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## **HOCUS POCUS, WITCHCRAFT, AND MURDER: THE PLIGHT OF TANZANIAN ALBINOS**

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## I. INTRODUCTION

Albinism is a genetic disorder characterized by a lack of melanin in the skin, hair, and eyes.<sup>1</sup> In the United States, 1 in every 17,000 persons has some form of albinism.<sup>2</sup> Worldwide, it affects about 1 in every 20,000.<sup>3</sup> In Tanzania, however, the condition is much more prevalent, affecting approximately 1 in every 3,000 persons.<sup>4</sup> In 2006, the Tanzanian government estimated that there were 170,000 albinos in the country,<sup>5</sup> though a current census has not been conducted, and the number may very well exceed that estimate.<sup>6</sup>

Although their presence is strong, discrimination against albinos is a serious problem throughout sub-Saharan Africa. Recently, however, it has taken a turn for the worst. Tanzanian officials have reported that witch doctors are now marketing albino skin, bones, and hair as ingredients in potions that are promised to make people rich.<sup>7</sup> At least forty-four albino murders have been reported in Tanzania since the killings began in 2006.<sup>8</sup> The actual number is thought to be much higher.<sup>9</sup>

The killers neither care about their victims' sex nor age, so long as they can obtain the profitable body parts of an albino. To date, the youngest victim has been a seven

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<sup>1</sup> National Organization for Albinism and Hypopigmentation, *What is Albinism*, [http://www.albinism.org/publications/what\\_is\\_albinism.html](http://www.albinism.org/publications/what_is_albinism.html) (last visited May 10, 2009).

<sup>2</sup> *Id.*

<sup>3</sup> David Lowe, *Welcome to Albino Island*, THE SUN (U.K.), Dec. 9, 2008, [http://www.thesun.co.uk/sol/homepage/woman/real\\_life/article2017493.ece](http://www.thesun.co.uk/sol/homepage/woman/real_life/article2017493.ece).

<sup>4</sup> Jeffrey Gettleman, *Albinos, Long Shunned, Face Threat In Tanzania*, N.Y. TIMES, June 8, 2008, [http://www.nytimes.com/2008/06/08/world/africa/08albino.html?\\_r=1](http://www.nytimes.com/2008/06/08/world/africa/08albino.html?_r=1).

<sup>5</sup> Telephone Interview with Peter Ash, Founder and Chairman of Under the Same Sun (Feb. 27, 2009) [hereinafter Ash].

<sup>6</sup> Interview with Al-Shaymaa Kwegyir, Member of Tanzanian Parliament, in Dar es Salaam, Tanzania (Mar. 16, 2009) [hereinafter Kwegyir].

<sup>7</sup> Gettleman, *supra* note 4.

<sup>8</sup> Kwegyir, *supra* note 6.

<sup>9</sup> Ash, *supra* note 5.

month-old baby.<sup>10</sup> The gruesome murders also include that of Miriam, a five year-old who was brutally attacked in her own home. The killers hacked off her legs, slit open her throat, drained her blood into a pot, and proceeded to drink it as other children watched in fear.<sup>11</sup> There is also the story of Vumilia Makoye, a seventeen year-old girl who was murdered in May 2008. As she was having dinner with her family, two men carrying knives barged into her home.<sup>12</sup> Despite her mother's best efforts to barricade the door shut, the men still made their way inside and "sawed off of both Vumilia's legs above the knee and ran away with the stumps."<sup>13</sup>

Like Miriam and Vumilia, there are many others who have endured similarly agonizing deaths. Unfortunately, even in death an albino cannot rest peacefully. Family members are forced to guard the graves of their loved ones to prevent grave robbers from digging up their remains and stealing other body parts.<sup>14</sup> Some must even resort to cementing graves shut or burying the bodies in their homes for safekeeping.<sup>15</sup>

Recently, news of these killings has made its way out of Tanzania. The killings have attracted the attention of international media outlets, which have put a new focus on witchcraft in Tanzania and discrimination against albinos. Even Pope Benedict XVI recently alluded to the fact that so many Africans "are living in fear of spirits, of malign and threatening powers."<sup>16</sup> Although the killings have been condemned both domestically

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<sup>10</sup> Alex Duval Smith, *Albino Africans live in fear after witch-doctor butchery*, THE OBSERVER, Nov. 16, 2008, at 35, available at <http://www.guardian.co.uk/world/2008/nov/16/tanzania-humanrights>.

<sup>11</sup> Interview with Vicky Ntetema, Bureau Chief of BBC Tanzania, in Dar es Salaam, Tanzania (Mar. 18, 2009) [hereinafter Ntetema].

<sup>12</sup> Gettleman, *supra* note 4.

<sup>13</sup> *Id.*

<sup>14</sup> Ntetema, *supra* note 11.

<sup>15</sup> *Id.*

<sup>16</sup> David Gibson, *Superstition vs. Religion*, WALL STREET J. (EU), Mar. 27-29, 2009, at W15.

and internationally, they persist. As a result, the country and its government are under the very watchful eye of the rest of the world. While the Tanzanian government has made several recent efforts to track down the individuals responsible for these killings, there remains much more to be done before the slaughter of albinos in Tanzania is put to an end.

The purpose of this paper is two-fold. First, this paper seeks to alert readers about the recent massacre of albinos in Tanzania and the problems that Tanzanian albinos face in their daily lives. Second, this paper proposes certain recommendations as to how the Tanzanian government, Tanzanian civil society and the international community should address the albino killings and end the discrimination against albinos in Tanzania. Section II provides a basic introduction to witchcraft and its presence in Tanzania, focusing particularly on the ways witchcraft is practiced. Section III provides a critique of the measures that the Tanzanian government and Tanzanian non-governmental organizations have adopted in response to the killings. Section IV proposes that rather than enact new legislation, the Tanzanian government should actually execute the laws currently in existence that are capable of both protecting albinos, and ensuring that those responsible for the killings are held criminally accountable.

Section V analyzes how foreign governments and international bodies have responded to the killings. Section VI posits that the Tanzanian government's failure to adopt adequate measures to protect albinos amount to human rights violations under U.N. covenants and conventions. In Section VII, we propose that the plight of Tanzanian albinos might be ameliorated if the Tanzanian government ratified international human rights conventions, and if foreign governments: (1) provided law enforcement assistance

to the Tanzanian government; (2) granted asylum to a greater number of Tanzanian albinos; (3) helped provide training to Tanzanian prosecutors and judges; and (4) provided monetary incentives for the Tanzanian government to act with greater haste to curb the killings. Lastly, we conclude our paper in Section VIII by reiterating that the measures that the Tanzanian government and the international community have adopted are inadequate to protect albinos. The Tanzanian government must bring forth prosecutions against those who are in custody for their involvement in the killings, and should adopt measures to dispel myths about albinism. Moreover, the international community must use the tools available in the international political arena both to assist and pressure the Tanzanian government to protect its albino citizens.

## II. WITCHCRAFT AND MURDER

### *a. Witchcraft 101*

To better understand the current situation in Tanzania, it is necessary to have a cursory understanding of witchcraft itself. In Africa, witchcraft provides answers to many of nature's mysteries, such as lightning bolts and illnesses.<sup>17</sup> It oftentimes explains social and political misfortunes, such as losing a job or an election.<sup>18</sup> Even if there is a plausible explanation for a particular misfortune, those who believe in witchcraft constantly seek physical and supernatural answers.<sup>19</sup> Some may argue that the same can

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<sup>17</sup> Nelson Tebbe, *Witchcraft and Statecraft: Liberal Democracy in Africa*, 96 GEO. L.J. 183, 196 (2007).

<sup>18</sup> *Id.*

<sup>19</sup> Hallie Ludsin, *Cultural Denial: What South Africa's Treatment of Witchcraft Says for the Future of Its Customary Law*, 21 BERKELEY J. INT'L L. 62, 74 (2003).

be said about people who embrace more conventional forms of religion.<sup>20</sup> Contrary to major religions, however, there is no coherent body of beliefs in witchcraft.<sup>21</sup>

The term witchcraft covers a wide range of beliefs and practices that can vary immensely from place to place, even within a single community.<sup>22</sup> “It is a controversial and ambiguous practice shrouded in secrecy leading people to do things they do not understand.”<sup>23</sup> Generally, however, it can be defined as the practice of using supernatural powers to achieve a personal goal.<sup>24</sup>

Given that there is no uniform method of practicing witchcraft, it is no surprise that there are several distinctions among practitioners. There are those who claim to use supernatural powers to do harm – witch doctors – and those who claim to use them for good – traditional healers. “Witch[doctors] are not spirits or gods but ordinary mortals who act out against their victims out of mundane motivations such as jealousy or revenge.”<sup>25</sup> People believe them to hold miraculous powers that can directly cause death, sickness, loss of cattle and property, or place curses to be activated in the future.<sup>26</sup> Their practice relies on the alleged communication with spirits, the worshipping of shrines and rare objects,<sup>27</sup> and ritualistic sacrifice, including that of humans.<sup>28</sup>

Traditional healers, on the other hand, combine their alleged supernatural powers with herbal remedies to treat illnesses and perform other good deeds, such as casting

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<sup>20</sup> Mohammed A. Diwan, *Conflict Between State and Legal Norms and Norms Underlying Popular Beliefs: Witchcraft in Africa as a Case Study*, 14 DUKE J. COMP. & INT’L L. 351, 355 (2004).

<sup>21</sup> *Id.*

<sup>22</sup> Tebbe, *supra* note 17, at 190.

<sup>23</sup> ANATOLI WASWA & HENRY FORD MIIRIMA, UNVEILING WITCH-CRAFT 23 (2007).

<sup>24</sup> Diwan, *supra* note 20, at 354-55

<sup>25</sup> Tebbe, *supra* note 17, at 191.

<sup>26</sup> NORMAN MILLER, WITCHCRAFT AND SORCERY IN TANZANIA 8 (1969).

<sup>27</sup> WASWA & MIIRIMA, *supra* note 23, at 6.

<sup>28</sup> *Id.* at 183.

away evil hexes and identifying witches.<sup>29</sup> They are considered to be the “kind of persons whom God, via nature, put in [a] position to heal.”<sup>30</sup> Despite their differences, however, many people associate traditional healing with witchcraft. Nevertheless, those who consider themselves traditional healers object to being described as witch doctors.

*b. Witchcraft in Tanzania*

As archaic as the idea of witchcraft may seem, belief in the occult is widespread in Tanzania and many other African countries.<sup>31</sup> Many Tanzanians would like to see the practice of witchcraft controlled and eradicated in one way or another due to its potential to generate violence and other forms of harassment.<sup>32</sup> Irrespective of some people’s objections to witchcraft, however, it still remains an unpleasant reality in everyday life.

The practice of witchcraft in Tanzania has been documented since the early European explorers ventured inland from the coast in approximately 1860.<sup>33</sup> Evidence suggests the practice has become more widespread from the time of these first reports to modern day Tanzania.<sup>34</sup> Today, most of those who are said to practice witchcraft are actually traditional healers.<sup>35</sup> Like all traditional healers, those in Tanzania distinguish themselves from witches on several grounds. Among the most common grounds of distinction is that unlike witches, who use human organs in their practice, traditional

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<sup>29</sup> Interview with Idi Msoli, Traditional Healer, in Bagamoyo, Tanzania (Mar. 16, 2009) [hereinafter Msoli].

