Case summary:[[1]](#footnote-1) *Mr. Y (represented by counsel [anonymity requested]) v. United Republic of Tanzania*

[Communication No. 23/2014](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/327/11/pdf/G1832711.pdf?OpenElement)

Date of communication (initial submission): 23 June 2014

Date of adoption of Views: 31 August 2018

Invoked provisions of the Convention: [1](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#1), [4](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4), [5](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [7](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#7), [8](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#8), [14](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#14), [15](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15), [16](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#16), [17](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#17) and [24](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#24)

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

Keywords: Disability; torture, inhumane and degrading treatment and discrimination against a person with albinism; Albinism; discrimination based on disability; violation of the right to respect for intellectual and mental integrity; exhaustion of domestic remedies; competence *ratione materiae*

Decision: The State party has failed to fulfil its obligations under articles 5, 7, 8, 15, 16, and 17 read alone and in conjunction with articles 4, and 24 of the Convention.

Full decision in PDF format: [Arabic](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/327/09/pdf/G1832709.pdf?OpenElement), [English](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/327/11/pdf/G1832711.pdf?OpenElement), [Russian](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/327/13/pdf/G1832713.pdf?OpenElement) and [Spanish](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/327/14/pdf/G1832714.pdf?OpenElement)

**The facts**

The author is Mr. Y, a Tanzanian national with albinism born on 24 May 1999, represented by Mr. AP. The author claims to be victim of violations by Tanzania of his rights under articles [4](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4), [5](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [7](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#7), [8](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#8), [14](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#14), [15](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15), [16](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#16), [17](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#17) and [24](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#24) of the CRPD. The United Republic of Tanzania ratified the OP in 2009.

The author and his brother are persons with albinism and were abandoned by their family. In 2008, they stopped attending school as they feared being attacked in the way to school, given the escalation of killings and violence against persons with albinism. In 2011, the 12 years-old author was attacked by a man with a machete, who injured him in his left shoulder and stole 3 of his right-hand fingers. The author was left wounded in front of his home. The State party did not provide him with any medical aid or rehabilitation. Later in 2012, a NGO brought the author back to school but, after 2 years of non-attendance, he faced difficulties and he is still unable to read or write properly.

The State party initiated an investigation on the crime. The author’s biological father, his stepmother and his uncle were detained and taken to court for attempted murder and acts of violence. In June 2012, the charges were dropped for lack of evidence. The State prosecutor required more time to finalize the investigation, but nothing has been done. The author waited two years before submitting his communication to the Committee without any prospect of redress from domestic authorities. He submits that he was attacked because of the widely-spread belief that the body parts of a person with albinism provide wealth and prosperity, a belief that led to an increase of persecutions against persons with albinism to feed a black-market of circulating body parts of persons with albinism.

**The complaint**

The author alleges that the State party violated his rights under articles 4, 5, 7, 8, 14, 15, 16, 17 and 24 of the CRPD.

With regard to article 4, the author claims that the State party has failed to provide him with the protection he has needed as a child with albinism, and has therefore put him under a permanent risk of being attacked.

With regard to article 5, para 2 and 3, the author claims that the State party has not taken reasonable steps to ensure that people with albinism are not discriminated against on the basis of their impairment. The failure to effectively investigate his and similar cases, and to prosecute the perpetrators, constitutes a violation of his rights to equality and non-discrimination. In relation to article 7, the author argues that the State party has failed to provide a safe and secure environment as it has not ensured that persons with albinism be protected from attacks, violence, threats and any other forms of intimidation. Regarding article 8, the author stressed that the State party has not taken appropriate measures to raise awareness throughout society regarding persons with albinism and failed to provide him with any form of medical assistance or rehabilitation.

On article 24, the author argues that that the permanent risk he is facing, and the lack of protection by the State party, has obliged him to stop attending school and thus prevented him from enjoying his right to education. In addition, as he was forced to stop attending school in order to escape violence and insecurity, the author claims that he did not enjoy his right to education for two years.

