Case summary:[[1]](#footnote-1) *Ms. Z (represented by counsel) v United Republic of Tanzania*

[CRPD/C/22/D/24/2014](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f22%2fD%2f24%2f2014&Lang=en)

Communication No. 24/2014

Date of communication (initial submission): 12 June 2014

Date of adoption of Views: 19 September 2019

Invoked provisions of the Convention: [5](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [6](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [8](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [10](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [14](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [15 (1),](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) [16](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) and [17](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)

Provisions of the Optional Protocol: 2

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

Decision: The State party has failed to fulfil its obligations under articles 5, 15 (1), 16, and 17, read alone, and of articles 6 and 8 read together with articles 5, 15 (1), 16 and 17 of the Convention

Full decision in English available [here](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f22%2fD%2f24%2f2014&Lang=en)

**Facts**

The author is Ms. Z., a Tanzanian national with albinism born in 1983. **The author claims the violations of his rights under articles** [**5**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**6**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**8**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**10**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**14**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)**,** [**15 (1),**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5)[**16**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) **and** [**17**](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5) **of the CRPD**.

The Optional Protocol entered into force for the United Republic of Tanzania on 10 November 2009.

Until 2008, she was self-sufficient farmer. On 17 October 2008, while she was sleeping, she was attacked by two men who cut off her arms with machetes. She recognized one of them being her neighbour. The author screamed for help but no one came and the men escaped with one of her arms. The other remaining arm was later amputated in the hospital. The author was pregnant at the time of the attack and as a result of the attack, she miscarried.

In 2011, the attackers were arrested and tried. The author claimed that she knew one of the attackers well. However, the Court gave little weight to her testimony since she was with a visual impairment. Additionally, her father was allowed to testify without any power of attorney and while he was drunk, which it contradicted the author’s testimony. The attackers were therefore acquitted for lack of evidence. After the incident, the author was unable to do any activity and she continued to face harassment and stigma. According to the author, persons with albinism suffer from different forms of persecution and discrimination, many of which are grounded on myths, such as the belief that the body parts of a person with albinism provides wealth and prosperity. The author claims that no effective domestic remedies are available in the State party; the authorities failed to prosecute with due diligence and commitment to enable that justice be done in the author’s case: State party’s authorities handled the case negligently and failed to gather significant evidence. This led to the acquittal of the two accused because of the supposed lack of evidence. The author argues that her right to a fair trial was violated as the harm she suffered was not repaired. In that connection, she refers to a decision of the Inter-American Commission[[2]](#footnote-2) where it was stated that in the case of crimes of public action, it is not valid to demand the exhaustion of domestic remedies.

**The complaints**

The author claims violations of **his rights under articles 5, 6, 8, 10, 14, 15 (1), 16, and 17 of the Convention**.

As refers to Article 5, she claims that she has been discriminated against on the basis of her disability due to the State party’s failure to take preventive measures to protect and to take care of persons with albinism.

As the violation of her rights under Article 6, the author argues that the State party has failed to take measures to empower and protect women with disabilities.

With regard Article 8, The author considers that the State party does not carry out public awareness to ensure that the public understands the rights of persons with albinism; in fact, according to the author, there is a prevailing ignorance of the rights of persons with disabilities among the population.

As refers to the violation of her rights under Article 10, the State party has failed to take measures of protection for persons with albinism. She argues that, had the State complied with the requirements of the Convention, she would not have been victim of such attack.

As Article 14, the author also considers that the State party failed to provide the necessary security to enable the persons with albinism to enjoy life.

As the violation of Article 15(1), the author argues that the State party has failed to protect her from violence and torture. She has suffered double jeopardy, as a woman and as a person with albinism. Arm amputation clearly amounts to torture and degrading treatment under such provision.

As Article 16 and 17, the State party has failed to ensure the rights under article 16 to persons with albinism and that all related crimes remain in total impunity. As a result, her physical integrity has not been respected. Since the State party has failed to protect persons with albinism against such practices, and to create effective protection and deterrence mechanisms, the State party has violated its obligations under article 17.

**State Party’s observations on admissibility and the merits**

On 25 June 2015, the State party submitted its observations on the admissibility and merits of the communication.

1. On admissibility:

The State party argues that the communication should be held inadmissible for non-exhaustion of domestic remedies, in compliance with article 2 (d) of the Optional Protocol to the Convention; it also presents sets of arguments related to the author’s claim under article 2 (e).

