Case summary:[[1]](#footnote-1) *X v Tanzania*

Case code: CRPD/C/18/D/22/2014

Communication no 22/2014

Date of communication (initial submission): 23 June 2014

Date of adoption of Views: 18 August 2017

Invoked provisions of the Convention: Articles [5](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%225), [15](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%2215) and [17](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%2217)

Provisions of the Optional Protocol: Articles [2(d)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx)

Keywords: Albinism; discrimination based on disability; torture, inhumane and degrading treatment; violation of the right to respect for intellectual and mental integrity

Decision: Violation of Articles [5](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%225), [15](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%2215) and [17](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%2217), read in conjunction with Article [4](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%224), of the Convention of the Convention

Full decision in HTML format (webpage): [Arabic](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XeHYkxsDSPA05ZvcX8dltnqUZq7PxdmUCIenTEiZn%2b8x31Lc5NDKzce6zjLPFzmSq6ctBGnX8WnUvI0gXizG3gd6MMsoB%2bKNZOKgLQO%2fT6ONw%3d%3d), [Chinese](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XeHYkxsDSPA05ZvcX8dltnqUZq7PxdmUCIenTEiZn%2b8x1MCHdFNt5rFjZp%2fHN7JnrnUMuHoW4Pw0c4oDOjTX9kh5yBWe1M%2bT3f1cDqIIWFU2Q%3d%3d), [English](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XeHYkxsDSPA05ZvcX8dltnqUZq7PxdmUCIenTEiZn%2b8x475Jtj3Mm9ayN7A6JdQ0uXFu75y%2bXb8DYT8OHCy4FAonz0AsUzyUM5bajLngeYaNQ%3d%3d), [French](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XeHYkxsDSPA05ZvcX8dltnqUZq7PxdmUCIenTEiZn%2b8x1%2fBhHQuSdX%2btZLyQLn9bHk4oFcg0IEVkPecH8johAQr16mNvEEGYMlePjHTbEFa3A%3d%3d), [Russian](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XeHYkxsDSPA05ZvcX8dltnqUZq7PxdmUCIenTEiZn%2b8x14mIAbiBfj95IEJazsC4GtYWnfW7RdLEvcdveTPkv8fo9CJoq1X6%2btiMW7E1s7Nzw%3d%3d) and [Spanish](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XeHYkxsDSPA05ZvcX8dltnqUZq7PxdmUCIenTEiZn%2b8x7lOuk99gBNz6XYby7tGsJeft%2b3iIEdLSvi9KGc5lxYovBT9DappwCkJbgwG5p8pCw%3d%3d)

For full decision in PDF and/or Word format in UN official languages search in <https://documents.un.org>, fill the blank space after ‘Symbol’ with the CRPD case code mentioned above and then click on ‘Details’.

Facts

The author is Mr X, a Tanzanian national with albinism born in 1969. He has had his left arm cut off by two strangers at the age of 41 due to his condition of albinism. The author was attacked on 10 April 2010 while he was fetching firewood. Two men hit him on the head with clubs and hacked off half of his left arm from below the elbow, and would have taken it away. Since then, the author’s access to justice has been significantly limited: no investigation seems to have been undertaken by the competent authorities after the prosecution´s withdrawal of the case following the author`s testimony stating that the accused person had not been involved in the attack. More than eight years after the attack, his case remains in total impunity.

The complaint submitted to the Committee

The author claims that State has breached its obligations under CRPD Articles [5](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%225), [15](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%2215) and [17](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx%22%20%5Cl%20%2217).

Regarding Article 5, the author alleged that he was discriminated against on the basis of albinism. Because of the different impairments and barriers that albinism entails, it would fall under Article 1 of the CRPD. The author further argued that the violence and the non-access to justice that he suffered are generalized practices against people with albinism in the State. Thus, he considered that State authorities did not take any preventive or protective measures in that regard and, therefore, the State violated article 5.

Regarding Article 15, the author claimed that the State party failed to take effective measures to protect him, as a person with albinism, from the targeted physical, emotional and mental abuse by non-state actors. The hacking of his arm subjected him to severe forms of torture and inhuman treatment and made him lose his independence, in violation of article 15.

Regarding Article 17, the author argued that since he was exposed to barbaric forms of suffering that injured his dignity and physical integrity, and the State party failed to take any effective steps against the perpetrators, there was a violation of article 17.

State party’s observations on the admissibility

The State argued that the communication should be held inadmissible for the non-exhaustion of all available domestic remedies under article 2(d) of the Optional Protocol (OP). It alleged that an investigation was instituted by the police the same day that the author was attacked, that a suspect was arrested and was arraigned in the District Court of Morogoro, and that a trial commenced and three witnesses testified, including the author. However, during his testimony, the author informed the Court that the accused person was not among his attackers. As a result, the prosecution withdrew the case against the accused person.

The investigation of the attack against the applicant is ongoing and efforts are made to locate and arrest the assailants and bring them to justice. The State added that the author did not approach the domestic authorities regarding his claims that criminal investigations were never instituted or that they were being delayed before bringing this matter to the Committee. It considered that the communication is based on an erroneous belief that the State party failed to act. In addition, the State noted that there was no evidence that the author attempted to initiate a private prosecution– mechanism that exists under the Criminal procedure.

The author’s comments on the State party’s observations

The author rejected the State’s contentions that his communication is inadmissible pursuant to article 2(d) of the OP. He submitted that the exhaustion of domestic remedies rule should never be used as a protective shield by States which have not established a suitable environment for promoting, protecting and preserving the rights of individuals. The author, referring to the jurisprudence of the African Commission and the European Court of Human Rights, pointed out that where domestic remedies are non-existent, or unreasonably prolonged, or unlikely to bring effective relief, a resort to international measures is required. The author argued that this is the case for the acts of murder and attacks to persons with albinism, which are pervasive, amount to a grave violation of rights, and remain unpunished. The author acknowledged that the prosecutor withdrew the matter after he testified. He submitted that he knew the perpetrators, who were his neighbours. The author considered that as the State failed to carry further investigation and to seek additional clarification.

