials. Further, to complement the Strategic Plan, the National Policy on Special Needs Education was adopted in 2007 to develop the personal, social and academic competencies of learners with special needs. However, the full implementation of this policy has been hindered by lack of funding, inadequate teaching and learning materials, inaccessibility of infrastructures and a shortage of specialized teachers.

B. Institutional framework

32. The Department of Disability is responsible for ensuring the realization of the human rights of persons with disabilities generally and the enjoyment of human rights by persons with albinism in the light of the particular violations they currently face. In June 2014, the Ministry of Disability was disbanded and absorbed by the Ministry of Gender, Children, Disability and Social Welfare. This had a significant impact on budgetary allocations for the issues covered by the Department. As a stand-alone ministry, it had

received 0.7 per cent of the national budget whereas, once absorbed, it received 0.3 per cent of the 2015-2016 budget.

33. This lack of resources directly affects the size of the Department in terms of human resources as well as its capacity for action. Similarly, its visibility and political leverage for promoting a transversal approach has been affected as it is now one of the many areas of concern that the Ministry of Gender, Children, Disability and Social Welfare has to address.

34. At the time of the visit in April 2016, the response plan for attacks against persons with albinism was coordinated by the National Steering Committee on Attacks on Persons with Albinism chaired by the Director of the Department of Disability. In May 2016, following up on the recommendation of the Independent Expert that stronger leadership be appointed for this committee, the National Technical Committee on Albinism was established, chaired by the Chief Presidential Adviser, Dr. Ntaba, with the Committee secretariat in the Department of Disability. This development is to be commended. However, given the scale and importance of the crisis faced by Malawians with albinism, it is imperative to ensure strong coordination of the efforts generated by the various members of the Committee while at the same time ensuring that it remains an action-oriented body focused on implementing the response plan as a matter of priority. To this end, the Committee requires the full cooperation of all departments involved. It also requires systematic monitoring and evaluation of all actions taken as well as adequate human and financial resources. The expertise of the Department of Disability of the Ministry of Gender, Children, Disability and Social Welfare is crucial in this regard, as it was instrumental in drafting the plan.

35. The Malawi Council for the Handicapped (MACOHA), a governmental institution, was established by the Handicapped Persons Act (1971) and began operations in 1972. Its function is to provide rehabilitation services and to facilitate the empowerment of people with disabilities for the end goal of their effective participation in the socioeconomic development activities of their communities and the country. Although persons with albinism are part of the general projects of the Council, the institution has not been focusing on them.

36. The Malawian Police Service has been instrumental in investigating cases of attacks against persons with albinism. The Inspector General heads the police, which operates under the auspices of the Ministry of Home Affairs and Internal Security. Through its community police network, the Service is present throughout the country, including in remote communities where attacks have been reported.

37. The protection measures adopted by community police in cooperation with traditional authorities as well as the support provided by communities to their members with albinism are commendable. The training and information given by community police and traditional leaders have in various cases led to the quick intervention of neighbours during attacks, resulting in the rescue of persons with albinism and the arrest of perpetrators. Such work is laudable, given the limited resources available to community police. As attacks often occur in rural and remote communities, community police officers are in the forefront, and require support through the provision of adequate human and financial resources to facilitate the reporting and investigation of attacks.

38. The Directorate of Public Prosecutions exercises its duties independently under the supervision of the Director of Public Prosecutions. The Department plays a key role in ensuring respect for the rule of law and in ensuring that those who commit attacks against persons with albinism are properly prosecuted. However, the Department faces a significant challenge in terms of human resources and funding, resulting in significant delays in prosecution; as of October 2016, very few murder cases of persons with albinism had been prosecuted. Further, as a result of these shortages, police officers prosecute the majority of

cases within the criminal justice system. This could significantly affect the quality of prosecution, as police officers prosecuting cases often do not have the necessary legal training to conduct such duties effectively.

39. The Ministry of Justice and Constitutional Affairs has designated a prosecutor within the Directorate of Public Prosecution to work specifically on cases of attacks against persons with albinism. However, given the shortage of resources in the Ministry, the prosecutor has not been provided with adequate support, in terms of both staff and funds, to enable him to travel to all the places where attacks are reported. He has also not been relieved of all other prosecution duties assigned to him and an official appointment to his new task of overseeing cases of persons with albinism has yet to be formalized.

