

Study on

Challenges and best practices in

investigations, prosecutions and

sentencing in offences against

persons with albinism in Malawi

FINAL REPORT

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In Re Fletcher Masina (Republic vs Kenneth Moses & Others) Police reference No. NU/CR/40/05/16.

In Re Harry Mackson Police Case Reference No. MH/Nsm/Cr/01/16

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UNICEF also extends its gratitude to Justice Dr. Redson Kapindu who has undertaken the study and compiled this report on behalf of UNICEF under a very tight time schedule of about three weeks.

LIST OF ABBREVIATIONS

AI	Amnesty International
APAM	Association of Persons with Albinism in Malawi
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CP&EC	Criminal Procedure and Evidence Code
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
FEDOMA	Federation of Disability Organisations in Malawi
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social Cultural Rights
MHRC	Malawi Human Rights Commission
OHCHR	Office of the UN High Commissioner for Human Rights
SADC	Southern African Development Community
TIP	Trafficking in Persons
UN	United Nations Organization
UNICEF	United Nations Children’s Fund
UNDP	United Nations Development Programme

EXECUTIVE SUMMARY

Despite various efforts, including the adoption of a Handbook for Investigators, Prosecutors and Magistrates in 2016 on how best to handle cases of offences concerning persons with albinism, not much progress has been made especially in terms of the speed with which such cases are handled throughout the due process of the law. In this regard, this study has been conducted with a view to identifying specific challenges that investigators, prosecutors and magistrates are facing in handling these matters. The study has also focused on what best practices may be adopted to ensure better and more successful handling of these cases and also the lessons that have been learnt in the process of handling such cases. The study, aside from establishing the challenges and the best practices, also examines, among other things, the nature and trends of the offences, the average times taken for the cases to conclude, the characteristics of the victims and the attackers, and the location of the attacks.

The study has come up with a number of findings. Firstly, the study establishes that cases of attacks on persons with albinism spiked between 2015 and 2016 and that attacks have since those years significantly reduced. This however does not mean that the attacks have stopped. The recent case of MacDonald Masambuka who disappeared from his village in Machinga on 9 March 2018 and has recently been reported to have been murdered serves as a clear signal that the problem of attacks on persons with albinism is still alive and grave.

The study has concluded that most of the attacks comprise cases of murder, trespass on burial places and exhumations of human tissue of deceased persons with albinism, selling of human tissue of persons with albinism, and verbal abuse of persons with albinism including cases of intimidation and the use of insulting language.

The study shows that whilst the amendments to the Anatomy Act and the Penal Code in 2016 that significantly enhanced the maximum penalties on offences against persons with albinism have led on the whole to the imposition of stiffer sentences, there are still instances where investigators, prosecutors and magistrates have erroneously applied the old law. In addition to

recommending continued training, the present study strongly urges investigators, magistrates and prosecutors to scrupulously use the *Handbook for Investigators, Prosecutors and Magistrates on Offences Concerning Persons with Albinism* (2016) in their work in order to avoid such instances.

The study also concludes that in certain instances, there is need for more judicial creativity in analysing facts and applying them to the law when coming to certain decisions concerning whether to convict or acquit an accused person. The study concludes that in certain cases, such as in cases of intimidation (a more serious offence) as against conduct likely to cause a breach of the peace (a lesser offence), there is a reasonably good possibility that in cases where the magistrates acquitted accused persons on the intimidation charge, they could actually have convicted on the same.

The study, in view of the seriousness of the problem of attacks on persons with albinism, applauds the High Court in Mzuzu for the deserving sentence that it imposed on Sam Kaumba in the case of ***Republic v Kaumba*** who was given a life imprisonment term for attempting to kill a boy child with albinism.

In terms of the average times that cases concerning persons with albinism take to conclude, the study's conclusions are two-pronged. First, in all cases other than murder or attempted murder, offences concerning persons with albinism are generally quickly investigated and disposed of. The quickest ones are those involving verbal abuse of persons with albinism. On average, the study concludes that these cases take not more than 6 months to conclude from commission of the offence, through investigations, to imposition of final sentence upon conviction.

The second category comprises cases involving murder or attempted murder. The study concludes that these are delaying rather inordinately considering the uniqueness and importance of dealing with the problem of attacks on persons with albinism on an urgent basis. The study concludes that on average these have taken at least 3 years and are not yet concluded except

one attempted murder case, the *Republic vs Kaumba* case (above). This represents a serious challenge and it is important that the key stakeholders, the Police, the Director of Public Prosecutions, the Legal Aid Bureau and the Judiciary should engage with a view to finding a better and quicker way of resolving these cases, but in strict accord with fair trial principles.

The study has concluded, in tandem with previous studies on the subject, that in most cases, a person who is close to the victim, either a relative or a well-known acquaintance or friend of the victim is involved in the attack, especially in cases of abductions and murder (including conspiracy to murder and attempted murder). The study also concludes that in most cases, the victims are young, either children or youth below the age of 25 years; whilst most of the attackers are poor, aged between 22 years old and 49 years old and related to the victim. The age bracket of the attackers demonstrates a clear nexus between the attacks and belief that such attacks in one way or the other would be of economic value to the attackers.

It has been concluded that frequently the attacks have taken place in border districts including Kasungu, Chitipa, Ntcheu, Dedza, Mangochi, Phalombe, Mulanje, Machinga and Zomba, among others. However, most of the attacks by far have been in the Eastern policing region and particularly in Machinga and followed by Mangochi districts. The 2016 Report of the UN Independent Expert on the enjoyment of human rights by persons with albinism on her mission to Malawi equally definitively found that Machinga has been the most affected district by these attacks. The study proposes that a socio-economic study be commissioned to establish why, in particular, these offences are most pronounced in Machinga and surrounding districts.

The study, on careful examination of documentation both from the police institutions as well as the majority of the judicial decisions examined, notes the continued use of the term “albino” which is strongly discouraged from a human rights perspective on account that it has derogatory overtones. The study reiterates the recommendation of the Handbook and strongly urges all to desist from using the term “albino” and instead use the term “person with albinism.”

In the end, upon cataloguing various challenges, best practices and lessons learnt in the handling of cases of offences concerning persons with albinism, the study makes the following recommendations:

- (a) It is important that measures taken by the security institutions should not only be focused on reactive measures in terms of what happens when an offence has been committed, but the measures should also be proactive. What can be done to prevent the offences from being committed in the first place. Thus this study recommends adopting the measures recommended in the *UN Regional Action Plan on Albinism in Africa - 2017 to 2021*, that such measures should include training and, resourcing all law enforcement personnel including border guards; strengthening community based protection structures beginning with traditional authorities; reinforcement of structures of homes and the living environment; and equipping PWA with security tools.
- (b) There is urgent need for Malawi to negotiate and conclude extradition treaties with all its three neighbours, Mozambique, Zambia and Tanzania.
- (c) Prior to the conclusion of such extradition treaties, Malawian security agencies should enhance other ways of formal cooperation with security counterparts in neighbouring countries by concluding memorandums of understanding and sharing databases relevant to the investigation and prosecution of cases concerning persons with albinism.
- (d) There is urgent need for more training for prosecutors & investigators through the Handbook. The UN recommends this as an existing best practice.
- (e) It is of utmost importance that the Judiciary should urgently issue sentencing guidelines, and promote the assignment of cases to higher Courts especially for purposes of stiffer sentencing in cases where Magistrates have jurisdiction.
- (f) There is need for both investigative, prosecuting and judicial authorities to be furnished with more financial and mobility resources.

- (g) The Judiciary should make special arrangements for special sittings of the High Court to try homicide offences concerning persons with albinism so that the trials are concluded with speed and the backlog of cases dealt with.
- (h) The Ministry of Finance and Economic Development (Treasury) should ensure that requisite special funds are made available to all the concerned institutions, including the Judiciary, the DPP's Chambers, the Malawi Police Service, the Legal Aid Bureau, and the Malawi Prisons Service in order to enable the special Court sittings to be conducted with efficiency and effectiveness.
- (i) The study recommends adoption of the recommendation of the Regional Action Plan, and the UN Independent Expert on Albinism, that a Special Prosecutor for cases concerning persons with albinism be appointed.
- (j) Need for more training among Police investigators and prosecutors on specialized aspects of investigations and evidence gathering and leading of evidence, such as the handling of DNA evidence.
- (k) Police investigators should keep up-to-date data on all persons with albinism in their respective policing areas.
- (l) Police should increase presence in the most highly affected areas to bring a greater sense of security for communities; and border patrols should also be enhanced.
- (m) Personal security of families of or with persons with albinism should be strengthened by the State including ensuring that access to these homes is strengthened and tightened against easy intrusions. Measures such as strengthening the structural safety and integrity of their houses by ensuring that they have steel or strong wooden doors with locks and secure windows, as proposed by the Independent Expert, must be implemented with urgency.
- (n) It is important that communities be continuously educated on how they can be on the lookout for suspected attackers on persons with albinism. As the UN Independent Expert

observed, the training and information given by community police and traditional leaders have in various cases led to the quick intervention of neighbours during attacks, resulting in the rescue of persons with albinism and the arrest of perpetrators. Thus provision of training and information are so vital in ensuring successful investigations and prosecutions.

- (o) Police investigators including members of Police victim support units should visit PWAs on a regular basis to hear any complaints and emerging security issues they may be facing.
- (p) Parents, guardians or caregivers, and all persons with albinism should be specially sensitized on all necessary precautionary measures they should take to reduce vulnerability to attacks.
- (q) Need for continuous education of communities to eliminate superstitious myths against persons with albinism.
- (r) The process of investigation and prosecution cannot be divorced from focusing on the effects of the attacks on the victims. The study therefore affirms the recommendations of the Regional Action Plan that there must be Psychosocial, medical, legal and socioeconomic support to rebuild the lives, for both victims, and surviving relatives, and that the State should ensure that these are available at community level.
- (s) Police investigations should also focus on more established target markets for tissue of persons with albinism beyond targeting merely the primary attackers and primary possessors of human tissue of persons with albinism.
- (t) The Independent Expert recommends that the Government of Malawi should conduct in-depth investigative research to ensure, on the one hand, a better understanding of the root causes of attacks, including witchcraft practices, myths and poverty, and, on the other hand, to map patterns of trafficking of body parts, including potential international networks involved, to identify the masterminds at the root of demand. This study affirms this recommendation.

- (u) Special legislation should be developed sanctioning the Police and the Human Rights Commission to visit and search without notice places where professing witchdoctors are undertaking their business/work to ensure that they do not at any given time possess human tissue.
- (v) Police in border areas are encouraged to develop good rapport with their counterparts in neighbouring countries to deal with cross-border aspects of these offences.

1. INTRODUCTION

1.1 BACKGROUND OF THE STUDY

1.1.1 Albinism is a rare, non-contagious, genetically inherited condition which results in a lack of pigmentation (melanin) in the hair, skin and eyes, causing vulnerability to the sun and bright light. Such vulnerability renders many persons with albinism prone to skin cancer and visual impairments; and that the present state of medical science presents no cure for this condition.¹ The condition is found in all races and ethnicities around the world.

1.1.2 In her work, Mswela states that albinism, which is characterised by a lack of skin pigmentation in humans,

is caused by a mutation in one of several genes...Each one of these genes supply the chemically coded directives for making one of several proteins involved in the making of melanin. "The active chemical in the gene is DNA. Melanocytes are the cells that produce Melanin." Such cells are found on one's skin and eyes. The consequence of gene mutation may possibly lead to the deficiency of melanin production or a complete stoppage of production of melanin. In the majority of types of albinism, the affected person inherits two copies of a mutated gene, one each from both parents, sequentially to have albinism. Clinically this is known as recessive inheritance. A person who has merely one copy of the mutated gene will have normal hair, skin or eyes.²

¹ UNHCHR, *Persons with albinism: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/24/57 (2013). See also RE Kapindu, *The Handbook for investigators, prosecutors and magistrates concerning offences against persons with albinism*, Ministry of Justice and Constitutional Affairs, Malawi, (2016)

² Maureen Mswela, *Evil Albino Stereotype: An Impediment to the Right to Equality*, 32 *Med. & L.* 79 (2013), 83.

1.1.3 Mswela states that in particular, the following are identified as the common symptoms of albinism:

- (a) absence of colour in the hair, skin, or iris of the eye,³
- (b) lighter than normal skin and hair,⁴
- (c) patchy, missing skin colour.⁵

1.1.4 She proceeds to state that further research shows that in early childhood the symptoms associated with Albinism are often the following;

- (a) crossed eyes (strabismus),⁶
- (b) light sensitivity (photophobia),⁷
- (c) rapid eye movements (nystagmus),⁸
- (d) vision problems or functional blindness.⁹

1.1.5 Throughout history, around the world, persons with albinism have faced different types of human rights violations including discrimination and violent attacks. Stacy Larson states in her work that:

individuals with disabilities [including persons with albinism] have historically been exposed to discrimination, neglect, abuse, and even death. In many societies around the world, disabled

³ Marshal Cavendish Cooperation: "Diseases and Disorders" (2008, New York: Marshal Cavendish Cooperation) at 29.

⁴ Ibid.

⁵ Nouri K, "Skin Cancer" (2008, New York: McGraw-Hill) at 40.

⁶ Sacharowitz H S in Stein CS Vision Rehabilitation; Assessments, Interventions and Outcomes (2000, New York: Routledge) at 41. Also see Dominguez B et al, "Building Blocks: Foundations for Learning for Young Blind and Visually Impaired Children" (1991, New York: American Foundation of the Blind) at 14.

⁷ Dominguez, (ibid).

⁸ Sacharowitz H S at 41. Also see Dominguez B et al at 14.

⁹ Dominguez B et al at 14.

individuals "have been deprived of such fundamental rights as liberty, education, privacy, family, and employment."¹⁰

1.1.6 However, the Federation of Disability Organisations in Malawi (FEDOMA) points out that the problem in Malawi assumes heightened proportions. It states that:

Whilst albinism-related stigmatization and discrimination are universal phenomena, in Malawi, persons with albinism experience not just higher levels of stigmatization and discrimination, but also human rights violations of a much higher magnitude, including extreme acts of violence and killings.¹¹

1.1.7 At the time of writing this Report, in the past few weeks the media has extensively covered the sudden missing of a young man with albinism, McDonald Masambuka, aged 22 years old who disappeared from his Village in the area of Traditional Authority Nkoola in Machinga District. He was reported missing on 9 March 2018 and only recently, the Media has reported that one of the arrested suspects led the Police to the place where the remains of McDonald Masambuka, who was reportedly brutally murdered, were buried.¹² This speaks to the currency and magnitude of the problem in Malawi.

¹⁰ Stacy Larson, *Magic, Mutilation, and Murder: A Case for Granting Asylum to Tanzanian Nationals with Albinism*, *Pace Int'l L. Rev. Online Companion*, Mar. 2011, at 1.

¹¹ FEDOMA, *Joint-Petition [to Parliament] Regarding the Rising Incidences of Attacks, Abductions and Killings of People with Albinism in Malawi and The Lenient Punishments as Well as Delayed Justice Delivery*, 24 May, 2016 - Lilongwe, Malawi.

¹² See The Daily Times, *Albino Abductions, Killings: Police Officer Arrested – Other suspects mentioned Officer*, The Daily Times of Monday, April 2, 2018, p. 1, 3. See also Southern African Litigation Centre, *A Call for an end and a holistic response to attacks on persons with albinism: The MacDonald Masambuka Case*, (2018) [Press Statement], <http://www.southernafricalitigationcentre.org/2018/03/23/a-call-for-an-end-and-a-holistic-response-to-attacks-on-persons-with-albinism-the-macdonald-masambuka-case/>

- 1.1.8 Amnesty International has reported that such attacks have been as pervasive in Malawi as in other neighbouring countries such as Tanzania and Mozambique.¹³ Kelly Allen demonstrates that similar problems have been experienced in the Great Lakes Region countries of Uganda, Burundi and Tanzania.¹⁴
- 1.1.9 Scholarly literature shows that in the past decade, the Central, Eastern and Southern parts of the African continent have witnessed a sharp rise in the number of persons with albinism who have been attacked with a view to harvesting their body parts for ritualistic purposes.¹⁵ Monaliza Seepersaud states, for instance, that “[s]ince 2007, Tanzanian nationals with albinism (Persons with Albinism or PWAs) have been hunted and killed for their body parts.”¹⁶ Maureen Mswela, focusing on the South African situation but in the broader context of the African continent points out that the attacks are “[b]ased on the belief that the body parts of persons with albinism have extraordinary powers”, and that “unscrupulous dealers have resorted to harvesting their body parts with the expectation that these can be used to help them become rich.”¹⁷
- 1.1.10 Overstone Kondowe also highlights the regional character of the problem of discrimination and attacks against persons with albinism when he states that: “Violence

¹³ Amnesty International, Urgent Action: Persons with Albinism Risk Further Attacks, UA: 51/16 Index: AFR 36/3949/2016 Malawi (2016).

¹⁴ Allen, Kelly (2011) "The Human Rights Case of Persons with Albinism in Uganda," *Undergraduate Journal of Global Citizenship*: Vol. 1: ISS. 1, Article 1.