<sup>30</sup> WASWA & MIIRIMA, *supra* note 23, at 169

<sup>31</sup> “Witchcraft beliefs are not limited to a particular economic class, to rural areas, to non-professionals, or to older generations, but instead are widely held across contemporary Africa.” (parenthesis omitted). Tebbe, *supra* note 17, at 193.

<sup>32</sup> WITCHCRAFT IN CONTEMPORARY TANZANIA 10 (Ray Abrahams ed., 1994).

<sup>33</sup> MILLER, *supra* note 26, at 2.

<sup>34</sup> *Id.*

<sup>35</sup> According to Samwel Mluge, at a recent public gathering in Geita, a district located about ninety kilometers west of Mwanza, attendees reported that there are approximately 3400 practicing traditional healers in that district alone.<sup>35</sup> Interview with Samwel Mluge, Director of Under the Same Sun Tanzania, in Dar es Salaam, Tanzania (Mar. 15, 2009) [hereinafter Mluge].

healers utilize plants and herbs in their remedies.<sup>36</sup> Most importantly, traditional healers distinguish themselves on the basis that they are government-licensed practitioners who pay annual fees to keep their licenses valid.<sup>37</sup>

Traditional healers in Tanzania claim to feel great resentment and anger toward witch doctors in their country.<sup>38</sup> One traditional healer in Bagamoyo, Idi Msoli, says witch doctors are “sorcerers” and “wizards.”<sup>39</sup> He claims that these wizards have sabotaged the healers’ reputation.<sup>40</sup> Msoli is outraged that the government has blamed traditional healers for the recent albino killings rather than acknowledge their efforts to help officials identify the culprits.<sup>41</sup> He further alleges that these “sorcerers” are the ones to blame for the targeting of not only albinos, but also other vulnerable groups throughout African history.<sup>42</sup>

According to Vicky Ntetema, journalist and Bureau Chief of BBC Tanzania, some of these vulnerable groups have included bald people and virgins.<sup>43</sup> Indeed, in the 1980s and 1990s, there were rumors that bald heads, much like the blood and bones of an albino, would bring people wealth and prosperity.<sup>44</sup> As a result, people with bald head were reportedly decapitated and their heads taken to Zaire for use in magic potions.<sup>45</sup> Furthermore, in the 1990s, some people in the Democratic Republic of Congo believed

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<sup>36</sup> Msoli, *supra* note 29.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> According to Msoli, the traditional healers in different regions have joined forces to track down any locals who are involved with any aspect of the killings. Traditional healers are calling the police to report the “suspect” behavior in an effort to cooperate with law enforcement and in some instances, Msoli claims, they will undertake efforts to apprehend the individual themselves. *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Ntetema, *supra* note 11.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

that the genitals and the right breasts of virgins held special powers.<sup>46</sup> Moreover, in Zimbabwe, many albino women are becoming the victims of rape due to the myth that sleeping with them will cure HIV.<sup>47</sup>

Although such beliefs may seem bizarre to the well-educated individual, Ntetema claims that the people who follow the word of a witch doctor do not question its authenticity.<sup>48</sup> Even though schools have taught them that there are natural occurrences that cause epidemics and natural disasters, people still believe that evil spirits are the cause.<sup>49</sup> Indeed, superstition has kept the population under fear, and a fearful population is always a vulnerable one.<sup>50</sup>

*c. The Killings*

In Africa, it used to be that a child who was born with albinism was killed at birth.<sup>51</sup> Although this is no longer common among the general population, it still occurs in some African tribes, such as the Maasai.<sup>52</sup> Some believe that a child's albinism is brought about by a curse or a mother's infidelity with a Caucasian man.<sup>53</sup> Others believe, that albinos are ghosts from Europe who carry bad omens. Lastly, many mistakenly believe that albinism is contagious.<sup>54</sup> As a result, albinos are often ostracized, making it difficult for them to obtain employment and fully integrate into society.<sup>55</sup>

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<sup>46</sup> *Id.*

<sup>47</sup> Lily Panamsky, *Albinos Victims of Abuse*, THE SILHOUETTE, Nov. 27, 2008, <http://thesil.ca/?tag=albino>.

<sup>48</sup> Ntetema, *supra* note 11.

<sup>49</sup> WASWA & MIIRIMA, *supra* note 23, at 10.

<sup>50</sup> Ntetema, *supra* note 11.

<sup>51</sup> Kwegyir, *supra* note 6.

<sup>52</sup> *Id.*

<sup>53</sup> Ntetema, *supra* note 11.

<sup>54</sup> *Id.*

<sup>55</sup> Kwegyir, *supra* note 6; Mluge, *supra* note 35; Interview with Gideon Mandesi, Attorney and Founder of Disabled Organization for Legal Affairs and Social Economic Development, in Dar es Salaam, Tanzania (Mar. 18, 2009) [hereinafter Mandesi].

Although discrimination against persons with albinism has existed for a long time, it has recently reached a deplorable extreme. Rumors have spread that a potion for wealth and good fortune can be made using the blood, limbs, and hair of an albino. Witch doctors are believed to be the source of such fallacies. The problem is of such gravity that even the Minister of Home Affairs has referred to Tanzania as the “capital of witchcraft and albino killings.”<sup>56</sup>

Most of the reported killings have taken place in the northern Lake Region in Tanzania, although there have also been reported killings in neighboring countries.<sup>57</sup> According to Samwel Mluge, Director of Under the Same Sun Tanzania, killers are also present in urban areas, such as Dar es Salaam.<sup>58</sup> Nevertheless, the vast majority of the killings have occurred in remote areas where the villagers are uneducated and other religious faiths are lacking.<sup>59</sup> As a result, witch doctors in these villages are fearfully respected.<sup>60</sup> This fear has even led some villagers to kill a relative simply because a witch doctor has instructed them to do so.<sup>61</sup>

When news of the killings first surfaced, there was no information available as to how the killings operated. Therefore, in March 2008, Ntetema went undercover, posing

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<sup>56</sup> Ntetema, *supra* note 11.

<sup>57</sup> Mluge, *supra* note 35; Patrick Nduwimana, *Burundi arrests eight for albino killings*, REUTERS, Mar. 15, 2009, <http://www.reuters.com/article/africaCrisis/idUSLF75113> (reporting on killings in neighboring Burundi); BBC.co.uk, *Tanzania ‘healers’ flout ban*, Jan. 26, 2009, <http://news.bbc.co.uk/2/hi/africa/7851287.stm> (reporting on killings in Burundi and Kenya).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Interview with Tom (LNU), Local Tanzanian businessman in the hospitality industry, Arusha, Tanzania (Mar. 21, 2009). In an interview with a local Tanzanian who is in the tourism industry, we learned that he himself, in an attempt to weed out any thieves on the staff, has hired witch doctors to come into his places of business and threaten the workers to come forward with any knowledge of wrongdoings. On one occasion, the father of an employee who had stolen some electrical equipment offered an acre of land in exchange for removing any curse that may have been placed upon them by the witch doctor.

<sup>61</sup> Ntetema, *supra* note 11..

as a Tanzanian businesswoman in the fishing and mining industries who sought out one of these magical potions. What she discovered was a well organized operation that was generating lucrative profits.

Some suspect that the operation is somewhat compartmentalized. According to Al-Shaymaa Kwegyir, a Tanzanian Member of Parliament, there are “spotters” in charge of identifying where albinos reside. Many of these spotters are particularly hard to detect because they themselves are family members of targeted albinos.<sup>62</sup> There are also those who are in charge of actually carrying out the killings, and those responsible for transporting the body parts to the witch doctors.<sup>63</sup>

The starting price for a potion is approximately \$2000,<sup>64</sup> but a witch doctor could easily earn up to \$30,000 for an entire body.<sup>65</sup> Ordinarily, a buyer first visits a witch doctor and gives a \$1000 down-payment.<sup>66</sup> The client then schedules a date to return for her product and to pay the witch doctor the balance due.<sup>67</sup> In the meantime, the witch doctor receives the body parts, grinds them to a pulp, mixes them with other substances, and creates a potion.<sup>68</sup>

It is no surprise that the average Tanzanian, who earns a meager \$800 per year, cannot afford the exorbitant fees charged for these potions.<sup>69</sup> Indeed, it is mostly the

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<sup>62</sup> Kwegyir, *supra* note 6.

<sup>63</sup> *Id.*

<sup>64</sup> Ntetema, *supra* note 11.

<sup>65</sup> Ash, *supra* note 5.

<sup>66</sup> Ntetema, *supra* note 11.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Ash, *supra* note 5.

wealthy businessmen and women in the mining and fishing industries who are fueling this growing market for albino body parts.<sup>70</sup>

Many in the fishing industry believe that weaving the golden hair of an albino into the fishing nets will attract more fish and result in a greater catch.<sup>71</sup> It is also common practice to sprinkle the ground-up hair and bones of an albino over the nets.<sup>72</sup> However, local fishermen in Dar es Salaam claim it has become very difficult to engage in these practices due to the constant patrolling of their fishing grounds by regional police.<sup>73</sup>

In the mining industry, many seek the leg bones and blood of albinos for use in potions.<sup>74</sup> These potions are sprinkled over the mining sites in hopes of recovering valuable minerals.<sup>75</sup> Sometimes, these miners chose to place the blood of an albino in an amulet that they will wear for life.<sup>76</sup>

Despite the promises of wealth and prosperity, customer expectations are not always met. Indeed, clients often notice no difference in their lives or businesses after buying a potion containing albino body parts.<sup>77</sup> The witch doctors, however, are skillfully deceptive; they convince dissatisfied clients to make changes to their lifestyles that over time will make it appear as though they have miraculously become wealthy.<sup>78</sup> These changes usually entail small and insignificant lifestyle adjustments, such as

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<sup>70</sup> Ntetema, *supra* note 11.

<sup>71</sup> Ntetema, *supra* note 11.

<sup>72</sup> *Id.*

<sup>73</sup> Interview with Sunni (LNU) and Richard (LNU), Local fishermen in Dar es Salaam, Tanzania (Mar. 17, 2009).

<sup>74</sup> Ntetema, *supra* note 11.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

drinking less alcohol or dining out less often.<sup>79</sup> As clients do less and less of these activities and save more money, they will inevitably notice greater wealth.<sup>80</sup> Even if their first attempt at greater wealth via these magic potions results in failure, some decide to incur the expense of buying a second potion, thus perpetuating the killings further.<sup>81</sup>

Through her efforts, Vicky Ntetema has alerted the world to the albino killings. While this exposé is certainly commendable, it is insufficient to put an end to this despicable practice. Stopping the albino killings requires the joint efforts of the Tanzanian government, Tanzanian civil society and the international community alike. Thus, the following Sections examine both the domestic and international responses to the killings and recommend courses of action.

### III. DOMESTIC RESPONSE AND INITIATIVES TO COMBAT KILLINGS

#### *a. Constitutional Protections and Legal Rights for Persons with Disabilities*

The Tanzanian Constitution recognizes that “[a]ll human beings are born free” and are entitled to have their dignity respected.<sup>82</sup> Under the Constitution’s Bill of Rights, the government has an affirmative duty to protect every person’s life.<sup>83</sup> When the government fails to discharge its constitutional duties, individuals may take legal action to secure their rights.<sup>84</sup> These constitutional protections apply equally to persons with disabilities.<sup>85</sup> Tanzanian law defines a person with disability as including those who have “physical or mental conditions arising from [sic] imperfect development of any organ.”<sup>86</sup>

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> CONSTITUTION, ART. 12 (1998) (Tanzania).