With regard to article 13, he argues that the failure by the State party to take the necessary steps to bring the perpetrators of the attacks he suffered in 2010 and 2011 to justice has violated his right to access to justice and protection. Regarding articles 15 and 16, the author considers that the State party has failed to protect him from violence and torture, not taking appropriate measures to curtail the targeted physical, emotional and mental abuses they suffer. Finally, on article 17, the author alleges that his physical and mental integrity have not been respected.

The author argues that significant efforts have been made to exhaust all available domestic remedies but the State party has failed to conduct effective investigations of the attacks he suffered in 2010 and 2011 and which he reported to the police.

**State’s party observation on admissibility**

The State submits that the communication should be held inadmissible for non-exhaustion of all available domestic remedies, in compliance with article 2(d) of the OP. The State challenges the author’s allegation that it failed to conduct effective investigations and submits that an **investigation was instituted after the attack** and three suspects were arrested for attempted murder. As not identified by the author as being his attackers, the prosecution dropped the charges in accordance with the domestic Criminal Procedure Act.12. The case can later be reinstated. The State further submits that the **Basic Rights and Duties Enforcement Act provides with a procedure** for the enforcement of constitutional rights, which was not exhausted by the author. Finally, the State submits that domestic **courts still have not adopted a final decision** on the author’s case, and thus the communication should be held inadmissible.

**Author’s comments on the State party’s observations on admissibility**

On 11 May 2015, the author submits that the exhaustion of domestic remedies rule should never be used as a protective shield by States which do not have a suitable environment for promoting and protecting the rights of its individuals. He cited jurisprudence of the African Commission stating that “three major criteria could be deduced in determining [the exhaustion] rule, namely: the remedy must be **available, effective and sufficient**.”[[2]](#footnote-2) and that “a remedy is considered available if the petitioner can pursue it without impediment. It is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint”. In the same vein, the author also recalls the jurisprudence of the European Court of Human Rights.[[3]](#footnote-3) The author considers that remedies are not effective in the case for the acts of murder and attacks to persons with albinism, which are systemic and continuous in the State.

As to the State’s submission that three suspects were arrested in October 2011, the author highlights that, following the prosecutor’s withdrawal of the matter, the State party did not take any further action to investigate his case. The author further refers to the jurisprudence of the Inter-American Commission of Human Rights, where it stated that: “[…] it is the State that is obliged to advance the investigation of any crime which may be prosecuted de officio. In such cases, it can only be demanded that the petitioner exhaust domestic remedies where the State concerned investigates the facts alleged with due diligence and proceeds to punish any persons found responsible in accordance with its duties under both domestic law and the Convention.”[[4]](#footnote-4) He further argues that in the case of crimes of public action it is not valid to request the exhaustion of domestic remedies by the victim because the State party has a duty to maintain public order and to set the criminal law system as to effectively investigate on these crimes.[[5]](#footnote-5) The State party has failed to conduct effective investigation and prosecution. As regards the State party’s statement that investigations are ongoing to bring his attackers to justice, the author submits he has never been contacted and he has never received any information as to the procedures and investigations allegedly in course.

Regarding the State party’s argument that the author should have submitted a human rights petition before Tanzanian Courts under the Basic Rights and Duties Enforcement Act, the author submits that such cumbersome procedure is extremely prolonged. The refers to the petition submitted by persons with albinism victims of acts of violence in the High Court of Tanzania on 20 March 2009 as “Miscellaneous Civil Application No. 15 of 2009”, under the Basic Rights and Duties Enforcement Act. According to Section 4 of the Act, which is still pending six years afterwards.

The author therefore considers that the local remedies to redress the violation in the State party are unavailable and even if considered available, they are undeniably ineffective and insufficient.