¹⁵ M Thuku, Myths, Discrimination, and the Call for Special Rights for Persons with Albinism in Sub-Saharan Africa, http://www.underthesamesun.com/sites/default/files/MYTHS.Final_.pdf (accessed 6 October 2016)

¹⁶ Monaliza Seepersaud, The Plight of Tanzanian Persons with Albinism: A Case for International Refugee and Asylum Procedure Reform, 32 *Emory Int'l L. Rev.* 115 (2017);

¹⁷ M Mswela 'Violent attacks against persons with albinism in South Africa: A human rights perspective' (2017) 17 *African Human Rights Law Journal* 114-1 33, 115; See also Monaliza Seepersaud, The Plight of Tanzanian Persons with Albinism: A Case for International Refugee and Asylum Procedure Reform, 32 *Emory Int'l L. Rev.* 115 (2017); CNN <http://www.cnn.com/2009/WORLD/africa/1/29/tanzania.personswithalbinism/index.html> (accessed 5 January 2017).

against Persons with Albinism (PWA) is a security governance challenge [that is] particularly acute in Africa.”¹⁸

1.1.11 Through various studies and reports, as well as through common local knowledge, it is now axiomatic that erroneous beliefs and myths, which are centuries old,¹⁹ and which are present in cultural attitudes and practices around the world, have perpetuated the spectre of attacks on persons with albinism. The Office of the UN High Commissioner for Human Rights (OHCHR) has observed that six special procedures mandate holders have observed that persons with albinism “are regarded as ghosts and not human beings who can be wiped off the global map. They are people...the target of many false and harmful myths in several countries, especially in the African region”.²⁰ According to the OHCHR, “[i]n some countries, persons with albinism are considered to simply vanish. In other countries, they are referred to as apes and a source of money. They are seen as sorcerers, devils or persons suffering from a curse and, in some communities, it is believed that contact with them will bring bad luck, sickness or death.”²¹

1.1.12 As discussed in the *Handbook for investigators, prosecutors and magistrates concerning offences against persons with albinism* (2016) (the Handbook), persons with albinism are persons with disabilities.²² The *Disability Act, 2012* supports this position. Section 2 of the Disability Act provides that:

¹⁸ Overstone Kondowe, *Violence on Persons with Albinism in Africa: A Security Governance Challenge Requiring New Approaches*, Presentation made at a Conference on Inclusion, Integration and Transformation: Social Protection for Persons with Disabilities in SADC, 3-4 May, 2017 Protea Parktonian Braamfontein Johannesburg, South Africa

¹⁹ The United Nations Children’s Fund (UNICEF) refers to the human sacrifice of a person with albinism believed to strengthen the power of the king in the Dogon cosmology and in the Bambara Kingdom. Aleksandra Cimpric, *Children Accused of Witchcraft: An anthropological study of contemporary practices in Africa* (Dakar, UNICEF, 2010), p. 28. Available from www.unicef.org/wcaro/wcaro_children-accused-of-witchcraft-in-Africa.pdf.

²⁰ See joint press statement issued on 4 May 2013, “Not ghosts, but human beings ... persons with albinism”. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13294&LangID=E.

²¹ Human Rights Council, *Twenty-fourth session: Annual report of the United Nations High Commissioner for Human Rights - Persons with albinism*, UN. Doc. A/HRC/24/57 (2013)

²² Kelly Allen, ‘The Human Rights Case of Persons with Albinism in Uganda’, *Undergraduate Journal of Global Citizenship*, Vol. 1, ISS. 1 [2011], Art. 1, 15.

“disability” means a long-term physical, mental, intellectual or sensory impairment, which, in interaction with various barriers, may hinder the full and effective participation in society of a person on equal basis with other persons.

1.1.13 The present study affirms the conclusion in the Handbook that the dermatological and visual conditions brought about by albinism clearly qualify albinism as a sensory condition; and that according to Section 2 of the Disability Act “impairment” means any loss or limitation of psychological, physiological or anatomical structure or function. The Handbook correctly posits that Albinism, in terms of the Disability Act, is a sensory impairment as it limits some physiological functions of the human body such as sight; or the anatomical structure of the body in the form of the skin. The conclusion is clear that albinism constitutes disability both within the meaning of the *Convention on the Rights of Persons with Disabilities* (CRPD) and the Disability Act.

1.1.14 Article 2 of the CRPD defines discrimination on the basis of disability as:

any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

1.1.15 This study also emphasises the four principles that undergird discourse on the rights of persons with disabilities; namely **equality**, **autonomy**, **participation**, and **solidarity**. Decisions taken in the course of legal processes, whether investigative, prosecutorial or

judicial, must therefore take into consideration and give effect to these broad and paramount principles as appropriate.

1.1.16 Malawi, in terms of the CPRD, has undertaken to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.²³ Acts of violence against persons with albinism, both psychological and physical violence, form part of the broad societal discriminatory apparatus against persons with albinism. Indeed, persons with albinism are victims of crime as a collective group, within the definition of the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*²⁴ which describes victims of crime as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.²⁵ The Declaration goes further to state that the term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization;²⁶ and that victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.²⁷

1.1.17 It must also be pointed out that in addition to the CPRD, Malawi is a party to various international and regional human rights instruments which are, in various ways significant in relation to the protection and advancement of the rights of persons with disabilities, including persons with Albinism in Malawi. Such instruments include the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the Convention on the Elimination of all forms of

²³ Article 4(1)(b) of the CRPD

²⁴ UN.Doc. A/RES/40/34 of 29 November 1985

²⁵ Para. 1

²⁶ Para.2

²⁷ Para. 4

Discrimination Against Women (1978); the Convention on the Rights of the Child (1989); the African Charter on Human and People's Rights (1981); the African Charter on the Rights and Welfare of the Child (1990); and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003).

- 1.1.18 It is also significant to note that there are various pieces of legislation which are important in relation to the protection and advancement of the rights of persons with albinism in Malawi, particularly as such rights relate to the spate of criminal attacks targeting persons with albinism. These include the Penal Code (as amended in 2016); the Child (Care, Protection and Justice) Act, 2010; the Anatomy Act (as amended in 2016), the Trafficking in Persons Act, 2015; the Criminal Procedure and Evidence Code; and the Police Act, among others.
- 1.1.19 Pausing there, this study affirms the conclusion in the Handbook that under present circumstances, persons with albinism in Malawi are collectively victims of crime, considering their vulnerability to attacks in the current social environment; and that State institutions should take heed to the call for judicial and administrative mechanisms to be strengthened and the need to ensure that persons with albinism obtain redress through procedures in the justice system that are expeditious, fair, inexpensive and accessible in respect to crimes perpetrated against them.
- 1.1.20 Since the adoption of the Handbook in December 2016, "the UN has supported popularisation of the Handbook through trainings targeting prosecutors and magistrates, as a critical intervention to strengthen the way the justice sector responds to crimes against persons with albinism. Current additional interventions include support for community based protection mechanisms, victims' assistance, psycho-social support and increased awareness raising around the rights of persons with albinism."²⁸

²⁸ <http://www.mw.one.un.org/govt-un-launch-handbook-on-offences-against-persons-with-albinism/>

1.1.21 However, although strides have been made in seeking to address the challenges presented by the surge in the criminal attacks on persons with albinism, and notwithstanding the adoption and popularisation of the Handbook, there is still lingering concern that there has not been much improvement in the investigation and prosecution of cases involving attacks on persons with albinism.

1.1.22 As the findings of this study show, there are a number of instances where, notwithstanding the firm recommendations in the Handbook, investigators, prosecutors and Magistrates are not fully taking these into account when, among other things, drawing up charges or sentencing accused persons. In a number of cases, investigators, prosecutors and Magistrates have still resorted to charging accused persons, dealing with and determining the cases against the same using the old law notwithstanding the 2016 amendments to the Anatomy Act and the Penal Code.

1.1.23 In April 2016, the UN Independent Expert on the enjoyment of human rights by persons with albinism, Ms. Ikponwosa Ero, visited Malawi upon the invitation of the Malawi Government, to appreciate first hand the situation and experiences of persons with albinism in Malawi. On conclusion of her mission to Malawi, the Independent Expert made various key recommendations, some of which have been effected, and some of which have either not been effected or are in the process of being effected. Among the key recommendations which still require urgent and close attention by Malawian authorities, is that there is little appreciation of the various new laws that are aimed at enhancing, in particular, the punishments to which persons found guilty of various offences against and targeted to persons with albinism. The Independent expert stated, in this regard, that:

The judicious use of multiple pieces of legislation is likely to increase sentencing in cases of attacks against persons with albinism. These include the Penal Code (Amendment) Act, the Anatomy (Amendment) Act, the Trafficking in Persons Act, the Disability Act and the Child Care, Protection and Justice Act.

However, during her visit, the Independent Expert noticed that a significant number of prosecutors and investigators were neither using combined charges where applicable, nor aware of any legislation beyond the Penal Code.²⁹

1.1.24 It appears that the UN Independent Expert's observations remain valid to a significant extent, notwithstanding the adoption of the Handbook. It is in view of these concerns that it became necessary to undertake this study which aims at identifying gaps or challenges, good practices and successful approaches in responding to attacks on persons with albinism.

1.2 OBJECTIVES OF THE STUDY

1.2.1 The study has four main objectives:

- (a) To identify the nature and trends of cases that have been prosecuted;
- (b) To identify challenges in both investigation and prosecution;
- (c) To identify good practices, opportunities and successful approaches in investigating and prosecuting offences against persons with albinism; and
- (d) To document lessons learnt in investigating and prosecuting offences against persons with albinism.

1.3 RESEARCH QUESTIONS

1.3.1 The study addresses the following key questions:

- (a) What are the nature and trends of cases relating to attacks on persons with albinism that have been reported, investigated and

²⁹ Human Rights Council, *Report of the Independent Expert on the enjoyment of human rights by persons with albinism on her mission to Malawi*, Thirty-fourth session, 27 February-24 March 2017, UN. Doc. A/HRC/34/59/Add.1, para. 23.

prosecuted including the type of case, characteristic of the perpetrator, characteristic of the victim and location?

- (b) What is the median time taken to investigate and prosecute these cases?
- (c) How many cases have been completely investigated and prosecuted (targeting completion)?
- (d) What are the factors contributing to successful investigation and prosecution of cases?
- (e) For cases where investigation has been completed but no prosecution done, what are the factors/ reasons behind non-prosecution?
- (f) What are the major causes of delays in investigating and prosecuting cases related to attacks on persons with albinism?
- (g) What are the challenges, bottlenecks and gaps in investigating and prosecuting cases related to attacks on persons with albinism?
- (h) What are the best practices and approaches that have been used in the successful investigation and prosecution of these cases?
- (i) What are the lessons that can be learnt from the cases that have been investigated and prosecuted?

2. METHODOLOGY

2.1 This is a descriptive study that employs data collection and analysis methodologies. The study has been drawn from, firstly, a desk review of various literature on the investigation and prosecution of cases involving violence against persons with albinism in Malawi; including a review of, among others, existing research/inquiry reports, UN agencies and other international organizations mission and other reports, court judgements on cases dealing with attacks against persons with albinism and other relevant literature on investigation/prosecution of cases involving attacks on persons with albinism in Malawi and neighbouring countries.

2.2 Secondly, the study also draws from interviews with key informants such as investigators, prosecutors, magistrates and victims including communities which have been of much help in expanding our understanding of the challenges and gaps in investigating and prosecuting cases relating to attacks on persons with albinism. The study has included specific interviews with the Office of the Director of Public Prosecutions as well as other key Informants with a view to further understanding the challenges and documenting successful approaches and best practices. The major aim of the study has been to analyse and understand the nature and trends of the cases; the nature and characteristics of the perpetrators and victims; and to identify the challenges and gaps in investigation and prosecution of cases relating to attacks on persons with albinism.

3. NATURE AND TREND OF CASES

3.1 Literature Sources

3.1.1 Violations of the rights of persons with albinism take various forms. According to an *Investigative Research on the Abductions, Killings and Exhumation of the Remains of Persons with Albinism in Malawi* conducted in 2016 by UNICEF and the Department of Disability and Elderly Affairs, the common offences constituting attacks on persons with albinism are *abductions, killings and exhumation of the remains of persons with albinism.*³⁰ The Research Report states, however, that the nature and trends of these offences are complex and that “they have kept on shifting since government increased the efforts to combat these malpractices.”³¹

3.1.2 Kondowe (2017), states that “[w]hile the violations take many forms, the most common forms are *verbal abuse, abduction, killing and exhumation of remains of deceased PWA.*”³²

³⁰ UNICEF & Department of Disability and Elderly Affairs, *Investigative Research on the Abductions, Killings and Exhumation of the Remains of Persons with Albinism in Malawi* (2016), 19.

³¹ Ibid.

³² Kondowe (2017), note. 17 (above) (Emphasis supplied)

3.1.3 Amnesty International (2016) also reported that “since 2009 there have been increasing numbers of *abductions, killings* and *exhumations* of the remains of persons with albinism.”³³ In its subsequent March 2017 Report, Amnesty reported that the “organization documented abuses including *abductions, killings* and *grave robberies* by individuals and criminal gangs, as well as *discrimination and abuse* based on erroneous beliefs and myths influenced by superstition that body parts of persons with albinism contain magical powers and bring good luck.” Amnesty International proceeds to state that:

In 2016, Malawi recorded an unprecedented wave of killings of persons with albinism. Between December 2014 and January 2017, Amnesty International documented the killing of 19 individuals with albinism and the abduction of five others whose whereabouts remain unknown. The organization further documented at least 107 crimes against persons with albinism as of December 2016, including *attempted abductions* and the *opening up of graves* in search of bones of deceased persons with albinism which are allegedly sold to practitioners of traditional medicine in Malawi and Mozambique for use in charms and magical potions in the belief that they bring wealth and good luck. The macabre trade is also fuelled by a belief that the bones of people with albinism contain gold.

3.1.4 Thus the literature shows that the nature of offences committed against persons with albinism in Malawi largely comprise killings, abductions, attempted abductions, verbal

³³ Amnesty International, “We Are Not Animals To Be Hunted Or Sold”: Violence And Discrimination Against People With Albinism In Malawi, (London: Amnesty International, 2016), 22.

abuse, desecration of burial places (graves), and exhumation of the remains of deceased persons with albinism (a practice that Amnesty International also calls “grave robberies”).

3.1.5 The nature and trend of offences against persons with albinism is further demonstrated through analysis of cases that have actually come before the courts. In a number of cases, the actual decisions were fully analysed. The analysis is provided in the next section.

3.2 Nature and trend of cases: cases reported, investigated or prosecuted

3.2.1 *Homicide/homicide-related*

The first category comprises homicide or homicide-related cases. These are arguably the most serious offenses against persons with albinism.

(a) The only murder case reported as ongoing in the High Court thus far is ***Republic vs CC & 5 Others*** (2015). The case is being tried at the Zomba High Court Registry and is at an advanced stage of prosecution. The case delayed due to delayed results of DNA evidence. Specimen of tissue allegedly recovered from a suspect was sent for DNA examination at a South African DNA laboratory to determine whether the same would match with the blood sample of biological mother of deceased victim. The case is being prosecuted by the State Advocate Chambers, Blantyre.

(b) On attempted murder, two cases were reported. First is the concluded case of ***the State v Sam Kaumba***,³⁴ which has been widely reported. The accused person was in a relationship of trust with the victim. Victim used to call the accused person “mjomba” (uncle). The accused asked the victim to follow him to collect some chickens. When they got to a bush, the accused person, in the accompany of two others, attacked the victim boy, aged about 11 years old, until they were disrupted by

³⁴ Criminal Cause No. 2 of 2015 (HC, MZ)

passers-by. It was clear that their intention was to murder the victim in cold blood. The accused person was sentenced to maximum prison term of life imprisonment by the High Court. The other case is that of the *State vs Joseph Ndimbwa*,³⁵ High Court of Malawi, Mzuzu. This attempted murder case was reported to be at the plea and directions stage before the Hon Justice Dorothy DeGabriele.

- (c) Two cases of conspiracy to murder were reported. The first is the case of *Republic vs Dick Maloko, Isaac Maloko, Kaombe Kachingwe, Dickson Mashata*.³⁶ The accused persons charged with conspiracy to murder contrary to Section 227 of the Penal Code. The accused had approached a village headman whom they thought would be interested in a deal to abduct and murder a person with albinism in order to remove his/her tissue for ritual purposes. The village headman reported to other authorities and the police and the accused persons were arrested. Upon conviction after full trial, they were sentenced to 10 years IHL. The second is that of *Republic vs Wyson Pichesi & Thomas Yusufu*.³⁷ The accused persons were charged with various offences including conspiracy to commit a felony under section 404 of the Penal Code. The felony specified in the particulars of the charge was that of murder. It is unclear why Section 227 of the Penal Code was not used. They were sentenced to 4 years IHL for conspiracy to commit a felony.
- (d) Notably, both these offences were committed, and the cases dealt with and disposed of after the coming into operation of the amendments to the Penal Code of 2016. We will return to this point later in the study. It is however surprising that they were charged under general provisions and not the provisions specific to persons with albinism. As pointed out in the Handbook, the specific offence as it relates to persons with albinism is section 224B of the Penal Code. That Section provides that:

³⁵ Criminal Case No. 1 of 2018

³⁶ Criminal Cause No. 479 of 2016, (SRM East)

³⁷ Criminal Case No. 158 of 2016, Zomba CRM

(1) A person who, knowing another person to be a person with any type of disability, for any purpose whatsoever, conspires with a third person or causes or attempts to cause a third person, to –

(a) kill the person with disability;

(b) maim, wound or otherwise cause grievous bodily harm to the person with disability;

(c) extract human tissue from the person with disability;

(d) sexually or otherwise assault the person with disability;

commits an offence and is liable, on conviction, to imprisonment for life.

(2) For purposes of this section, “disability” has the meaning ascribed under the Disability Act and includes albinism, birth or other deformities, intellectual and physical disabilities.

(3) A person is deemed to have caused an act under subsection (1) where the person instructs, encourages, promotes, incites, directs, demands, requests or otherwise makes another person to do any of the proscribed acts.

