

END VIOLENCE AGAINST PEOPLE WITH ALBINISM

# TOWARDS EFFECTIVE CRIMINAL JUSTICE FOR PEOPLE WITH ALBINISM IN MALAWI



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**In Malawi, people with albinism suffer serious violations of their human rights and risk losing their lives in attacks.**

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## INTRODUCTION

Violence against people with albinism in Malawi decreased soon after Amnesty International published its 2016 report “*We are not animals to be hunted or sold*”: *Violence and discrimination against people with albinism*.

However, since the report was published in 2016, there was a resurgence in attacks, with four more people with albinism being killed in Malawi since January 2017. That report recorded 69 cases involving crimes related to people with albinism, comprising 18 cases of people killed, five abducted and missing, between November 2014

and May 2016. In February 2018, a joint report by the Malawi Police Service and the Ministry of Justice and Constitutional Affairs revealed that the number of reported crimes had increased to 148, including 14 cases of murder and seven attempted murders since November 2014.<sup>1</sup>

In May and June 2017, an Amnesty International delegation visited Malawi and met with civil society, victims and government officials from the Ministry of Gender, Children, Disability and Social Welfare, Ministry of Justice and Constitutional Affairs, the national prosecuting authority, the Chief Justice and other members of the judiciary and the police.

This briefing is a follow-up to the 2016 report and is based on visits conducted in 2017 as well as follow-up interviews and desktop research. The briefing focuses on the current resurgence in attacks against people with albinism, stemming from an atmosphere of prejudice and a lack of understanding of the condition. The problem is exacerbated by inadequate resources to deal with crime, leading to a culture of impunity. The briefing analyses the causes of recurring attacks and the government’s response, and identifies gaps in the criminal justice system. It also assesses the progress made in Malawi towards the protection of the right to life and security of people with albinism.

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1. Joint Docket Tracing Exercise Report for Cases of Persons with Albinism in Malawi. This is a Joint report by the Malawi Police Service, Ministry of Justice and Constitutional Affairs. It was funded by the UNDP with technical assistance from UNICEF.

## BACKGROUND

The UN noted that from 2000 to 2013 it had received 200 reports of ritual attacks on people with albinism across 15 African countries.<sup>2</sup> Since November 2014, however, an unprecedented wave of killings and other human rights abuses including abductions and robberies against people with albinism has swept through Malawi. Similar attacks have occurred in neighboring Mozambique. People are targeted for their body parts in the belief that they contain magical powers. The current population of people with albinism in Malawi is estimated at between 7,000 and 10,000, representing a ratio of 1 in every 1800 persons.<sup>3</sup>

Between June and December 2016, Malawi experienced a seven-month respite from attacks and killings, believed to be because of awareness brought by the launch of the Amnesty report, the public condemnation of the attacks by President Mutharika and other senior government officials. This was broken in January 2017 when Madalitso Pensulo, a teenage boy with albinism, was killed in Mlonda village under the Nsabwe Traditional Authority in Thyolo District. In February 2017, Mercy Zainabu Banda, a 31-year-old woman with albinism was found murdered in Lilongwe with her wrist, right breast and hair removed. Two

brothers were stabbed in Nsanje in March 2017, amid several attempted abductions or killings. Cases of verbal insults, threats and robbery of graves containing the remains of persons with albinism have also been recorded. Women and children with albinism are particularly vulnerable to abductions and killings by criminal gangs because they are seen as easy targets. According to the UN, suspected perpetrators operating as gangs or individuals can gain up to US\$75,000 for the sale of a full set of body parts.<sup>4</sup>

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2. [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/.../A\\_HRC\\_24\\_57\\_ENG.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/.../A_HRC_24_57_ENG.doc) Report on Albinism, UN Office of the High Commission for Human Rights, 2013

3. Amnesty International, 'We are not animals to be hunted or sold': Violence and discrimination against people with albinism (Index: AFR 34/4126/2016)

4. <http://news.un.org/en/story/2016/03/525042-witchcraft-beliefs-trigger-attacks-against-people-albinism-un-expert-warns>

## ATTACKS CONTINUE DESPITE OFFICIAL CONDEMNATION

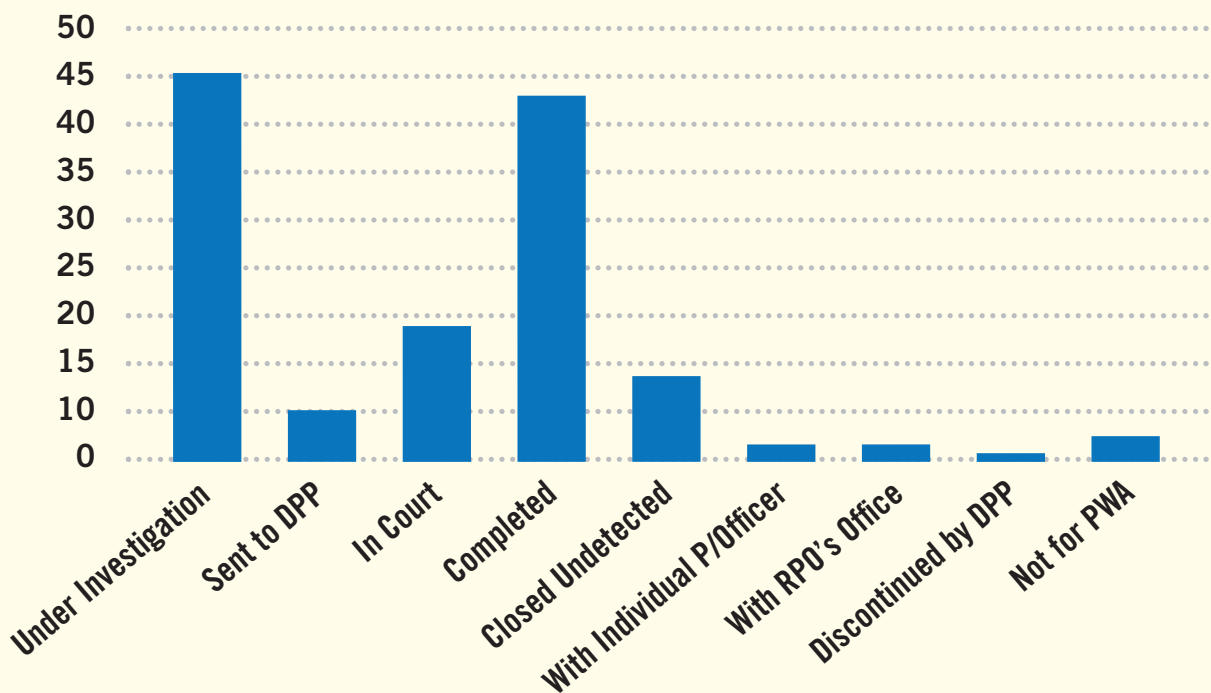
The government of Malawi has obligations under the African Charter on Human and Peoples' Rights, African Charter on the Rights and Welfare of the Child, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa as well as the International Covenant on Civil and Political Rights, to protect, promote and fulfil the right to life, dignity, personal security and safety for all people in Malawi, including vulnerable groups such as people with albinism, and ensure equal protection before the law.