**Lack of reply of the State party on the merits of the communication**

Despite several requests to the State, its observations on the merits of the communication have not been received. In their absence, the Committee must give due weight to those of the authors’ allegations that have been properly substantiated.

**Committee’s consideration of admissibility**

The Committee notes the author’s submission that filing a petition before Tanzanian courts under that Basic Rights and Duties Enforcement Act as well as initiating and pursuing private prosecutions of the attackers **did not constitute effective remedies in his case**. Since the prosecution was withdrawn under section 98 of the Criminal Procedure Act for lack of evidence, the author has never been informed of any new additional steps that would have been taken by the authorities. The effectiveness of a remedy depends on the nature and the particular seriousness of the alleged violation. Despite Tanzanian criminal procedure, that permits the prosecution to be conducted by any person, including the victim, in cases of violations of such gravity as those which the author has been victim of, the primary non-delegable duty and obligation to investigate, prosecute and punish remains in the hands of the State party’s authorities. Further, on 20 March 2009, other victims of similar violent acts brought their case to the Constitutional court of Tanzania under the Basic Rights and Duties Enforcement Act, and more than nine years later, the matter still has not been heard. 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.

Under article 1, persons with disabilities include, but are not limited to, 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. The Committee recalls that “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 view thereof, the Committee considers necessary to reiterate that albinism falls within the definition of disability as enshrined by article 1 of the Convention.

With regard to article 4, the Committee recalls that, in view of its general character, this article can only be invoked in conjunction with other rights. The Committee therefore considers that the author’s claims under article 4 read alone are inadmissible under article 2 (e) of the Optional Protocol.

As to the claims under article 14, the Committee notes that the claims are submitted in general terms, and that the author was never deprived of his liberty in the sense of article 14 that relates to any form of detention or institutionalization of persons with disability. The Committee considers that this part of the complaint is inadmissible for lack of substantiation.

There being no other obstacles to admissibility, the Committee declares the communication admissible and proceeds to its examination on the merits.

**Committee’s consideration of the merits**

Regarding article 5, the Committee notes that State’s authorities have note taken the necessary measures to ensure an effective, complete, and impartial investigation and prosecution of the perpetrators and that no preventive or protective measures have been implemented. Under article 5(1) and (2), States parties must ensure 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 Committee considers that the State may not avoid its responsibilities under the Convention for the mere fact that some of its authorities have already dealt or are still dealing with the matter, while it is clear that the remedies pending in the State party have been unduly prolonged and would appear to be ineffective. It further considers that the failure to prevent and punish such acts resulted in a situation putting him and other persons with albinism in a situation of particular vulnerability and preventing them from living in society on an equal basis with others. The Committee considers that the author has been a victim of a form of violence that exclusively targets persons with albinism. The Committee therefore concludes that the author has been a victim of a direct discrimination based on his disability, in violation of article 5 of the Convention.

With regard to article 7, the Committee observes that by failing to provide protection to the author, despite the complaint he submitted to the police after the first attack in 2010, and its failure to provide him with the medical assistance and rehabilitation he needed after the second attack he suffered because of his disability in 2011, the State breached its obligations under article 7 of the Convention.

Regarding article 8, the Committee observes that the State’s inactivity and passivity amounted to an implicit acceptance of the perpetuation of the heinous crimes committed in its jurisdiction against persons with albinism and considers that it amounted to a violation of article 8 of the Convention.

As regards of articles 15 and 16, the Committee recalls that “the term "torture" means 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 further recalls 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 recalls that States’ 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 adds that the suffering experienced by the author owing to the lack of action by the State that would allow the effective prosecution of the suspected authors of the crime, becomes a cause of re-victimization, and amounts to psychological torture and/or ill-treatment. Hence, the Committee finds that, in the case, the State has violated articles 15 of the Convention.

Regarding article 16 paragraph 4, the Committee observes that even though, at the time of the attack, the author was a twelve-year-old child abandoned by his family, the State failed to provide him with any kind of medical care and assistance for his rehabilitation. The Committee thus finds that the State has violated the author’s rights under article 15 and 16 of the Convention.