- (e) Thus the maximum consideration for sentence should have been life imprisonment. This is just one example of several instances where Magistrates must remain mindful that there have been changes in the law. This study reiterates what the Handbook states that:

Courts in particular are to pay careful attention to the significance of Section 224B of the Penal Code in so far as the imposition of punishments is concerned. The offences under Section 224B are aggravated forms of the general crimes elsewhere in the Penal Code or under any other law, such as the Anatomy Act, in so far as Section 224B applies specifically to offences targeted at persons with disability and...persons with albinism in particular. Therefore,

notwithstanding that the maximum punishment under the general law may be similar to that applicable under Section 224B of the Penal Code, Courts should not apply the general sentencing trend under the general penal provisions to Section 224B offences. Courts should impose significantly stiffer sentences in order to reflect the unique gravity of offences targeted at persons with albinism...Similarly, Police Investigators and all prosecutors are likewise advised, where an offence under the general law falls in the category of an offence under Section 224B of the Penal Code, to prefer a charge under Section 224B.

- (f) Although only a few cases were reported to the researcher directly, there are many cases of homicide that have been reported through the media or otherwise. There are, for instance, a number of important cases that have been reported by Amnesty International (AI) in its 2016 Report, *“We are not animals to hunted or sold”: Violence and Discrimination against People with Albinism in Malawi*.³⁸ The report followed some comprehensive nationwide research that the organisation conducted in 2015/2016. Some of the cases reported in the AI report are the following:

i. In Re Fletcher Masina³⁹ (Republic vs Kenneth Moses & Others)

AI reported that on 24 May 2016, a 38-year-old man with albinism, Fletcher Masina, was attacked and killed by unknown persons while working in his garden in Zintambira village under Traditional Authority Chakhumbira in Ntcheu district, Central Region. Fletcher and his wife went to their vegetable garden in the morning which is some distance from their village. At about lunchtime Fletcher’s wife said he told her to go home while he continued working in the garden. At about 7pm his wife said she told her brother that Fletcher had not returned home. A search party was sent to the

³⁸ Amnesty International, *“We are not animals to hunted or sold”: Violence and Discrimination against People with Albinism in Malawi* (London: Amnesty International, 2016)

³⁹ Ibid. Police reference No. NU/CR/40/05/16.

garden to look for him but all they saw was blood all over the garden and signs of a struggle. They tried to follow the blood trail but it was too dark to see anything. The next day, police and relatives continued the search and found Fletcher's body a few hundred meters from the garden with both hands and legs cut off.

As at March 2018, information supplied by APAM suggests that investigations have since been concluded and that the matter is now ready for prosecution. The case docket is with the Director of Public Prosecutions.

ii. In Re Jenifer Namuso⁴⁰

AI reports Malawi police sources as stating that a 30-year-old woman with albinism, Jenifer Namuso, was found dead in Phalombe District on 30 April 2016. According to the Report, Jenifer Namuso was stabbed in the back, abdomen and elbow and her breasts and eyes were removed. Jenifer was attacked as she made her way to another village on a bicycle to seek traditional medicine. The report stated that Jenifer Namuso left home very early at about 2am and her mutilated body and bicycle were found at later that same morning at about 10am. The report notes that it was not clear why she travelled so early in the morning or whether she left home alone or in the company of another or others. At the time of writing the report in mid-2016, AI reported that the attackers were yet unknown and police were still investigating.

The latest information as at March 2018 is that accused persons are still at large and investigations therefore are still underway.

iii. In Re Davis Fletcher Machinjiri⁴¹ (Republic vs Mabvuto Biswick & Others)

AI reports that according to Malawi Police sources, Davis Fletcher Machinjiri, a 17-year-old boy with albinism, left his home in Dedza district on 24 April 2016 to watch a

⁴⁰ Ibid. Police case Ref. No. PB/Cr/31/04/16

⁴¹ Ibid. Police case Ref. No. DZ/Cr/02/05/16

soccer game with a friend and never returned. According to the report, Davis Machinjiri was abducted by about four men who trafficked him to Mozambique and killed him. The men chopped off both his arms and legs and removed the bones. They then buried the rest of his body in a shallow grave. Davis's remains were found in Mozambique on 1 May. Two men were arrested by the Malawi police and charged with "conspiracy to commit a felony contrary to Section 404 of the Penal Code", "abduction with intent to murder contrary to 261 of the Penal Code", and "trafficking [a] person" under Section 15(1) of the Trafficking of Persons Act. It was reported that the accused persons pleaded guilty to the charges, were convicted and sentenced to 25 years' imprisonment each. Amnesty International further reported that as at 2016 when the report was being compiled, the accused persons were also facing murder charges and the trial was on-going.

This version was confirmed by officers from Dedza Police Station during the National dialogue and validation workshop held on 26 March 2018 at Bingu International Conference Centre (BICC) in Lilongwe. It was confirmed that convictions were entered for the offences listed above and that the matter was sent to the office of the Director of Public Prosecutions for prosecution on the murder charge. It was not suggested, as AI states, that the trial in this matter is ongoing.

It will be interesting to see how the High Court handles this case if it does go for prosecution because the case authorities in Malawi seem to suggest that an accused person cannot be charged with the principal offence after already being prosecuted for conspiracy to commit the same offence. The practice of prosecuting accused persons for conspiracy first in offences against persons with albinism should be a matter of very prudent prosecutorial exercise which the present study strongly recommends should be done with the authority of the Director of Public Prosecutions.

iv. In Re Enelesi Nkhata⁴² (Republic vs Gerald Phiri & 9 others)

According to AI, Enelesi Nkhata, a 21-year-old woman with albinism, went missing for some days from Kumtumba village in Dedza district under Traditional Authority Kaphuka. Her body was found in a shallow grave and in a state of decomposition by farmers at Mpare Estate in Dowa district on 14 April 2016 with her arms and legs cut off. The body also had a stab wound on the chest.

According to the AI report, Enelesi had been tricked by a relative into believing that he had found her a job in Madisi, in Dowa district. At least 10 men, including the relative and some businessmen, were arrested by police on suspicion of involvement in the killing of Enelesi. At the time of reporting two men, including the relative, were convicted of conspiracy to murder and abduction under the Penal Code and sentenced to 17 years' imprisonment with hard labour. All 10 were facing murder charges.

Once again, this report by AI was corroborated by the Magistrate at Mponela Magistrate Court during the National dialogues and validation workshop held on 26 March 2018 at BICC in Lilongwe.

According to information from Mponela Police Station and from APAM, as at 2018, the murder docket on this matter is now with the Director of Public Prosecutions and the case is ready for prosecution.

v. In Re Whitney Chilumpha⁴³ (Republic vs White Chilumpha & 4 Others)

The AI 2016 report states that on the night of 3/4 April 2016, a girl with albinism aged 23 months, Whitney Chilumpha, was snatched from the family home in Chiziya village in the area of Traditional Authority Kaperula in Kasungu district. The mother of the

⁴² Ibid. Police case Ref. No. MP/Cr/39/04/16

⁴³ Ibid. Police Case Ref. No. KU/Cr/10/04/16

child, Madalitso Lemani (25), went to bed at about 8pm on 3 April with the toddler sleeping next to her. When she woke up at about 4am on 4 April she discovered that the child was missing. As soon as she noticed that the child was missing Madalitso alerted other residents and a search was conducted but they did not find the child. According to the report, on 13 April, at around 2pm, two women who were fetching firewood in Balantha hill in the area discovered pieces of skull, some teeth and clothing items that included a diaper. Madalitso positively identified the clothing items as the ones last worn by baby Whitney before she was abducted. The discovery was reported to the police who visited the scene for investigations. Four bones believed to be those of Whitney were found in a garden a few weeks later. At the time of compiling this report police were holding five men, including Whitney's father, on suspicion that they had been involved in the abduction and killing of the child. As at 2016, it was reported that baby Whitney Chilumpha was the second person with albinism to be killed in Kasungu district in 2016.

According to the most recent information from APAM, as at the time of writing this Report (March 2018), prosecution of this case started with funding sourced by APAM. Two witnesses testified, and the case has since stalled because the funding from APAM ran out.

This case brings to the fore the sad reality about the nature of our criminal justice system in so far as the prosecution of offenses against people with albinism is concerned. In fact this is an issue that was also hotly debated during the stakeholder dialogue and validation workshop at BICC on 26 March 2018. The Government of Malawi needs to show greater commitment by ensuring that all cases involving attacks on persons with albinism are vigorously and speedily prosecuted, whether with or without outside donor funding. Government, through Government funds, has the primary duty to ensure that these offences are vigorously prosecuted.

vi. In Re Harry Mackson⁴⁴

AI reports in its 2016 Report that on the night of 27/28 February 2016, a gang of unidentified men broke into the family home of a nine-year-old boy with albinism, Harry Mokoshoni (also known as Harry Mockshon or Harry Mackson), of Mpakati village under Traditional Authority Chikwewo in Machinga district, where he was sleeping with his mother. The men threatenekd Harry's mother and injured her as they took the boy away. After days of searching, Harry's head was discovered in a neighbouring village on 3 March. It was reported that at the time of compiling the AI Report in mid-2016, 10 men had been arrested and charged with murder. According to AI, among those arrested for the killing of Harry was a man who had been convicted in 2015 for possessing bones suspected to be of a person with albinism and who was, on that occasion, fined MK20,000 (US\$29). AI has, in this regard, expressed serious concerns on other cases where police did not thoroughly investigate how suspects obtain bones. AI has expressed the belief that some cases involving suspects arrested with bones of people with albinism may actually be murder cases which were not investigated by police. It is feared that police assume that the bones may have been obtained through trespass of graveyards and the resultant exhumations of the remains of already dead persons with albinism. AI cautions, correctly so, that assumptions made without thorough investigations allow perpetrators to avoid facing serious charges and create a sense of impunity. As at March 2018, this matter is yet to be set down for trial before the High Court in Zomba.

It is noteworthy that the information compiled by Amnesty International on this case differs markedly from the information gathered by APAM on the same matter. According to APAM, Harry Mackson is the accused person in this case and not the victim as suggested by AI. According to APAM, the victim is Elias Chacha. Again contrary to AI's finding that the case is not at prosecution stage with 10 persons

⁴⁴ Ibid. Police Case Reference No.

arrested and charged with murder, APAM states that the case is still under investigations and that thus far, only the head of the victim was found.

The researcher did not have sufficient time to objectively verify the actual status of this matter in view of this discrepancy in the narratives.

vii. In Re Eunice Phiri⁴⁵ (Republic vs Madalitso Phiri & 2 Others)

AI has stated in its 2016 Report that according to its sources, Eunice Phiri, a 53-year-old woman with albinism from Bokosi village in the area of Traditional Authority Kaluluma in Kasungu district, was tricked by three men, including her brother, into accompanying them on a trip to Zambia through the Kasungu National Park. According to the Report, whilst passing through the National Park, she was killed and her body dismembered on or about 23 January 2016. According to the AI Report, Eunice Phiri's eight-year-old son, also with albinism, who had accompanied her mother on the journey, her managed to escape and returned home but was unable to explain to his relatives what had happened to his mother. The mutilated body of Eunice Phiri was later found on 28 January by a cattle herder with the arms cut off.

The latest information from Police is that the accused persons are still hiding in Zambia

viii. In Re Alfred Chigalu (Attempted murder)⁴⁶

The AI 2016 Report herein indicates that on the night of 29 November 2015 in Namasoko village under Traditional Authority Mkhumba, in Mulanje District, a gang of five men attempted to kill a 17-year-old boy, Alfred Chigalu. At around 10pm on 29 November, while Alfred was sleeping, the men broke into his hut armed with machetes, locally known as Pangas or "Zikwanje". According to the report, at the time of the attack Alfred was sleeping alone in his hut next to his parents' house. The

⁴⁵ Ibid. Police case Ref, No. KU/Cr/129/01/16

⁴⁶ Ibid

report indicates that the attack was foiled by Alfred's cry for help which woke up other residents who came to his rescue. The Report however sadly states that Alfred was seriously injured from the attack and suffered deep cuts to the forehead, arm and leg which required hospital treatment. AI reported that as of April 2016, indications were that the attackers remained unknown and that the case was still under investigation. There was no update from Southern Region Police Headquarters at the time of compiling the present study's Report.

ix. In Re Prescote Pepuzani⁴⁷

The AI Report (2016) states that in August 2015 a 40-year-old businessman with albinism, Prescote Pepuzani, disappeared for a week before his friends and family noticed. His family told Amnesty International that a report was made to the police on 13 August. Three weeks later, in September, what appeared to be human arms were unearthed by dogs in a neighbour's garden; the owner was arrested on suspicion of murder and released on bail. The residents told Amnesty International that they were told by police that the remains were of a monkey, which they did not believe. According to AI, suspects were arrested several weeks after Amnesty International's visit on 11 November 2015. As at March 2018, no update was provided to the researcher on the present status of this case.

x. In Re Iblah Chikopa

AI reports that on the night of 16 January 2015, the mother of two-year-old Iblah, Margret Chikopa, was woken up to the sound of a child crying. According to the report, the family had gone to bed at about 10pm with the children sleeping in a separate room. Margaret tried to wake her husband but he did not get up. Margaret then went out to search but could not see the child. She called for help and was joined by other community members. When they could not find the child, the village head went to report the case to the police, leading to the arrest of the child's father and

⁴⁷ Ibid

two other men. According to AI, a family member told the AI that team that some days before the child's abduction, a brother to Iblah's father was overheard threatening to sell the child. The family member told Amnesty International that she confronted Iblah's father and offered to take the child for his own safety, but the father refused and told her that he would protect the child. A few days later, according to the AI Report, the child was abducted. Following Iblah's abduction, AI reports that his father and two other men were arrested by police and charged with burglary and kidnapping under the Penal Code, but they were acquitted. Following the arrest of her husband, Iblah's mother left her family home as she strongly suspected that her husband or members of his family were involved. According to AI, Iblah's maternal grandaunt expressed the strong desire that all the family wants is to know the truth. She stated that the family is worried that they still do not know where Iblah is or where his grave is. She stated strongly that she wants the truth to come out. She lamented that the family is regrettably poor and that maybe if they had money they could afford hiring lawyers and be treated differently. She however rhetorically asked where the family can find the money to hire a lawyer when they are literally struggling to even get food. She stated with conviction that we do not choose what child God gives us, and that the missing child had to be the last to go missing.

xi. In Re Martha Phiri⁴⁸

AI reports that in January 2016, Martha Phiri, a mother of an eight-year-old girl with albinism, was approached by two women from her neighbourhood in capital city Lilongwe's Area 25 suburb. The two women, according to AI, invited Martha to one of their houses, saying that they wanted to discuss with her a business proposal that involved the child. When she enquired about the nature of the business the women told her that there was money involved. Martha told Amnesty International that the women informed her that her daughter had gold in her bones and that in order for it to be extracted they needed to take her to a European man. The women promised

⁴⁸ Ibid

Martha MK1 million (US\$1,500), which she refused. The women told her that she should go ahead with the deal. Martha then reported the conversation to her husband who advised that they report the incident at the local police station. This took her about two days. She first told a neighbour who was a police officer and the matter was reported at Kanengo Police station and statements were recorded. She then led the police to the home of one of the women and they were arrested. AI states that according to Martha, the first woman reportedly admitted to the offence when questioned while the second woman initially denied, but later changed her statement and admitted. After some delay in the case, Martha sought the help of a local human rights organization. That is when police told her that they were going to take the case to court on 19 February 2016. After a short trial, the two women were fined MK7,000 (US\$10) each. It is not clear from the AI Report what specific charges were preferred against the accused persons. AI reports that Martha had this to say about the outcome of the trial:

I am very bitter about what happened because my child's life is still at risk. I would have liked to see all the people involved given long prison sentences. I know the women and their husbands who were said to be involved. I do not feel that my daughter is safe to play within the community. She used to go to one of the women's home to play with other children. I don't know how I can get her to school.

3.2.2 Intimidation and Conduct likely to cause a breach of the peace

- (a) A study of the cases reported by Magistrates from around the country revealed that another category of common offences against people with albinism involve verbal attacks or abuses. Of the about 25 court decisions that have been systematically studied, six of them involved the expression of words that were either derogatory of or threatening on the victims. The practice of the State has been to charge the accused persons with

intimidation contrary to Section 88 of the Penal Code (Cap 7:01 of the Laws of Malawi) and, in the alternative, with conduct likely to cause a breach of the peace under section 181 of the Penal Code.

- (b) The analysis shows that in most cases, Magistrate courts have interpreted the use of derogatory language as not amounting to threatening and intimidating conduct and have in most cases acquitted the accused persons of the offence of intimidation under section 88 of the Penal Code. They have however routinely convicted them on the count of conduct likely to cause a breach of the peace which is a very minor offence carrying a maximum fine of k3000 and a prison term of not more than three months.
- (c) Thus for instance, in both the cases of *Republic v Ngunga Stande*⁴⁹ and *Republic v Carlos Zuze, Patrick Twaibu and Arnold Mbiriman*,⁵⁰ the accused person kept stating that the victim person with albinism was money and could be sold. The accused were acquitted on the more serious intimidation charge and convicted on the lesser charge of conduct likely to cause a breach of the peace. In each case they were given the maximum penalty of 3 months IHL.
- (d) In *Republic vs GK*, (2017), a Mchinji case but handled by the CRM Centre, the accused person was charged with the offence of intimidation contrary to section 88(1) of the Penal Code. The complainant alleged that he said that she was money and that she could be sold, but the case was subsequently withdrawn by the victim in June 2016. The Magistrate supplying the information to the researcher stated that due to the insufficiency of information available to her, she was unable to establish whether the two (the accused persons and the victim) were directly or closely related leading to the withdrawal of the charge.