The courts, Human Rights Commission and the government have obligations in terms of the constitution of Malawi to provide assistance<sup>5</sup> in the protection of human rights such as the right to life<sup>6</sup>, dignity<sup>7</sup>, equality<sup>8</sup> and access to justice and remedies.<sup>9</sup>

Despite public condemnation of the attacks by the President of Malawi and the Minister of Gender, Children, Disability and Social Welfare in March 2015, the violence has continued.

Although some individuals have been arrested, charged and convicted, the majority of crimes remain unresolved due to failure in the administration of justice. The charges and penalties often have not matched the gravity of the

**Figure 1: Summary of cases of attacks related to people with albinism in Malawi as of 26.02.18<sup>10</sup>**



5. Section 15 of the Constitution of Malawi  
6. Section 16 of the Constitution  
7. Section 19 of the Constitution  
8. Section 20 of the Constitution

9. Section 41 of the Constitution  
10. Joint Docket Tracing Exercise Report for Cases of Persons with Albinism in Malawi, Malawi Police Service and Ministry of Justice and Constitutional Affairs.

crimes, creating a climate of impunity as well as deep fear.

In a February 2018 joint report by the Malawi Police and Ministry of Justice and Constitutional Affairs, the police documented at least 148 cases in four provinces of Malawi. The most prevalent offence was the desecration of graves of people with albinism. Most such crimes are committed during the night and witnesses are hard to find, resulting in a low rate of prosecution. Police figures indicate that around 10 cases of intimidation, kidnapping and abductions have been concluded since 2015. In cases involving possession and selling of body parts of people with albinism, around 16 cases have been concluded since 2015. Those involving the killing or attempted murder of people with albinism remain unresolved, mainly due to inadequacies in the administration of justice. Other offences committed against people with albinism include armed robberies, assaults with intent to cause grievous bodily harm, and conspiracy to kidnap and sell children.

The statistics in the table above show that the rate at which cases are concluded is slow compared to other crimes investigations: only 30% out of 148 cases reported. By February 2018, the police had not finalized investigations in 45 cases, whilst 21 murder cases had been submitted to the DPP's office.<sup>12</sup> The police had failed to resolve 14 cases and 44 cases had been completed as of February 2018.<sup>13</sup>

### Table of cases reported to police January 2014 to February 2018 in Malawi.<sup>11</sup>

REGION	CASES REPORTED	CASES CONCLUDED
Northern	8	3
Central	39	5
Eastern	49	22
Southern	52	14
<b>TOTAL</b>	<b>148</b>	<b>44</b>

Amnesty International has since confirmed through information from the Malawi Police Service and the Director of Public Prosecutions (DPP) that the total number of unresolved murder and attempted murder cases stands at 21 as of February 2018.

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11. Joint Docket Tracing Exercise Report for Cases of Persons with Albinism in Malawi, Malawi Police Service and Ministry of Justice and Constitutional Affairs
12. Joint Docket Tracing Exercise Report for Cases of Persons with Albinism in Malawi, Malawi Police Service and Ministry of Justice and Constitutional Affairs
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Despite some successful prosecutions outlined above, abductions, disappearances and murders have continued. On 7 December 2017, a family in Phalira, Thambani District, woke to discover that their two-year-old daughter Jean Ngwedula was missing. Her father reportedly sold the child to a traditional doctor for ritual purposes in Mozambique. He was later arrested on charges of murder and investigations are continuing.

Macdonald Masambuka, aged 22, was last seen on 9 March 2018 in Nakawa Village, Nkoola Authority, in Machinga

District, Southern Malawi, near the border with Mozambique. His body was found buried in a shallow grave on 1 April after suspects confessed to the murder leading to the arrest of seven people. According to the Association of Persons with Albinism Malawi (APAM),<sup>14</sup> seven people were arrested by police and charged with murder. The murder of Masambuka has shown how some of the attacks against people with albinism are rooted in organized crime and concerted efforts are required to combat impunity and strengthen accountability.