With regard to article 17, the Committee recalls that “every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.” The violent acts suffered by the author clearly fall within the category of acts that result in a violation of physical and mental integrity since the current practice in the State consists in hunting persons with albinism to savagely cut off some of their body parts, denying them their physical integrity and condition as human beings. The State party did not take any measures to prevent the acts suffered by the author, it failed to prosecute the perpetrators of those acts and did not take any measures to provide author with rehabilitation nor support for his reintegration in society. So far, crimes committed against the author remain with impunity. The Committee observes that the author has not been provided with any support from State party’s authorities to enable him to live independently again after the loss of his left arm and right hand. Consequently, the Committee considers that the failure by the State party to take all necessary measures to prevent acts of violence similar to those suffered by the author and to efficiently investigate and punish the perpetrators of these acts in the author’s case amount to a violation of his rights under article 17, read in conjunction with article 4 of the Convention.

With regard to article 24, the Committee observes that the State party did not provide the author with any assistance and did not adopt any form of reasonable accommodation to enable him to go to school, and that as a result, he was deprived of his right to education. Hence, the Committee finds that, the State party has violated the author’s rights under article 24 paragraph 2 (b) and (c).

**Conclusion and recommendations**

The Committee, acting under article 5 of the OP, is of the view that the State party has failed to fulfil its obligations under articles 5, 7, 8, 15, 16, and 17 read alone and in conjunction with article 4, and 24 of the Convention and therefore makes the following recommendations to the State party:

(a) Concerning the author: the State is under an obligation:

(i) To provide him with an effective remedy, including compensation, redress for the abuses suffered, and the support that is necessary to enable the him to live independently again;

(ii) To conduct an impartial, speedy and effective investigation into the attack suffered by the author, and to prosecute the perpetrators;

(iii) To publish the Committee’s Views and circulate them widely in accessible formats so that they are available to all sectors of the population;

(b) General measures: the State party is under an obligation to take measures to prevent similar violations in the future. In this regard, the Committee refers to the recommendations of the Independent Expert on the Enjoyment of Human Rights by persons with albinism as contained in her report to the Human Rights Council49 and requires the State party:

(i) To review and adapt legal frameworks as needed to ensure that they encompass all aspects of attacks against persons with albinism, including with regard to trafficking of body parts;

(ii) To ensure prompt investigation and prosecution of cases of attacks against persons with albinism as well as trafficking of body parts;

(iii) To ensure that the practice of using body parts for witchcraft-related practices is adequately and unambiguously criminalized in domestic legislation;

(iv) To develop and implement long-lasting awareness-raising campaigns based on the human rights model of disability and in compliance with State party’s obligations under article 8 of the Convention, and trainings to address harmful practices and rampant myths affecting the enjoyment of human rights by persons with albinism, as well as on the scope of the Convention and its OP.

In accordance with article 5 of the OP and rule 75 of the Committee’s rules of procedure, the State party should submit a written response to the Committee in six months’ time that includes information on any action taken in the light of the present Views and recommendations of the Committee.

1. This case 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, consult IDA’s factsheet available on [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/en/disability-rights-litigationhttp:/www.internationaldisabilityalliance.org/en/disability-rights-litigation)  [↑](#footnote-ref-1)
2. African Commission on Human and Peoples' Rights, *Sir Dawda K. Jawara v The Gambia (147/95-149/96)ç* [↑](#footnote-ref-2)
3. European Court of Human Rights, *Sejdovic v. Italy* [↑](#footnote-ref-3)
4. IAHRC, *Case of Juan Angel Greco v. Argentina* [↑](#footnote-ref-4)
5. ICHR, *Arges Sequeira Mangas v. Argentina*, Report 72/01, Case 11.804, para. 51: ”the obligation to investigate "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government." [↑](#footnote-ref-5)