The State mentions that the author could have initiated a Constitutional Petition under the Basic Rights and Duties Enforcement Act, which provides for the procedure for enforcement of constitutional basic rights for duties and related matters. As regard the author’s claim for reparation, the State party argues the author could file a civil suit for malicious prosecution against the authorities that instituted the charges. The State party further challenges the author’s allegation that it failed to conduct effective investigation as an investigation was instituted by the police immediately after the attack; it recalls that three suspects were arrested and arraigned in the High Court for attempted murder (criminal case N. 36 of 2009). The fact that the available evidence did not meet the standard of identification beyond reasonable doubt cannot be attributed to any form of negligence by the prosecution which rigorously presented the case.

The State party refutes the claim that the evidence of the author was given little weight because she could not see sufficiently. The author’s eyesight and vision were never taken into consideration by the Prosecution, the defence or the Judge: the identification of the accused was tested against the principles and standards of identification of an accused person as stipulated by the Court of Appeal. Further, the State party claims that it is highly inconceivable that the Prosecution, the Judge and the Assessors would have allowed a witness to testify while under the influence of alcohol. The State party therefore considers that the author’s allegations are ill founded and unsubstantiated. According to the State, the author has never raised her demands before the municipal courts and has not given the State party a chance to address the alleged violations raised before the Committee. As the access to justice, the State party highlighted that a full trial was held and the fact that the accused was acquitted and that there was no appeal does not mean that the author was deprived of the right to access to justice and to go through the Court system. The State concludes therefore, that the author has not exhausted all available domestic remedies.

1. On the merits

The State considers the author’s claim of the violation of the article 5 as groundless, since the State has taken initiatives to ensure that persons with albinism are not discriminated against and are treated equally, such as the Person with Disabilities Act of 2010, or of National Disability policy in 2004 to end discrimination against persons with disabilities in the workplace. Furthermore, a specific department was created within the Ministry of Health and Social Welfare to oversee the rights of persons with disabilities, including persons with albinism.

As regard article 6, the State party submits that it has made efforts to ensure that women with disabilities, including women with albinism, are provided for in all matters relating to their personal development, their rights to health and education. The State party has adopted several specific acts and policy papers. The State considers that it has not violated its obligations under such article.

With regard to article 8, the State party also denies the author’s allegations that it has made no effort to raise awareness on the rights of persons with albinism. The Ministry of Health and Social Welfare has rather collaborated with civil society and other actors to raise public awareness throughout the country. The Commission for Human Rights and Good Governance within the National Human Rights Institution has also played a very active role in promoting and protecting the rights of persons with albinism.

As the violation of article 10 of the Convention, the State party also denies the author’s allegations. The State party states that, after the climax of attacks and killings of persons with albinism in 2006-2007, it reacted immediately with the establishment of special Task Forces, the suspension by the Government of all licenses of traditional healers in 2008, public awareness campaigns, and fast tracking of investigation and prosecution of criminal cases, including specific criminal sessions for cases related to attacks and killings of persons with albinism in order to expedite their adjudication. These vigorous measures have contributed to the reduction of the attacks and killings of persons with albinism.

As regard to the author’s complaint referring to the violation of her rights under the articles 10, 15(1), 16 and 17, the State party admits that many challenges have to be overcome and efforts continue to be made. However, it refutes the allegations that it has failed to observe the author’s rights in violation of articles 10, 15 (1), 16 and 17 of the Convention.

**Author’s comments on the State party’s submission**

On 25 August 2016, the author submitted her comments to the State party’s observations on admissibility and merits, arguing that the exhaustion of domestic remedies rule should not be used as a protective shield by States that have not fulfil its obligations. In that connection, the author refers to the jurisprudence of international and regional human rights mechanisms: where domestic remedies are non-existent, or unduly and unreasonably prolonged, or unlikely to bring effective relief, a resort to international measures is allowed. The author considers that this is the case for the acts of murder and attacks of persons with albinism, which are systemic and continuous in the State party, amounting to a grave violation of their rights, and which remain unpunished.

The author submits that the State party has neglected in conducting effective investigation and prosecution in her case, as in many cases entered *nolle prosequi*, discontinuing prosecutions. She was not provided with any information as to the progress made to bring the culprits to justice. Therefore, even though the State party alleges that the investigations are ongoing to bring justice, there is no sign of end and result of such investigation and ultimately, justice has been denied to the author.