On 3 May 2016, the Chief Justice of Malawi, Andrew Nyirenda, issued a directive to all magistrates in the country pointing out that only Chief Resident Magistrates, Principal Resi-

14. Joint Docket Tracing Exercise Report for Cases of Persons with Albinism in Malawi, Malawi Police Service and Ministry of Justice and Constitutional Affairs

“the police are one of the primary agencies of the state responsible for the protection of the public in general and women and children in particular against the invasion of their fundamental rights by perpetrators of violent crime”

**Constitutional Court of South Africa**

dent Magistrates and Senior Resident Magistrates are allowed to handle trials of offences concerning people with albinism.<sup>15</sup> Amnesty International acknowledges the efforts by the Chief Justice with the aim of prioritizing cases of people with albinism in the judiciary and to delegate them to qualified senior magistrates. People with albinism have become marginalised and vulnerable as they are subjected to intimidation, abductions and killings, thereby curtailing their right to life, security, dignity and free-

dom of movement. They need legal and social protection to fully enjoy their rights.

As observed by the Constitutional Court of South Africa in the case of *Carmichele v Minister of Safety and Security*, “the police are one of the primary agencies of the state responsible for the protection of the public in general and women and children in particular against the invasion of their fundamental rights by perpetrators of violent crime.”<sup>16</sup> The police have, however, raised concerns about delays in concluding trials due to the limited number of senior magistrates qualified to deal with cases relating to people with albinism.<sup>17</sup>

In addition, there have been efforts at coordination between the police and the office of the DPP to conclude investigations more promptly and efficiently. Amnesty International calls on the Malawi authorities to continue with the positive steps towards accountability and access to justice and effective remedies for people with albinism and to expedite the prosecution of murder cases currently pending at the High Court.

Since Amnesty International’s visit to Malawi in June 2017, magistrates’ courts have handed down harsher sentences than previously in cases that involve crimes against people with albinism. These cases were all completed in 2017. Amnesty International recognizes efforts by the Ministry of Justice in the following matters:

15. Handbook on offences relating to attacks against people with albinism, Report compiled by Justice Redson Kapindu at page 90.

16. *Carmichele v Minister of Safety and Security* 2001(4) SA 938 (CC) para. 62

17. Joint Docket Tracing Exercise Report for Cases of Persons with Albinism in Malawi, Malawi Police Service and Ministry of Justice and Constitutional Affairs

- Eight people were sentenced to six years' imprisonment for conspiracy to the murder of Enelesi Nkhata in Dedza in April 2015. One of the accused is Enelesi's uncle. The charge of murder remains outstanding.
- Three men - Tomasi Ndini, Dezieu Jonasi Ogala and Enock Banda - were convicted and sentenced to 14 years' imprisonment for conspiracy to exhume the body of a person with albinism.
- Alison Samson and Jafuli Ligomba from Nkhatakata were convicted and sentenced in November 2017 to 21 years' imprisonment for kidnapping with intent to kill a child, Amadu Wasi.
- Francis Dick and John Chilape were convicted on charges of abduction with intent to murder and were sentenced to 20 years' imprisonment. According to the charges, they had abducted 24-year-old Silaji Mbalaka in October 2017 with intent to sell him to a businessman at Ntaja District.
- In October 2017, John Bakuwa and Vincent Mathaya, were charged with attempting to remove Gana Saidi's body tissue and were sentenced to 18 months' imprisonment.

People with albinism continue to experience human rights violations and abuse based on their gender, disability and skin colour. Amnesty International believes that addressing the root

causes through human rights education and raising awareness must be part of the strategy to stop further attacks. An accountability strategy will require more concerted efforts in identifying and stopping criminal gangs, including tracing and identifying the source of demand for the body parts of people with albinism and cooperation with neighbouring countries where there is reason to believe that people or body parts are being trafficked across borders. According to the Canada-based NGO Under the Same Sun,<sup>18</sup> there has been cross-border trading of body parts of people with albinism in Democratic Republic of the Congo, Mozambique, South Africa, Swaziland and Tanzania.

Malawi and all the Southern African Development Community (SADC) states should be guided by Article 9 of the SADC Gender and Development Protocol which urges states to adopt measures and laws to protect persons with disabilities that consider their vulnerabilities. People with albinism would qualify as having disabilities owing to their visual impairment and would therefore be eligible for disability grants. The Malawian authorities must increase efforts for greater regional collaboration in investigating and prosecuting cross-border crimes to ensure access to justice and effective remedies for people with albinism. SADC states, including Malawi, should invoke and implement the provisions of the Protocol on Extradition and the

18. Under the Same Sun is a Canadian Christian charitable organization that promotes the wellbeing of persons with albinism via education and advocacy.



Protocol on Mutual Legal Assistance in Criminal Matters<sup>19</sup> to ensure collaboration in the efficient arrests of criminal gangs and effective prosecution of cross-border crimes. Finally, SADC states must amend their human trafficking laws to include prohibition of trade in body parts of people with albinism.

Amnesty International also urges the Government of Malawi and civil society organizations to continue to work collaboratively with the international community, including donors and the UN Independent expert on the enjoyment of human rights by persons with albinism, to end the attacks and discrimination.

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## UNDERSTANDING THE MOTIVES BEHIND THE ATTACKS

In its 2016 report, Amnesty International noted that some of the crimes against people with albinism, especially grave robberies, might have been opportunistic and driven by greed, fueled by rumours that vast sums of money can be made by selling the bones of a person with albinism.

### Beliefs and attitudes

Some people in Malawi, and across sub-Saharan Africa, associate body parts of people with albinism with economic fortunes, believing that such body parts bring luck. There is a widely-held belief in Malawi that business people are successful because they use magic. Some of the victims have been abducted and sold by close family members seeking to acquire wealth. Societal attitudes about albinism are not changing and people with albinism continue to be attacked.