<sup>83</sup> *See id.*

<sup>84</sup> CONSTITUTION, ART. 26 (Tanzania)

<sup>85</sup> Mandesi, *supra* note 55.

<sup>86</sup> Disabled Persons Care and Maintenance Act, No. 3 (1982) (Tanz.).

As previously noted, albinism affects several organs including the eyes and skin.

Accordingly, albinism should qualify as a disability under Tanzanian law.

Aside from the protections the Bill of Rights affords to persons with disabilities, there are also other constitutional provisions designed to promote the well-being of disabled persons. Article 11 of the Constitution, for example, requires that the government “make appropriate provisions for the realization of a person’s right to work, to self education and social welfare at times of old age, sickness or disability and in other cases of incapacity.”<sup>87</sup> Because Article 11 is not incorporated within the Bill of Rights, however, the rights it affords are not enforceable to the same extent as they would be if they were incorporated.<sup>88</sup> That is, Tanzanian law distinguishes between the rights afforded in the Bill of Rights and those afforded in other Constitutional provisions.<sup>89</sup>

The Constitution is not the only source of law conferring rights on persons with disabilities. Two Tanzanian statutes, the Disabled Persons Care and Maintenance Act (“DPCMA”) of 1982 and the Disabled Persons Employment Act (“DPEA”) of 1982, impose duties upon the government to promote the well-being and protect the rights of persons with disabilities. The DPCMA requires local authorities to maintain records of disabled persons residing within their jurisdictions, and requires that they establish, operate, manage, and maintain facilities for the disabled.<sup>90</sup> This statute imposes a duty upon relatives to provide care to their disabled family members, and it requires that the

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<sup>87</sup> CONSTITUTION, ART. 11 (Tanzania)

<sup>88</sup> Legal and Human Rights Centre, *Tanzania Human Rights Report 2007*, 69 (Jan. 1, 2008). The Tanzanian Bill of Rights are enshrined in Articles XII – XXIX of the Constitution.

<sup>89</sup> Interview with Clarence Kipobota, Legal and Human Rights Centre, and Josephat Torner, Tanzania Albino Society, in Dar es Salaam, Tanzania (Mar. 18, 2009) [hereinafter Kipobota].

<sup>90</sup> Disabled Persons Care and Maintenance Act, *supra* note 86; Mandesi, *supra* note 55.

government establish a national fund to provide assistance to disabled persons.<sup>91</sup> The DPEA likewise is designed to promote the rights of individuals with disabilities by requiring employers with more than fifty employees to hire a certain number of disabled persons.<sup>92</sup>

According to Gideon Mandesi, founder of the Disabled Organization for Legal Affairs and Social Economic Development (“DOLASED”)<sup>93</sup>, a Tanzanian non-profit organization devoted to advancing the legal rights of people with disabilities, the Tanzanian government has never adequately funded the National Fund that the DPCMA created.<sup>94</sup> Moreover, it has never adequately enforced the provisions of either the DPEA or DPCMA. Because, as a practical matter, these statutes have been ineffective in promoting the well-being of Tanzanians with disabilities, DOLASED co-drafted the Comprehensive National Act for Persons with Disabilities.<sup>95</sup> This Comprehensive Act incorporates the provisions of both the United Nations Convention on the Rights of Persons with Disabilities and those of Tanzanian statutes that afford rights to persons with disabilities.<sup>96</sup>

As the continuing plight of persons with albinism makes evident, legislation designed to protect the rights of persons with disabilities has proven to be an inadequate means of ensuring the protection of these persons’ legal and constitutional rights.

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<sup>91</sup> Disabled Persons Care and Maintenance Act, *supra* note 86.

<sup>92</sup> Disabled Person Employment Act, No. 2 (1982) (Tanz.); Mandesi, *supra* note 55.

<sup>93</sup> DOLASED is a Tanzanian NGO committed to promoting public awareness of and legal advocacy for persons with disabilities in Tanzania.

<sup>94</sup> Mandesi, *supra* note 55.

<sup>95</sup> As of the time of this writing, the Tanzanian Parliament had still not voted on this legislation. *Id.*

<sup>96</sup> The Convention on the Rights of Persons with Disabilities provides, *inter alia*, that disabled persons are entitled to “full and effective participation and inclusion in society.” Convention on the Rights of Persons with Disabilities (“CRPD”), G.A. Res. 61/106, UN Doc A/RES/61/106 (Dec. 13, 2006).

Although Mandesi's efforts are laudable, new legislation is unlikely to translate into a heightened degree of protection for persons with albinism or other disabilities. Rather than enact new legislation, the government should execute the laws that are currently in existence.

*b. Government Response to Albino Killings*

Despite the government's constitutional duty to safeguard the lives of its citizens, its actions to protect albinos have been inadequate. Since the killings began in 2006, there has not been a single prosecution in connection with any of the forty-four reported killings.<sup>97</sup> Although there have been approximately 170 arrests,<sup>98</sup> many of those arrested have been allowed to post bail or have been released for other unknown reasons.<sup>99</sup> In short, Tanzanians with albinism do not feel any safer today than they did when the first killings were reported in 2006.<sup>100</sup> Many are still afraid to even leave their homes<sup>101</sup> or send their children to school.<sup>102</sup>

On a more positive note, the domestic and international media's focused attention on the killings of persons with albinism has motivated the government to adopt some measures that may prove to be effective. These measures include: (1) President Kikwete's appointment of an albino to serve as a Member of Parliament ("MP"); (2) a secret ballot initiative to identify those involved in the trade of albino body parts; and (3)

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<sup>97</sup> Kwegyir, *supra* note 6.

<sup>98</sup> *See id*; Kipobota, *supra* note 89; BBC News, *Man Tried to Sell Albino Wife*, BBC, Nov. 13, 2008, <http://news.bbc.co.uk/2/hi/africa/7726743.stm>.

<sup>99</sup> *See* Kwegyir, *supra* note 6; Kipobota, *supra* note 89.

<sup>100</sup> Mluge, *supra* note 35. During each of their respective interviews, Mluge, Josephat Torner, and Kwegyir stated that Tanzanian albinos live in constant state of fear.

<sup>101</sup> Mluge, *supra* note 35.

<sup>102</sup> Mluge, *supra* note 35; Kipobota, *supra* note 89.

the suspension of traditional healers' licenses to practice. The following three sections, respectively, will address the likely impact of each of the aforementioned measures.

i. Appointment of MP Al-Shaymaa J. Kwegyir

On April 8, 2008, President Kikwete took the unprecedented step of appointing a person with albinism, Al-Shaymaa Kwegyir, to the Tanzanian Parliament. Kwegyir, who was an advocate for the rights of people with albinism before her appointment, is the first – and to date the only – person with albinism to serve in the Tanzanian Parliament.<sup>103</sup> President Kikwete appointed her to show solidarity with the Tanzanian albino community and to reduce the stigma that many Tanzanians associate with albinism.<sup>104</sup>

According to Kwegyir, people's perceptions about persons with albinism are changing because of her appointment to parliament. As she explains, many Tanzanians used to doubt albinos' intelligence.<sup>105</sup> Traditionally, even highly educated albinos have had difficulty seeking employment because of discrimination.<sup>106</sup> She has made it her mission as MP to raise awareness about albinism and dispel the myths that many Tanzanians believe about albinos.<sup>107</sup> As part of this effort, Kwegyir has traveled throughout Tanzania, spreading the message that albinos are people like everyone else and should be respected as such.<sup>108</sup> To her delight, she has found that people have responded favorably to her.<sup>109</sup>

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<sup>103</sup> Kwegyir, *supra* note 6.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

Kwegyir has also attracted the attention of both the domestic and international media, and has placed a spotlight on the issue of albino killings.<sup>110</sup> Indeed, Kwegyir's appointment to parliament has helped arouse the conscience of the world to the plight of Tanzanian albinos.

## ii. Secret Ballot Initiative

In February 2009, President Kikwete announced that the government would launch a nationwide initiative calling upon people to identify via secret ballot those involved in the killings of albinos and the trafficking of their body parts.<sup>111</sup> The government launched this initiative because it suspected that people with valuable information concerning the killings might refuse to contact authorities out of fear that if identified, witch doctors would use their magical powers to do them harm.<sup>112</sup> The government's suspicions are certainly well founded since traditionally, even police officials have felt intimidated by witch doctors and have refused to act against them, particularly in rural areas.<sup>113</sup> Moreover, "some officers have been accused of turning a blind eye when attacks on albinos occur,"<sup>114</sup> and four have even been arrested for allegedly taking part in the killings.<sup>115</sup> The government's stated goal behind the initiative

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<sup>110</sup> One need only conduct a simple search on the Internet for the name of Al-Shaymaa Kwegyir to notice that she has been referenced in the news articles of such publications as the New York Times, British Broadcasting Corporation, Cable News Network, and Al-Jazeera.

<sup>111</sup> Kwegyir, *supra* note 6; IPPMedia.com, *Special referendum for albino killers for ...*, THE GUARDIAN, Mar. 2, 2009, <http://ippmedia.com/ipp/guardian/2009/03/02/132647.html> [hereinafter *Special referendum*].

<sup>112</sup> Kwegyir, *supra* note 6; *see also* MILLER, *supra* note 26, at 19-20.

<sup>113</sup> MILLER, *supra* note 26, at 20.

<sup>114</sup> Jill Schnoebelen, *Witchcraft allegations, refugee protection and human rights: a review of the evidence*, in NEW ISSUES IN REFUGEE RESEARCH (United Nations High Commission for Human Rights, Research Paper No. 169), available at <http://www.unhcr.org/research/RESEARCH/4981ca712.pdf>.

<sup>115</sup> George Obulutsa, *Tanzania bans healers to curb albino murders*, REUTERS INDIA, Jan. 24, 2009, <http://in.reuters.com/article/worldNews/idINIndia-37635820090124>.

was to provide people with an anonymous means of denouncing those involved in any aspect of the market for human body parts.<sup>116</sup>

The government carried out the secret ballot initiative throughout the various regions of Tanzania, beginning in the Lake Region on March 9, 2009, and ending in the Coastal Zone on March 29.<sup>117</sup> The initiative called on Tanzanians to identify 1) killers of persons with albinism; 2) witch doctors advising clients to obtain albino body parts; and 3) individuals who located residences of albinos as part of the plan to obtain albino body parts.<sup>118</sup> Because the government recognized that people would be afraid to be seen participating in the voting, the ballots also requested information about other crimes, including drug dealing and burglary.<sup>119</sup> A Government Security Committee would then be responsible for reviewing the ballots and launching investigations of individuals whose names consistently appeared.<sup>120</sup>

The extent to which the initiative will ultimately facilitate the capture of those responsible for the killings remains unclear. Critics of the initiative suspect that some people may use it as a means to resolve personal vendettas.<sup>121</sup> That is, personal animosity may drive people intentionally to accuse those whom they do not actually suspect of wrongdoing. As a result, valuable law enforcement resources may be wasted as police pursue false leads.<sup>122</sup>

Clarence Kipobota, a lawyer with the Tanzanian Legal Human Rights Centre, questions the value of any information that might be obtained through the secret ballots.

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<sup>116</sup> Kwegyir, *supra* note 6; *see also Special referendum, supra* note 111.

<sup>117</sup> Kwegyir, *supra* note 6.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*; Kipobota, *supra* note 89.

<sup>122</sup> Kwegyir, *supra* note 6; Kipobota, *supra* note 89.