40. The Malawian court structure consists of the Supreme Court of Appeal, high courts and magistrate courts. There is a high court located in each of Malawi's main cities. The lower courts in Malawi are the magistrates courts, which have jurisdiction over both criminal and civil cases. There are four categories of magistrate court in Malawi, presided over either by professional magistrates or by lay magistrates. In addition, Malawi has a traditional court system, which operates in rural areas and was formalized in 2011 by the Local Courts Act. Traditional jurisdictions are, however, not competent for cases of attacks against persons with albinism.

41. Regarding cases of attacks against persons with albinism, on 17 May 2016 the Chief Justice issued a practice direction pronouncing that all cases concerning persons with albinism be handled only by chief resident magistrates, principal resident magistrates and senior resident magistrates, with a view to ensuring the speedy disposal of these cases and consistency in the way cases are handled.

42. The governance structure of Malawi encompasses traditional leadership. Traditional leaders are in charge of local governance and, in practice, often preside over small customary, civil and even commercial disputes. There are six levels of chieftaincy in Malawi: village headman; group village headman, responsible for five or more villages; subchief, chief and senior chief, each in charge of an increasingly broader territory; and at the summit of the hierarchy, the paramount chief. The traditional authorities fall under the authority of the Minister of Local Government and Rural Development. At the local level, traditional authorities work closely with other State institutions such as the community police, including for the protection of persons with albinism.

IV. Main findings and challenges

A. Attacks

Context

43. According to data provided by Government during the visit of the Independent Expert, 65 cases of crimes against persons with albinism had been recorded by police since late 2014. As of September 2016, that number had risen to 102. These cases include attacks and threats, killings, abductions, possession of body parts of persons with albinism and exhumations of graves of persons with albinism. These are reported cases only, as attacks often take place in remote areas which are difficult to access. Further, given the implication of family members in many of the attacks, the possibility that reported cases amount to only a fraction of the overall attacks cannot be excluded.

44. The majority of cases were reported in the district of Machinga. However, cases have also been reported in at least 21 districts throughout Malawi, particularly in the south of the country and in border areas. During the visit of the Independent Expert, an attempted

abduction and a murder were reported. The President of Malawi has condemned the attacks, and called on the police to arrest perpetrators and protect persons at risk.

45. Given the relatively small size of the population of persons with albinism in the country, attacks against a few of them constitute a danger to all of them. For example, in Machinga, the most affected district of Malawi, according to statistics provided by traditional authorities, in 2015 there were at least 121 residents with albinism. At the time of the visit, seven cases of attacks against persons with albinism had been reported in the district, including possession of body parts, graveyard robberies and one case of disappearance which was under investigation. These data, based on reported cases only, highlight the situation of insecurity of persons with albinism in the district and the significant probability that persons with albinism will be victims of attacks.

46. The frequent involvement of close relatives in cases of attacks against persons with albinism is highly disturbing. Relatives are often either instrumental in the commission of the crime by providing information on the whereabouts of the victim or by taking part in the commission of the crime. Similarly, in cases of graveyard robberies, there is little doubt that close relatives or acquaintances of the deceased are involved since the identification of the graves of persons with albinism requires specific information. The involvement of relatives increases the danger posed to persons with albinism as they are unable to trust even those who are supposed to care for and protect them.

47. While relatives of persons with albinism have been implicated in attacks, including fathers of child victims, there are no reported cases involving the birth mothers of persons with albinism. Given the immense amount of familial pressure on mothers to abandon their children with albinism at birth, those mothers who have resisted these pressures by protecting their children require assistance. Proactive awareness-raising targeting women in general to prepare them for the possibility of having a child with albinism could be a further measure of protection in this regard.

48. Attacks have mostly, but not exclusively, occurred in rural communities and, frequently, communities close to the border. For example, Eunice Phiri was killed in Kasungu national park, bordering Zambia, in January 2016. Similarly, the remains of Davis Fletcher Machinjiri, who disappeared during the visit of the Independent Expert in April 2016 from the border district of Dedza, were found in Mozambique.

49. The extent to which a cross-border element is present in cases of attack is not clear. However, it appears from interviews with persons detained for attacking persons with albinism that perpetrators have crossed borders to complicate investigations. In one reported case, a person with albinism was made to cross a border under the pretext of employment, and then killed just after crossing. This significantly delays investigation as police cooperation usually goes through official channels at central level. There is a lack of international agreement, shared resources and mechanisms to facilitate direct and rapid police cooperation in such cases.