In her 2016 report to the UN Human Rights Council, the Independent Expert on the enjoyment of human rights by persons with albinism stated: “Dangerous myths feed these attacks on innocent people: many erroneously believe people with albinism are not human beings, but are ghosts or sub-human and cannot die but only disappear.”<sup>20</sup>

19. [www.sadc.int](http://www.sadc.int)

20. [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18502&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18502&LangID=E) January 2016

## Poverty and social conditions

Most of the population in Malawi live in extreme poverty,<sup>21</sup> leading to the acknowledgement among policy makers that crime is one possible means of survival for many. In the Poverty Reduction Strategy Paper of 2002, the government noted that “poverty and crime can also be part of a vicious cycle – crime reinforces and increases poverty, and poverty causes crime. For the ultra-poor, the only means of survival may be stealing food or assets from other people.”<sup>22</sup>

“Persons who are facing financial hardships are being used to abduct, kill or exhume the remains of people with albinism for body parts which are believed to be sold to local as well as cross-border buyers for their end use.”<sup>25</sup>

**UNICEF Report**

There is a strong relationship between what are termed “crimes of need” and pervasive poverty. Indeed, the most common crimes are those that are related directly to household and individual survival.<sup>23</sup> People with albinism are still associated with the acquisition of wealth. A human rights activist told Amnesty International that witchcraft and poverty are driving attacks on people with albinism in different parts of Malawi.

Crime has been on a constant increase since 2001, principally due to the poverty levels.<sup>24</sup> Attacks against people with albinism increase during the farming period/rainy season because food and income are scarce during the period before harvest. The combination of poverty, corruption, unemployment, food scarcity and limited sources of income leads people to become frustrated and resort to crime for wealth and material needs.

According to a UNICEF funded investigative research report on the Abductions, Killings and Exhumation of the Remains of Persons with Albinism in Malawi, “the perpetrators of the atrocities are small-scale business persons, fishermen, farmers and traditional healers and other unknown wealthy individuals who are lured and motivated by the promise of riches and change of fortunes in their activities and lives. There is growing evidence that these atrocities are being organized by some people who have enough money to meet the expenses incurred in these atrocities. Persons who are facing financial hardships are

21. Data from the UN Commission for Trade and Development indicates that 71% of Malawians are living in extreme poverty.

22. Government of Malawi, Malawi Poverty Reduction Strategy Paper, Final draft, April 2002

23. Patrick Burton, Eric Pelsler and Lameck Gondwe, Understanding Offending: Prisons and Rehabilitation in Malawi, ISS and Crime Statistical Division, National Statistical Office, November 2005, p 1 <https://oldsite.issafrica.org/uploads/Book2005UnderstandPrisoner.PDF>

24. Patrick Burton, Eric Pelsler and Lameck Gondwe, Understanding Offending: Prisons and Rehabilitation in Malawi, ISS and Crime Statistical Division, National Statistical Office, November 2005

being used to abduct, kill or exhume the remains of people with albinism for body parts which are believed to be sold to local as well as cross-border buyers for their end use.”<sup>25</sup>

## SELLING HUMAN BONES



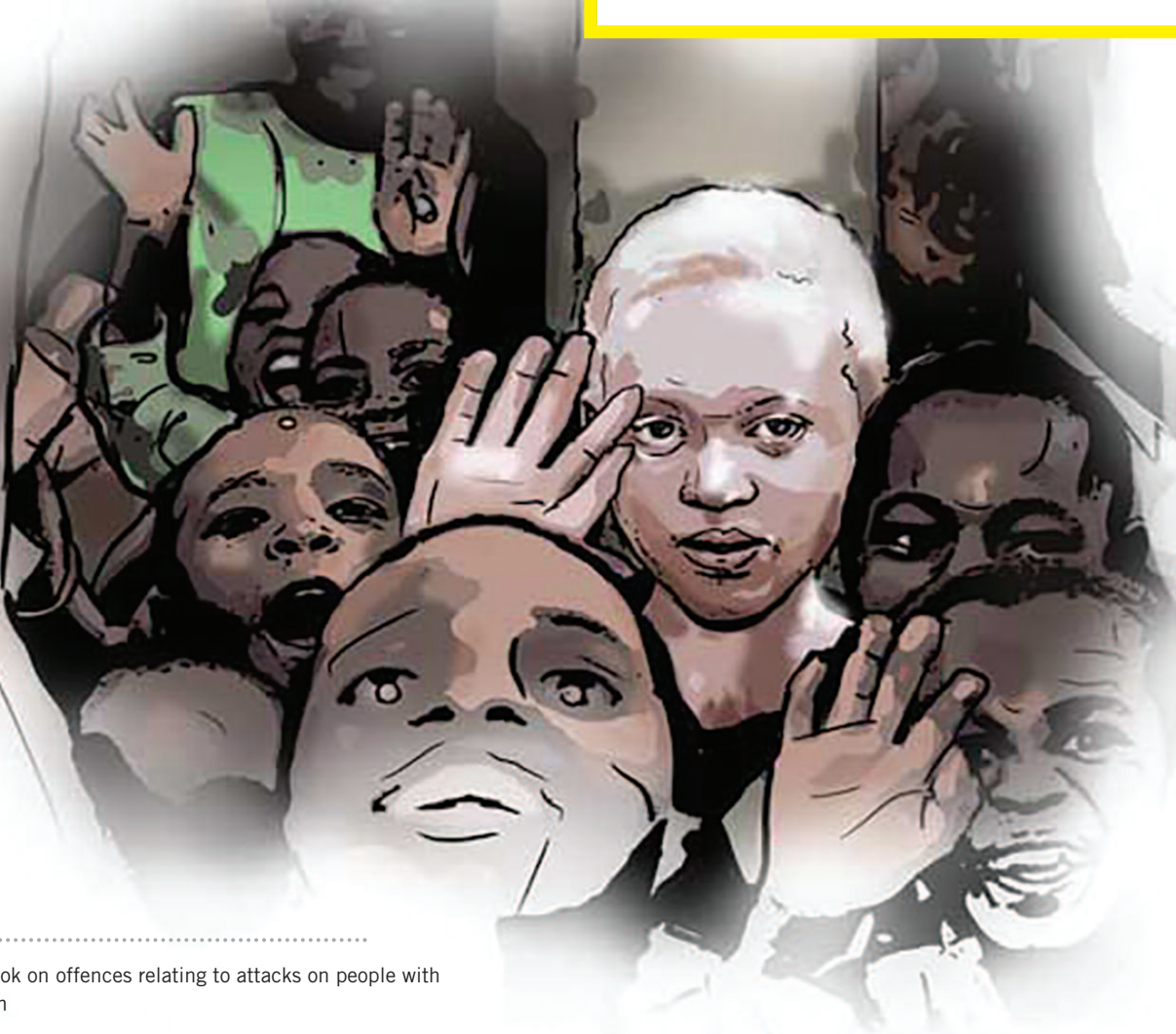
In March 2017, police officers arrested a 24-year-old man who was selling human bones reported to be of a person with albinism at a hotel in the capital, Lilongwe. The bones were believed to be those of Supiriano Duncan, a person with albinism whose grave had been desecrated in Mchinji.