If individuals are too afraid to communicate the identities of those involved in the killings in a non-anonymous fashion to the authorities, they will be too afraid to testify at the trials of the suspects.<sup>123</sup> According to Kipobota, prosecutors would need to secure the testimony of these individuals to meet the required Tanzanian legal standard of proof beyond a reasonable doubt to convict those responsible for the killings.<sup>124</sup>

Another concern with the initiative is that it legally conflicts with the Tanzanian Witchcraft Ordinance of 1928, which remains valid law in Tanzania.<sup>125</sup> The Witchcraft Ordinance proscribes public accusations of witchcraft without providing evidence that the accused actually practiced witchcraft or claimed to possess witchcraft powers.<sup>126</sup> One might argue that the initiative violated the Witchcraft Ordinance because its goal was to seek anonymous accusations of alleged witchcraft practices without requiring the accusers to present proof.

As discussed in Section IV.A, *infra*, the Witchcraft Ordinance might be used as a prosecutorial tool to try those alleged to be involved in the killings. If those who are eventually brought to trial are prosecuted under the Witchcraft Ordinance, they might potentially assert the defense that the government itself violated the ordinance in conducting its investigation.<sup>127</sup> Consequently, they may claim that the court should refuse to admit any evidence discovered as a result of the government's illegal investigation. Although one may only speculate as to how the Tanzanian courts would ultimately resolve this issue, the truth of the matter is that the secret ballot initiative could

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<sup>123</sup> Kipobota, *supra* note 89.

<sup>124</sup> *Id.*; Mandesi, *supra* note 55.

<sup>125</sup> Mandesi, *supra* note 55; *see also* Edward Miguel, *Poverty and Witch Killing*, 72 REV. ECON. STUD. 1153, 1157 (2005).

<sup>126</sup> Mandesi, *supra* note 55; MILLER, *supra* note 26, at 20.

<sup>127</sup> Mandesi, *supra* note 55.

potentially undermine the cases the government might build against those involved in the killings of albinos.

The concerns regarding the secret ballot initiative are, indeed, valid. The initiative, however, is not intended to be a panacea. Many members of non-profit human rights organizations,<sup>128</sup> legal institutions,<sup>129</sup> and the media<sup>130</sup> are outraged that the government has not acted with sufficient haste to stop the killings. If nothing else, the secret ballot initiative alerts Tanzanians – particularly those who are responsible for the killings – that the government will not remain idle as the killings continue. Although the government should be applauded for its recent efforts to identify the perpetrators of the albino killings, the secret ballot initiative represents but one very minor step in promoting the well being of persons with albinism.

### iii. Suspension of Traditional Healers' Licenses

In January 2009, the Tanzanian government indefinitely revoked the licenses of all traditional healers and officially banned them from consulting their clients. The goal behind the ban is to eliminate the market for albino body parts by prohibiting traditional healers to practice.<sup>131</sup> The invalidation of the licenses of traditional healers, however, does absolutely nothing to enhance the protection of persons with albinism.

First, traditional healers have flouted the ban, which might as well not exist since law enforcement authorities do not enforce it. Just two days after the ban was announced, a BBC correspondent observed at least ten traditional healers working openly

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<sup>128</sup> Ash, *supra* note 5; Telephone Interview with Rick Guidotti, Founder of Positive Exposure (Mar. 10, 2009) [hereinafter Guidotti].

<sup>129</sup> Kipobota, *supra* note 89; Mandesi, *supra* note 55.

<sup>130</sup> Ntetema, *supra* note 11.

<sup>131</sup> See Kwegyir, *supra* note 6.

in Dar es Salaam.<sup>132</sup> Moreover, in March 2009, the authors of this essay – three Americans who do not speak a word of Swahili – very easily located and even interviewed a traditional healer in the Bagamoyo District who was operating his business as openly as ever.<sup>133</sup>

Second, the revocation of traditional healers' licenses does not further efforts to identify, arrest, and prosecute those who are involved in the killings. The means by which persons with albinism are targeted and their body parts trafficked is clandestine and will remain clandestine with or without the ban.<sup>134</sup> That is, the ban is unlikely to have any impact on the modes of operation of either the killers, traffickers, or witch doctors who advise clients to obtain albino body parts. Assuming that any licensed traditional healers are even responsible for any aspect of the killings, it is difficult to imagine that a revocation of their licenses will result in their taking a hiatus from engaging in illegal activity.

The government certainly has a legitimate interest in outlawing certain practices associated with witchcraft. Indeed, the government should outlaw and adopt measures to prohibit any religious practice that infringes on another's right to live. However, an executive decree that does nothing more than attempt to direct a group of religious leaders to abandon their religious customs does not afford anybody protection, particularly when this ban is not enforced.

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<sup>132</sup> Ntetema, *supra* note 11; BBC.co.uk, *Tanzania 'healers' flout ban*, BBC NEWS, Jan. 26, 2009, <http://news.bbc.co.uk/2/hi/africa/7851287.stm>.

<sup>133</sup> Msoli, *supra* note 29.

<sup>134</sup> *See supra* Section II.C.

*c. The Response of Tanzanian Non-governmental Organizations*

On March 19, 2009, Tanzania’s Legal and Human Rights Centre (“LHRC”) and the Tanzanian Albino Society (“TAS”) filed a declaratory judgment action against the government.<sup>135</sup> The complaint alleges that the government has failed to: 1) provide albinos with reasonable health services; 2) discourage stigma against persons with albinism; 3) take affirmative action to stop the killings of persons with albinism; and 4) provide albino children with equal access to participate in educational programs.<sup>136</sup> According to the complaint, the government’s failure to take affirmative action to protect albinos and promote their well-being amounts to violations of Articles 12, 14, and 18 of the Constitution.

Clarence Kipobota – a lawyer with the LHRC – and Josephat Torner – a representative of the TAS – say that their respective organizations felt compelled to file this declaratory action because they believe the government has refused to take action to stop the killings.<sup>137</sup> When asked why they felt so sure that the government has simply refused to act, Kipobota recounted the tale of an informant who had specific information about individuals trading in albino body parts in Mwanza.<sup>138</sup> According to Kipobota, this individual first approached the police in Mwanza to report the identities of individuals trading in albino body parts.<sup>139</sup> The Mwanzan police, however, did nothing. The individual then approached the LHRC, claiming to be aware of the identity of gold miners in Geita who were involved in the trafficking of albino body parts.<sup>140</sup> With this

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<sup>135</sup> Kipobota, *supra* note 89.

<sup>136</sup> See Complaint, Legal and Human Rights Centre, Mar. 18, 2009.

<sup>137</sup> Kipobota, *supra* note 89.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

information, the LHRC contacted the Ministry of Home Affairs in Dar es Salaam, which oversees the national Tanzanian police.<sup>141</sup> The Ministry suggested that the LHRC and the informant contact the police in Dar es Salaam because it was possible that the police in Mwanza could not be trusted.<sup>142</sup> Kipobota claims that the LHRC and the informant provided the police in Dar es Salaam with specific actionable information.<sup>143</sup> Despite having such specific information, nobody from the police in Dar es Salaam has traveled to Mwanza to investigate the killings further.<sup>144</sup>

Less than one week after the LHRC and the TAS filed the petition, the latter organization withdrew its name.<sup>145</sup> When announcing the TAS's withdrawal, TAS chairman Ernest Kimaya stated that the "albino society appreciates the current efforts being taken by the government to end the vicious killings."<sup>146</sup> Kimaya claimed to have realized that filing the petition was "doing injustice to the leaders" of Tanzania.<sup>147</sup> Although it is unclear why, exactly, the leaders of the TAS experienced such a dramatic change of heart, the discord between the TAS and the LHRC clearly highlights a broader problem among Tanzanian non-governmental organizations ("NGO"). It appears that organizations' desires to promote themselves sometimes hinder the effective promotion of the causes they claim to espouse.<sup>148</sup>

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Felister, Peter, *Albino society withdraws from petition against govt*, THE GUARDIAN TANZANIA, Mar. 24, 2009, at 1-2.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> The authors of this essay witnessed and experienced this broader problem first-hand. We had scheduled an interview with members of the Tanzanian Culture Troupe in Bagamoyo district, which was approximately two hours distance from where we were staying in Dar es Salaam. On the phone, the leader of the group appeared very excited to talk to Americans about the efforts his organization was taking to combat the killings. After travelling for over two hours to meet with

As of now, the LHRC has proceeded with its petition against the government. It is far from certain, however, that the government will change its policies vis-à-vis persons with albinism if the court were to grant declaratory relief. Existing legislation and the Tanzanian Constitution already impose a duty on the government to protect the disabled. Although the court may reaffirm that this duty exists, such a declaration will not necessarily guarantee that the duty will be executed. To the extent that the petition has raised awareness about the albino killings both inside and outside Tanzania, however, it may compel the government to act to preserve a positive image both domestically and internationally.

#### IV. DOMESTIC RECOMMENDATIONS

It is clear that legislation to address the killings and promote the welfare of persons with albinism will not ensure that the rights of Tanzanian albinos will be respected. Indeed, laws for their protection already exist. What is necessary is that the laws be executed in an effective manner. Moreover, beyond executing the law, the Tanzanian government and non-profit organizations must go about transforming people's beliefs about persons with albinism. Although legal measures certainly have a role to play in prosecuting those involved in the trade for albino body parts and in promoting the health and educational needs of persons with albinism, it is impossible to change people's perceptions about albinism exclusively via the legal process.

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members of the Troupe, however, we were told that interviews typically cost money. We explained that we were students and were not conducting research for profit. The leader of the Troupe, however, refused to allow us to interview anyone since he claimed that we lacked the proper government documentation authorizing us to do research in Tanzania.

*a. Prosecuting Those Responsible for the Albino Killings*

The government of Tanzania must prosecute those responsible for the killings, and set a precedent that will deter others from participating in the trade for albino body parts. One possible law that may be used to prosecute those responsible for the albino killings is the Witchcraft Ordinance of 1928. This law allows for the criminal prosecution of anyone who either practices witchcraft, claims to practice witchcraft, is in possession of witchcraft paraphernalia, or accuses another of practicing witchcraft without furnishing proof.<sup>149</sup> The Ordinance vaguely defines witchcraft as “sorcery, enchantment...[or] the purported exercise of any occult power and the purported possession of any occult knowledge.”<sup>150</sup> The law provides that the penalty for using witchcraft with the intent of causing death or injury to another person shall be a term of imprisonment of no fewer than seven years.<sup>151</sup> Moreover, the law allows district commissioners to order those whom they believe to be practicing witchcraft to “reside in certain places.”<sup>152</sup> Before issuing such an order, the accused witch need not stand trial or be convicted of any charge.<sup>153</sup>

The UN Human Rights Committee has criticized the Witchcraft Ordinance, and has called for its repeal as recently as 1998.<sup>154</sup> In allowing district commissioners to confine a suspected witch without any sort of judicial proceeding, the Ordinance lacks any semblance of guaranteeing due process for those accused. Furthermore, by criminalizing accusations of witchcraft, the Witchcraft Ordinance may actually serve as

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<sup>149</sup> Witchcraft Ordinance of 1928 (Ch. 18 of the Laws of Tanzania) (amended in 1956).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> See *id.*; see also Press Release, United Nations Human Rights Committee, Human Rights Committee Completes Sixty-third Session, U.N. Doc. HR/CT/98/25 (July 31, 1998).

<sup>154</sup> Press Release, *supra* note 153.

an impediment to investigators. That is, people with information about the killings may be afraid to notify the authorities because doing so may result in a criminal charge under the Ordinance.