50. The strong rural element of these cases does not mean that interventions in the city should be overlooked. During her visit, the independent Expert met with a victim of attack in the city of Blantyre and another critical incident was reported in Lilongwe.

Witchcraft

51. Attacks against persons with albinism occur owing to the misbelief that the body parts of persons with albinism can confer benefits such as wealth and good luck when used by witchdoctors in witchcraft rituals, potions and amulets. It is for this reason that the remains of victims are often dismembered and body parts stolen, including limbs, genitals and hair.

52. It is worrying to note that witchcraft beliefs and practices are widespread in Malawi, although they are often a taboo topic. In April 2016, the Independent Expert saw various advertisements posted in newspapers daily by persons presenting themselves as traditional healers (sometimes stressing that they come from Mozambique) offering solutions to financial problems, sentimental issues, work-related promotions, luck, cures for HIV/AIDS and the return of stolen property, among other things. Such misleading advertisements do not constitute traditional medicine and encourage recourse to witchcraft practices.

53. Following the Independent Expert's visit, on 1 June 2016, Justice Madise, sitting in the High Court in Mzuzu, granted an injunction ordering traditional healers, witchdoctors, charm producers and fortune tellers to stop operating. The injunction also prohibited media from carrying advertisements that were related to witchcraft practices. The case was brought by three private citizens who alleged a strong link between the work of traditional healers and witchdoctors, on the one hand, and the surge in attacks against persons with albinism in Malawi on the other.

54. The injunction was temporary, and it has now lapsed. However, the matter illustrates the apparent lack of distinction between traditional healers/herbalists, on the one hand, and professed witchdoctors/magicians on the other hand. During the visit of the Independent Expert, there was at least one case under investigation where body parts of persons with albinism were found buried close to the house of a traditional healer suspected of being a witchdoctor. The Independent Expert also noted the absence of registration and oversight of the practices of traditional healers to ensure that their work remains within the framework of traditional medicine.

Poverty

55. Poverty is a root cause of attacks against persons with albinism. The current general context in Malawi for ending the atrocities faced by persons with albinism is therefore challenging. Malawi is one of the world's poorest countries, and the sale of body parts of persons with albinism is believed to be very lucrative: body parts allegedly sell for millions of kwachas (1 million kwachas is roughly equivalent to \$1,387,¹ over four times the 2014 per capita gross domestic product of Malawi²). Although such information is widely known, the Independent Expert has found no concrete evidence of actual payments for body parts. It could be that the mere possibility of earning money is sufficient motivation for such attacks. However, complete information on the overall chain of command for these crimes is lacking, including patterns of attacks, actual payments made, details of end users and who might be the masterminds. Therefore, any conclusions drawn concerning this matter are at best only reasonable probabilities, not certainties.

56. Owing to the widely held belief that body parts fetch high prices, witchdoctors or other intermediaries can easily recruit persons to carry out attacks. In a context where a family member with albinism is often perceived to be a burden that increases poverty and social ostracism, relatives could be tempted to connive in such attacks, thinking, erroneously, that it would provide a source of income while alleviating the social burden of having a family member with albinism.

57. Similarly, the poverty of persons with albinism has increased their insecurity. It is very common for the houses of persons with albinism to be easily accessible, with no windows, no door and just a curtain at the entrance. Kidnapping of babies and children from such households at night has been reported. Houses in the countryside are not equipped with electricity or landlines, and the lack of torches and mobile phones also

¹ United Nations operational rate of exchange as of 1 December 2016.

² According to United Nations data, the 2014 per capita gross domestic product for Malawi was \$343.

complicates immediate search and rescue. Mobile phones can also be used by persons with albinism for security purposes, to report attacks and as a protection measure, particularly to report their whereabouts regularly to persons they trust.

58. Persons with albinism, and parents of children with albinism, live in constant fear of attack. Many do not sleep peacefully and have deliberately restricted their movements to the necessary minimum, during daylight hours and when escorted by trustworthy persons. Mothers have sent their children to live with relatives or to boarding schools. Yet, even there, fear remains. Staff of boarding schools are concerned for the safety of their students and such establishments are in immediate need of security measures. Other children have dropped out of school to remain under the protection of their parents.