## THE CASE OF MISHECK SAMSON



In late April 2017, Veronica Samson of Cholwe village, Ntchisi district, learned that three men had been arrested for planning to abduct her son Misheck, a two-year-old child with albinism. Two men who had been informed of the plan contacted APAM, who worked with the police in the investigation. Veronica Samson told Amnesty International in April that between January and March 2017 she had heard footsteps outside her house and attempts to break in, and that the family had been living in fear.

25. Handbook on offences relating to attacks on people with albinism



## WHAT PROGRESS HAS MALAWI MADE?

The President and senior government officials have publicly condemned attacks against people with albinism. The following measures to combat discrimination and abuse were announced following the release of the 2016 Amnesty International report:

- In June 2016, a National Technical Committee was established which formulated a National Response Plan.
- The practice direction issued on 3 May 2016 by the Chief Justice, with a view to ensuring consistency and speedy resolution of these cases.<sup>26</sup> This was widely seen as official commitment to combat impunity and ensure an effective response to attacks and abuses. In a June 2017 meeting with Amnesty International, the Chief Justice reiterated his commitment to deliver justice while stating that this is dependent upon the police investigating crimes professionally and efficiently and the prosecutorial authorities successfully presenting cases before them.
- In June 2017, the Director of Public Prosecutions (DPP) stated in a meeting with Amnesty International delegates that she was

concerned by the lack of professionalism among the police. She said that they do not have the capacity to carry out competent investigations and are prone to accepting bribes. Successful prosecutions are being hampered by the absence of legally qualified personnel. She said that the appointment of a legal desk officer would help in reducing the case backlog. In June 2016, the Inspector General of Police announced that all cases concerning people with albinism must be handled by senior prosecutors. This announcement has not yet yielded positive results since the police officers, who are doubling up as prosecutors, do not have the requisite legal qualifications to effectively present cases and argue before judicial officers in courts of law.

- The Malawi authorities made several legislative reforms, notably to the Anatomy Act and the Penal Code. Prosecutors, lawyers and police officers have received training on the reformed legal framework, but training and knowledge-sharing has not adequately addressed the backlog of cases. The DPP confirmed that her own office is inadequately staffed.
- On 20 December 2016 the UNDP and the Ministry of Justice and Constitutional Affairs, with support from UNICEF, launched a technical handbook incorporating legislative changes to guide investigators, prosecutors and magistrates on

26. A/HRC/34/59/Add.1, Human Rights Council 34th Session, 27 February- 24 March 2017, Report of the Independent Expert on the enjoyment of human rights by persons with albinism on her mission to Malawi, pg 16



## WHERE DOES MALAWI NEED TO IMPROVE?

### Policing

*“Some police officers are corrupt and incompetent. It is easy to bribe some of the police officers and make them abandon the case.”*

An activist working to end discrimination against people with albinism

how to handle offences committed against persons with albinism. The handbook analyses, simplifies and compiles all offences relating to attacks against people with albinism, and references relevant laws including the Penal Code, the Anatomy Act, the Child Care Act, Protection and Justice Act, the Trafficking in Persons Act and the Witchcraft Act.<sup>27</sup> The handbook seeks to strengthen the legal response to crimes against people with albinism by bringing together all applicable charges that can be filed against suspected perpetrators.

### Failure to promptly and thoroughly investigate crimes

In her 2017 report to the Human Rights Council, the UN Independent Expert on the enjoyment of human rights of persons with albinism recommended that:

- a) Malawi authorities train public officials at the national, regional and local levels, including law enforcement agencies, community police, the judiciary and the legislature, on the rights of people with albinism and the obligations of the State in this regard;
- (b) Conduct specific training for all police officers, investigators and magistrates handling such cases, including on relevant legislation, combined charges, case law and guidelines regarding attacks.<sup>28</sup>

27. [www.mw.one.un.org](http://www.mw.one.un.org), Govt, UN launch handbook on offences against persons with albinism, accessed 3 June 2017.

28. A/HRC/34/59/Add.1, Human Rights Council 34th Session, 27 February- 24 March 2017, Report of the Independent Expert on the enjoyment of human rights by persons with albinism on her mission to Malawi, pg 16

**Systemic problems in the Malawi Police Service and lack of capacity to carry out thorough investigations are at the heart of the failure to arrest and prosecute suspects in cases of attacks against people with albinism.**

Systemic problems in the Malawi Police Service and lack of capacity to carry out thorough investigations are at the heart of the failure to arrest and prosecute suspects in cases of attacks against people with albinism. Although police are empowered to prosecute murder cases, there are concerns about inadequate expertise and lack of professional legal training. Such failures have led to accusations that suspects have been granted bail as the police have failed to provide necessary information to the courts. This has led to acquittals of suspects even though they had previously confessed to committing the crime, particularly in cases where they were arrested in possession of human bones.