The Witchcraft Ordinance is not an appropriate prosecutorial tool to address the killings. Instead, prosecutors should avail themselves of Tanzania's penal code, which proscribes murder and even provides for the application of capital punishment for those convicted of murder with "malice aforethought."<sup>155</sup> Tanzania's penal code also proscribes conspiracy to commit murder.<sup>156</sup> Indeed, these more conventional means of establishing criminal liability would make the criminal proceedings much less controversial and more legitimate than applying the vaguely worded Witchcraft Ordinance, which has been much criticized in the international community.<sup>157</sup>

*b. Educational and Social Protections*

Simply arresting, trying, and imprisoning those responsible for the killings will not result in an improved standard of living for Tanzanian albinos. Although it is important for the government to bring the killers to justice, it is equally important that the government ensure that persons with albinism and all disabled persons have equal access to education and participation in economic activity. To this end, both the government and non-governmental organizations must take affirmative action to change the cultural acceptance of discrimination against persons with albinism. Among the most obvious and important measures the government could take is enforcing the DPCMA and the DPEA.

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<sup>155</sup> Penal Code (Ch. 16 of the Laws of Tanzania) (1945).

<sup>156</sup> *Id.*

<sup>157</sup> See Press Release, *supra* note 153.

Moreover, there must be greater access to education in the rural areas of Tanzania, which is where most of the killings have taken place. These areas are plagued by ignorance more than others because of the lack of access to education.<sup>158</sup> This ignorance makes people more vulnerable to believing myths about the curative and magical powers of albino body parts. One way of going about changing people's erroneous beliefs is to provide education as to what albinism actually is – a hereditary skin disorder. Fortunately, some NGOs, such as Under the Same Sun, are already doing this.<sup>159</sup> Some groups are also injecting a religious message in their educational outreach as part of an effort to convince people to embrace Christianity as an alternative to witchcraft.<sup>160</sup> Although it is beyond the scope of this paper to pass judgment on the wisdom of using religion to turn people away from witchcraft, any message that advocates respecting the dignity of all human beings should be welcomed.

Indeed, transforming a culture is much more difficult than enacting and executing laws. Laws are nothing more than words on paper if they are neither enforced nor followed. The government must both punish those responsible for the atrocities that have been committed and execute the laws and constitutional provisions designed to promote the welfare of persons with albinism and all Tanzanians with disabilities. The government, however, cannot legislate discrimination out of existence.

The harsh reality is that popular perceptions about persons with albinism will not change from one day to the next. This should not, however, discourage NGOs and the Tanzanian government from encouraging perceptions to change via educational

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<sup>158</sup> Mluge, *supra* note 35; Kwegyir, *supra* note 6.

<sup>159</sup> Mluge, *supra* note 35.

<sup>160</sup> Ash, *supra* note 5; Mluge, *supra* note 35; Interview with Ole Kirimbai N. Paul, Lutheran Church Official (Mar. 22, 2009).

curricular reforms and other informational outreach programs.<sup>161</sup> By addressing the problem via the dual approaches of law enforcement and education, one might be confident that Tanzanian albinos will eventually actually enjoy the full rights that their fellow citizens enjoy.

## V. INTERNATIONAL RESPONSE TO THE KILLINGS

### *a. Condemnations*

To date, the international community has not taken a proactive role in addressing the albino killings in Tanzania. The predominant international response has come in the form of the usual political rhetoric. Indeed, members of the international community, including both intergovernmental organizations and States, have done nothing more than condemn the killing of people with albinism in Tanzania. In today's globalized and interdependent world, moral condemnations shame a country and tarnish its image on the world stage. These condemnations are particularly injurious to vulnerable developing countries, such as Tanzania, because of their dependence on aid from other countries.

Although such moral condemnations do play a significant role in addressing human rights issues, it took the international community a while to respond. For instance, it was not until December 2008—more than two years after the first reported killing—that UNICEF Tanzania issued a press release condemning the killings.<sup>162</sup> In that same press release, UNICEF said that it and “the entire UN system in Tanzania[] [would]

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<sup>161</sup> Al-Shaymaa Kwegyir has worked on changing the Tanzanian educational curriculum to include the subject of albinism. She is also creating a textbook, which includes information about albinism. Kwegyir, *supra* note 6.

<sup>162</sup> Press Release, United Nations Children's Fund, In the wake of dozens of killings of Albinos in Tanzania, UNICEF urges action and respect for human life, Dec. 23, 2008, *available at* [http://www.unicef.org/media/media\\_46932.html](http://www.unicef.org/media/media_46932.html) (“Following the spate of gruesome murders of albinos in Tanzania, UNICEF has called for more concerted action to stop the ongoing atrocities and speed up prosecution of the perpetrators.”).

continue to urge and work with the government and other stakeholders to galvanize action to ensure that such barbaric and inhumane practices are stopped, perpetrators brought to justice, and ensure albinos like other citizens enjoy their fundamental rights to life, freedom and protection.”<sup>163</sup> Two months after UNICEF’s condemnation, UN Secretary-General Ban Ki-moon condemned the killings<sup>164</sup>, and it was only after he met with Tanzanian officials that the government implemented the secret ballot initiative.<sup>165</sup> So far, however, neither UNICEF nor “the entire UN system in Tanzania” has done much—that is, aside from condemning the killings and pressuring the government to take action—to set the Tanzanian government on the right track to stop these killings or to prosecute the people involved.

Other intergovernmental organizations have similarly weighed in on the issue of the albino killings.<sup>166</sup> The European Union (“EU”) Parliament on September 4, 2008, passed a resolution by a unanimous vote condemning the killing of albinos in Tanzania.<sup>167</sup> Additionally, the resolution discusses actions that the EU itself could take, such as “support the efforts of the Tanzanian Government, NGOs and civil society to formulate policies to address the needs and rights of albinos, promoting non-

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<sup>163</sup> *Id.*

<sup>164</sup> Dahee Nam, *UN Secretary General Condemns Albino Killings in Tanzania*, IMPUNITY WATCH REPORTER, AFRICA, Feb. 28, 2009, available at [http://www.impunitywatch.com/impunity\\_watch\\_africa/2009/02/un-secretary-general-condemns-albino-killings-in-tanzania.html](http://www.impunitywatch.com/impunity_watch_africa/2009/02/un-secretary-general-condemns-albino-killings-in-tanzania.html).

<sup>165</sup> Kwegyir, *supra* note 6.

<sup>166</sup> Kwegyir said that the president of the African Union has also condemned the killings. Kwegyir, *supra* note 6. However, the African Union has not issued an official statement or press release stating as much.

<sup>167</sup> Albino killings in Tanzania, EUR. PARL. DOC. P6\_TA-PROV0413 (2008) [hereinafter EU Parliament Resolution].

discrimination and access to employment.”<sup>168</sup> Like UNICEF, however, the EU has not acted on its pledge to support the Tanzanian government or society in any material way.

Intergovernmental organizations are not the only members of the international community that have commented on the killings. The U.S. State Department discussed the killings in its 2008 Human Rights Report on Tanzania<sup>169</sup>, and the U.S. Embassy in Tanzania gave the 2009 Martin Luther King, Jr. Drum Major for Justice Award to the entire Tanzanian albino community.<sup>170</sup> Other than providing much-needed support and pressure, however, the United States’ response to the killings has matched that of the rest of the international community.

Although it is true that the international community has not taken any substantial action to address the albino killings in Tanzania, it is unfair to place all the blame on these organizations and States. Despite the existence of intergovernmental organizations like the UN, States are still sovereign and have exclusive jurisdiction over their respective territories. Because each State has such exclusive jurisdiction over its territory, there is a corresponding duty imposed on every State, namely, “a duty of non-intervention in the area of exclusive jurisdiction of other States.”<sup>171</sup> Therefore, the UN, UNICEF, the EU, and every other State in the international community are greatly limited in what they can do for the albino community in Tanzania. Indeed, any action taken without the approval of the Tanzanian government would constitute unlawful intervention and would subject

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<sup>168</sup> *Id.*

<sup>169</sup> U.S. DEPARTMENT OF STATE-BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2008 HUMAN RIGHTS REPORT: TANZANIA (2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119028.htm>.

<sup>170</sup> Press Release, Embassy of the U.S. in Tanzania, People of the Albinism Community in Tanzania receive Martin Luther King Jr. Drum Major for Justice Award, Jan. 15, 2009, *available at* [http://tanzania.usembassy.gov/pr\\_01152009.html](http://tanzania.usembassy.gov/pr_01152009.html).

<sup>171</sup> IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 287 (4th ed. 1990).

the illegal interveners to sanctions under applicable international law. Despite these limitations, however, the international community has at its disposal more effective and more forceful political tools than mere condemnations.<sup>172</sup> These alternative courses of action have, at least until now, been under-utilized.

*b. Interpol*

Although the international community's lackluster response to the albino murders in Tanzania has had a negligible impact on the killings, the International Criminal Police Organization ("Interpol") has decided to take a more proactive approach. Interpol is an intergovernmental organization that "facilitates cross-border police co-operation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat international crime."<sup>173</sup> In February 2009, Interpol decided to lead a criminal investigation team including Tanzania, Rwanda, Burundi, and the Democratic Republic of the Congo ("DRC").<sup>174</sup> In an interview with the Tanzanian newspaper, *The Citizen*, Commissioner Robert Manumba, Interpol's Director of Criminal Investigations said, "We will use very high intelligence systems to address the problem, and we all have agreed not to stop until we are very sure that there is no more of it."<sup>175</sup> Although Interpol will not release the details of its plans because of fear that witchdoctors and others involved will coordinate to evade detection, the organization ensures that it will work tirelessly to put an end to the killings and trafficking.<sup>176</sup>

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<sup>172</sup> For a discussion of recommendations, see *infra* Section VII.

<sup>173</sup> INTERPOL, *About INTERPOL*, <http://www.interpol.int/public/icpo/default.asp> (last visited April 24, 2009).

<sup>174</sup> Mkinga Mkinga, *Interpol leads regional operation to end albino killings in Tanzania*, THE CITIZEN, Feb. 11, 2009, <http://thecitizen.co.tz/newe.php?id=10515>.

<sup>175</sup> *Id.* (quoting Commissioner Robert Manumba).

<sup>176</sup> *Id.*

While Interpol's efforts to conduct an international criminal investigation are certainly laudable, Interpol became involved only after the killings spread to other countries in the region. Indeed, it was this "evidence that the crime had become part of an international network" that prompted Interpol to get involved.<sup>177</sup> Of course Interpol could not have impinged upon Tanzania's jurisdiction while the murders were still confined to Tanzania. This illustrates one of the drawbacks of international responses, namely, that the international community, because of issues relating to State sovereignty, is severely limited as to what it can do. Therefore, before intergovernmental organizations, such as Interpol, can take any sort of corrective action, situations oftentimes *must* rise to an international level.

*c. Media Coverage*

The first person to report on the albino killings was Vicky Ntetema, the journalist and bureau chief of BBC in Tanzania. Ntetema's investigation and story sparked a worldwide interest in the situation in the Lake Region. Soon thereafter, major news networks from around the world, including CNN<sup>178</sup>, the New York Times<sup>179</sup>, Le Monde<sup>180</sup>, and the Australian Broadcasting Company<sup>181</sup>, released print and television stories on the albino killings in Tanzania. Since then, the international media coverage of the killings has soared. In fact, ABC sent a production crew with Peter Ash, founder of

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<sup>177</sup> *Id.*

<sup>178</sup> Martin Geissler, *African albinos become prey*, CNN Video, Mar. 20, 2009, available at <http://www.cnn.com/video/#/video/world/2009/03/20/geissler.tanzania.hunting.albino.itn?iref=videosearch>.