59. Such insecurity among Malawians with albinism leads to a vicious circle of poverty because the livelihoods of parents of children with albinism are directly affected. Owing to the need to stay at home and protect their children, parents do not attend to their crops or go to the market. Adults with albinism are unable to go to their gardens alone as they used to. This has driven families already living in poverty into dire straits.

60. In addition, victims of attacks and their families are deeply traumatized and are in dire need of assistance in rebuilding their lives and restoring their dignity, including through the provision of psychosocial assistance. The Independent Expert welcomes the initiative taken by the Ministry of Gender, Children, Disability and Social Welfare on 9 September 2016, when all district social welfare officers were directed to provide psychosocial support to victims and their families and to assess the housing conditions of persons with albinism.

Media

61. The media in Malawi have widely reported the situation of persons with albinism in the country. However, during the visit of the Independent Expert, several interlocutors noted the undesirable effects of this coverage, namely the spreading of incomplete or erroneous information about the scientific explanation of albinism and the belief that the publication of the alleged prices of body parts of persons with albinism could incentivize the gullible. Further, interlocutors regretted the disproportionate reporting of cases of attack and discrimination vis-à-vis positive images of persons with albinism; the imbalance repeatedly cast albinism in a negative light. Associating persons with albinism exclusively with attacks and witchcraft practices might have the effect of reinforcing the myths that dehumanize them. It would be prudent to train media professionals on the scientific explanations of albinism, how to report freely without incentivizing criminals and the technique of repeated positive imagery to counteract frequent negative reporting.

B. Discrimination

62. Malawians have been taken by surprise by the recent increase in attacks against persons with albinism. Yet such attacks highlight the pre-existing context of discrimination against them. Discrimination has a long history in well-rooted myths and misbeliefs as well as harmful practices, including infanticide covered up by claiming that a baby with albinism was stillborn, hiding a child with albinism and abandonment, as well as structural isolation of persons with albinism and their mothers, both within the family and in the community.

63. In addition, in the current context of attacks, persons with albinism are sometimes deemed as posing a danger to the family and are consequently expelled. One person with albinism told the Independent Expert that she was expelled by her family and her children

without albinism taken away from her by her family against her will as a way of protecting them from becoming victims of potential attacks against their mother.

64. It is particularly alarming that persons with albinism are regularly called pejorative names, including “money”, as they walk their streets and neighbourhoods, in a direct reference to the alleged value of their body parts. The widespread use of such verbal abuse in all parts of the country is worrying as it highlights the scale and depth of misbeliefs behind albinism as well as the social exclusion that persons with albinism face.

65. Many complaints were received that victims and persons with albinism generally were not benefiting from the various government programmes meant to help those in most dire need. Persons with albinism in the current context of attacks are the most vulnerable of the vulnerable, the most marginalized of the marginalized. They are locked in a spiral of fear and poverty. Unable to leave their homes to go to school or work in their fields, and often limiting their movements so that at least one family member is able to protect them, their situation, already precarious because of discrimination, deteriorates further. Access to government social welfare programmes and other benefits by persons with albinism is necessary to ensure that they are not seen as burdens by their relatives.

C. Education

66. The right to education and the duty of the State to develop inclusive education at all levels is established by article 13 of the International Covenant on Economic, Social and Cultural Rights and article 24 of the Convention on the Rights of Persons with Disabilities. The Committee on the Rights of Persons with Disabilities, in its general comment No. 4 (2016) on the right to inclusive education, stresses that the right to inclusive education encompasses a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility. It involves strengthening the capacity of the education system to reach out to all learners.

67. The inclusive education policy adopted by the Government of Malawi is commendable. However, in practice, many challenges impede its full implementation. Although specialized education teachers are available for children in special needs education institutions, the coverage of such centres in the country is limited, resources are scarce and children attending these schools often live far away from their community. In addition, it appears that low-vision devices and large print material, central to the education of persons with albinism, were not systematically produced and sent to schools on the basis of a needs assessment; rather, they were available only in some institutions. To fully implement the inclusive education policy, it is fundamental for special needs educators to train teachers in all primary and secondary schools in the country. It is also necessary to conduct regular visits to these establishments to ensure that all schools cater fully for the needs of children with albinism as part of the broader aim of catering for all the special needs of children in school.