An additional problem is the absence of forensic experts or pathologists within the criminal justice system to determine causes of death. In an

interview with Amnesty International in June 2017, the DPP stated that the police are forced to rely on private pathologists.

During Amnesty International's visit to Malawi in April 2017, civil society groups and activists working with people with albinism told Amnesty International about the loss of confidence in the police's ability to effectively end attacks. Communities become increasingly frustrated with delays and minimal success in the administration of justice, often resulting in mob violence. Government officials in the justice, home affairs and social welfare ministries interviewed by Amnesty International confirmed that no visible police patrols have been put in place in areas with high incidents of attacks, despite such recommendations in Amnesty International's 2016 report.

**An official with the Department of Disability said that the police have failed to deploy adequate officers in communities where people with albinism are at risk, especially at centres which look after children with albinism.**

An official with the Department of Disability said that the police have failed to deploy adequate officers in communities where people with albinism are at risk, especially at centres which look after children with albinism. Civil society activists expressed concern that while there is a significant police presence in urban areas, a rural area may have only two police stations which may be 20-30 km apart.

*“Many people don’t even know that we have changed laws because nothing is happening to perpetrators killing people with albinism.”*

APAM member interviewed by Amnesty International

## THE CASE OF DAILESS LONGWE NKHATA BAY T/A MANKHAMBIRA



**Mphatso Phiri, aged 21, was arrested in Chinthече, Nkhata Bay, after allegedly threatening Dailess Longwe, a woman with albinism, in her home with a knife on 8 March 2017. Mphatso Phiri was charged with intimidation under Section 88 of the amended penal code; the case was ongoing**

## Administration of Justice

### Delays in investigations and prosecutions

The administration of justice in Malawi is characterized by severe delays at all stages, which undermine the fairness of trials.<sup>29</sup> An accused person has the right to be brought promptly before a judicial officer upon arrest<sup>30</sup> and to be tried within a reasonable time once placed on remand.<sup>31</sup> Victims of attacks are entitled to access to justice through prosecution of perpetrators. The failure to prosecute abuses and attacks against people with albinism and a culture of impunity continues to fuel the killings.

According to the UN Declaration of Basic Principles of Justice for victims of crime and abuse of office, judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, affordable and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. The responsiveness of judicial processes to the needs of victims should be facilitated by, among other factors, providing proper assistance to victims throughout the legal process, protecting witnesses and victims from intimidation and retaliation, and

29. Malawi: Justice Sector and Rule of Law, A review by AfriMap and the Open Society Initiative for Southern Africa, Professor Fidelis Edge Kanyongolo, OSISA, 2006, pg115

30. Amnesty International, Fair Trial Manual, page 57

31. Amnesty International, Fair Trial Manual, pages 70 and 143.

avoiding unnecessary delays.<sup>32</sup> Law enforcement personnel in Malawi require further training on investigations procedures to assist them in evidence gathering and competent and qualified prosecutors and magistrates will need to be trained on the use of the Handbook developed with assistance from UNICEF.

*“I was shocked by the resurgence of violence. When the violence started, the state arrested people and kept them in custody as a deterrent effect, but there were no convictions. Perpetrators were not tried for the past crimes. In most cases it was clear that the killings were premeditated crimes to kill, as well as to extract bones and other body parts.”*

Activist and lawyer Interviewed by Amnesty International, May 2017

Delays in finalizing cases, including of murder, and excessively lenient sentencing have not provided a strong message to would-be offenders and have contributed to demotivating police officers. The Office of the DPP confirmed in a meeting with Amnesty International in June 2017 that other pressing priorities, such as corruption scandals, deflect the Office’s attention from crimes against people with albinism. Amnesty International is concerned by reports that suspects in Malawi who

**“If the criminal justice system had worked, the attacks against people with albinism would have ended.”**

**Activist interviewed by Amnesty International**

are caught with incriminating evidence, such as hair, teeth or other body parts, have been acquitted and those granted bail are permitted to return to their communities as they await trial. This leads to fears by victims that suspected perpetrators are not being held accountable. Perceived impunity for crimes against people with albinism significantly reduces the deterrent effect of the law and therefore contributes indirectly to the continued wave of attacks.<sup>33</sup>

There are exceptional circumstances when an accused may be detained pending trial. The burden rests on the state to establish that release would create a substantial risk of flight, harm to others or interference with the evidence or investigation that cannot be allayed by other means.<sup>34</sup>

32. Paragraph 6 of the UN Declaration of basic principles of justice for victims of crime

33. A/HRC/34/59/Add.1, Human Rights Council 34th Session, 27 February - 24 March 2017, Report of the Independent Expert on the enjoyment of human rights by persons with albinism on her mission to Malawi, Paragraph 22 pg 634.

34. Amnesty International, Fair Trial Manual page 61



## Poor case handling and management

The measures adopted by the government in the criminal justice system have failed to significantly reduce the level of impunity. There have been prosecutions but, as highlighted above, many cases have not been concluded. The DPP expressed her concerns about the poor quality of police investigations. She told Amnesty International that the police often mishandle cases due to pressure exerted on them by communities to find suspected perpetrators. She said, “when the community

sees a dead body, they also want to see the accused.” She said that this often leads to wrongful arrests of people who are later released.

An activist interviewed by Amnesty International stated: “the weakness of Malawi’s criminal justice system is that there were no trials and convictions. If the criminal justice system had worked, the attacks against people with albinism would have ended.” He believes that the poor criminal justice system has led to failures by the state to systematically tackle killings of people with albinism.