**State party’s additional observations**

On 29 August 2016, 13 February 2017, 11 January 2018, the State party was requested to submit additional observations on the admissibility and merits of the communication. The Committee notes and regrets that no further information has been received within the fixed deadline from the State party.

**Committee’s consideration of admissibility**

In accordance with article 2 of the OP and with rule 65 of the rules of procedure, the Committee has to decide on the admissibility of the communication before considering any claim in a communication.

Firslyt, the Committee has ascertained that the same matter was not been examined and it is not being examined under another procedural of international investigation or settlement.

Secondly, the Committee notes the State’s arguments relating to the lack of exhaustion of domestic remedies, because the author did not file a Constitutional petition under the Basic Rights and Duties Enforcement Act and did not initiate civil proceedings to request compensation for damages and harm. In that regard, the Committee notes the author’s submission that civil action and private prosecution do not constitute effective remedies in her case. The Committee recalls that the effectiveness of a remedy depends on the nature and the particular seriousness of the alleged violation. The Committee also recalls that, under Tanzanian criminal procedure, the magistrate inquiring into or trying 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 of which the author has been victim, the primary responsibility to prosecute lies in the hands of the authorities of the State party, which have a non-delegable duty and obligation to investigate, prosecute, and punish perpetrators. With regard to the constitutional petition under the Basic Rights and Duties Enforcement Act, the Committee considers that the information before it does not allow it to conclude that a constitutional petition would be an effective remedy in the author’s case. In light of the foregoing, the Committee concludes it is not precluded, under article 2 (d) of the Optional Protocol from considering the author’s complaint.

Thirdly, with regard to the author’s claims under article 6, the Committee recalls that, this article is a cross-cutting one; the Committee will examine the author’s claims based in light of the rights invoked under articles 5, 15 (1), 16 and 17. As regards article 8, it will be the same, since the Committee notes that the author’s allegations under that provision are also intimately linked to the others under art 5,15(1), 16 and 17.

Fourthly, the Committee also notes that the author has invoked a violation of article 10 without however providing further explanation. Therefore, the Committee considers that this claim is insufficiently substantiated, and is thus inadmissible under article 2 (e), of the Optional Protocol.

In relation to the author’s claims under article 14 of the Convention, the Committee notes that the author was never deprived of her liberty in the sense of article 14; therefore, it considers that this part of the communication is inadmissible *ratione materiae*.

There being no other obstacles to admissibility in regard to articles 5, 15 (1), 16 and 17, the Committee finds the communication admissible and proceeds with the consideration of the alleged violations on the merits.

**Committee’s consideration of the merits**

With regard to the complaint under article 5 of the Convention, the author claims that she has been discriminated against on the basis of her disability, because the violence she has suffered constitutes a generalized practice in the State party only affecting people with albinism. She has been a victim of disability-based discrimination owing to the impunity of the violent acts that she has suffered and that the State party’s authorities consider that such violence is linked to witchcraft, a generally accepted cultural practice. Under article 5 (1) and (3) of the Convention, States parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law, and shall take all appropriate steps to ensure that reasonable accommodation is provided to promote equality and eliminate discrimination.

In the present case, the Committee notes that the author was a victim of a violent crime corresponding to the characteristics of a practice that affects persons with albinism exclusively and the author’s access to justice has been significantly limited: no investigative action seems to have been taken by the competent authorities after the withdrawal of the prosecution against two of the perpetrators and the acquittal of the third one, and her case remains in total impunity more than eleven years after the attack she suffered. The State party cannot avoid its responsibilities under the Convention for the mere fact that some of its judicial 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. Furthermore, the State did not provide any support to the victim, enabling her to live independently again. In spite of the observations of the State party on the matter, the Committee considers that the author has been a victim of a form of violence that exclusively targets persons with albinism. It further considers that the State party’s failure to prevent and punish such acts has resulted in putting the author, as 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 therefore concludes that the author has been a victim of direct discrimination based on her disability, in violation of article 5 of the Convention.