68. Discrimination at schools, by both students and teachers, predates attacks against persons with albinism and, in addition to the lack of reasonable accommodation for vision impairment, has caused students with albinism to drop out of school. The current context of attacks has caused more children with albinism to drop out of school owing to security concerns both during the journey to school and at the school itself. In terms of quality of life and health, lack of formal education is particularly grave for children with albinism as it destroys their chances of finding work indoors, which in turn exposes them to a high risk of skin cancer and early death.

D. Health

69. The right to the enjoyment of the highest attainable standard of physical and mental health has been recognized in instruments such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. This right encompasses specific entitlements including the right to an adequate system of health protection, the right to prevention and treatment of illnesses, the right to access essential medicines and the provision of health-related education and information, as well as the participation of those concerned in health-related decisions.

70. Owing to the lack of melanin in persons with albinism, they are particularly vulnerable to skin cancer. In Malawi, skin cancer is a life-threatening condition for persons with albinism as there are few facilities for adequate medical interventions. Although there are no specific figures available for Malawi, statistics from other parts of Africa indicate that persons with albinism die early from skin cancer, between the ages of 30 and 40. This means that cancer is likely to be the leading cause of death for persons with albinism.

71. However, there are several effective and easy ways to prevent skin cancer, including the lifetime use of sun protection cream and sun protective clothing. Although a pilot programme for local sunscreen production was launched in the past in Malawi, it was not sustained. Therefore, the supply of sunscreen in Malawi currently remains ad hoc and is heavily dependent on international donations. Such fundamental goods of primary necessity should be provided in a reliable manner, in line with the principles of availability, accessibility and affordability. Sun protection lotion should be included on the list of essential medicines, available free of charge and distributed regularly to all communities, using mechanisms such as health surveillance assistants. In addition, trainings and readily available information on albinism and related health issues should be provided to mothers of children with albinism at an early stage to ensure that adequate protection is provided to their babies.

72. In addition, free access to dermatological care for persons with albinism is necessary to ensure that skin cancer is detected early and treatment readily provided.

73. A lack of melanin in the eyes also results in high sensitivity to bright light and significant vision impairment in most persons with albinism. Free clinical assessments should be provided by ophthalmologists and optometrists along with glasses and adaptive devices as measures of reasonable accommodation.

74. The use of mobile clinics to ensure that persons with albinism in remote areas can be screened on a regular basis for skin cancer and vision assessment and care is a best practice established in the region.

E. Participation

75. The primary responsibility to promote and protect the rights of persons with albinism falls on the Government of Malawi. However, it faces an immense task that it cannot cope with alone. It is clear that an urgent and coordinated response from the Government, civil society and development partners working in strong partnership with each other is required.

76. Yet for initiatives to truly respond to the implementation of human rights for persons with albinism, all measures, including legislative initiatives, programmes and policies, must create space for the effective and meaningful participation of persons with albinism themselves. From a human rights perspective, their effective participation is not only desirable in terms of ownership and sustainability, but is in itself a human right: the right to

take part in public affairs and the right to active, free and meaningful participation in development as well as the right to fair distribution of benefits resulting therefrom.

77. In all actions and interventions on this issue, it is fundamental for the Government and all stakeholders to uphold the principle of “nothing about us without us” and to involve organizations of persons with albinism at every step, where the process cannot be led directly by them.

V. Conclusions and recommendations

78. **The situation of widespread attacks against persons with albinism in Malawi witnessed by the Independent Expert during her visit is alarming. The crisis has taken institutions and citizens by surprise and caused legitimate and widespread fear among persons with albinism. Root causes of such attacks run deep in Malawian society and they are far from a recent phenomenon. Those causes include the prevalence of witchcraft belief and practice, the context of poverty, media reports on alleged prices of body parts of persons with albinism, widespread myths and long-standing discrimination against persons with albinism.**

79. **Malawi is commended for its high-level condemnation of attacks and the steps taken to address them to date. Such initiatives include the adoption of a response plan in March 2015, the strengthening of the framework for the implementation of the plan, the amendment of key legislation and the adoption of a practice direction. As a result of these initiatives, awareness of the authorities and the public at large has increased and attacks are being reported more systematically.**

80. **Malawi has also demonstrated commendable political will, including by being the first country to accept a visit from the Independent Expert. However, it is important for Malawi to continue to translate that political will into concrete and specific time-bound measures for lasting solutions.**

1. Emergency and priority action

81. **The Independent Expert recommends that the Government of Malawi:**

(a) **Continue to provide an urgent response to attacks against persons with albinism. Malawi is confronted by various challenging and pressing issues; however, given the scale of the attacks, its response requires adequate technical, budgetary and political support;**