⁴⁹ Criminal Cause No. 131 of 2016, SRM, Zomba

⁵⁰ Criminal Cause No. 198 of 2016, SRM, Zomba

(e) An observation needs to be made here about the nature of the offence of intimidation. First is that it is a more serious offence than the offence of conduct likely to cause a breach of the peace under section 181 of the Penal Code in that intimidation carries a maximum penalty of K50,000 fine and imprisonment for five years whereas the offence under section 181 of the Penal Code carries a maximum fine of k3000 and imprisonment for three months. Thus, considering the seriousness of the issue of attacks on persons with albinism, both verbal as well as physical, it would be apposite to frame charges around the more serious offence. As demonstrated above however, there are almost routine acquittals. In most cases, the accused persons call the victim persons with albinism as “money” and that the accused can make a fortune out of the victims. The question is whether it is correct to state that under these circumstances, the more serious offence of intimidation is not made out. The main reason for the acquittals is that the courts find that words such as those stating that a person with albinism is “money” do not constitute a “threat” in terms of section 88 of the Penal Code. The word “threaten” is incidentally not defined in the Penal Code. However the Cambridge Advanced Learner’s Dictionary, 3rd Edition, defines the word “threaten” to include “to be likely to cause harm or damage to something or someone.” The *Black’s Law Dictionary*, 6th Edition, describes “threatening” as constituting in word or gesture which, “in common experience is likely to create an apprehension of danger.”

(f) Pausing there, it is in this regard imperative to set out the terms of the relevant parts of Section 88 of the Penal Code. Section 88(1) (a) & (b) provide that:

(1) Any person who—

(a) by word, attitude, manner or conduct, threatens another with any injury to his person, reputation or property or to the person, reputation or property of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to

omit to do any act which he is legally entitled to do, or to prevent that person from carrying out any duties or work essential to the maintenance of public security, public tranquillity or public order or to the maintenance of essential services, as a means of avoiding the execution of such threat; or

(b) in the like manner and with the like intention threatens persons generally or any class or description of persons; shall be guilty of an offence.

- (g) It would clearly appear that words such as “look, money over there” are likely, in the common experience of persons with albinism in Malawi, to create an apprehension of danger in the mind of the victim. Such words would therefore constitute a “threat” within the meaning of Section 88(1) of the Penal Code. The next question is whether the threat is a threat to cause any injury to the person of the victim, to his/her reputation or property or to the person, reputation or property of anyone in whom that person is interested. This is where Magistrates find a missing element. But It seems rather clear that by using words suggesting that a person with albinism is essentially a commodity on the body parts market, such words constitute a direct threat to the person of the victim because there is no way that he or she can be said to be “money” without having his or her person violated and harmed physically. Clearly, the words are said with intent to cause alarm to the person with albinism concerned and the person uttering the words does so with knowledge, whether direct or constructive, that the person with albinism, as a result of such utterances might omit to do certain things that he or she is legally entitled to do, such as freely wandering around his or her neighbourhood at a time of his or her choosing to do any lawful activity. It is the conclusion of this study that perhaps Magistrates have not been deeper enough in their analysis of the elements of the offence of intimidation leading to the routine acquittals and conviction on a rather trifling offence of conduct likely to cause a breach of the peace.

- (h) It is therefore strongly recommended that, in view of the gravity of the problem of attacks on persons with albinism, Magistrates in the country should take a careful rethink on the precise elements and contours of the offence of intimidation under section 88(1) of the Penal Code.
- (i) Further, even if the offence of intimidation were totally unsustainable, a word of caution was sounded in the Handbook, that:

These offences are so commonplace and are causing a lot of psychological pain and anguish among persons with albinism. They clearly amount to a form of discrimination based on the status of such persons as persons with albinism. Regrettably, as can be seen from the provisions of sections 181 and 182 of the Penal Code, the punishments are very minor. A maximum of three months' imprisonment for conduct likely to cause a breach of the peace under section 181, or six months imprisonment for insulting language under Section 182. Interestingly, even under cases which would qualify under the more serious offence between these two which is insulting language under Section 182, Police investigators and prosecutors have routinely brought the lesser charge of conduct likely to cause a breach of the peace. Police investigators and prosecutors are encouraged to also invoke section 182 of the Penal Code in cases where insults are hurled at persons with albinism. (Emphasis added).

- (j) It was made very clear that the offence of using insulting language under Section 182 of the Penal Code is to be preferred over the lesser offence of conduct likely to cause a breach of the Peace under Section 181 of the Penal Code, yet in the cases committed after the coming into force of the 2016 amendments, it is evident that investigators and

prosecutors are still preferring the charge of conduct likely to cause a breach of the peace over that of using insulting language under Section 182. This study reiterates the need to for investigators and prosecutors to take careful note of the Handbook when framing charges.

- (k) However, is noteworthy that there was a conviction on the offence of intimidation in ***Republic vs PB***, (2016), SRM, Mwanza, (delivered 2018), where the accused person, a grown up man well-known to the boy child with albinism, around 11 years old, kept telling the victim to stop grazing goats, telling him that he did not want to see him around and that he would suck his blood dry one day. The Magistrate was convinced this conduct passed the test of intimidation under Section 88(1) of the Penal Code. The Magistrate was easily convinced that there was ground to convict because of the use of the words “I will suck your blood dry one day” which were viewed as a direct threat and a threat to cause harm to the person of the victim boy with albinism. The Court is yet to impose sentence hence the non-disclosure of the actual parties.

3.2.3 Trespass to burial sites and removal of human tissue

- (a) The second category of common offences were the related offences of trespass on a burial place contrary to section 129 of the Penal Code and removal of human tissue contrary to section 18(1)(a) of the Anatomy Act. Examples of such cases examined are ***Republic v Bel Diness and 2 Others***;⁵¹ ***R v. Siginala Kajenala Josaya (sentence)***;⁵² ***R v. Timothy Justine (sentence)***;⁵³ ***Republic vs Stenala Shaibu Lichapa, Julius Pichesi, Witness Liwenga, Damiano Msusa, Masautso Ng’omba and Watson Malemia***;⁵⁴ and ***Republic Vs. Goodson Rabson, John Yobe Chinyopilo, Anderson Mfusela***.⁵⁵ In these cases, the accused persons were tried and convicted for both offences of trespassing on a burial site and removal of human tissue.

⁵¹ Criminal Case No. 66 of 2015, (SRM, ZA), SRM

⁵² Criminal Case No. 66 of 2015, SRM, Zomba

⁵³ Criminal Case No. 276 of 2015, SRM, Zomba

⁵⁴ Criminal Case No. 165 of 2015, SRM, Zomba

⁵⁵ Criminal Cause No. 129 of 2016, SRM, Zomba

- (b) Most of the cases reported however related to offences that were committed and tried prior to the coming into operation of the 2016 amendments to the Penal Code and to the Anatomy Act. The implication is that the light sentences imposed are reflective of the previous light penalties under the old provisions.
- (c) There have also been cases of attempts to commit the offence of removal of human tissue, for instance in the case of ***Republic vs John Bakuwa & Vincent Mwachaya***,⁵⁶ which is a more recent case. The Magistrate imposed a sentence of 18 months IHL. In this case, it is worth noting that the particulars stated that the offence was committed on or about the 14th day of October 2017 at around 1000hrs at Likulungwa Village in the district of Mangochi. This means that at the time the offence was committed, the 2016 amendments to the Penal Code and the Anatomy Act were already in force.
- (d) That notwithstanding, it is evident that the learned Magistrate proceeded on the basis of the old version of Section 18(1)(a) of the Anatomy Act which imposed a maximum of a fine of two hundred fifty thousand Kwacha (subject to the Fines and Conversion Act) and to imprisonment for a period of three years. In the result, he imposed a sentence of 18 months IHL on each of the accused persons.
- (e) This case speaks to the need for Magistrates to carefully make use of the Handbook in their work, in the absence of an updated Law Revision Order incorporating the 2016 amendments to the Anatomy Act and the Penal Code into the Laws of Malawi series. If the Magistrate had consulted the Handbook, he could have noted that the full text of the amended provision is provided at pages 59-60 of the Handbook and that the maximum penalty for the substantive offence under that Section is life imprisonment. According to Section 402 of the Penal Code, an attempt to commit such an offence carries a maximum of seven years imprisonment. If the Magistrate had proceeded on the basis that the

⁵⁶ Criminal Case No. 419/17, SRM, Zomba

maximum penalty allowed for him to impose was 7 years imprisonment and not 3 years imprisonment, in all probability he was going to impose a much stiffer sentence than the one he imposed, a sentence that would have more closely reflected the gravity of the offence committed.

- (f) Likewise in the case of ***Republic vs Tomasi Ndini & 2 Others***,⁵⁷ the accused persons were charged on two counts. First was conspiracy to unlawfully exhume a human corpse contrary to section 404 as read with section 137B of the Penal Code; and the second count; couched in the alternative to the first count, was unlawful exhumation of a human corpse contrary to section 131B of the Penal Code. On the first count, the particulars were that Tomasi Ndini, Deziu Jonasi Ogala and Enock Banda during the months of March to April 2017 at Chibade village in the District of Mulanje conspired together to unlawfully exhume a human corpse of Chosaziwa Kaunda a person with Albinism.
- (g) On the 2nd (alternative) count, the particulars were that Tomasi Ndini, Deziu Jonasi Ogala and Enock Banda between the night of 30th day of April 2017 to 1st day of May, 2017 at Chibade village in the District of Mulanje unlawfully exhumed human corpse of Chosaziwa Kaunda a person with albinism. The Court however dropped the alternative charge on the basis that according to the authorities, a conspiracy charge could not be sustained together with a charge on the substantive offence, and the State had elected to prioritise the conspiracy charge. After a full trial, the learned Magistrate found the accused persons guilty of the offence. He noted that Section 131B of the Penal Code prescribes a maximum penalty of life imprisonment.
- (h) The learned Magistrate then noted that as a Senior Resident Magistrate, he did not have jurisdiction to impose a life sentence but that under section 14(1) of CP & EC he could impose a sentence of up to 21 years imprisonment. The learned Magistrate then stated that “Instead of imposing 21 years imprisonment, the court has exercised some leniency

⁵⁷ Criminal Case No. 326 of 2017 (SRM, Muloza, Mulanje)

and imposes the sentence of 14 years of imprisonment to each of the 3 convicts as from the date of their arrests.”

- (i) A concern must be stated with regard to the approach taken by the learned Magistrate when sentencing. A Reading of his reasoning seems to suggest that he put himself the sentence of 21 years imprisonment as the maximum benchmark from which he could now consider an appropriate sentence, and the basis for that approach was that as a Senior Resident Magistrate, the maximum sentence he could impose was 21 years imprisonment. This was so notwithstanding the fact that the statutory maximum penalty is life imprisonment which can only be imposed by the High Court of Malawi or the Supreme Court of Appeal upon final appeal. If the learned Magistrate was minded to pass a 14 year prison term as he did, he should not have made reference to the 21 years threshold which was neither here nor there. If the learned Magistrate had opined that the appropriate sentence e would exceed the maximum penalty he is permitted to impose according to the jurisdiction of his Court, he could have referred the matter to the High Court in terms of Section 14(6) of the Criminal Procedure and Evidence Code. As it is, one gets the impression that the Magistrate could have imposed a sentence higher than 14 years imprisonment had he not factored into account his 21 years threshold limit.

3.2.4 *Selling human tissue and attempts*

- (a) 3.3.1 Another strand of offences is that of selling human tissue contrary to section 16(a) of the Anatomy Act. Two concluded cases were reported to the researcher, both of which were committed and concluded before the 2016 amendments to offences relating to persons with albinism. These cases were ***Republic vs Stenala Shaibu Lichapa, Julius Pichesi, Witness Liwenga, Damiano Msusa, Masautso Ng’omba and Watson Malemia*** above and ***Republic vs Peter Jeke & Rabson Mwanyali***.⁵⁸ In ***Republic v Lichapa & Others***, the accused persons were sentenced to 12 months IHL for selling human bones. In ***Republic v Peter Jeke & Another***, the Court imposed a fine of K10,000 or one month IHL

⁵⁸ Criminal Case 172 of 2015, SRM, Zomba

in default. The accused persons were charged with the offence of selling human tissue contrary to Section 16 (a) of the Anatomy Act. The particulars were that Peter Jeke and Rabson Mwanyali on 11th April 2015 at Namwera Trading Centre in Machinga District offered for sale human tissue namely the hair of a person with albinism to Mr. Pius. At the time the offences were committed, the maximum penalty for this offence under Section 16 of the Anatomy Act was a fine of fifteen thousand Kwacha and imprisonment for a period of ten years.

- (b) The Magistrate, notwithstanding acknowledging that cases of this nature had proliferated in the Eastern region and that the offence was abhorrent considering that perpetrators were taking advantage of the disability of those with albinism to enter into illegal transactions, still decided to impose a trifling punishment of a K10,000 fine ostensibly on the ground that the Magistrate was satisfied that the 2nd accused person had been mistreated by the Police whilst in custody and sustained visible injuries. What is unclear is why the Court imposed the same sentences for both accused persons when only one alleged mistreatment and injury at the hands of the State. Indeed the first accused person was a witchdoctor and the Court acknowledged that the conduct of witchdoctors was aggravating the vulnerability of persons with albinism. Still the Court imposed a trifling K10,000 fine even on the witchdoctor.
- (c) The study notes that this was prior to the 2016 amendments to the Penal Code and the Anatomy Act but, with this kind of reasoning, it is probably that even under the present legal dispensation vis-à-vis offences against persons with Albinism, the learned Magistrate would still have imposed a very light sentence.
- (d) Whilst torture is universally prohibited and has arguably crystallised into a norm of *jus cogens* at international law, is imperative that the Court must still weigh all the factors and circumstances in the interests of justice generally. It would be appropriate that those who were guilty of torture be investigated thoroughly but that a healthy balance should

be struck with ensuring that attacks on persons with albinism are not practically trivialized on account of the fact that the Police abused their power when questioning the accused.

3.2.5 *Kidnapping or abducting in order to murder, child stealing and offering child for sale*

- (a) Another type of offence revealed during the study is that of abducting a child in order to murder contrary to section 261 of the Penal Code. One such case was ***Republic vs Wyson Pichesi & Thomas Yusufu*** above. The particulars on this charge were that Wyson Pichesi on the 11th day of June, 2016 at Muheya Village in the district of Machinga by deceitful means took away Tamandani Wyson a seven years old daughter with albinism with intent to murder or put her in danger of being murdered. He was also charged with offering a child for sale contrary to Section 82 (a) as read with Section 83 of the Child care Protection and Justice Act. He was convicted on both counts and Sentenced to 14 years IHL for abducting in order to murder the child with albinism; and 5 years IHL for offering a child for sale contrary to Section 82 (a) as read with Section 83 of the Child care Protection and Justice Act.
- (b) Another case was that of ***Republic vs Francis Dick & John Kapale***.⁵⁹ In this case, the accused persons were struggling with their businesses at Ntaja trading centre in Machinga and they thought that the solution lay in approaching a prominent businessman in the area so that they could supply him with human tissue from a person with albinism. One of the accused persons had a cousin with albinism. On approaching the businessman, he was shocked, and whilst appearing to cooperate with them he got them arrested by the Police. They were convicted and sentenced to 20 years IHL.
- (c) Another case reported was that of ***Republic vs Jafali Ligomba, Samson Alison, Aliya Mbale***.⁶⁰ They abducted a 4 year old child with albinism at Tumbwe village in Mangochi. There was clear evidence that they intended to kill the child. They were convicted of the

⁵⁹ Criminal Cause No. 406 of 2017, Chief Resident Magistrate Court, Zomba

⁶⁰ Criminal Cause No. 461 OF 2017, SRM, Zomba

offence of kidnapping with intent to murder under section 261 of the Penal Code. The researcher was only furnished with judgment on conviction. It is not known what sentence was imposed.

- (d) In the cases of *Republic vs Melinda Mbendera*,⁶¹ and *Republic vs Jana James*,⁶² the accused persons were charged with and convicted of the offence of child stealing contrary to section 167 of the Penal Code, the child in each case being a child with albinism. In the *Mbendera case*, the accused was convicted of attempted child stealing as the attempt to steal the child was foiled by some curious unidentified members of the public. In the Jana case, the accused was convicted of child stealing under Section 167 of the Penal Code and sentenced to 5 years IHL.

4. PERIOD FROM COMMISSION/ALLEGED COMMISSION OF OFFENCE TO CONCLUSION OF TRIAL

- 4.1 Out of the 25 Court decisions analysed, it was noted that in most cases the cases were investigated very quickly and prosecution also concluded with relative speed. The quickest recorded was *Rep v John Bakuwa & Another* which took 10 days from commission of the offence to pronouncement of sentence.
- 4.2 Thus far, the longest is the murder case at Zomba in *Republic vs CC & 5 Others* (2015) which has taken at least 36 months and is still ongoing.
- 4.3 Most of the cases took about 2 to 3 months to conclude from commission of the offence to pronouncement of sentence.
- 4.4 Excluding the murder cases, the mean average of the period taken from commission of offence, investigation and conclusion of prosecution has been 6.4 months.