<sup>179</sup> Gettleman, *supra* note 4.

<sup>180</sup> LeMonde.com, *En Tanzanie, les albinos sont les victimes ciblées des gangs organisés*, LE MONDE, July 30, 2008, [http://www.lemonde.fr/cgi-bin/ACHATS/acheter.cgi?offre=ARCHIVES&type\\_item=ART\\_ARCH\\_30J&objet\\_id=1045557](http://www.lemonde.fr/cgi-bin/ACHATS/acheter.cgi?offre=ARCHIVES&type_item=ART_ARCH_30J&objet_id=1045557).

<sup>181</sup> ABCNews.com, *Tanzania bans healers to curb albino murders*, ABC NEWS, Jan. 25, 2009, <http://www.abc.net.au/news/stories/2009/01/25/2473898.htm>.

the Canadian NGO, Under the Same Sun, on his trip to Tanzania in April 2009. Footage from the trip will be part of a primetime program on the albino killings that the network will air the summer of 2009.<sup>182</sup>

International human rights organizations “have persistently used the news media as a crucial means to advance human rights and raise awareness of abuses in all regions of the world.”<sup>183</sup> Indeed, the international media coverage of the albino killings has garnered significant attention from people all over the world. In fact, it is only after the media brought this situation to the world’s attention that the UN, other intergovernmental organizations, and the international community as a whole took any official notice of it. If it had not been for Ntetema’s courageous investigation and reporting of the killings, it is uncertain whether news of this clandestine network of murderers and traffickers would have ever surfaced.

While the media coverage has certainly brought Tanzania under the international spotlight, not everyone appreciates all the attention. Indeed, some government officials have commented that the news of the killings has tarnished the peaceful image of Tanzania.<sup>184</sup>

Despite whatever negative perception of Tanzania may exist in the international community at the moment, the Tanzanian albino community appreciates all the media attention and welcomes even more of it. In the midst of terror and fear, Samwel Mluge sees a silver lining—because of the killings and the news coverage of them, people now care about albino issues in Tanzania. And for that, he is grateful.

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<sup>182</sup> Ash, *supra* note 5.

<sup>183</sup> Christiana Ochoa, *Access to U.S. Federal Courts as a Forum for Human Rights Disputes: Pluralism and the Alien Tort Claims Act*, 12 IND. J. GLOBAL LEGAL STUD. 631, 645 (2005).

<sup>184</sup> Ntetema, *supra* note 11.

*d. International NGOs*

Unlike intergovernmental organizations and States, international NGOs have been instrumental in the fight against the albino murders. By far the most active and influential has been Peter Ash. Under the Same Sun “exists to promote the wellbeing of persons often disadvantaged by disability and/or poverty.”<sup>185</sup> Specifically, Under the Same Sun works to promote and protect persons with albinism all over the world.

When Ash, who himself has albinism, first learned of the killings in Tanzania, he felt morally obliged to get involved.<sup>186</sup> Therefore, in October 2008, Ash together with a team of advocates ventured to Tanzania in search of answers and solutions. Rick Guidotti, a former fashion photographer, accompanied the team to Tanzania to document the visit.<sup>187</sup> Guidotti is the founder of Positive Exposure, a non-profit organization that “utilizes the visual arts to significantly impact the fields of genetics, mental health and human rights.”<sup>188</sup> Ash, Guidotti, and the rest of the team went to Tanzania not only to address the killings, but also to institute long-lasting change in Tanzanian society concerning the rights of people with albinism.

During their trip to Tanzania, the international NGO team was able to meet with Tanzanian government officials, including Al-Shaymaa Kwegyir, the Minister of Foreign Affairs, and the Deputy Minister of Foreign Affairs. Although the team’s meetings with governmental officials produced the expected assurances that the government was going

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<sup>185</sup> Under the Same Sun, *About Under the Same Sun*, <http://www.underthesamesun.com/about.php> (last visited Apr. 24, 2009).

<sup>186</sup> Ash said, “All that is necessary for evil to prevail is for good men to do nothing. And I didn’t want to ‘do nothing.’” Ash, *supra* note 5.

<sup>187</sup> Guidotti, *supra* note .

<sup>188</sup> Positive Exposure, *About the program*, <http://www.positiveexposure.org/about.html> (last visited May 3, 2009).

to do all it could to stop the murders, the team's visit played a significant role in raising international awareness about the problem in Tanzania.

The success of the team's first visit led to another visit in April 2009. Thanks to the publicity that Ash's work had drawn from the international community at large, Ash was able to meet with President Jakaya Kikwete and Prime Minister Mizengo Pinda. However, Ash's work in Tanzania did not include just meeting with more government officials. In fact, the primary purpose of Ash's second trip to Tanzania was to open an Under the Same Sun office in Dar es Salaam with Samwel Mluge as its managing director.<sup>189</sup> The mission of Under the Same Sun-Tanzania extends far beyond the killings. Indeed, the staff in the office will engage in more general advocacy efforts, such as providing education to persons with albinism, educating the public about what albinism really is, improving the health of albinos, and forging alliances with religious and community leaders to promote the health and well-being of Tanzanians with albinism.<sup>190</sup> Guidotti is also putting together art exhibits showcasing photographs of people with albinism.<sup>191</sup> The goal of these exhibits is to deconstruct the idea that albinism is that rare or that unique and emphasize instead the beauty of what unites us as human beings.<sup>192</sup>

In addition to these activists' efforts in Tanzania, in February 2009, Ash met with UN and UNICEF officials in New York to discuss the murders. In his meetings, Ash made a variety of recommendations, including appointing a UN special prosecutor to

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<sup>189</sup> Ash, *supra* note 5.

<sup>190</sup> *Id.*

<sup>191</sup> Guidotti, *supra* note 128.

<sup>192</sup> *Id.*

expedite the prosecution of captured murderers and traffickers.<sup>193</sup> Due at least in part to Ash's efforts, the UN finally took official notice of the killings. It was approximately three weeks after Ash's meeting with UN officials that Ban Ki-moon publicly condemned the killings. Had it not been for Ash, Guidotti, and other members of the international NGO community, the Tanzanian albino community would be left with nothing more than moral condemnations.

## VI. HUMAN RIGHTS VIOLATIONS

Many people have criticized the situation in Tanzania as a gross violation of human rights. For example, Ban Ki-moon at a conference in Dar es Salaam in February 2009 told reporters that the UN "strongly condemn[ed] such killings and violation of human rights . . . ."<sup>194</sup> These broad characterizations of the killings as human rights violations are often unaccompanied by any meaningful substantiation or supporting examples. Thus, rather than similarly denounce the albino killings generally as human rights violations, this Section will explore some of the possible specific violations resulting from the murders in Tanzania.

### *a. Establishing a Human Rights Violation*

Before examining specific provisions of international human rights treaties, it is necessary to establish the requisite state action upon which a human rights violation must be premised. It is a general principle of international law that only States Parties to an international treaty can be bound by that treaty.<sup>195</sup> In other words, private citizens under a State Party's jurisdiction are not bound by the specific provisions of a given treaty.

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<sup>193</sup> Megan O'Toole, *Halting the slaughter of Albino innocents*, NATIONAL POST, Feb. 27, 2009, <http://www.nationalpost.com/most-popular/story.html?id=1337401>.

<sup>194</sup> Nam, *supra* note 164.

<sup>195</sup> Anthony J. Colangelo, *Constitutional Limits on Territorial Jurisdiction: Terrorism and the Intersection of National and International Law*, 48 HARV. J. INT'L L. 121, 131 (2007).

Thus, in order to establish a violation of a protected human right, the aggrieved individual must often prove that the violation was caused by state action.<sup>196</sup> Under international law, however, a State may sometimes be held accountable for human rights violations where it is unable or unwilling to control private individuals' conduct that causes such violations.<sup>197</sup> Indeed, the State's inability or unwillingness to prevent certain conduct constitutes an omission, which satisfies the state action requirement.

The albino killings in Tanzania provide two bases on which one could find the requisite state action to establish a human rights violation. First, there have been many reports about certain police officers and politicians being involved in the killings or trafficking of body parts.<sup>198</sup> If these state officials were involved in the killing of albinos, then that action, if performed in the scope of the official's employment, could provide the necessary nexus to constitute state action for the purposes of establishing a human rights violation.

A more plausible approach to establishing a human rights violation is to focus on Tanzania's purported unwillingness and/or inability to stop the albino killings. Given all the attention the albino killings have gotten—not to mention the government's own acknowledgement of the problem—the government is certainly on notice that albinos are being hunted, attacked, and murdered. According to some, the government has failed to act in such a way as to prevent or even curb the killings.<sup>199</sup> Indeed, it was only after two years of reported murders that the government introduced the secret ballot initiative, the

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<sup>196</sup> Regina E. Rauxloh, *A Call for the End of Impunity for Multinational Corporations*, 14 TEX. WESLEYAN L. REV. 297, 309 (2008).

<sup>197</sup> See, e.g., Michael G. Heyman, *Domestic Violence and Asylum: Toward a Working Model of Affirmative State Obligations*, 17 J. INT'L REFUGEE L. 729, 741 (2005) (applying the "unable or unwilling" theory of liability to domestic violence in the asylum context);

<sup>198</sup> Ntetema, *supra* note 11.

<sup>199</sup> Kipobota, *supra* note 89; see also Complaint, App. B.

effectiveness of which, as noted above, is still unclear. The government has nevertheless taken some action to stop the killings.

In situations such as these, it is very easy to point fingers at the national government and blame it for failing to stop this admittedly extensive clandestine network of criminals. As Kipobota and others have noted, though, the inability and the unwillingness to stop the killings lie in the hands of local law enforcement agents and local prosecutors.<sup>200</sup> Even armed with information about killers and confessions from criminals themselves, the local police have largely failed to investigate the killings<sup>201</sup>, and the local prosecutors have yet to prosecute anyone charged with murder or trafficking in body parts.<sup>202</sup> International tribunals have found state liability for human rights violations where investigative and prosecutorial procedures such as these are ineffective to address human rights violations.<sup>203</sup> If it were found that Tanzania's current procedures to investigate and prosecute suspected criminals are ineffective in protecting albinos' rights, this would be sufficient to satisfy the necessary element of state action for the purposes of establishing human rights violations.

*b. International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights ("ICCPR"), as its title suggests, affords individuals protection of such civil liberties, as physical integrity, fairness and equity before the law, freedom from discrimination, and rights related to

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<sup>200</sup> Kipobota, *supra* note 89.

<sup>201</sup> *See, e.g., id.* (claiming that even after he and an informant notified the police about known murders and traffickers, the police failed to investigate).

<sup>202</sup> Kwegyir, *supra* note 6; Ash, *supra* note 5.

<sup>203</sup> *See, e.g., Velásquez Rodríguez Case*, Inter-Am. Ct. H.R. (ser. C) No. 4, paras. 166, 178 (1988) (Inter-American Court of Human Rights stating that a State is obligated to "prevent, investigate, and punish any violation of the rights recognized by the Convention" and finding that Honduras's failure to investigate allegations of forced disappearances amounted to a violation of the disappeared individual's right to life).

political participation.<sup>204</sup> Although it was drafted in 1966 along with the International Covenant on Economic, Social and Cultural Rights, the ICCPR officially entered into force on March 23, 1976. Tanzania ratified the ICCPR on June 11, 1976, and the treaty eventually entered into force on November 11, 1976. Therefore, as of November 1976, the Tanzanian government assumed an international duty to abide by the provisions of the ICCPR and to avoid violating the rights contained therein.