(b) **Continue to promote stronger leadership for the National Technical Committee on Albinism and ensure that it remains action-oriented: coordinating, initiating, implementing and monitoring concrete measures to protect and promote the rights of persons with albinism.**

2. Data collection

82. **The Independent Expert recommends that the Government of Malawi:**

(a) **As part of data collection on persons with disability, insert the variable of persons with albinism in the upcoming national census scheduled for 2018;**

(b) **Ensure that all data collected relating to the situation of persons with albinism is disaggregated at a minimum by sex and age;**

(c) Provide adequate safeguards for all data amassed on persons with albinism to ensure the protection of their right to privacy and to prevent misuse of data for attacks, discrimination or other illicit acts.

3. Training and awareness-raising

83. The Independent Expert recommends that the Government of Malawi:

(a) Train public officials at the national, regional and local levels, including law enforcement agencies, community police, the judiciary and the legislature, on the rights of persons with albinism and the obligations of the State in this regard;

(b) Conduct specific training for all police officers, investigators and magistrates handling such cases, including on relevant legislation, combined charges, case law and guidelines regarding attacks;

(c) Strengthen the gathering of evidence, the use of forensics and investigative techniques used by police through training and, where necessary, technical assistance from abroad;

(d) Train health-care workers, community leaders, persons with albinism, families of persons with albinism, particularly mothers of children with albinism, and women generally as potential mothers of children with albinism on the scientific explanation and implications of albinism. Such training should be integrated into ongoing programs targeting women or through other specific programming;

(e) Provide information to traditional leaders and communities on prevention, protection and reporting measures at the local level. Isolated examples of such training by community police have led to the quick intervention of neighbours during attacks and the arrest of perpetrators;

(f) Ensure that the Malawi Police Service engages in sustained and intense sensitization of border communities regarding attacks on persons with albinism. Police sensitization activities should not be seen as a substitute for concrete police action on these cases in terms of prevention and protection;

(g) Train the media on albinism and balanced reporting, as well as responsible investigative reporting, to avoid inadvertently fuelling attacks.

4. Legal framework

84. The Independent Expert recommends that the Government of Malawi:

(a) Ensure enhanced oversight of traditional medicine practitioners by, for example, regulating their practice by means of legislation and a licensing regime. Such a Government-led monitoring mechanism should include sanctions for non-registered practitioners and its oversight should reach rural communities;

(b) Use the ongoing review of the Witchcraft Act to reflect on witchcraft practices in Malawi. While the continued criminalization of witchcraft accusations remains desirable in its intent, this should not lead to the legalization of witchcraft practices or the granting of legal character to the phenomenon. In the light of the constitutional protection of freedom of religion or belief, mere belief in witchcraft should not be criminalized;

(c) Ensure the regulation of misleading advertisements in newspapers and other media that contribute to the legitimization of witchcraft practices.

5. Investigation and prosecution

85. The Independent Expert recommends that the Government of Malawi:

(a) **Ensure that all cases of offences against persons with albinism are promptly and thoroughly investigated and documented, with a view to identifying the masterminds behind the attacks and the chain of perpetrators;**

(b) **Formalize the role of the prosecutor tasked with prosecuting cases of attacks against persons with albinism. The prosecutor should be provided with adequate resources to address this urgent and daunting task;**

(c) **Ensure that police officers and magistrates are aware of applicable criminal legislation;**

(d) **Train prosecutors and the judiciary using, among other relevant tools, the handbook for prosecutors and investigators concerning offences against persons with albinism, including sentencing guidelines and practice directions, which should be published and widely disseminated;**

(e) **Strengthen community police through the provision of adequate resources, including facilitating reporting of incidents to police and the gathering of evidence;**

(f) **Use the draft sentencing guidelines that are being developed by the Special Law Commission as an opportunity to contribute to stronger and more consistent sentencing in crimes affecting persons with albinism;**

(g) **Ensure enhanced cooperation between the police and the Directorate of Public Prosecutions, as well as adequate resources to facilitate the collection of needed evidence;**

(h) **Facilitate international law enforcement cooperation with neighbouring countries, for example through memorandums of understanding, shared databases and the signing of extradition treaties.**

6. Victim support

86. The Independent Expert recommends that the Government of Malawi ensure the provision of psychosocial, medical and legal assistance to persons with albinism who are victims of attacks, as well as to their families.