⁶¹ Criminal Case Number 144 of 2015, SRM, Zomba

⁶² Criminal Case Number 142 of 2015, SRM, Zomba

- 4.5 When the murder cases are reckoned however, the situation drastically changes. The average mean period if trial in all the 23 murder cases were to conclude today goes up to 20 months. But only one of the 23 cases was concluded and all the rest are ongoing so the mean average taken will easily go up beyond 24 months and counting.
- 4.6 Thus when murder cases are isolated, they paint a rather grim picture in terms of the speed of both investigations and prosecutions. For instance, of the 23 cases listed by APAM in Annexure 4, some of which date back to as far back as 2014, none has yet been concluded. Most of the cases were committed between 2015 and 2016. On average, these have taken 3 years and time is still running without conclusion. Of the 23 cases listed by APAM, 8 are still under investigations. Of the 23 cases listed by APAM, 11 are stated to be ready for trial but they are still with the office of the DPP and they are either to be brought to Court for trial or have not been set down for trial. Only two have been listed to be undergoing trial and one attempted murder case was concluded.
- 4.7 From the figures above, it seems that for the lesser offences, such as those involving verbal abuses, trespass of burial places, exhumation of human tissue and selling of human tissue, the process from investigations to conclusion of trial is relatively very quick. The main problem lies with homicide cases. It would appear that these are faced with both investigative as well as prosecutorial challenges.

5. CHARACTERISTICS OF THE PERPETRATORS/ALLEGED PERPETRATORS

- 5.1 In most cases the perpetrators or suspected perpetrators have been young men between the ages of 22 years to 30 years old. In a few cases, those involved have gone up to the late 40s.
- 5.2 In one case, the case of **Rep vs Melinda Mbendera**, the offender was a young woman in her 20s. She was a repeat offender according to the finding of the Magistrate.

- 5.3 This trend seems to show that it is mostly the energetic and economically productive age bracket that is involved in attacks on persons with albinism. This speaks to the myth that somehow body parts of persons with albinism have ritualistic characteristics which can lead to economic empowerment and flourishing.
- 5.4 It is also evident that in invariably all cases, the persons involved in the attacks are either poor villagers or young people struggling to make ends meet at various trading centres. The case of ***Republic vs Francis Dick & John Kapale*** is a classic illustration. Thus, on top of the issue of myths is the factor of poverty as a driver for the proliferation of these attacks. The poverty is feeding on the superstitious myths.
- 5.5 Just from the case analysis, it is also very clear that in the overwhelming majority of cases, someone related to the victim is involved, especially in cases involving murder, attempted murder, conspiracy to murder, kidnapping or abduction in order to murder. This observation is corroborated by the response from the Police Eastern Region who stated that:

Perpetrators mostly [act] like a chain. One person starts it, by expressing interest in finding a person [with] albinism and contracts another, that another contracts another, until a relation or a close acquaintance of that person with albinism is identified, coaxed with a promise of huge pay out (mostly quoted in millions [of Kwacha]). And it is that relation [either] alone or in company with the strangers that executes the attack. OR, it starts with the relative/close acquaintance attacking the victim and starts looking for a market.

- 5.6 The UN Independent Expert on the Enjoyment of Human Rights by Persons with Albinism has equally found that attacks on persons with albinism usually involve a person who is closely related to the victim.

6. CHARACTERISTICS OF VICTIMS

- 6.1 Most of the victims are either children, who are simply physically carried and taken away, or young persons with albinism. Thus in the cases analysed, the youngest victim was aged four years old in ***Republic vs Jafali Ligomba, Samson Alison, Aliya Mbale***. It is probable that attacks on older persons with albinism are viewed as more risky by the perpetrators. It seems unlikely that the superstitious myths dictate the age of the victims because those that have gone to trespass burial sites and remove tissue from the remains of the dead have not discriminated in terms of the age of the deceased.

- 6.2 The analysis from the cases herein which shows that most of the victims are either children or young people is also supported by the findings of the Police from an investigative perspective. The Eastern Region Police has indicated to the researcher that:

Most of the victims are persons living with albinism and are children. On reported cases in the Eastern Region the oldest victim is aged 24...[and] on attacks targeted to compounds, the [targets] are the isolated [settlements] e.g. Chikweo area and [attacks] mostly happen when the guardian is away.

- 6.3 In view of the fact that most of the victims are either children or young people, it is of paramount importance that parents, guardians and other caregivers should be sufficiently sensitized on appropriate measures to take in order to ensure that their children are safe. Families that have persons with albinism, especially where these are children or young persons, should be appropriately empowered with defensive means in the homes including tightening access to and the general security of the homes. The

young people should also be sensitized in their own respect on the need to be very cautious and not to repose too much trust even in close relatives when they make them offers to leave their homes for some unknown or suspicious places. The Ministry responsible for home affairs and internal security, together with the Malawi Police Service, should take the lead in these sensitization campaigns.

7. LOCATION OF THE ATTACKS

7.1 As the list of analysed cases received from Magistrates around the country shows, the overwhelming number of cases of attacks is in the Eastern region, especially in the districts of Machinga and Mangochi and to a certain degree, Zomba. This again is corroborated by information from the Malawi Police Service Eastern region which responded to the researcher that:

Malawi was divided into four policing regions, these include Central, North, South and East. Eastern Region is made up of four districts, Zomba, Machinga, Balaka and Mangochi districts. Of all the Regions, Eastern Region is the most hit by attacks on persons with albinism, registering approximately 16 prosecuted cases (Eastern Region Police Headquarters Report on cases Involving People With Albinism for the Period of 2013-2017). Machinga is the most affected with approximately 60% of all the reported cases. Offences range from Found in Possession of Human Parts, Kidnappings, Tampering with Grave yards, Murder, Intimidation to Conduct likely to cause breach of peace. The areas of Chikweo, Ngokwe and Nkoola are the most hit with most attacks.

7.2 This finding also resonates with the findings of the UN Independent Expert on the enjoyment of human rights by persons with albinism who, during her mission to Malawi in 2016, equally

definitively found that Machinga has been the most affected district by these attacks.⁶³ Once again, there is need for deeper social research to unearth the factors that result in attacks on persons with albinism to be more widespread in the Eastern Region of the country.

- 7.3 It is also importance that there should be increased Police presence in the most highly affected areas to bring a greater sense of security for the communities; and border patrols should also be enhanced.

8. MAJOR CHALLENGES IN INVESTIGATING AND PROSECUTING CASES

8.1 Perspectives from the Judiciary

8.1.1 A number of cases delay where Magistrates have to travel away from duty station since cases are supposed to be dealt with by Professional Magistrates only. This is a resource problem. This follows *Practice Direction No. 1 of 2016: Handling of Cases Concerning Persons with Albinism by Magistrates* issued by the Honourable the Chief Justice on 3rd May 2016 which directed that owing to the divergent approaches and considerations by Magistrate Courts in handling and determining cases concerning persons with albinism, all cases in that category should be handled by Chief Resident Magistrates, Principal Resident Magistrates and Senior Resident Magistrates only; and that the Practice Direction was intended to facilitate speedy disposal of the cases as well as ensure consistency in the manner in which such cases are managed and dealt with.

8.1.2 Cases also frequently delay because of shortage of Magistrates. Most of the cases are concentrated in the Eastern Region. In the past two years, at least six professional Magistrates have been transferred from the CRM Court, East. Now, the only professional Magistrate in the Eastern Region is the CRM. In view of the CJ's Practice Direction, this has seriously compromised service delivery in so far as the handling of offences relating

⁶³ Human Rights Council, *Report of the Independent Expert on the enjoyment of human rights by persons with albinism on her mission to Malawi*, Thirty-fourth session, 27 February-24 March 2017, UN. Doc. A/HRC/34/59/Add.1, pages 9-10.

to persons with albinism are concerned. There is urgent need for more professional Magistrates in the Eastern region.

- 8.1.3 In some cases, where the Magistrate has been transferred, progress on cases slows down significantly due to resource constraints. The main solution here lies in ensuring that enough resources are allocated to the Judiciary and to the specific cost-centres concerned to ensure that Magistrates who have been transferred are able to easily travel back to their former duty stations to conclude the cases.
- 8.1.4 In some cases, as some of the cases from Mchinji show, the victims withdraw the complaint. This poses a challenges in this cluster of cases where the Court is geared to be part of the solution to this endemic problem of attacks on persons with albinism.
- 8.1.5 A heightened sense of insecurity among Magistrates was also cited as a factor that make cases involving attacks on persons with albinism a concern. Magistrates expressed fear that in some cases, especially where there is an acquittal of a suspect, there is a heightened sense of personal and family insecurity due to simmering anger within the community. Magistrates are not provided with any form of security.
- 8.1.6 Unavailability of witnesses to testify. Many times cases are adjourned because prosecution witnesses are unavailable for the trial to continue.
- 8.1.7 Unnecessary applications by Counsel for accused persons that end up delaying the trial. To ensure fair trial, the Magistrate has to listen to the representations of the accused person's Counsel but sometimes the technical issues raised are deliberately designed to slow down the trial process.

8.1.8 Lack of coordination with other actors, e.g the Director of Public Prosecutions' Chambers and the Legal Aid Bureau. Sometimes resources are wasted on travel only for another or other actors to fail to turn up and the cases fail to take place.

8.1.9 Badly drafted charges by prosecutors. These delay cases as the Court orders that they be properly drafted. Sometimes the poorly or inappropriately drafted charges may have an adverse effect on the outcome of the case for the State.

8.1.10 Lack of proper guidance from the High Court or through sentencing guidelines on the trend of sentencing to follow in offences against persons with albinism.

8.2 Perspectives from the Police

8.2.1 Some investigations stall because suspects flee to neighbouring countries. In the Eastern Region, they flee to Mozambique. It is difficult to secure the co-operation of the Mozambican counter-parts to trace the suspects. Malawi has no extradition agreement with Mozambique.

8.2.2 Unavailability of witnesses for trial. Witnesses are unavailable for various reasons. Sometimes they cannot be traced. Sometimes they are unwilling to testify because they are related to the accused person. Sometimes they are too traumatized or afraid to testify.

8.2.3 Some cases have stalled in investigation because investigators lack capacity both in personnel and equipment.

8.2.4 The prosecutions set up in cases relating to persons with albinism in centralised, i.e the cases are handled at the regional prosecutions level. On the whole has turned out to be a good practice, but it has also come with its own challenges. For example, where an offence against a person with albinism is committed at Ngokwe, and witnesses have to travel from Ngokwe to Zomba at their own expense, this is demotivating on the witnesses

and they frequently fail to come and give evidence thereby derailing the prosecution process.

8.2.5 Lack of resources is a major factor in slowing down progress on cases concerning persons with albinism. The Police has largely ended up merely relying on public goodwill for information in order to make leads due to lack of adequate financial resources to undertake essential and probing investigations on the attacks. Prosecutors frequently struggle to locate key witnesses and this ends up compromising either the progress or indeed the ultimate fate of the criminal case.

8.2.6 Lack of equipment: computers, printers, digital cameras (to capture crime scenes and exhibits), mobility - vehicles + fuel (it normally takes time for police investigators to visit crime scenes).

8.2.7 Lack of capacity building. There are insufficient numbers of well-trained specialized detectives on cases of attacks on persons with albinism. It was reported that an average investigator in Malawi receives training at Police Training School which is general in nature and not specifically suited for investigation of complex cases which in some instances involve cross-border crimes and the need for DNA evidence for matching suspects to victims. Police lacks training and equipment to conduct such pertinent investigations.

8.2.8 Technological challenges, such as lack of DNA testing equipment, laboratories and testing experts.

8.3 Perspectives from the Director of Public Prosecutions' Chambers

8.3.1 The Director of Public Prosecutions' (DPP's) Chambers acknowledged that there have been very significant delays in the prosecution of homicide offences concerning attacks on persons with albinism. Two major challenges leading to such delays were advanced.

- 8.3.2 The first Challenge relates to delays in investigations by the Police. There are numerous instances where, although Police officials have reported that investigations have been concluded, when the case docket reaches the DPP's Chambers, it is referred back to the Police for further investigations. The DPP's Chambers views these cases with great seriousness and therefore wishes to ensure that nothing is left to chance. The DPP's Chambers calls for great investigative circumspection and that investigations must be thorough in order to avoid unnecessary acquittals. Such requirements for further investigations have led to significant delays in prosecuting these cases.
- 8.3.3 The second major challenge was that in homicide cases, it is mandatory that the accused person must be legally represented. Although this is so, in the 2015/16 financial year, the Legal Aid Bureau (LAB), which is the State agency mandated with the responsibility of providing legal aid in Malawi, took a decision that due to major funding constraints from Government, it would not be available to represent suspects in homicide cases in the country. It is only in the 2017/2018 financial year that the LAB has resumed such services. Considering that almost all suspects in these offences rely on the LAB for legal representation, and the LAB did not make an exception for these cases in terms of its decision to suspend services, it was not possible for prosecutions to move resulting in very significant delays.
- 8.3.4 At the time of publishing this Report, the DPP's Chambers reported that it was ready to proceed with prosecutions in about 20 cases, some of which were already in progress in the courts.
- 8.3.5 The DPP's Chambers and indeed the Ministry of Justice and Constitutional Affairs (MOJACA) generally, forms the view that the problem of attacks on persons with albinism is greatly contributed to by the practices of witchdoctors or traditional herbalists with demand the human tissue of persons with albinism for ritualistic purposes. In this regard

the MOJACA is developing a Bill on the regulation the practice of traditional healers or traditional herbalists (some of whom are known as witchdoctors).

8.4 Perspectives from Parliament

8.4.1 The National Assembly is deeply concerned with the problem of delays in investigations and prosecution of cases concerning persons with albinism. Thus the National Assembly is setting up a formal enquiry into the problem of attacks on persons with albinism in Malawi.

8.4.2 The Enquiry will be done jointly by the Legal Affairs Committee of Parliament; the Defence and Security Committee of Parliament; and the Social and Community Affairs Committee of Parliament.

8.4.3 At the time of publishing this Report, the Enquiry had already received the approval of the Speaker of the National Assembly and the National Assembly (Parliament) was looking for more funds to operationalise the formal Parliamentary Enquiry.

8.4.4 The Social and Community Affairs Committee of Parliament forms the view that perhaps the Judiciary should set up “special Courts”, meaning designate some period and some Judges who should deal with all the outstanding homicide cases concerning persons with albinism in order to clear the backlog so that the justice system is seen to prioritise the problem of attacks on persons with albinism.

8.4.5 Government does not seem to prioritise the problem of attacks on persons with albinism from a funding perspective. In the 2018/2019 Budget Estimates (yet to be approved by the National Assembly), there is no special provision for funding to the sector institutions, i.e Judiciary, Malawi Police Service, MOJACA, DPP’s Chambers and Legal Aid Bureau to ensure special treatment and expedition in the handling of these cases.

8.5 Perspectives from the Association of Persons with Albinism (APAM)

- 8.5.1 Delays in investigation, prosecution and conclusion of cases are a major challenge. The longer the case drags, the more the integrity and quality of the evidence becomes compromised. The evidence may even be lost.
- 8.5.2 Critical information relating offences against persons with albinism, such as the 2016 amendments and the Handbook are not quickly circulated to all magistrates and courts.
- 8.5.3 Lack of thorough investigations by the Police on cases that are brought to Court.
- 8.5.4 Corruption. Investigators and prosecutors are sometimes alleged to engage in the “zithandize wekha” (“help yourself”) corrupt practice where those that have the demanded amount of money are simply released without charge.

9. BEST PRACTICES AND APPROACHES IN THE SUCCESSFUL INVESTIGATION AND PROSECUTION OF CASES

- 9.1 The study has identified the following as best practices to ensure successful investigation, prosecution and conclusion of cases on offences concerning persons with albinism in Malawi:
 - 9.1.1 Every District should have at least one Police District Homicide Officer who should receive specialist training in forensic investigations including the gathering, analysis and use of DNA evidence.
 - 9.1.2 DNA evidence should be resorted to more in order to ensure more scientific identification of victims especially where they have been murdered. DNA evidence would also be of great significance in other forensic investigations concerning persons with albinism.

- 9.1.3 Police Regional Offices responsible for investigating and /or prosecuting offences concerning persons with albinism must employ significantly experienced prosecution lawyers (legal practitioners) to help with both investigations and prosecutions, even if this means hiring such legal practitioners on a part-time basis.
- 9.1.4 Police investigators and prosecutors should work more closely with the office of the Director of Public Prosecutions especially with regard to the framing of appropriate charges in non-homicide offences which are dealt with by Police Prosecutors.
- 9.1.5 The UN Independent Expert has poignantly observed that the office of the Director of Public Prosecutions “faces a significant challenge in terms of human resources and funding, resulting in significant delays in prosecution; as of October 2016, very few murder cases of persons with albinism had been prosecuted. Further, as a result of these shortages, police officers prosecute the majority of cases within the criminal justice system. This could significantly affect the quality of prosecution, as police officers prosecuting cases often do not have the necessary legal training to conduct such duties effectively.” This study agrees with this observation. The best practice in prosecution of these cases therefore lie in ensuring that well qualified and experienced legal professionals (prosecuting counsel) should prosecute these cases.
- 9.1.6 Police investigators, prosecutors and magistrates should ensure that at all appropriate times they consult with the Handbook for best approaches in dealing with offences against persons with albinism.
- 9.1.7 In order to address the problem of a huge backlog of untried homicide cases concerning attacks on persons with albinism, the Judiciary should make special arrangements for

special sittings of the High Court to try these offences so that the trials are concluded with speed and the backlog of cases dealt with.

- 9.1.8 The Ministry of Finance and Economic Development (Treasury) should ensure that requisite special funds are made available to all the concerned institutions, including the Judiciary, the DPP's Chambers, the Malawi Police Service, the Legal Aid Bureau, and the Malawi Prisons Service in order to enable the special Court sittings to be conducted with efficiency and effectiveness.
- 9.1.9 Courts should develop appropriate infrastructure at every district Court that will ensure the privacy and security of witnesses, such as though who may not wish to see their attacker face-to-face in Court.
- 9.1.10 Victims of crime in cases of attacks on persons with albinism should always be given an opportunity to provide their story in evidence prior to sentencing of the accused persons in accordance with Section 260 of the Criminal Procedure and Evidence Code.
- 9.1.11 Police should sensitize communities in the most affected areas on how to preserve a crime scene without contamination.
- 9.1.12 Witnesses who refuse to come to testify at Court because they are related to the accused person should be compelled through the subpoena process to testify.
- 9.1.13 Police Victim Support Units (VSUs) to be staffed with more expert Counsellors to counsel victims who are so traumatized and become unwilling to testify in Court; or who are unprepared to face their attacker in Court.