Compliance with the ICCPR is monitored by a body of independent experts known as the UN's Human Rights Committee. Although Tanzania is a State Party to the ICCPR and is thereby bound to abide by all of its provisions, it has not accepted the ICCPR's individual complaint mechanism. The Optional Protocol to the ICCPR "allows individuals to submit complaints directly to the UN Human Rights Committee,"<sup>205</sup> which will then conduct an independent investigation of the complaint. Because Tanzania has not ratified the Optional Protocol, however, Tanzanians cannot initiate a complaint against the government, and the Human Rights Committee cannot conduct an independent investigation of any alleged violation of the ICCPR. This does not mean that Tanzania does not have any international obligations under the ICCPR. On the contrary, the Tanzanian government must ensure that it protects individuals' rights as protected by the ICCPR. Despite the government's efforts to prevent the killings, the measures it has employed might not be enough to save it from violating some of the ICCPR's rights, specifically their right to security of person, right to life, and freedom from discrimination.

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<sup>204</sup> International Covenant on Civil and Political Rights ("ICCPR"), G.A. Res. 2200A (XXI), UN Doc. A/6316, (1966).

<sup>205</sup> *List of Issues on the Implementation of the ICCPR*, Legal and Human Rights Centre (LHRC), et. al., January 2009.

First, the albino killings have resulted in a deprivation of albinos' rights to security of person. Article 9 of the ICCPR states that "[e]veryone has the right to liberty and security of person."<sup>206</sup> Although this article concerns itself primarily with arbitrary arrest and detention, its provisions nevertheless apply to the albino murders in Tanzania. As noted above, Tanzanians with albinism are living in fear. They are afraid to leave their homes because it is not safe for them to travel alone on the streets. For example, Samwel Mluge has one driver that he trusts in all of Dar es Salaam; if he cannot find his driver, he will not leave his house.<sup>207</sup> Some parents even refuse to let their albino children go to school for fear that people will attack them on the streets.<sup>208</sup> Despite these very real fears, the Tanzanian government has apparently failed to provide an adequate level of protection to the albino community.

Second, the killings may have resulted in a violation of the ICCPR's right to life. Article 6 of the ICCPR provides that "[e]very human being has the inherent right to life."<sup>209</sup> Certainly not everyone who is murdered or in some way loses her life has a valid claim under this provision. The albino killings in Tanzania, however, are a far cry from the cases in which one private citizen murders another private citizen. Instead, this is a systematic hunting and killing of a group of human beings, akin to a genocide.<sup>210</sup> Although the government knows of these killings—and in some cases may even be implicated in them—it has not yet implemented any protective or corrective measures. As explained above, see *supra* Section III.b., local law enforcement officials and prosecutors have largely failed to investigate the killings or even attempt to secure

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<sup>206</sup> ICCPR, *supra* note 204, at art. 9.

<sup>207</sup> Mluge, *supra* note 35.

<sup>208</sup> Ntetema, *supra* note 11.

<sup>209</sup> ICCPR, *supra* note 204, at art. 6.

<sup>210</sup> Ntetema, *supra* note 11.

convictions of murderers and traffickers. Accordingly, such failures may be said to amount to a violation of albinos' rights to life.

Finally, the killings arguably have violated the ICCPR's provision prohibiting discrimination. Article 2 of the ICCPR offers a general anti-discrimination provision, which states that all individuals are entitled to protection of the rights guaranteed in the ICCPR without distinction on any basis, including color, birth, or other status.<sup>211</sup> Clearly people with albinism are being hunted on the basis of the color of their skin, the genetic condition with which they were born, and their status as albinos. Accordingly, albinos are being deprived of their rights to life and security of person based on these distinctions, which likewise violates the ICCPR's anti-discrimination provision.

*c. Convention on the Rights of the Child*

The Convention on the Rights of the Child ("CRC") is an international treaty protecting the civil, political, social, cultural, and economic rights of children. Tanzania ratified the CRC on June 10, 1991. The Committee on the Rights of the Child, a body of independent experts, is responsible for monitoring compliance with the CRC. The Committee does this by reviewing regular State reports and issuing recommendations.<sup>212</sup> Unlike the ICCPR, the CRC does not provide an individual complaint mechanism. Therefore, the enforcement of the CRC depends on the political will of the States subject to the Committee's review.

Many of the victims of the albino murders have been children, who deserve more protection than adults. In fact, it is precisely because children are more delicate and vulnerable that the international community adopted the CRC. The CRC's legitimacy is

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<sup>211</sup> ICCPR, *supra* note 204, at art. 2.

<sup>212</sup> Convention on the Rights of the Child ("CRC"), G.A. Res. 44/25, UN Doc. A/44/49, art. 43 (1989).

further substantiated by the fact that all but two States have ratified the treaty.<sup>213</sup> Despite the overwhelming recognition that children are particularly vulnerable and susceptible to violence, the Tanzanian government has not implemented any special protections for children. The government's failure to protect children's right to life<sup>214</sup> and freedom from discrimination<sup>215</sup> surely amount to a gross violation of human rights.

In addition to these rights, the albino killings may implicate albino children's right to education. The CRC provides that "States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity . . . ."<sup>216</sup> Thus, the Tanzanian government must ensure that all children are provided with this basic education. Because of the severe discrimination against albino children in Tanzania, many children do not go to school. The killings over the past few years have only exacerbated this problem. In fact, parents nowadays prohibit their albino children from going to school for fear that they will be attacked or killed along the way.<sup>217</sup>

The Tanzanian government is well aware of the effect that these murders have had on children with albinism and accordingly has instituted special measures to protect children. In fact, the government has provided albino children with police escorts so that they may be able to go to school without fear of being mutilated or murdered.<sup>218</sup> Although the government's efforts have been properly focused on stopping the killings,

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<sup>213</sup> The only two States that have not ratified the CRC are the United States and Somalia.

<sup>214</sup> CRC, *supra* note 212, at art. 6.

<sup>215</sup> *Id.* at art. 2.

<sup>216</sup> *Id.* at art. 28.

<sup>217</sup> Ntetema, *supra* note 11.

<sup>218</sup> Gettleman, *supra* note 4. Moreover, the EU Parliament has taken official note of the police escort system and has praised the Tanzanian government for its initiative. EU Parliament Resolution, *supra* note 167, at para. 4.

Tanzanian officials have also been mindful of their obligations under the CRC.

Therefore, in light of Tanzania's efforts to ensure that albino children get their education, especially when they are being targeted, the government likely has fulfilled its duties under the CRC.

*d. Convention on the Rights of Persons with Disabilities*

The Convention on the Rights of Persons with Disabilities ("CRPD"), the most recent of the major international human rights treaties, entered into force on May 3, 2008.<sup>219</sup> It aims to protect the rights and integrity of persons with disabilities and provide them with accessibility and reasonable accommodations. Tanzania has signed, but not yet ratified, the treaty. Therefore, Tanzania is not bound by the terms of the treaty, and as such, Tanzanians with albinism are not protected under this convention. If Tanzania were bound by the provisions of the CRPD, it would be in violation of the same kinds of rights as those found in the ICCPR.<sup>220</sup>

The Committee on the Rights of Persons with Disabilities is charged with the responsibility of monitoring and ensuring compliance with the CRPD. Similar to the other international treaties, the Committee receives regular State reports on the measures the State has taken to implement the CRPD in the domestic arena.<sup>221</sup> Additionally, the Optional Protocol to the CRPD allows individuals to submit individual complaints to the

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<sup>219</sup> CRPD, *supra* note 96.

<sup>220</sup> For example, article 10 of the CRPD guarantees "that every human being has the inherent right to life and [the State Party] shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others." *Id.* at art. 10. This right, however, is framed as a positive obligation on the State, not a negative one. Indeed, rather than requiring the State to refrain from interfering with an individual's right to life, the provision requires the State Party to adopt measures that ensure persons with disabilities enjoy their right to life as persons without disabilities. Because the Tanzanian government has failed to implement *any* measures to ensure that albinos' rights to life are protected, it would violate this provision.

<sup>221</sup> *Id.* at art. 34–35.

Committee for review.<sup>222</sup> Because Tanzania has ratified neither the CRPD nor the Optional Protocol, however, Tanzanian albinos are foreclosed from bringing such complaints to the Committee.

*e. African Charter on Human and Peoples' Rights*

The African Charter on Human and Peoples' Rights ("African Charter") is a regional human rights treaty that was drafted by the members of the Organization of African Unity—now the African Union—and entered into force on October 21, 1986.<sup>223</sup> The African Charter is more expansive than any of the other international human rights treaties as it not only guarantees individual civil, political, economic, social, and cultural rights, but also collective rights.

Like the ICCPR, the African Charter has a provision guaranteeing an individual's right to life. Article 4 of the African Charter states: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."<sup>224</sup> While this article mainly concerns itself with arbitrary arrest and detention, the scope of the article encompasses the general security of person that albinos in Tanzania lack. Moreover, the African Charter prohibits States from discriminating on the basis of "color, . . . birth or other status."<sup>225</sup>

While the human rights of Tanzanians with albinism may have been violated, redressing these violations under the African Charter presents another obstacle. The African Commission on Human and Peoples' Rights ("African Commission") is

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<sup>222</sup> Optional Protocol to the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, UN Doc A/61/49 (2006).

<sup>223</sup> African Charter on Human and Peoples' Rights ("African Charter"), OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

<sup>224</sup> *Id.* at art. 4.

<sup>225</sup> *Id.* at art. 2.

responsible for monitoring compliance with the African Charter. The African Commission can receive individual complaints, but only after the individual has exhausted all local remedies.<sup>226</sup> Assuming an aggrieved individual can exhaust the local remedies in Tanzania, the African Commission will only undertake a review of the killings if the Assembly of Heads of State and Government (“Assembly”) requests it to do so.<sup>227</sup> This entire procedure remains confidential unless the Assembly decides otherwise.<sup>228</sup> Therefore, rather than the increased political pressure that comes with open and public proceedings, the aggrieved Tanzanian albino would have to depend solely upon the will of the African Commission and the Assembly to redress the violations of the African Charter. Given the fact that this is an intergovernmental organization and not a body of independent experts, it is unlikely that this procedure would result in any significant change.

## VII. RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY

### *a. Ratify International Human Rights Conventions*

First, Tanzania should adopt the Optional Protocol to the ICCPR. Presently Tanzanians do not have any international remedy for violations of their rights as protected by the ICCPR. The only way in which the Human Rights Committee could review Tanzania’s record on human rights is through the State reporting mechanism. Otherwise, Tanzania’s refusal to accept the Human Right Committee’s individual complaint mechanism completely forecloses review outside the scope of the regular State reports. If Tanzania were to ratify the Optional Protocol to the ICCPR, thereby permitting Tanzanians to proceed individually against the Tanzanian government, it

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<sup>226</sup> *Id.* at art. 56.

<sup>227</sup> *Id.* at art. 58.

<sup>228</sup> *Id.* at art. 59.

would provide an additional vehicle of redress for aggrieved people with albinism in Tanzania.