“There are some cases within courts that are not moving. Government is waiting for donors to come with money so that it can resume investigations of the cases of the killings.”

APAM activist and member interviewed by Amnesty International

## THE CASE OF GILBERT DAIRE



**On the night of 9 March 2017, four men attempted to drill through the wall of the home in Lilongwe of Gilbert Daire, former president of the Association of People with Albinism, as he slept. They fled the scene after his neighbours intervened. A suspected perpetrator was later arrested after community members reported him to the police, but he was later acquitted after police were unable to establish a link with the attempted attack.**

## Broader problems in the judiciary

The judiciary, prosecution and police in Malawi are currently facing serious problems including understaffing, inadequately qualified personnel and lack of financial resources, thus compromising the criminal justice system and the rule of law. Although the majority of serious cases in the judicial system are dealt with in magistrates' courts, the majority of prosecutors are police officers with no legal training. Since the beginning of 2018 the Judicial Services Commission has recruited around 15 professional magistrates to improve justice delivery. Prior to this recruitment 4 chief magistrates and 6 senior magistrates faced challenges in dealing with the backlog of cases. According to a senior magistrate interviewed by Amnesty International, most police prosecutors struggle to make sound legal submissions, resulting in either acquittals or convictions on lesser charges.

## The price of prosecution

Amnesty International believes that government spending on the justice sector is unsatisfactory and most institutions are funded by donors. Those charged with murder are entitled to legal representation, but most cannot afford the fees and the state is therefore unable to proceed with prosecution. Under the current Legal Aid and Legal Practitioners Act,<sup>35</sup> the Law Society of Malawi does not have a structured pro bono services programme to represent defendants in

35. Legal Aid and Legal Practitioners Act, Cap. 3:04

such cases, which has contributed to the lack of progress in prosecutions. In an encouraging development this year, the Legal Aid Bureau (LAB) offered to provide legal defence in murder cases and at least 45 lawyers from the law society of Malawi expressed interest in providing pro bono services. The offer made by some members of the law society must be implemented expeditiously for progress to be made in the pending murder cases.

The DPP told Amnesty International that the government is unable to fund prosecutions in murder cases as lawyers must be paid travel and subsistence allowances for their legal advice. However, the UN has been providing financial support to the government for the prosecution of non-murder-related cases. In 2016 the UNDP donated US\$30,000 for the prosecution of 43 non-murder cases, but little progress was made over the following year. When asked to explain this the DPP said that there was a shortage of legally qualified prosecutors and police officers faced challenges in expeditiously concluding investigations due to incompetence. The government must train police officers who should speed up investigations in all cases of violence against people with albinism and the government must provide adequate resources for the recruitment of qualified prosecutors to prosecute outstanding cases to completion. The government, with the assistance of donors, must adequately fund the LAB to enable them to provide legal defence in murder cases.

## No money to defend suspects

The Legal Aid Bureau (LAB), an independent body which was formerly part of the Ministry of Justice and Constitutional Affairs, was set up to make legal aid services more efficient and accessible throughout the country. It was intended to be adequately funded to ensure independence but this has not been the case in practice.

The LAB provides legal aid in civil and criminal matters to those unable to engage a private legal practitioner. Its legal services were expanded to include court representation, pre-trial assistance, public legal education and other legal advice. However, from March 2016, it became unable to deal with pending murder cases until the state increased legal aid funding. In 2017 the LAB established a legal aid fund, but this is yet to become operational and its effectiveness has been hampered by inadequate financial support and human resources. Once the fund is in place the LAB, in partnership with donor agencies and the DPP's office, can begin to contribute towards reducing the backlog of murder cases. As of January 2018, the LAB and DPP have started dealing with murder cases at scheduled regional court sessions and it is hoped that if this can be sustained and broadened to include all serious crimes it would strengthen the criminal justice response to the plight of people with albinism.

## Failure to protect persons with albinism

Concern remains within civil society in Malawi that the authorities continue to display a “laissez-faire” attitude towards combating attacks against people with albinism and that they have appeared more reactive than proactive. A local human rights lawyer stated that “political authorities have powers to ask difficult questions to the criminal justice system”. He blamed the government for “not asking difficult questions to government officials in charge.”

“The government is complicit in weakening efforts to address the issue... We need investigations and full trials to take place. People should be named and shamed and the gaps should be addressed in the legal system to address the issue.”

Activist interviewed by Amnesty International

Activists told Amnesty international that the state has failed to acknowledge that protection is an ongoing process and reiterated that more effort needs to be channelled towards changing the attitudes and belief systems of Malawians towards people with albinism.

During a meeting at the Department of Disability in the Ministry of Gender, Children, Disability and Social Welfare in April 2017, officials told Amnesty International that the Committee on Social Welfare had publicly stated that the government had failed people with albinism. The public officials stated that the Committee had not taken any steps to ensure protection of the right to life and bodily security of people with albinism. Social activists believe that “radical measures are needed to galvanise people to denounce attacks.”<sup>36</sup>

### THE CASE OF EDNA CEDRIC MACHINGA



On the night of 27/28 February 2016, a gang of unidentified men broke into a house in Mpakati village in Traditional Authority Chikwewo, Machinga district, and killed a nine-year-old twin boy with albinism, Harry Mokoshoni (also known as Harry Mockshon). A suspect was arrested and later released due to delays in the investigation. He subsequently was reported to have intimidated and threatened the boy’s mother, Edna Cedric. She now fears for the safety of the remaining twin, who has since been taken to a different location.