- 9.1.14 Presiding judicial officers should issue directions soon after the accused person has taken plea on the steps and calendar of the trial, and ensure that as far as practicable the directions are followed, in order to ensure speedy trial.
- 9.1.15 One cases on offences against persons with albinism are concluded by Magistrates, they should be sent, within 7 days from the date of the final decision, under special letter cover by the Chief Resident Magistrate to the Registrar of the responsible High Court Registry or Division so that they is special and quick review procedure in terms of Section 362 of the Criminal Procedure and Evidence Code.
- 9.1.16 Funding of investigations and prosecutions on attacks on persons with albinism should come from the Government and as far as possible, reliance on special donor funding should be discouraged.
- 9.1.17 Courts should be more probing on the reasons for withdrawal of complaints by victims where the case concerns an attack on a person with albinism. In appropriate cases, courts should decline to grant consent to withdraw.
- 9.1.18 The State should take progressive steps towards developing a comprehensive and effective witness protection system in cases of attacks on persons with albinism and other appropriate cases.
- 9.1.19 The State should ensure that Magistrates and prosecutors are provided with sufficient security at all times.

10. LESSONS LEARNT

10.1 The following are some important lessons that were learnt during the study:

10.1.1 Lack of specially dedicated and well-resourced detectives to investigate the commission of offences against persons with albinism in the most affected areas, and also to engage victims and communities on various measures to be taken to prevent the attacks in the first place, is resulting in slower and less effective investigations in cases where there have been attacks on persons with albinism. Assigning such specially dedicated and well-resourced detectives could help a lot in addressing the problem.

10.1.2 Good rapport and administrative co-operation by Police stations in border areas with their counterparts in neighbouring countries, as has been the case in some instances with Mozambican Police, could help in yielding some positive results even in the absence of an extradition treaty. A typical case in this regard is that of *Republic v Mabvuto Biswicki & Others* which involved the abduction and killing of David Machinjiri, a boy with albinism from Dedza. Malawian Police in Dedza successfully cooperated with their counterparts from Tete Province in Mozambique, leading to successful conviction of suspects even in the absence of an extradition treaty.

10.1.3 The nature and pervasiveness of these offences in Malawi and surrounding countries suggest that there must be an organised criminal syndicate of some form, and an organised market for human tissue of persons with albinism, although this study, given its scope limitations, did not succeed in identifying these. Unless greater efforts and concerted efforts are made by various stakeholders to identify and destroy such criminal rings and markets, the fight against attacks on persons with albinism will remain largely unsuccessful as it will still largely be addressing the effects of the crimes rather than their cause.

10.1.4 Investigators, prosecutors and magistrates who are using the Handbook have made significant progress in the manner in which they handle offences against persons with albinism and have spoken highly of the utility of the Handbook. However, the study revealed that most investigators, prosecutors and magistrates are not using the Handbook. In some cases, this is due to the fact that they did not receive a copy. In most cases however, they had the Handbook but it was unclear why they were not using the same. If therefore investigators, prosecutors and magistrates are to make greater use of the Handbook, the quality of their investigations, prosecutions and trial processes is likely to significantly improve.

10.1.5 Where cases involving persons with albinism are handled by more experienced and expert officers, better results are yielded in general. This has been exemplified by the finding that the Directive that was made in the Malawi Police Service that all cases involving persons with albinism be sent to Regional Prosecution offices for prosecution has improved the handling of such cases as the regional offices have more experienced personnel with greater expertise in prosecutions than at the District level. This has helped instil confidence in society that offences targeting people living with albinism are being taken more seriously by the Police and by the Courts. From this experience, it may be concluded that if such expert and experienced officers are also sent to prosecute such cases at the District level, the handling of the cases by Police Prosecutors could improve much further. This experiences also suggests that it could help if the same approach is adopted when it comes to investigations so that more experienced and expert investigators are assigned these cases.

10.1.6 Lack of referral of cases by Magistrates to the High Court for either trial or at least sentencing in appropriate cases involving persons with albinism which carry very severe maximum penalties, such as abduction in order to murder, among others, in terms of Section 14(6) of the Criminal Procedure and Evidence Code is resulting in the imposition

of more lenient punishments than perhaps could otherwise have been the case. An illustration is the case of *Republic vs Tomasi Ndini & 2 Others*. This is also contributing to the stunted growth of jurisprudence (case law) from higher courts that forms judicial precedent. Unless senior Magistrates take a deliberate approach of referring appropriate matters to the High Court for either trial or sentencing, the nature of sentences imposed is unlikely to change much, and the progressive development of law, both in respect of the substantive new offences concerning persons with albinism and on punishment thereof will remain stifled.

10.1.7 The approach of Magistrate courts in Malawi generally is that in cases where there is limited case law from the higher courts to guide Magistrates on sentencing, the *Sentencing Guidelines for Magistrates, 2007* assist greatly. These Guidelines unfortunately do not include most of the offences against persons with albinism and in the few instances where they do, the guidelines did not factor in the attacks specifically targeted at persons with albinism as a unique aggravating factor. The lack of an up-to-date set of *Sentencing Guidelines for Magistrates* that factors in the newly created offences against persons with disabilities including persons with albinism is therefore a major setback in ensuring appropriate and consistent sentencing by magistrates. The call for development of necessary sentencing guidelines has also been made by the UN Independent Expert who has stated that: "Sentencing guidelines could also be an opportunity to facilitate prosecution by clarifying the circumstances of such crimes and the sentences that should be pronounced."⁶⁴ Unless an updated set of such Sentencing Guidelines is adopted, the problem will persist.

10.1.8 Lack of drive and adversarial assertiveness by the State contributes significantly to delays in prosecuting offences affecting persons with albinism. The State in some cases has taken a seemingly inquisitorial approach of sitting down and waiting for the Court to give directions on further steps for the case to move forward. This is so notwithstanding that

⁶⁴ UN Independent Expert,...page 6.

the adversarial approach of trial in Malawian criminal procedure law requires the State to be vigilant and to move the Court. An illustration of this trend is to be found in a bail application cause, **Twaya Mapondo & Another vs Republic**, Miscellaneous Criminal Cause No. 131 of 2018, which involved the recently much publicised murder of Mr. McDonald Masambuka, a person with albinism. The High Court in Zomba, per Ntaba J, expressed its strong concerns about this approach by the State in the following terms:

Let me state at this point, that the State is the Government organ charged with seeking justice for victims and this constant issue of telling the court that it is ready for trial and awaiting the court to make directions is a surprising issue. The court is an institution that must be moved and such happens when charges are filed and documents disclosed. Let the State...note [that if they profess] that ritualistic murders of persons with albinism is something they take seriously, then this is a case they must...show [such seriousness by complying with] what this court has ordered. It is up to the State to show Malawians how seriously they take the rule of law that is, prosecuting cases namely especially cases like this one.⁶⁵

10.1.9 Failure by Courts have to be more hands on in active case management through giving strict directions for the progress of the case creates, in some cases, room for delays in prosecutions. A more assertive approach by courts in giving directions for the progress of the case will go a long way in ensuring speedy trial in cases targeting persons with albinism.

10.1.10 The decision by the Legal Aid Bureau to suspend services in homicide offences due to acute shortage of financing from Government was an unfortunate development that should never have been allowed to prolong for as much as it did, thereby seriously

⁶⁵ Miscellaneous Criminal Cause No. 131 of 2018 (HC, ZA), para. 3.2.

compromising progress in homicide offences concerning persons with albinism. Both the LAB and Treasury could have done more to ensure the impasse was resolved with speed. Going forward, other actors in the justice and security sector should be more robust and proactive in responding to such developments.

10.1.11 Where there is little focus by courts and other relevant State agencies on what happens to the victim during and after the trial, victims of offences against persons with albinism are left with a heightened sense of vulnerability. Courts have routinely focused on the traditional approach of handling trials: hearing the evidence, making a decision on guilt or lack thereof and proceeding to sentence. There was, for instance, no evidence of deliberate assessment of the sensitivity of victims facing their assailants face-to-face in court and whether arrangements can be made to avoid this in proper cases. Unless courts and other relevant State agencies take a deliberate victim-focused approach, including counselling for victims of attacks and members of their families, victims of offences against persons with albinism will continue to be left with a heightened sense of vulnerability.

10.1.12 Section 260 of the Criminal Procedure and Evidence Code is not regularly used by Courts, thus losing an opportunity for greater victim participation in the trial process. A greater use of Section 260 of the CP & EC will help boost the confidence that victims of these crimes have in the judicial process.

11. RECOMMENDATIONS

11.1 The present study, after clearly identifying the challenges that are affecting the speedy and successful investigation, prosecution and conclusion of cases of offences against persons with albinism in Malawi, has concluded that a more effective scheme for achieving this overarching goal also lies in ensuring that a more conducive enabling broader environment within which the investigations and prosecutions take place is

created. In this regard, over and above the various best practices that the present study has outlined above, the following specific recommendations are made and/or affirmed:

- (a) It is important that measures taken by the security institutions should not only be focused on reactive measures in terms of what happens when an offence has been committed, but the measures should also be proactive. What can be done to prevent the offences from being committed in the first place. Thus this study recommends adopting the measures recommended in the *UN Regional Action Plan on Albinism in Africa - 2017 to 2021*, that such measures should include training and, resourcing all law enforcement personnel including border guards; strengthening community based protection structures beginning with traditional authorities; reinforcement of structures of homes and the living environment; and equipping PWA with security tools.
- (b) There is urgent need for Malawi to negotiate and conclude extradition treaties with all its three neighbours, Mozambique, Zambia and Tanzania.
- (c) Prior to the conclusion of such extradition treaties, Malawian security agencies should enhance other ways of formal cooperation with security counterparts in neighbouring countries by concluding memorandums of understanding and sharing databases relevant to the investigation and prosecution of cases concerning persons with albinism.
- (d) There is urgent need for more training for prosecutors & investigators through the Handbook. The UN recommends this as an existing best practice.⁶⁶
- (e) It is of utmost importance that the Judiciary should urgently issue sentencing guidelines, and promote the assignment of cases to higher Courts especially for purposes of stiffer sentencing in cases where Magistrates have jurisdiction.
- (f) There is need for both investigative, prosecuting and judicial authorities to be furnished with more financial and mobility resources.

⁶⁶ UN Independent Expert...

- (g) The Judiciary should make special arrangements for special sittings of the High Court to try homicide offences concerning persons with albinism so that the trials are concluded with speed and the backlog of cases dealt with.
- (h) The Ministry of Finance and Economic Development (Treasury) should ensure that requisite special funds are made available to all the concerned institutions, including the Judiciary, the DPP's Chambers, the Malawi Police Service, the Legal Aid Bureau, and the Malawi Prisons Service in order to enable the special Court sittings to be conducted with efficiency and effectiveness.
- (i) The study recommends adoption of the recommendation of the Regional Action Plan, and the UN Independent Expert on Albinism, that a Special Prosecutor for cases concerning persons with albinism be appointed.
- (j) Need for more training among Police investigators and prosecutors on specialized aspects of investigations and evidence gathering and leading of evidence, such as the handling of DNA evidence.
- (k) Police investigators should keep up-to-date data on all persons with albinism in their respective policing areas.
- (l) Police should increase presence in the most highly affected areas to bring a greater sense of security for communities; and border patrols should also be enhanced.
- (m) Personal security of families of or with persons with albinism should be strengthened by the State including ensuring that access to these homes is strengthened and tightened against easy intrusions. Measures such as strengthening the structural safety and integrity of their houses by ensuring that they have steel or strong wooden doors with locks and secure windows, as proposed by the Independent Expert, must be implemented with urgency.
- (n) It is important that communities be continuously educated on how they can be on the lookout for suspected attackers on persons with albinism. As the UN Independent Expert

observed; “The training and information given by community police and traditional leaders have in various cases led to the quick intervention of neighbours during attacks, resulting in the rescue of persons with albinism and the arrest of perpetrators.”⁶⁷ Thus provision of training and information are so vital in ensuring successful investigations and prosecutions.

- (o) Police investigators including members of Police victim support units should visit PWAs on a regular basis to hear any complaints and emerging security issues they may be facing.
- (p) Parents, guardians or caregivers, and all persons with albinism should be specially sensitized on all necessary precautionary measures they should take to reduce vulnerability to attacks.
- (q) Need for continuous education of communities to eliminate superstitious myths against persons with albinism.
- (r) The process of investigation and prosecution cannot be divorced from focusing on the effects of the attacks on the victims. The study therefore affirms the recommendations of the Regional Action Plan that there must be Psychosocial, medical, legal and socioeconomic support to rebuild the lives, for both victims, and surviving relatives, and that the State should ensure that these are available at community level.
- (s) Police investigations should also focus on more established target markets for tissue of persons with albinism beyond targeting merely the primary attackers and primary possessors of human tissue of persons with albinism.
- (t) The Independent Expert recommends that the Government of Malawi should conduct in-depth investigative research to ensure, on the one hand, a better understanding of the root causes of attacks, including witchcraft practices, myths and poverty, and, on the other hand, to map patterns of trafficking of body parts, including potential international

⁶⁷ UN Independent Expert, note...above.

networks involved, to identify the masterminds at the root of demand. This study affirms this recommendation.

- (u) Special legislation should be developed sanctioning the Police and the Human Rights Commission to visit and search without notice places where professing witchdoctors are undertaking their business/work to ensure that they do not at any given time possess human tissue.
- (v) Police in border areas are encouraged to develop good rapport with their counterparts in neighbouring countries to deal with cross-border aspects of these offences.

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ANNEXURE 1: FOCUS GROUP DISCUSSIONS, BINGU INTERNATIONAL CONFERENCE CENTRE (BICC), 26 MARCH 2018

The following is a report of the proceedings of the Focus Group Discussions (FGD) among various stakeholders on sharing of experiences in relation to the handling of offences against persons with albinism.

Focus Group A

Challenges, good practices/lessons on investigations - Malawi Police Service

Challenges:

- Lack of resources. Normally funds for informants are lacking. The Police largely relies on public goodwill for information in order to make leads due to lack of adequate financial resources to undertake essential probing investigations on the attacks.
- Lack of equipment: computers, printers, digital cameras (to capture crime scenes and exhibits), mobility - vehicles + fuel (it normally takes time for police investigators to visit crime scenes).
- Lack of capacity building. There are insufficient numbers of well-trained specialized detectives on cases of attacks on persons with albinism.
- Technological challenges, such as lack of DNA testing equipment, laboratories and testing experts.

Good Practices:

- Police investigators suggest that people with albinism should associate more and more openly with others in society.
- Police investigators should keep up-to-date data on all persons with albinism in their respective policing areas.
- Police investigators including members of Police victim support units should visit PWAs on a regular basis to hear any complaints and emerging security issues they may be facing.

- There is need for continuous sensitization of communities on issues affecting persons with albinism and to demystify and remove the abhorrent prejudices against persons with albinism.

Lessons arising out of previous investigations:

- Most attackers are less privileged people
- Most victims are young
- Most cases are masterminded by relatives
- Lenient sentences by courts are fueling attacks.

Plenary Issues:

- An issue was raised whether it was not proper for investigators to engage with prosecutors first so that proper charges are brought. The group members responded that this was appropriate and that in most cases it happens. The investigators also emphasized that in any event, ultimately the prosecutor has discretion on what charges to lay before the Court.
- An issue was also raised on whether Malawian police investigators have sufficient materials to preserve crime scenes for forensic investigations such as conducting DNA tests. The group responded that this was a major challenge but that within their limited resources, police investigators try to preserve crime scenes. The investigators lamented that frequently members of the public contaminate crime scenes and that the Police cordon-off crime scenes as soon as they arrive on the scene. Group members also pointed out that in the recent past, some Police officers were trained at the Lilongwe University of Agriculture and Natural Resources (LUANAR) on matters of DNA although regrettably none of those officers came to the instant workshop.
- An issue was also raised whether at Police stations there are specialized CIDs who deal with cases of attacks on persons with albinism. Group members responded that there are specialized investigators for murder cases and that national Police management has trained homicide officers and that it is working towards having these in every district and that the training provided will include training on offences dealing with persons with albinism.

- Some participants also wanted to know whether in Malawi DNA evidence was admissible in Court. The group deferred answering this question to judicial officers present at the Workshop and a number of Senior Resident Magistrates responded that DNA evidence, when properly done and presented by the appropriate persons, would be admissible in Court.

Focus Group B

Challenges, good practices/lessons on Prosecutions - Director of Public Prosecutions, Police Prosecutions Representative

The prosecutors were all from the Police as the Director of Public Prosecutions was unrepresented

Challenges:

- The prosecutors cited insufficiency of resources as a major problem. They reported that the result of financial resources is that the prosecutors frequently struggle to locate key witnesses and this ends up compromising either the progress or indeed the ultimate fate of the criminal case.
- General lack of transport from point A to point B was also cited as a major problem affecting prosecutors.
- Lack of computers is a major problem and that this results in poor records management vis-à-vis prosecutions.
- Challenges of unwillingness by witnesses to testify either because they are related to the victim or the accused persons.
- Some victims have challenges meeting their attackers face to face in Court and are therefore afraid to come and testify at Court. Courts have no equipment to ensure that such victims can testify without meeting their assailants face to face in Court.
- Lack of an extradition treaty between Malawi and its three neighbouring countries, especially Mozambique. Suspects easily disappear into Mozambique leading to impunity.