The author, based on specific jurisprudence of the Inter-American Commission of Human Rights, argued that in the case of crimes of public action, it is not valid to demand the exhaustion of domestic remedies by the victim or the victim's relatives. The obligation to investigate, prosecute and punish the persons liable for human rights violations is a non-delegable duty of the State. The author submitted that, in his case, the State party has failed to conduct effective investigation and prosecution, by discontinuing the investigation.

As regards the State’s statement about ongoing investigations, the author submitted that there was no sign of any concrete action taken or of any result. The author was neither contacted nor received any information on investigations allegedly in course. The author therefore considered that, in the particular circumstances of his case, the local remedies in the State were unavailable and, even if available, they would be ineffective and insufficient. He therefore requested the Committee to examine the case on the merits

Issues and proceedings before the Committee

Consideration of admissibility

First, the Committee ascertained that the same matter had not been examined by it and had not been or was not being examined under another procedure of international investigation or settlement, as required by [article 2(c) of the OP](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx).

Regarding inadmissibility for non-exhaustion of domestic remedies, the Committee recalled that under the Tanzanian criminal procedure, the magistrate inquiring into any case may permit the prosecution to be conducted by any person, including the victim. However, in cases of violations of such gravity as those which the author has been victim of, the primary responsibility to prosecute remains in the hands of the authorities of the State party, that have a non-delegable duty and obligation to investigate, prosecute and punish. Furthermore, the Committee noted that the lengthy procedures initiated by the author before the judicial authorities had not had any result to that date. In such circumstances, the Committee does not find it reasonable to require that the author should have gone to court to initiate additional proceedings of an unpredictable duration, such as civil proceedings. A civil claim and an award of compensation, by itself, would not be an effective remedy. The Committee concluded that the remedies referred to by the State would not have been effective, and that it is not precluded, under article 2 (d), of the OP, to consider the complaint.

Regarding inadmissibility on the basis of *ratione materiae*, the Committee considered necessary to clarify that persons with albinism fall within article 1 of the Convention.

Consequently, claims under Articles 5, 15 and 17 of the CRPD, were admitted.

Consideration of the merits

The Committee regretted that the State did not submit its observations on the merits of the communication. In the absence of State comments on the merits, the Committee had to give due weight to those of the authors’ allegations that were properly substantiated.

The Committee considered that the State may not avoid its responsibilities under the Convention for the mere fact that some of its judicial authorities, such as the District Court of Morogoro and the Constitutional Court had dealt or were still dealing with the matter, while it is clear that the remedies pending in the State had been unduly prolonged and would appear to be ineffective. Additionally, the Committee noted that the author was not provided with any support from State party’s authorities to enable him to live independently again after the loss of his arm and that, generally speaking, the State did not adopt any measures to prevent this form of violence against persons with albinism and to protect them therefrom.

Regarding Article 5, the Committee considered that the author was a victim of a form of violence that exclusively targets persons with albinism. It further considered that the State’s failure to prevent and punish such acts had resulted in a situation putting him and other persons with albinism in a situation of particular vulnerability, preventing them from living in society on an equal basis with others. The Committee therefore concluded that the author was a victim of a direct discrimination based on his disability, in violation of article 5.

Regarding Article 15, the Committee recalled that the term “torture” refers to a pain or suffering that 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, among other elements of the concept. Thus, the Committee recalled that the violent acts suffered by the author were perpetrated by private individuals and that, as such, they do not constitute acts of torture. Nonetheless, the Committee recalled that States parties’ obligation to prevent and punish torture and inhuman and degrading treatment violations applies to acts committed by both State and non-State actors. The Committee also considered that the suffering experienced by the author due to lack of action by the State, became a cause of revictimization, and amounts to psychological torture and/or ill-treatment. Consequently, the Committee found that, in the circumstances of the present case, the State violated article 15.

Regarding Article 17, the Committee stated that the violent acts suffered by the author clearly result in a violation of the affected person’s physical and mental integrity. The Committee further recalled that States Parties have the general obligation to take all necessary measures to ensure the full realization of this right. In this case, the State party did not take any measures to prevent and punish the acts suffered by the author and to support him to live independently again; and, to date, the case remains in total impunity. Consequently, the Committee considered that the failure by the State to take all necessary measures to prevent acts of violence, and to efficiently investigate and punish these acts in this case amount to a violation of the author’s rights under article 17, in conjunction with article 4.

Conclusion

The Committee concluded that the State failed to fulfil its obligations under articles 5, 15 and 17, read in conjunction with article 4 of the Convention, and recommended:

Regarding the author: To provide him with an effective remedy, including compensation and redress for the abuses suffered, and the support to enable him to live independently, as well to conduct an impartial, speedy and effective investigation and to prosecute the perpetrators of the attack.

As general measures: To ensure legal frameworks encompass all aspects of attacks against persons with albinism, including with regard to trafficking of body parts; to ensure prompt investigation and prosecution of cases of attacks against persons with albinism as well as trafficking of body parts, and that the practice of using body parts for witchcraft-related practices is adequately and unambiguously criminalized in domestic legislation; and to implement long-lasting awareness-raising campaigns in compliance with article 8 of the Convention, and trainings to address harmful practices and rampant myths affecting human rights of persons with albinism.

1. This summary has been prepared by the International Disability Alliance. For more information on how to lodge individual communications under the Optional Protocol to the CRPD, visit [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/es/node/105)  [↑](#footnote-ref-1)