7. Investigative research

87. The Independent Expert recommends that the Government of Malawi conduct in-depth investigative research to ensure, on the one hand, a better understanding of the root causes of attacks, including witchcraft practices, myths and poverty, and, on the other hand, to map patterns of trafficking of body parts, including potential international networks involved, to identify the masterminds at the root of demand.

8. Poverty

88. The Independent Expert recommends that the Government of Malawi:

(a) **Continue to adopt measures to address poverty in the light of Agenda 2030 for Sustainable Development to ensure that Malawians with albinism are not left behind, that they have full access to employment and social welfare programmes and that they are included in all poverty-reduction programmes;**

(b) Review the criteria for benefiting from social welfare programmes, taking into account the vulnerability to skin cancer and vision impairment faced by persons with albinism and, in particular, ensure that social welfare programmes are not conditioned on performing acts that are harmful to persons with albinism such as performing manual work outdoors in the sun.

9. Protection

89. The Independent Expert recommends that the Government of Malawi:

(a) Support the roll-out of community-based protection mechanisms involving community police, traditional and religious leaders, local communities and persons with albinism, and provide basic protection items such as mobile phones, torches and whistles;

(b) Strengthen the structural safety and integrity of the houses of persons with albinism by ensuring that they have wooden doors with locks and secure windows.

10. Discrimination

90. The Independent Expert recommends that the Government of Malawi:

(a) Raise awareness on albinism to fight rampant myths concerning albinism through widespread campaigns sustained continuously for at least two years. These should be in all national languages, involve persons with albinism, target communities and villages through various forms of media and involve key stakeholders including traditional authorities and faith-based organizations;

(b) Promote persons with albinism as role models, including, for example, through the nomination of a person with albinism to a high-level position in Government, because such visibility is important to ensure their full integration and to combat myths that dehumanize them.

11. Health

91. The Independent Expert recommends that the Government of Malawi:

(a) Ensure that sun protection lotion is included on the list of essential medicines, available free of charge and distributed regularly, along with sun protective clothing, to all communities, using mechanisms such as health surveillance assistants and in line with the principles of availability, accessibility and affordability;

(b) Ensure that training and information on albinism and related health issues are provided to mothers of children with albinism immediately after the birth of their child to ensure that adequate skin and vision protection are provided to their babies;

(c) Provide free dermatological and ophthalmological assessments to persons with albinism along with glasses, adaptive devices and other visual aids as measures of reasonable accommodation;

(d) Carry out early intervention and detection programmes, using best practices such as mobile clinics.

12. Education

92. The Independent Expert recommends that the Government of Malawi:

(a) Ensure the full implementation of the Inclusive Education Advocacy Programme, including by providing the necessary resources for special needs educators to regularly access all schools where there are children with albinism;

(b) Ensure the availability of low-vision and adaptive devices as well as large print materials in all schools as a measure of reasonable accommodation;

(c) Ensure the systematic training of teachers on the special needs of children with albinism, including that children with albinism should be seated in the front row of classrooms, that teachers' notes should be provided to them, that large print writing should be used on the blackboard and that awareness on albinism should be raised among other teachers and students;

(d) Include information on the needs of children with albinism in the current review of the initial primary teacher curriculum;

(e) Ensure that schools that have children with albinism offer the necessary basic protection measures, such as fences, and that teachers and staff are aware of the situation of students with albinism and are trained to respond adequately.

13. Participation

93. The Independent Expert recommends that the Government of Malawi ensure the full participation of persons with albinism in all decisions and measures taken for the full implementation and enjoyment of their rights.

14. International cooperation and assistance

94. The Independent Expert calls on:

(a) International development partners to support the efforts of the Government of Malawi in addressing this urgent situation, including by integrating the issue into their existing development programmes for persons with disabilities, women and children or by creating specific programmes to respond to the issue;

(b) The United Nations system to provide technical assistance and support to Malawi, in particular for data collection, analysis and monitoring as well as capacity-building for civil society working on albinism;

(c) Regional partners to strengthen international cooperation on the issue, including by placing the issue on the agenda of regional and subregional meetings. As many of the issues faced by Malawi regarding persons with albinism are regional, transnational collaboration, joint action and exchange of best practices in this regard are fundamental to finding lasting solution to the crisis.