- Lack of capacity. Need for better and specialized training in prosecuting offences against persons with albinism.
- Prosecutors sometimes receive unnecessary pressure to take matters to Court and there is an expectation that they must secure a conviction even in cases where there is insufficient evidence.

Good Practices:

- Maintain good relationship with investigators.
- Prosecutors to scrupulously adhere to the 48 hour rule under Section 42(2)(b) of the Constitution in order to avoid unnecessary legal challenges.
- Prosecutors to scrupulously peruse case dockets in order to come up with correct or proper charges.
- Seek directions from the Office of the Director of Public Prosecutions where in doubt.
- Pre-trial briefing of witnesses to prepare them for testimony in Court.
- Ensure speedy trial.
- Ensure proper handling of exhibits.
- Make proper arrangements for transfer of cases from districts to Chief Resident Magistrate (CRM) centres.
- Always invoke Section 260 of the Criminal Procedure and Evidence Code to ensure that the voice of victims of crime is heard by the Court before the convict is sentenced.

Lessons arising out of previous prosecution experiences:

- Sometimes accused persons have been charged with minor offences despite there being appropriate serious charges.
- This has frequently resulted from failure to consult the handbook when framing the charges.

Plenary Issues:

- Some participants wanted to know whether where a lower court had imposed a lenient sentence, it was possible for the State to appeal because they had heard that the State only appeals on points of law. The Group responded in the affirmative, and a number of

Senior Resident Magistrates in the Workshop likewise confirmed that the State can appeal against a manifestly inadequate sentence and that this is a matter of law.

- Other participants expressed concern on the issue of unwillingness of witnesses to testify because of their relationship to the accused person. There was emerging consensus in plenary that the appropriate approach in such cases is to compel such witnesses to attend Court and testify.
- On the issue of witnesses being unwilling to testify because they are victims and that they do not wish to meet their attackers face-to-face again, it was recommended generally during plenary that there is need to secure more specialist counseling for such victims to prepare them to testify. It was reported on the issue of counseling that many Police stations have victim support units (VSUs) which provide some counseling to such witnesses. Also courts should look into the issue of modernizing infrastructure so that it should be possible for such witnesses to testify without necessarily meeting their attackers face-to-face again in Court.
- A question was also posed during plenary whether there was a witness protection scheme. The general response was that “this is Malawi” and that we shouldn’t expect such a scheme. Implicit behind this suggestion was that Malawi is so resource constrained that it would be unreasonable to expect the State to have such a scheme. It was reported however that in Zomba, the youth organization YONECO has a scheme where witnesses receive some protection for limited durations of time when they are testifying in sensitive cases. It was reported that there are safe rooms that are guarded 24 hours every day and 7 days a week by armed PMS officers. In view of this experience, the plenary took the view that it was possible, therefore, for the State in Malawi to take progressive steps towards a more effective witness protection regime in Malawi, especially as regards persons with albinism.

Focus Group C

Challenges, good practices/lessons in Prosecutions/judicial decision making - Representative of Judiciary

Challenges:

- Lack of speed in prosecuting cases by prosecutors. It could be that this is a result of lack of thorough investigations. Cases frequently stall after plea has been taken. In many cases this is also reported to be the result of unavailability of witnesses.
- Applications by accused persons on some technical issues especially where legally represented also delay cases.
- It was also reported that sometimes case progress stalls or stops completely because of lack of coordination between various stakeholders in the criminal justice system. An example was given where a Magistrate traveled to Mchinji to try a case involving an attack on a person with albinism but the lawyer from the DPP's Chambers failed to turn up to prosecute the case reportedly because the APAM funding for prosecuting such cases had been exhausted. Participants during plenary were quite disturbed that prosecution of such cases should depend on the goodwill of donors. There was a firm recommendation that cases of attacks on persons with albinism should be tried with funding from the Malawi Government through its normal budgeting process and should not be dependent on availability of donor funding, whilst at the same time welcoming the donor funds.
- Most magistrates expressed concern that in many cases, charges are badly drafted, frequently with insufficient or misleading particulars and that this leaves the Magistrate in a rather awkward position. If the Magistrate is seen to instruct the prosecutor on how to properly frame the charges, it would appear as if the Court has taken sides with the prosecution.
- Magistrates expressed the concern that identification evidence is usually a problem for persons with albinism in view of the fact that evidence must be to the standard of beyond reasonable doubt and that persons with albinism tend to have visual challenges.
- Magistrates also expressed the concern that in some cases, victims withdraw cases for no apparent reasons.

- Magistrates expressed the concern that there are sentence discrepancies among different magistrates for similar offences. It was recommended that precedents on sentencing from the higher courts should be widely disseminated to all magistrates.
- Magistrates raised the concern of lack of personal security. In instances where, for instance the Magistrate acquits an accused person widely suspected of having attacked a person with albinism, the community becomes very angry and this compromises the security of the Magistrate.

Good Practices:

- Magistrates should be very firm to ensure that cases do not stall at plea stage and that there should be progress on the matters.
- Courts should issue directions on how the case should progress to avoid unnecessary delays.
- Prosecutors should always insist that investigators thoroughly investigate their cases beyond visual identification evidence, wherever possible, in order to ensure that there is corroborative circumstantial evidence where needed.
- In cases where the victim wishes to withdraw a case, the Magistrate should require that reasons be furnished and if the reasons are not good enough, consent to withdraw should be withheld.

Lessons arising out of previous handling of court cases:

- Need for better use of the Handbook;
- Need for the Court to be more active in managing the case to avoid unnecessary delays.
- Need to ensure that victims of crime are heard before convicts are sentenced in view of the provisions of Section 260 of the Criminal Procedure and Evidence Code.

Plenary Issues:

- Some participants wanted to know why there are coordination challenges among stakeholders and also why in some cases wrong charges are framed.
- On the issue of lack of coordination, the Group responded that there were problems both with the DPP Chambers and the Legal Aid Bureau. On the part of the DPP's Chambers, it

was pointed out that whilst the DPP herself is very helpful and committed to stakeholder cooperation, it is normally officers in her office who are letting her efforts down as they simply fail to communicate.

- On framing wrong charges, the Group pointed out that this was largely a problem of the prosecution; but that it could be the result of both failure to consult the Handbook and to seek relevant directions from the office of the DPP.

Focus Group D

General and specific observations/comments on challenges; and suggestions/comments on good practices/lessons – APAM; Representative(s) of Department of Disability & other stakeholders

Challenges:

- Delays in investigation, prosecution and conclusion of cases. Concern was expressed that the longer the case drags, the more the integrity of the evidence becomes compromised. The evidence may even be lost.
- There has been a challenge of lenient sentences, but this has largely been addressed after the coming into force of the amendments to the Anatomy Act and the Penal Code in 2016 that introduced very stiff penalties for these offences.
- Critical information relating offences against persons with albinism, such as the 2016 amendments and the Handbook are not quickly circulated to all magistrates and courts.
- Some judicial officials have the right information on how these offences are to be handled but are neglecting it.
- Lack of thorough investigations by the Police on cases that are brought to Court.
- Corruption is another problem among some Police officers and this is compromising investigations. The “zithandize wekha” (“help yourself”) practice where officers tell an accused person if you want us to let you go, “help yourself.” Those who manage to pay are left to go scot-free.

- The issue of expecting special funding for cases on albinism is a big problem that is compromising the speedy resolution of these cases. If Government manages to handle other categories of criminal cases without special funding from donors, there is no reason why cases affecting persons with albinism should drag simply because there is no special funding or special funding has run dry.

Good Practices:

- There is need for proper and more comprehensive orientation of investigators, prosecutors and Magistrates on how to handle offences against persons with albinism.
- There is need for the High Court to order retrial of cases committed after the commencement of the 2016 amended laws (the Anatomy Amendment Act, 2016 and the Penal Code Amendment Act, 2016) which were tried and determined using the old laws should be retried using the appropriate applicable laws.
- Investigations should also expand to the earlier period, pre-2013 cases, when there was not much intense focus on offences committed against persons with albinism. No victim should be forgotten. An example was given of an 18 year old girl who was killed at Mayaka in Zomba, Maria Costa, and that the case has not been resolved to date.
- Freed perpetrators who come out of prison quickly and start boasting and threatening persons with albinism again should be arrested and dealt with according to law. An example was given of a previous convict in Ntcheu who after being released from prison has been bragging and threatening persons with albinism that he can attack them again and come out of prison as quickly as he was released for his prior offence.
- Changes in the law should be quickly popularized and disseminated to all investigators, prosecutors, Magistrates and Judges.
- Cases should be financed using normal Government funding and special donor funding should be discouraged.
- Where investigators and prosecutors are in doubt on the drafting of charges, they should quickly seek directions from the office of the Director of Public Prosecutions.

- Police investigators should focus on discovering the target markets for the tissue of persons with albinism.
- Need for better coordination in efforts to tackle issue of offences targeting persons with albinism. E.g the absence of a single Police officer who was trained on DNA matters at the present Workshop is a clear sign of lack of coordination and proper planning in the Police.
- Recovered remains of persons with albinism should be handled with dignity and given back to the families of the deceased victim for descent burial.

Lessons arising out of previous handling of court cases:

- Generally covered under “challenges” and “good practices” above.

Plenary Issues:

- It was emphasized during plenary that the question of special funding should be addressed firmly. It is unacceptable that cases should fail to progress because of lack of special donor funding. Regrettably, the fingers were pointing at the office of the Director of Public Prosecutions which office was not represented to provide its side of the story.
- The need for more rigorous training for investigators, prosecutors and magistrates on how to handle offences against persons with albinism was stressed.
- The need for better protection of persons with albinism by the Police, beyond the reactive responses when there is an attack, was also emphasized.
- The need for continuous education on the public that persons with albinism are just as human as any other person was emphasized.

ANNEXURE 2: LIST OF PARTICIPANTS TO LESSON LEARNING AND VALIDATION WORKSHOP

26 March 2018

1. Esther Phiri, Magistrate, Zomba
2. Jones Masula, Magistrate
3. William Masapi, APAM
4. Emmie Chiumia, APAM
5. Patrick Chambuluka, Police – Prosecutor
6. Peter Kandulu, Magistrate, Mzuzu
7. Damiano Kaputa, Police Prosecutor, Mzuzu
8. Davison Banda, Police Prosecutor, Mulanje
9. Charles Ndau, APAM – Ntcheu Vice Chairperson
10. Francis Masambuka, APAM, Blantyre Chairperson
11. Precious Kapenuka, APAM, Ntcheu Chairperson
12. Levi Mvula, DFID Adviser
13. Justin Lipenga, Police, Mangochi
14. Bestard Chipangula, Police
15. H/W Msokera, Senior Resident Magistrate Lilongwe
16. H/W Yona, Senior Resident Magistrate, Lilongwe
17. Janet Liabunya, UNICEF
18. Robert Makomela,
19. D. Makundi, Police
20. Dickens Mwambazi, Police, RPO, East.

ANNEXURE 3: LIST OF PERSONS INTERVIEWED/CONSULTED

1. PARLIAMENT

2. Hon. Richard Chimwendo Banda, MP, Chairperson, Social and Community Affairs Committee of Parliament

DIRECTOR OF PUBLIC PROSECUTIONS CHAMBERS

3. Mrs. M. Kachale, Director of Public Prosecutions
4. Mr. D. Malunda, Senior Assistant Chief State Advocate (Lilongwe)
5. Mr. Chisanga, Principal State Advocate, Blantyre

MAGISTRATES

6. H/H Masoamphambe (former Chief Resident Magistrate);
7. H/W Mdeza, (CRM, South);
8. H/W Chipao, (CRM, C),
9. H/W Gondwe, Mzuzu (CRM, North);
10. H/W Chiotcha, (Acting CRM, East);
11. H/W Kandulu, Mzuzu (SRM, Mzuzu);
12. H/H Nyimba (formerly SRM, Zomba)
13. H/W Nkhata (former SRM, Zomba);
14. H/W Yona, (SRM, Lilongwe)
15. H/W Msokera (SRM, Lilongwe)

POLICE OFFICERS

16. Mr. Dickens Mwambazi (RPO, East); Louis Makiyi (SPO, East)
17. Senior Superintendent Gwembere Officer In-Charge Nselema Police Post held 22/03/2018.

18. Detective Sergeant Jane Umi /Ntaja Police Post held 22/03/2018.

19. Detective Sergeant Chikaonda/ Nselema Police Post held 22/03/2018

20. Sergeant Louis Makiyi, RPO, East, 20 March 2018

**ANNEXURE 4: PROGRESS REPORT ON CASES FOR PEOPLE WITH ALBINISM IN MALAWI. MURDER /
ATTEMPTED MURDER CASES**

Serial No.	Ref. No.	Offence	Accused	Victim	Station	Position	Remarks
1**	Ku/Cr/10/04/16	Murder	White Chilumpha & 4 Others	Whitney Chilumpha	Kasungu	Prosecution Started with funding Sourced by Apam. Two witnesses testified. Adjourned because we ran out of funding.	File With DPP
2**	Mp/Cr/39/04/16	Murder	Gerald Phiri & Nine Others	Enelesi Nkhata Phiri	Mponela	Ready for prosecution	File With DPP
3	Mj/MI/Cr/20/11/14	Murder	Sande Maxwell Mpunga	Violet Kanyama	Mulanje	Investigations under way. Accused arrested in Mozambique for another murder case. Procedures underway to take him to Malawi	Investigations Still Ongoing.
4**	Mc/Cr/59/12/15	Murder	Douglas Mwale & 3 Others	Prescott Pepuzani	Mchinji	Ready for prosecution	File With DPP
5**	Dz/Cr/02/05/16	Murder	Mabvuto Biziwiki & Others	Fletcha David Machinjiri	Dedza	Ready for prosecution	File With DPP
6**	Nu/Cr/120/06/16	Murder	Kenneth Moses &	Fletcha Masina	Ntcheu	Ready for prosecution	File With DPP

			Others				
7**	Pb/Cr/29/11/1 5	Attemptmur der	Leo Sambani & 3 Others	Alfred Chikalu	Phalombe	Ready for prosecution	File With State Advocate Bt.
8**	Ck/Nl/Mp/15/0 1/15	Murder	Thomas Petro	Aida Petro Thomas	Nchalo	Ready for prosecution	File With State Advocate,Bt.
9**	Cz/Cr/14/05/1 5	Murder	Clement Chilumpha & 5 Others	Symon Mphatso Mukota	Chiradzulu	Investigations concluded	Case Being Tried At Zomba High Court.
10**	Mh/Nsm/Cr/8/ 2/16	Murder	Ibrahim Matola	Jailosi Jefrey	Machinga	Ready for prosecution	File With DPP
11	Pb/Cr/31/04/1 6	Murder	Unknown	Jenipher Namuso	Phalombe	Still under investigation as accused are not known	File With Police.
12	Ku/Cr/129/01/ 16	Murder	Eunice Phiri	Madalitso Phiri & 2 Others	Kasungu	Under investigation accused hiding in Zambia	File With Police.
13	Za/Cr/231/12/ 14	Murder	Fainess Maloya	Unknown	Zomba/ Thondwe	Still under investigation as accused are not known	File With Police.
14	Za/Cr/01/01/1 5	Murder	Malita Makolija	Unknown		Still under investigation as accused are not known	File With Police.
15	Mh/Nsm/Cr/01 /16	Murder	Harry Mackson	Elias Chacha	Nselema	Under investigations. Only head of the victim was found	File With Police
16	Za/Cr/03/07/1 3	Murder	Maria Foster	Unknown	Zomba/ Mayaka	Still under investigation as	File With Police.

						accused are not known	
17.	Mj/Cr/02/15	Attempt Murder	Dafter Sakwata	Chikondi Kubalasa	Mulanje	Ready for prosecution	File With Chief State Advocate, Bt.
18	.....	Attempt Murder	Lex Kaitano & Never Chindio	Christina Timu	Thyolo	Prosecution concluded. Accused convicted of possession of human body tissue and sentenced to 8 years.	
19	Chitipa (Ipenza) C3/Cr/17/07/2016	Attempted Murder	Joseph Mdimbwa And Laure Mwamphachi	Lucia Kainga	Chitipa	Victim was attacked in her house. One right hand chopped	1 st Accused Arrested In Malawi & 2 nd Accused Arrested In Tanzania Where He Still Is.
20	Thyolo (Sandama)	Murder	Wilard Michael And Makuluni Ekhoto	Madalitso Pensulo	Thyolo	1 st accused murdered the deceased with a hoe handle and hid in 2 nd accused's house in Mozambique saying he had been sent by him	File Is With State Advocate, Blantyre.
21	Mzuzu	Attempted Murder	Morton Juma	Sam Kaumba	Mzuzu	Sentenced to life imprisonment	Tried By The High Court In Mzuzu
22	Mp/Cr/49/06/16	Attempted Murder	Manuel Jani	....	Mponela	....	File With DPP.