As regards the author’s allegations under article 15(1), the Committee notes the author’s argument that the acts she was a victim of amount to torture, violence and abuse which the State party has failed to effectively and promptly investigate and punish. The Committee further notes the State party’s submission that it takes all appropriate measures to address attacks on persons with albinism. Under article 15, no one is to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Committee further recalls that the violent acts suffered by the author were perpetrated by private individuals, and that, as such, they cannot be seen as constituting acts of torture. Nonetheless, States parties have the obligation to prevent and punish torture and inhuman and degrading treatment violations applies to acts committed by both State and non-State actors. In light of these considerations, the Committee concludes that in the State party has violated its duties under article 15 (1) of the Convention.

With regard to article 16 (4) of the Convention, States parties must “*take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse*” and that such recovery and reintegration must “take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs. Nonetheless, the competent authorities have not taken any measures to provide the author with assistance for her rehabilitation and reintegration of the author, a 28-year-old woman, mother of one child and pregnant of another one. In the circumstances of the present case, the State party has violated the author’s rights under article 16 of the Convention.

With regard to the author’s claim under article 17, under that provision of the Convention, “*every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others*”. It also recalls that the right to integrity is linked to the idea of human dignity, and that each person’s physical and mental space should be protected. It includes the prohibition of physical and mental torture, as well as of a wide range of less serious forms of interference with a person’s body and mind. The Committee considers that the violent acts suffered by the author clearly fall within the category of acts that result in a violation of physical and mental integrity. Under article 4 of the Convention, States parties have a general obligation to take all necessary measures to ensure and promote the full realization of this right. 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 amounts to a violation of the author’s rights under article 17 of the Convention.

As regards article 6, the Committee notes that, at the time of the attack, the author was the single mother of a small child and was pregnant. It further notes that, as a direct consequence of the attack, the author suffered a miscarriage. The Committee further notes that these elements, intrinsically linked to the author’s status as a woman with albinism, have resulted in the isolation of the author from her community, and amounted to gender and disability based discrimination. None of these elements has been taken into account in the course of the procedures. The Committee considers that such an invisibilization of the specific impacts of the attack suffered by the author as a woman amounts to an additional gender-based discrimination suffered by the author, and is contrary to State party’s obligation under article 6 of the Convention. In view thereof, the Committee considers that the facts under review reveal a violation of the author’s rights under article 6, read together with articles 5, 15 (1), 16 and 17 of the Convention.

Regarding the author’s claims under article 8 read together with articles 5, 15 (1), 16 and 17, the Committee notes the author’s argument that the State party failed to take appropriate and adequate measures to raise awareness throughout society on persons with albinism, and that this led to insecurity for persons with albinism, which she has directly suffered. The Committee also notes the author’s argument that the State party has taken no initiative to end this situation. Further, it notes that, the Ministry of Health and Social Welfare have collaborated with civil society and other actors to raise public awareness. Nonetheless, the Committee notes that such measures regarding persons with albinism have not been systematic and sufficient to be in compliance with article 8 of the Convention. The lack of the State party’s adequate response 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 the author’s rights under article 8, read together with articles 5, 15 (1), 16 and 17 of the Convention.

**Conclusion**

**The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under articles 5, 15 (1), 16, and 17, read alone, and of articles 6 and 8 read together with articles 5, 15 (1), 16 and 17 of the Convention**, and therefore makes the following recommendations to the State party:

a) Concerning the author, the State party is under an obligation:

(i) To provide her with an effective remedy, including compensation, proper medical treatment, redress for the abuses suffered, provision of life support devices as functional prostheses, rehabilitation and the support that is necessary to enable her to live independently again;

(ii) To conduct an impartial, prompt and effective investigation into the attack suffered by the author, and to prosecute and sanction those responsible.

(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 Council 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 and the punishment of those responsible;

(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 that are based on the human rights model of disability and are in compliance with State party’s obligations under article 8 of the Convention, and training to address harmful practices and rampant myths affecting the enjoyment of human rights by persons with albinism, among the general population, and in particular among the judicial officials, the police, and all workers in the areas of education, health, justice, and also cover the scope of the Convention and its Optional Protocol;

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

(vi) To pursue rehabilitation measures for survivors and victims of mutilations and killings.

In accordance with article 5 of the Optional Protocol and rule 75 of the Committee’s rules of procedure, the State party should submit to the Committee, within six months, a written response that includes information on any action taken in light of the present Views and the 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. See case *Arges Sequeira Mangas v Nikaragua*, [↑](#footnote-ref-2)