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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the International Bar Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Written submission to the UN Human Rights Council, 34th Session Agenda Item 3: Interactive Dialogue with the UN Independent Expert on the Enjoyment of Human Rights by Persons with Albinism*

Mr. President,

The International Bar Association's Human Rights Institute (IBAHRI), the Southern Africa Litigation Centre (SALC) and the Malawi Centre for Human Rights Education, Advice and Assistance (CHREAA) welcome the reports¹ of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism. As human rights organisations we oppose discrimination of any kind and support the mandate of the Independent Expert.

We welcome the steps that have been taken by countries such as Malawi and Mozambique to increase the protection for persons with albinism as highlighted in the Independent Expert's respective reports.² However, we agree with the Independent Expert that a lot more has to be done by all states to increase such protections, including the need to raise awareness about albinism; train prosecutors and the judiciary to ensure proper prosecution and effective sentencing in cases relating to violation of rights of persons with albinism; as well as to take steps to address the legal gaps which allow for perpetrators of violent attacks against persons with albinism to go unpunished.

We further encourage states to ensure that, in seeking to protect the rights of persons with albinism, policies and practices are not implemented which inadvertently further violate their rights. A case in point is the judgement by a Magistrates court in Malawi which employed a tougher sentence against a man with albinism on the basis of his condition.³ While the sentence was reduced by the High court upon review, this court appeared to reinforce the discriminatory position of the Magistrates court. The details of the case are as follows:

1. The man in question is an 18-year old with albinism who was charged with and pleaded guilty to being found drunk and incapable in a public place contrary to section 183(1) of the Malawi Penal Code. He was unrepresented at his trial. In determining his sentence, the Magistrates Court took into account the fact that he is a persons with albinism as an aggravating circumstance and sentenced him to a fine of MWK10,000.000 (about US\$13.90) or six months' imprisonment. The Court reasoned that in the light of the attacks against persons with albinism and government efforts to prevent these attacks, his crime warranted stronger punishment due to his heightened responsibility to ensure his safety.
2. On review he argued that the sentence imposed on him on basis of his condition was unconstitutional and discriminatory. The Magistrates Court's reference to him as "pathetic" and its reasoning in the sentencing to impose on him a form of special moral responsibility due to his condition infringed his rights to human dignity and to equality before the law. He argued, further, that the Court impermissibly sought to use him as a scapegoat to deter other offenders despite that he was a first-time offender and failed to appreciate that albinism is a disability and should have been regarded as a mitigating circumstance on his case, specifically. He also argued that the decision was manifestly excessive and unlawful for instating a sentence ten times the maximum penalty under the Penal Code and imposing an impermissible alternative custodial sentence for the offence. Consequently, he asked that his sentence be set aside.
3. In advancing his legal argument, he cited the finding of the 2016 Report of the Independent Expert on the enjoyment of human rights by persons with albinism explaining how myths present ostracism, exclusion and

¹ The Report of the Independent Expert on the enjoyment of human rights by persons with albinism of December 2016, A/HRC/34/59; as well as her reports on her mission to Malawi, A/HRC/34/59/Add.1; and to Mozambique, A/HRC/34/59/Add.2

² See Report on Mozambique paragraph 27 and 33 – 35; and report on Malawi paragraph 25 - 42

³ S v Precious Michael

discrimination against persons with albinism as a natural necessity, a practice that strips persons with albinism of their humanity.

4. On 8 February 2017, the case was heard on review at the Malawi High Court. The High Court held that the Magistrates Court's decision was unlawful, being in excess of the maximum prescribed. It set aside the MWK 10,000 fine and the alternative custodial sentence and replaced it with a fine of MWK 500 (about US\$ 0.69).

5. Despite the progress, however, the High Court disagreed that the sentence of the Magistrates Court was discriminatory. In its oral judgment, the High Court similarly affirmed that persons with albinism should have greater moral culpability for being drunk and disorderly in the context of the violence against them.⁴

The fact that a person has albinism ought not to be a factor that aggravates their punishment. Such judgements are discriminatory as they impose a higher sentence on a person with albinism merely because of their condition. They violate the right to dignity, fair trial right and equality before the law. They further victimise persons with albinism and make them responsible for their own protection.

The IBAHRI, SALC and CHREAA therefore call on the government of Malawi to ensure that such a negative approach to sentencing people with albinism does not become accepted practice or policy. We further remind the authorities that it is primarily the responsibility of the state to protect, promote and fulfil the rights of all persons without discrimination.

We further wholeheartedly support the recommendations of the Independent Expert to both the government of Malawi and Mozambique, in particular the recommendation to ensure that training for magistrate, judges and prosecutors and all actors involved in the administration of justice include content concerning the protection of the rights of persons with albinism.

To states and to the Independent Expert we offer our technical assistance to ensure increased protection of the rights of persons with albinism. To this end, the International Bar Association has set up a taskforce on the enjoyment of human rights by persons with albinism to carry out relevant legal research into albinism. The task force is at the disposal of the Independent Expert to assist her mandate in this regard.

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*Southern Africa Litigation Centre (SALC), Centre for Human Rights Education, Advice and Assistance (CHREAA), NGOs without consultative status, also share the views expressed in this statement.

⁴ For further information see: <http://www.southernafricalitigationcentre.org/cases/ongoing-cases/malawi-discriminatory-sentencing-against-persons-with-albinism/> (accessed 10 Feb. 17)