23	Lilongwe (Tsabango)	Murder	Unknown Woman With Albinism.	Unknown	Lilongwe	Deceased was found dead in a decomposed state	Case Under Investigations.
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Source of information: APAM

ANNEXURE 5: CASES WHICH WERE REPORTED IN CONNECTION TO PEOPLE WITH ALBINISM IN MALAWI

Serial no.	Station/ Ref. No.	Deceased/ Victim	Accused	Offence	Brief facts	Date of offence	Position of case
1	Karonga	Milton Juma	Sam Kaumba Fiska Mtambo	Attempted murder.	First convict lured victim into the bush, produced a knife and started hacking him on the neck.	September, 2015	Completed. First accused convicted and sentenced to life imprisonment.
2	Mponela	Enelesi Nkhata	Gerald Phiri And 9 Others	Conspiracy/abduction	Deceased was a niece to first to 1 st accused. On 02/04/16 1 st , 2 nd , 3 rd & 4 th accused killed her at madisi t/ centre and took her bones to area 49 to house of 9 th accused for sale. 12 bones recovered from the house of 2 nd accused	02/04/2016	Defence stage accused on remand
3	Lilongwe (Lingadzi)	Silvia Kaondo	Vanasiyo Lusiyano	Abduction	On 23/04/2016 accused booked a room at mtandire rest house with an albino girl. After some minutes accused went out and was heard	23/04/2016	Accused remanded

					saying that he would be k20 million richer. He was arrested		
4	Lilongwe (Lingadzi)	Julias Ngangula	Gerald Makiyi	Intimidation	On 22/05/2016 the victim went to the market to watch pool game when he heard accused saying if the victim is sold there would be money	22/05/2016	Two witnesses testified and is on remand cc. 635/2016
5	Lilongwe (Kawale)	Lilian Tengani	Olivia Mangani	Intimidation	On 22/05/2016 the victim went to kaliyeka market on way, accused shouted "ndalama izo"	22/05/2016	Four witnesses testified so far Cc. 635/16
6	Lilongwe (Kanengo)	Charles Sentala	Abdul Ng'ombe	Intimidation	Accused called the victim "money"	Between april and may 2016	Accused in custody
7	Lilongwe	Chimwemwe Billy	Jacklin Chinele (Child)	Conduct likely to cause a breach of peace	On 21/04/2016 at area 36 at a shop, the accused mentioned that the victim would be worth 9 million if sold	21/04/2016	Matter in court
8	Phalombe	Imran Chongo	Holace Mkango	A/o/a/b/harm	On 22/01/2015 three men were seen struggling with the victim but was resued however accused was identified	22/01/2015	Matter in court 15/2015

9	Phalombe	Alfred Chikalú	Leo Sambani Kingstone Mutiye Moses Philipo Aubrey Maudedi	Conspiracy to murder	.....	.....	File sent to chief state advocate
10	Phalombe	Goodson Kalibwanji	Unknown	Tempering with a grave yard	.....	.....	Investigations still going on
11	Limbe	Erick Banda	Esnart Ayani	Conduct likely to cause a breach of peace	Victim was passing by kachere trading centre when the accused shouted “ndalama izo, ma million akudutsa”	March 2015	Absconded court bail and efforts to rearrest underway
12	Limbe	Grizea Chimbamba	Frank Manda	Conduct likely to cause a breach of peace	Victim and accused picked a quarrel. Accused threatened that he would find a market to sell the victim	April 2016	Case is on judgement stage
13	Mulanje	Chikondi Kubalasa	Dafter Sakwata	Attempted murder	Accused broke and entered the victims house and wanted to kill him when he shouted for help	February 2015	File sent to chief state advocate
14	Nchalo	Ida Thomas	Unknown	Missing person	Victim went to school but never returned home	January 2015	Investigations going on
15	Nsanje	Masiteki Rossi	Wyson Mekithayo	Abduction	Accused took the victim to mozambique	March 2016	Matter in court

					and never returned with him to this date		Cc. 47/2016
16	Blantyre (Machinjiri)	Yohane Kamwendo	Unknown	Attempted human trafficking	.....	03/06/2015	Under investigations
17	Blantyre (Chileka)	Margrate Nyambo	Unknown	Tempering a grave yard	.....	28/01/2016	Under investigations
18	Mulanje	Violet Kanyama	Sande Mathews Mpunga	Murder	Accused was a husband to the deceased	10/11/2014	Accused fled to mozambique (case is under investigations)
19	Mulanje	Awelo Jalasi	Unknown	Tempering a grave yard	.....	...	Under investigations
20	Thyolo	Christina Timu	Unknown	Tempering a grave yard	.....	.....	Under investigations
21	Thyolo	Thom Naligoje	Unknown	Attempted murder	....	....	Under investigations
22	Chiradzulu	Dorothy Joseph	Cydreck Mitepa	Tempering a grave yard	....	....	Under investigations
23	Chiradzulu	....	Mazunzo Banda Willy Msambo	Tempering a grave yard	....	...	Under investigations
24	Chiradzulu	Raphael Kapito	Zinenani Kaposi Leonard Kaposi	Kidnapping	....	....	Under investigations
25	Chikwawa	Aida Petro	Thomas Petro	Murder	....	...	Under investigations

26	Nsanje	Unknown	Unknown	Trespassing a grave yard	....	....	Under investigations
27	Nsanje	Edson Gama	Unknown	Tempering a grave yard	....	.....	Under investigations
28	Nsanje	Unknown Grave	Unknown Accused	Tempering a grave yard	.....	.....	Under investigations
29	Phalombe	....	Unknown	Found human bones	.....	.....	Under investigations
30	Phalombe	.....	Kanindo Pinifolo	Selling human bones	.....	.....	Under investigations
31	Blantyre (Green Corner)	Unknown	Unknown	Selling human bones	.....	.....	Under investigations
32	Zomba	Maria Kosta	Unknown	Murder	.....	.....	Under investigations
33	Zomba (Kachulu)	Ambassador Uzingo	Unknown	Abduction	.....	.....	Under investigations
34	Zomba(Jali)	Malita Makolija	Unknown	Murder	.....	.....	Under investigations
35	Zomba(Do masi)	1.Esnart Majawa 2.Eunice George	Unknown	Tempering a grave yard	....	.....	Under investigations
36	Zomba (Likhomo)	Fainesi Maloya	Unknown	Murder	.....	.....	Under investigations
37	Zomba(Na mata)	Sibongile Chapita	Unknown	Tempering a grave yard	....	.....	Under investigations
38	Balaka	Mr. & Mrs. Betha	Unknown	Alleged trespassing a grave yard	....	....	Under investigations

39	Balaka	Unknown	Unknown	Found human bones	.....	.....	Under investigations
40	Machinga (Nselema)	Unknown	Unknown	Tempering a grave yard	....	.....	Under investigations
41	Machinga	Unknown	Unknown	Being human body tissues	....	.....	Under investigations
42	Machinga	Twalele Yusuf	Unknown	Burglary/ kidnapping	....	.....	Under investigations
43	Machinga	Unknown	Unknown	Found human bones	.....	.....	Under investigations
44	Machinga	Catherine Winesi	Unknown	Burglary/ kidnapping	....	.....	Under investigations
45	Machinga	J. Andiwotchi	J. Andiwotchi	.....	.....	.....	Accused jumped from a moving vehicle on way to court at zomba
46	Machinga	Agness William	Moses Katopola	Abducton	.....	.....	Under investigations
47	Machinga	Hukran Howard	Unknown	Burglary/ kidnapping	....	.....	Under investigations
48	Machinga	Shalif Jabilu	Jana James	Kidnapping	....	.....	Under investigations
49	Machinga	Harry Mokoshoni	Step Father	Kidnapping	....	.....	Under investigations
50	Mangochi	.....	.....	Tampering a grave yard	....	.....	Under investigations
51	Mangochi	Unknown	1.Wyson Mussa	Being found in possession of	14/04/2015	.....	Under investigations

			2. Dick Kandulu 3. Stereo Thuman 4. Selemando Jackson (Moz)	human body tissues (bones)			
52	Nkhotakota	Miss. Bertha	Unknown	Tampering a grave yard	....	.....	Under investigations
53	Dedza	Unknown	Henry Julio	Being found in possession of human body tissues (bones)	06/03/2015	.....	Under investigations
54	Dedza	Precious Nathalo	Unknown	Kidnapping	03/03/2014	.....	Under investigations
55	Salima	Dickson Mataka	Unknown	Kidnapping	27/10/2015	.....	Under investigations
56	Salima	Afani Staubi	Unknown	Missing person	25/03/2015	.....	Under investigations
57	Ntcheu	Unknown	1.Samson Mateyo 2. Evason Matolino (Both Mozambica ns)	Being found in possession of human body tissues	29/07/2015	.....	Under investigations
58	Ntcheu	Jiva Samuel	Unknown	Tempering a grave yard	20/11/2015	.....	Under investigations
59	Ntcheu	Subande Mmasomwada	Unknown	Tempering a grave yard	20/10/2015	.....	Under investigations

60	Lilongwe (Namitete)	John Mphoka	Unknown	Tempering a grave yard	18/10/2015	.....	Under investigations
61	Lilongwe (Kanengo)	Maria Wisiki	Unknown	Tempering a grave yard	14/11/2015	.....	Under investigations
62	Lilongwe (Mchesi)	Robert Banda	Lucious Mantha	Conduct	19/03/2015	.....	Under investigations
63	Kasungu (Bokosi Village)	Michael Phiri	Unknown	Tempering a grave yard	15/01/2016	.....	Under investigations
64	Mchinji	Spiliyano Felix	Unknown	Tempering a grave yard	08/05/2016	.....	Under investigations
65	Kasungu	Eunice Phiri	1.Masautso Phiri 2. Bonface Banda 3. Aaron Mwale	Murder	23/01/2016	.....	Under investigations
66	Kasungu Ku/Cr/10/04/2016	Whitney Chilumpha	1.White Chilumpha 2. James Kanjira 3. Lastone Phiri 4. Alftred Mwale	Murder	04/04/2016	.....	Under investigations
67	Lilongwe (Mtandire)	Silivia Kaondo	Fanasiyo Luciano	Rape	23/04/2016	.....	Under investigations
68	Karonga (Mwakane ma)	Thomson Mwanema	Unknown	Trespassing a grave yard	08/06/2015	.....	Under investigations

69	Zomba	The State		Possession of human body tissues/murder			
70	Chiradzulu	Symon Mphatso Mukota	1.Clement Chilumphu 2. Samson Madengu 3. Mavuto Mchihiwa 4. Goodwin Mmwala 5. Vincent Masamba 6. Lucious Bernado Bola	Possession of human body tissues / murder	On 20/12/2014 the victim was taken by 4 th & 5 th accused saying they would find him a job in mozambique. They took him to jali where they strungled him to death. Some bones were removed and the rest of the body burried.	Srm zomba under court case number 202/2015	Remanded and case still under investigations
71	Mangochi (Namwera)	The State	1.Peter Jeke 2. Robson Mwanyale	Possession of human body tissues (human hair)	On 11/04/2015 accused were found selling human hair of an albino person	Srm zomba under court case number 72/2015	Case is on defence stage
72	Chileka	Margrate Nyambo	Unknown	Tampering a grave yard	.....	.....	Under investigations
73	Mulanje	Violet Kamanga	Sande Mathews Mpunga	Murder	.....	.....	Under investigations
74	Nsanje (Magulugulu)	Unknown	Unknown	Tampering a grave yard	.....	.....	Under investigations
75	Nsanje (Nyakamera)	Edson Gama	Unknown	Tampering a grave yard	.....	.....	Under investigations

76	Nsanje (Chiphwembwe)	Milliam Nyada	Unknown	Tampering a grave yard	.....	.....	Under investigations
77	Nsanje	The State	Unknown	Found human bones	.....	.....	Under investigations
78	Zomba	The State	Unknown	Tampering a grave yard	.....	.....	Under investigations
79	Machinga (Kapoloma)	Faiza Richard	Unknown	Tampering a grave yard	.....	.....	Under investigations
80	Machinga (Mtunguzi Village)	Wilson Afiki	Unknown	Tampering a grave yard	.....	.....	Under investigations
81	Ntaja Nj/Cr/25/05/2016	Innocent Simba	Ngunga Sitande	Intimidation/conduct	....	Zomba cc.131/2016	3 months ihl on 28/06/2016
82	Ntcheu Nu/Cr/120/06/2016	The State	Dalitso Saulos & Leston Mafunso	Tampering a grave yard	....	....	Sent to dpp on 30/06/2016
83	Machinga Lw/Cr/15/06/2016	The State	Mary Barton & 7 Others	Conspiracy to commit a felony	....	...	Sent to dpp on 12/07/2016
84	Machinga(Ntaja)	The State	Unknown	Tampering a grave	....	....	Under investigations
85	Limbe Lb/Cr/167/06/2016	Patrick Chimpeni	Wilfred Mwanyama & 2 Others	Conduct likely to cause a breach of peace	2 accused said the victim only sells his goods to fellow albinos	...	Sent to dpp on 11/07/2016 accused bailed by court on 13/07/2016

86	Karonga Ka/Cr/24/0 6/2016	Wahowike Karambo	Aaron Nkhonjera	Attempt to kidnap or abduct	Victim was asleep in her house when 3 men knocked on her door. She shouted for help one man arrested	....	Sent to dpp on 14/07/2016
87	Chitipa C3/Cr/16/0 6/2016	Chisambo Kameme & 3 Others	The State	Conspiracy to commit a felony	Accused were heard discussing issue of albino bones in their area	....	Sent to dpp on 14/07/2016
88	Ntcheu Nu/Cr/05/0 7/2016	Chipezayani Kudzobwe	Thom Somba	Conspiracy to commit a felony	....	....	Sent to dpp on 14/07/2016
89	Mponela Mp/Cr/49/ 06/2016	Manuel Jani	Mercy Jimu	Attempted murder	....	....	Sent to dpp on 14/07/2016
90	Nsanje	The State	Unknown	Tampering a gravee	....	....	Under investigations
91	Ntcheu Nu/Cr/120/ 06/2016	The State	Dalitso Saulos & Leston Mafunso	Murder	....	....	Sent to dpp on 30/06/2016
92	Nathenje Ne/Cr/38/0 7/2016	Alick Moses	Linesi Diveliyasi	C/l/c/b/peace	Accused promised several times to sell the victim	...	Sent to dpp on 01/08/2016
93	Ntcheu	Dijani Lwoko	Unknown	Tampering a grave	On january 2016 unknown dug our a grave for late rabson kabondo & took out the bones	.....	Still under investigations

94	Ntcheu (Lizulu)	Charles Chidambukwa Ndau	Yune Kasamba	Robbery with violence	On 06/02/2016 accused Robbed k103,000.00 & tied up the victim in his shop	....	Still under investigations
95	Mpemba(Mirale) Mr/Cr/11/08/16	Divason Chimombo	Willard Diverson	A/o/a/b/harm	Victim went to visit his sister where he was assaulted by accused who is his inlaw	Adj. To 15/08/16 for hearing accused remanded	Sent to dpp on 18/08/16
96	Phalombe Pb/Cr/01/02/2016	Gozanga Mponda	Kanindo Pinifolo	C/l/c/b/peace	Accused offered for sale human bones	Adj. Sinadie accused remanded	Sent to dpp on 18/08/16
97	Chilomo Ci/Cr/21/06/2016	Juma Ali	Doreen Mkandala & Sarah Napwiri	Use of insulting language	Accused insulted the victim by calling him money	Adj. Sinadie accused remanded	Sent to dpp on 18/08/16
98	Nchalo NI/Cr/80/07/2016	Masautso Tobiasi & 3 Others	The State	Conspiracy to commit a felony	Accused were discussing about the sale of human foetus	Adj. Sinadie accused remanded	Sent to dpp on 18/08/16
99	Phalombe Pb/Cr/19/06/2015	Odala Chimwala	Goodson Rabson & 2 Others	Tampering a grave	Jonathan kalibwanji (of albinism had died 4 years ago. On 01/06/16 his grave was dug out and bones taken away	Adj. Sinadie accused remanded	Sent to dpp on 18/08/16
100	Mwamnza Mw/Cr/09/08/2016	Justin Kafandiye	Petro Bazilio	Intimidation	Accused threatened to kill the victim	Adj. Sinadie accused remanded	Sent to dpp on 18/08/16
101	Lilongwe(Ka nengo)	Charles Sentala	Abdul Ng'ombe	Intimidation	.....	Matter in court accused on remand	

102	Mwanza Mw/Cr/13/ 08/2016	Tobiasi Chowawa	Dereck Bola And Blessings Filimon	C/l/c/b/peace	Accused called the victim worth of millions	Adj. Sina die accused remanded	Sent to dpp on 18/08/16
103	Kawale (Kaliyeka) Kw/Cr/128/ 10/2016	Moses John	Friday Tengani	C/l/c/b/peace	Accused promised to sell the victim & use the money for beers	Hearing stage accused remanded	Spo kawale
104	Ntchisi	Unknown	Katiwe Zodiak	Tampering a grave	A 1 year six months child with albinism's grave was dug out and body found abandoned with no arms	No arrest	....
105	Limbe (Bca Hill)	The State	Innocent Simoni	C/l/c/b/peace	Accused was looking for an albino grave claiming that he had a market	Convicted and sentenced to 3 months ihl	
106	C3/Cr/17/0 7/2016	Lucia Kainga	Joseph Mdimbwa And Laure Mwamphac hi	Attempted murder	Accused attacked the victim in her house and chopped her right palm	Mdimbwa arrested in malawi and mwamphachi arrested in tanzania but not yet extradited	
107	Lilongwe(M sundwe) Ne/Cr/12/1 0/2016	...	Kulinzi Kang'oma	Offering a child for sale	Accused was offering his onw child for sale	Arrested and remanded at maula	...

108	Thyolo (Sandama)	Mphatso Pensulo	Willard Michael and Makuluni Ekhoto	Murder	Accused called the victim into a certain house to give him mandasi but hit him with a hoe handle and died	Arrested on 12/01/17 in mozambique	File was sent to state advocate blantyre on date to be communicate d
109	Lilongwe (Tsabango)	Unknown Woman with albinism	Unknown	Murder	Deceased was found dead in a decomposed state	Case under investigations	...
Total cases	109						

Source of information: APAM