Second, Tanzania should ratify the CRPD and the Optional Protocol to the CRPD. Although some think that it is debatable whether albinism itself would be sufficient on its own to qualify as a disability, the disorders from which people with albinism suffer, such as skin disorders and visual impairment, certainly qualify. The CRPD would, therefore, provide an extra layer of compulsion on the government to bring its laws and actions in accordance with international human rights norms—an extra layer that Tanzanian albinos need as they continue to be hunted and murdered. The Optional Protocol would also afford individuals an individual complaint mechanism similar to that of the ICCPR. Such a mechanism essentially would allow Tanzanians with albinism and other disabilities to avail themselves of another international legal remedy in cases of human rights violations.

Moreover, the CRPD would offer the same sorts of protection to those albinos who survived attacks but now have another disability, such as a missing limb.<sup>229</sup> There has been so much focus on the killings that the survivors of these attacks are left without adequate protection or services. Some disability rights advocates speculate that the government is being selfish in refusing to ratify the CRPD. They assume that if the government were to ratify the CRPD, then it would be obligated to apportion some of its budget to disability rights issues, which it does not want to do.<sup>230</sup> To fill this void of protection, however, the government should ratify the CRPD.

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<sup>229</sup> Mandesi, *supra* note 55.

<sup>230</sup> *Id.*

*b. Increase Regional Cooperation*

As noted above, *see* Section II.c., the albino killings have been spreading to other countries. In fact, there have been reports from Burundi, Uganda, Malawi, and Kenya that people with albinism have been threatened, attacked, or killed.<sup>231</sup> Because the killings are no longer confined to the Lake Region of Tanzania, there is an even greater need for regional cooperation to put an end to this problem. Interpol has already established a regional coalition to investigate the murders and trafficking of human body parts.

The cooperation required to combat this extensive criminal network, however, requires more than the joint efforts of law enforcement. The governments of Tanzania, Kenya, Burundi, Malawi, Rwanda, and the DRC must collaborate to patrol their respective borders in search of traffickers in body parts and organs. The governments should likewise share intelligence to facilitate investigations of the killings. It is only through such intergovernmental cooperation that the murder of albinos and the cross-border trafficking of their body parts can be stopped.

*c. Grant Asylum*

One of the ways in which the international community can provide help to Tanzanians with albinism is to grant asylum to albino applicants. According to the Protocol relating to the Status of Refugees (“1967 Protocol”), a refugee is defined as a person who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the

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<sup>231</sup> *See, e.g.,* BBC.co.uk, *Albinos in Burundi flee killings*, BBC NEWS, Oct. 2, 2008, <http://news.bbc.co.uk/2/hi/africa/7649420.stm> (reporting on the spread of the albino killings to Burundi); Mwangi Muiruri, *Albinos in danger over cross-border body parts trade*, THE STANDARD, Dec. 31, 2008, <http://www.eastandard.net/InsidePage.php?id=1144002879&cid=459> (describing attacks and threats in Kenya).

country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.”<sup>232</sup> Thus, in order to be eligible for asylum, Tanzanians with albinism must establish: 1) a well-founded fear of being persecuted, and 2) membership of a particular social group.

Undoubtedly Tanzanian albinos have a well-founded fear of being persecuted; indeed, the world’s attention has been focused on the dangers of living with albinism in Tanzania. The biggest obstacle that Tanzanians with albinism face in applying for asylum in the United States is establishing their membership in a particular social group. According to the Refugee Act of 1980, an asylum-seeker is entitled to asylum if she can show that “membership in a particular social group . . . was or will be at least one central reason for persecuting the applicant.”<sup>233</sup> The United States courts, however, have rarely considered whether the medical condition of albinism qualifies as a particular social group. The Eighth Circuit is the only federal court of appeal that has considered albinism in the context of asylum. In that case, the court reviewed the Board of Immigration’s denial of asylum of an Indonesian man with albinism.<sup>234</sup> Although the court did not have occasion to decide whether albinism constituted a “particular social group” because it denied asylum on other grounds, the court nonetheless expressed grave doubts as to whether the medical condition rises to the level of establishing a particular social group.<sup>235</sup>

Despite the lack of jurisprudence in this particular area, the United States will nevertheless have to evaluate the claims of Tanzanian albinos who are applying for

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<sup>232</sup> Protocol relating to the Status of Refugees (“1967 Protocol”), 606 UNT.S. 267 (1967).

<sup>233</sup> Refugee Act of 1980, 8 U.S.C. § 1158(b)(1)(B)(i) (2006).

<sup>234</sup> *Makatengkeng v. Gonzales*, 495 F.3d 876, 881 (8th Cir. 2007).

<sup>235</sup> *Id.*

asylum. Tanzanian albinos' life experiences are fundamentally and irrefutably different from those of albinos living in other countries around the world. As mentioned previously, people have discriminated against Tanzanian albinos for various reasons for hundreds of years.<sup>236</sup> Aside from this type of general discrimination that many albinos all over the world face, albinos occupy a unique space in Tanzanian society: their bones and hair are the sources of good luck and fortune for believers in witchcraft. Moreover, the albino community forms a unique social group that suffers particularized stigmatization and discrimination. Above all else, it is precisely because of their membership in the albino community that people with albinism are being targeted and killed in Tanzania. This information should be sufficient to establish the requisite elements for asylum in the United States. The United States, however, is concerned about opening the flood gates to persecuted people with albinism all over the world.

The United States' concerns should be allayed by the fact that Tanzanians with albinism are also seeking asylum in other countries. For instance, an eighteen year-old man with albinism from Benin arrived in Spain and applied for asylum based on his fears of the killings making their way to his home country.<sup>237</sup> Although Benin is located on the opposite coast of Africa thousands of miles away from Tanzania, the Spanish Commission for Refugee Aid nevertheless described the Beninese man's fears as reasonable.<sup>238</sup> Evidently other members of the international community are and should be ready to accept the inevitable surge in asylum applications from people with albinism from Tanzania and the rest of Africa.

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<sup>236</sup> See *supra* Section I.

<sup>237</sup> BBC.co.uk, *Albino African seeks Spain asylum*, BBC NEWS, Apr. 9, 2009, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/7991789.stm>.

<sup>238</sup> *Id.*

*d. Increase Funding to Tanzanian NGOs*

Aside from providing direct support to the Tanzanian government or organizations, the international community can also increase funding to Tanzanian NGOs. Tanzanian civil society has been very active in the fight for albinos' rights. Indeed, the only groups that have challenged the government's inaction with respect to the albino killings are NGOs, such as the Legal and Human Rights Centre based in Dar es Salaam. One of the greatest problems Tanzanian NGOs face, however, is a lack of funding.<sup>239</sup> The lack of financial resources greatly limits their ability to engage in any meaningful or effective advocacy efforts. While international law imposes great restrictions on what the international community can do in Tanzania, intergovernmental organizations and States may provide funding to Tanzanian NGOs, thereby empowering them to continue fighting for the rights of persons with albinism.

A potential problem with increasing funding to NGOs is that some NGOs might be working to advance their own interests rather than the interests of the albino community at large. As such, the people who will eventually benefit from the increase in funds are not the people who need it most, but the heads of these NGOs. If members of the international community were to provide funding to civil society organizations in Tanzania, they should perform their due diligence to ensure that the funds will be put to good use.

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<sup>239</sup> Guidotti, *supra* note 128.

*e. Freeze Funds to Tanzanian Government*

Sometimes the international community imposes economic sanctions on States where their action or inaction perpetuates the gross violation of human rights.<sup>240</sup> Freezing aid to Tanzania, however, might prove to be counterintuitive. Tanzania is one of the poorest countries in the world. Imposing economic sanctions would be seemingly pointless. Moreover, the albino killings are economically motivated; while the buyers of the potions and body parts may be wealthy, the killers are oftentimes poor. If the international community were to cut off funds to Tanzania, the economic situation there would only get worse. Therefore, freezing funds, while effective in some situations, might have the perverse effect of exacerbating the killings instead of curbing them.

*f. Provide Training for Prosecutors and Judges*

As noted above, Tanzanian prosecutors and judges must undergo extensive training to expedite the prosecution of individuals charged with murdering albinos or possessing albino body parts. The international community, particularly common law States, could and should provide the Tanzanian legal sector with such training, for example in gathering evidence in investigations and presenting the evidence at trial. This type of training will allow prosecutors to secure the necessary convictions of murderers and traffickers. Such an emphasis on the legal process and prosecution is even more important given that the only government action until now has been the secret ballot initiative, which facilitates the investigative process but does little, if anything, to help secure a conviction.

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<sup>240</sup> See, e.g., Press Release, Security Council, Security Council Postpones Action on Lifting Libya Sanctions Until 12 September, U.N. Doc. SC/7866, Sept. 9, 2003 (refusing to lift economic sanctions because of Libya's failure to comply with human rights norms).

## VIII. CONCLUSION

Although persons with albinism have always been discriminated against in Tanzania, it was not until relatively recently that people began systematically hunting and murdering them for their blood, limbs, and organs. While it would be easy to blame the killings solely on the purportedly uneducated rural people who believe in witchcraft and witch doctors, the people who are perpetuating the killings are the greedily wealthy businesspersons in the fishing and mining industries. Indeed, these businesspersons create the demand for magic potions, which the witch doctors promise will bring them increased wealth and prosperity. In response to this demand, witch doctors hire spotters and killers to find albinos and chop off their limbs for the potions. Obviously this a complex criminal system with many actors who play a variety of roles. This network even extends beyond Tanzania's borders into neighboring countries.

Tanzania certainly faces an uphill battle in combating this extensive, clandestine criminal network. The government nevertheless has implemented some measures to curb the killings, such as the secret ballot initiative and the police escort service for albino children. Moreover, Tanzania's Constitution and laws seemingly confer numerous rights and protections on Tanzanians with albinism. Despite the existence of this legislative and legal framework, however, the government's efforts have been largely ineffective in stopping the killings. This is perhaps due in part to the failure or reluctance of some police to properly investigate the killings. Furthermore, no one—not even those who have been captured and confessed—has been prosecuted for their involvement in the albino killings.

Given the despicable nature of these killings, which some have even likened to a genocide, the international community eventually took notice and responded accordingly. While intergovernmental organizations and other States have issued moral condemnations of the killings and declared them to be human rights violations, journalists and international NGOs deserve the credit for raising awareness and focusing the world's attention on the murders. The international media and NGOs have worked in concert not only to pressure the government and the international community to stop the killings, but also to effect change in the collective Tanzanian mindset regarding albinism and the rights and needs of persons with albinism.

Although such tasks present virtually insurmountable obstacles, they nevertheless may be accomplished. However, it requires the concerted effort of the Tanzanian government and the international community alike. The government should begin by prosecuting individuals for their involvement in the murders. This will, at the very least, set an example of the government's dedication to stop the killings, and may even serve to deter other individuals from participating in the murders and in the trafficking in body parts. The Tanzanian government should also educate the community and unveil the lies of witchcraft, both in the minds of the youth and in the minds of the population who have already incorporated it into their lifestyles. In light of the fact that such beliefs and practices have spread into other countries, it is incumbent upon the international community to use tools available in international law and the international political arena to assist the government in combating this problem. Otherwise, Tanzania risks losing its title as the most peaceful country in Africa and forever being remembered as the country where persons with albinism are hunted and murdered.

APPENDIX A

# **Interview List**

A1

# Complaint

# **Disabled Persons Employment Act of 1982**

# **Disabled Person Care and Maintenance Act of 1982**