36. Interview with Bill Abner Mayaya, Chairperson of the National Right to Food Network, May 2017.

## Lack of government coordination

In May 2016, the President established a National Technical Committee comprising representatives from the Office of the President and Cabinet, Ministries of Gender, Children, Disability and Social Welfare; Justice and Constitutional Affairs; Home Affairs and Internal Security; Health, Information, Communications Technology and Civic Education; Local Government; Education, Science and Technology; and the Inspector General of Police. Its mandate was to facilitate the implementation of the plans, strategies and initiatives to end abuses and attacks against people with albinism. Despite high expectations at this initiative, however, results so far have been disappointing. The National Technical Committee has no terms of reference, nor a clear mandate and does not have the competency to hold anyone or any ministry accountable. Its powers are limited and in April 2018 APAM expressed disappointment at the lack of political will and effectiveness in implementing plans and initiatives to end abuses and attacks against people with albinism.

In most cases, interventions by government bodies are made separately from those of the National Technical Committee. Amnesty International is concerned that the government is not doing enough to raise awareness about the challenges faced by people with albinism such as discrimination and attacks, as well as visual impairment

The National Technical Committee has no terms of reference, nor a clear mandate, and does not have the competency to hold anyone or any ministry accountable.

and the effects of the sun on the skin. The National Technical Committee has not been able to offer any rehabilitation and redress, including psycho-social support to survivors and families of victims. The failure by the National Technical Committee to hold relevant authorities in the justice and law and order sectors to account and ensure that victims have access to justice through investigation and prosecution of cases has contributed to the culture of impunity.

“There is no coordination within government to implement programmes to protect people with albinism. Police are doing awareness in communities without the department of justice knowing. Victims are still living in fear with their attackers in some communities.”

Department of Disability staff interviewed by Amnesty International

## CONCLUSION

Amnesty International believes that the persistent targeting of people with albinism – due to prejudice and misunderstanding of the condition – is fueled by the ineffective criminal justice system in Malawi, and to a certain extent a lack of coordination by members of the National Technical Committee set up to combat attacks.

Amnesty International therefore urges the authorities to, among other things, improve its criminal justice system, including by engaging specialist

support for forensic investigations, compiling post-mortem reports and combating human trafficking, to bring suspected perpetrators of these human rights abuses to justice.

There must be a review study of the root causes of the attacks against people with albinism and how cases have been dealt with once the accused have been brought to court in order to identify gaps and develop strategies to



end impunity. Amnesty International believes that the identity and motivation of those suspected of involvement in violence against people with albinism need to be better understood by Malawi law enforcement agents in order to develop appropriate strategies to counter and combat these crimes.

Amnesty International is urging the Government of Malawi to ensure that crimes against people with albinism are prosecuted by prosecutors with appropriate legal qualifications and presided over by competent judicial officers. The relevant authorities must employ adequate numbers of legally qualified prosecutors and magistrates to ensure the effective administration of justice.

### **Recommendations to the Ministry of Justice and Constitutional Affairs**

- Conduct training for selected legally qualified prosecutors and police officers who handle albinism cases on the application of the new laws to deal with the crimes against people with albinism and ensure that those trained are the ones using the law.
- Work with the Judicial Service Commission in facilitating the training of judicial officers to effectively handle cases relating to people with albinism.
- Recruit legally qualified prosecutors and forensic investigators.
- Improve the case management system and bring suspected

perpetrators of crimes against people with albinism to justice, and ensure that victims have access to effective remedies. All pending cases of murder and violence against people with albinism must be expeditiously concluded.

- Public prosecutors involved in cases of attacks against people with albinism must assist police prosecutors in framing charges and investigations. The authorities must phase out using untrained police officers to prosecute crimes by 2020 and train and recruit qualified prosecutors.
- Strengthen the Malawi Human Rights Commission including through the provision of adequate funding and appointment of legal officers to boost its capacity to effectively monitor human rights violations specifically targeted at people with albinism.
- Work with the Law Society of Malawi and the Legal Aid Bureau in providing legal aid services and pro bono services in cases such as abductions and murder.
- Launch a sub-regional action plan with other SADC States such as Democratic Republic of the Congo, Mozambique, South Africa, Swaziland, Tanzania and Zambia to effectively combat the trade in body parts of people with albinism.
- Ensure that the Legal Aid Bureau and Office of the Director of Public Prosecutions is adequately resourced to effectively deal with serious crimes such as murder.

## Recommendations in relation to policing

- Ensure that cases of violence against people with albinism are promptly, thoroughly and transparently investigated, and that investigations in all pending cases of murder and abductions are concluded.
- Make reports and case files of their investigations available to NGOs fighting for the rights of people with albinism.
- Strengthen community policing and ensure that police patrols are visible in certain key inaccessible regions of Malawi.
- Assign lawyers and forensic experts to train and recruit police officers with modern investigative techniques including forensic investigations.

## Recommendations in relation to coordination and cooperation

- The National Technical Committee must have a clear role and defined mandate with powers to hold ministries accountable.
- The Technical Committee must share its reports with its members and ensure that minutes taken are circulated.

- The Technical Committee should provide psychosocial support and counselling to victims and survivors of attacks, through the Ministry of Gender, Children, Disability and Social Welfare and relevant civil society organizations.
- The Technical Committee should ensure that early warning rapid response mechanisms are put in place to guarantee the safety and security of people with albinism.
- The Technical Committee should promote government support for sound housing structures and lockable doors for people with albinism to ensure adequate security.
- Civil society organizations must raise awareness or train the media on the importance of effectively reporting about people with albinism in Malawi.
- Donors should consider granting financial support for recruitment of legal desk officers to assist the Legal Aid Bureau and DPP in reducing the backlog of cases related to people with albinism.
- Donors should consider funding the training of investigators, prosecutors and magistrates in Malawi to promote the efficient administration of justice.

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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