

**COMBATING WITCHCRAFT BASED VIOLATIONS OF THE  
RIGHT TO LIFE OF ALBINOS IN TANZANIA: A CRITIQUE ON  
LAW AND OTHER MEASURES**

**By**

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University**

**2016**

## **CERTIFICATION**

We, the undersigned certify that we have read and hereby recommend for acceptance by the Mzumbe University a Dissertation titled, **COMBATING WITCHCRAFT BASED VIOLATIONS OF THE RIGHT TO LIFE OF ALBINOS IN TANZANIA: A CRITIQUE ON LAW AND OTHER MEASURES** in fulfillment of the requirements for the degree of Master of Laws of Mzumbe University.

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## **DEDICATION**

I dedicate this work to my beloved wife Bahati Dickson Mwaipasi and our lovely children, Giovanna Emmanuel and Gian Emmanuel, who have always been my pillars of strength and encouragement. They had been praying for me day and night. Indeed, this Masters has cemented that appreciation. Thank you my beloved wife and lovely children for your powerful prayers and faithfulness. I will always strive to make you proud. May God the Almighty give you favor.

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All research participants who willingly assisted me with the completion of the questionnaires, as well as participated in the interviews.

All my family members and friends who supported and encouraged me.

## **LIST OF ABBREVIATIONS**

AU	African Union
CHRAGG	Commission for Human Rights and Good Governance
CEDAW	Convention on the Elimination of All Forms of Discriminations Against Women
IAAD	International Albinism Awareness Day
ICPCR	International Convention on Political and Civil Rights
ICRPD	International Convention on the Rights of Persons with Disabilities
LHRC	Legal Human Rights Centre
NGOs	Non-Governmental Organizations
PWA	People with Albinism
TAS	Tanzania Albino Society
THCs	Temporary Holding Centers
THO	Traditional Healers Organization
UN	United Nations
URT	United Republic of Tanzania
UTSS	Under The Same Sun
UVRs	Ultraviolet Rays
UNHCHR	United Nations High Commissioner for Human Rights

## **ABSTRACT**

Tanzania is experiencing the unprecedented attacks and killings of persons with Albinism (PWA); this is the tragedy which currently the nation is facing. The statistics from 2006 to 2015 show 156 incidents have been reported in Tanzania; 75 killings, 62 maimed and crippled survivors, 1 abduction, 16 grave desecrations and 2 attempt grave desecration by organ hunters. According to UNHCHR report, these atrocities are geared by witchcraft beliefs based on the notion that body parts of PWA have magical powers capable of making non-albinos wealthy and prosperous. Such acts violate the right to life, and the right to security enshrined under the Constitution of the United Republic of Tanzania and, various international human rights treaties. The attacks and killings are continuing despite the existing law termed the Witchcraft Act Cap 18 R.E 2002, which has been in place since the colonial era.

The continuation of the atrocities prompted the government of Tanzania to adopt administrative measures such as Public awareness campaigns, Temporary holding centers and Secret ballots but still the attacks and killings continued as in 2015, five incidents were reported.

Therefore, this dissertation focuses on the assessment of the effectiveness and adequacy of the Witchcraft Act, together with Administrative initiatives adopted by the government in the Protection of PWA. It also focuses to give recommendations on how to do away with violations of the right to life of PWA.

The study employed simple survey design to make sure that the required data is gathered. The study used a sample size of 135 respondents who were obtained through purposive sampling. Data were collected by using interviews and questionnaires.

The findings revealed that the witchcraft Act is blunt, insufficient and useless as far as the witchcraft practices are concerned, and administrative measures taken to curb the problem were inadequate that is why the problem is still persisting. The suggested permanent solution is massive public education so as to change the mindset of the people.

## **INTERNATIONAL AND REGIONAL INSTRUMENTS**

African Charter on Human and Peoples' Rights (1981/1986)

African Charter on the Rights and Welfare of the Child, 1990.

Convention on the Elimination of All Forms of Discrimination Against Women, 1979/1981.

International Covenant on Civil and Political Rights (ICCPR) 1966.

International Covenant on Economic, Social, and Cultural Rights, 1966.

International Convention on the Rights of Persons with Disabilities, 2006.

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women (Maputo Protocol), 2003.

Universal Declaration of Human Rights, 1948.

## **CONSTITUTION**

The Constitution of United Republic of Tanzania, 1977(as amended from time to time)

## **LIST OF STATUTES**

The Law of the Child Act No 9 of 2009.

The Penal Code [Cap.16, R.E 2002].

The Persons with Disabilities Act, Act No.9 of 2010.

The Traditional and Alternative Medicine Act, Act No 23 of 2002.

The Witchcraft Act, 1928 [Cap 18, R.E 2002].

## **LIST OF CASES**

### **Tanzania Cases**

Mboje Mawe and 3others v. R, Criminal Appeal Case No 86/2010, Court of Appeal of Tanzania at Tabora,(Unreported)

Masumbuko Matata and 2others v. R, Criminal Appeal Case No 318, Court of Appeal of Tanzania at Tabora (Unreported)

Republic v.Juma Abdallah[ 1974] EA 336,338

### **Cases from other Jurisdictions**

Bandhua Mukti Morcha v. Union of India AIR (1984), SC102

State v. Makwinyane Mchnu [1995]3 S.A (CC)

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## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Introduction

In Tanzania, there have been serious attacks and killings of persons with albinism due to the antiquated belief in witchcraft that body-parts of persons with albinism hold some magical powers that can make non-albinos wealthy and prosperous.<sup>1</sup> The attack and the killings are purely an outright disrespect for the human dignity as entrenched by the international Human Rights Law.<sup>2</sup>

The Court of Appeal of Tanzania in one of its decisions, has referred such a belief to be the most stupid and barbaric misconception.<sup>3</sup> The then President of the United Republic of Tanzania His Excellency Jakaya Mrisho Kikwete in his speech of March 2015 to the public, referred to the same as an evil that has shamed Tanzania<sup>4</sup> while President Barack Obama of the United States of America has named it as a foolish tradition.<sup>5</sup> The killings have not only shocked people with albinism and the government of Tanzania but also the International Community hence making an outcry against it.<sup>6</sup> Children with albinism are mostly the victims of the violations due to the fact that they are more vulnerable, easy to find and relatively easy to capture because they are often left to play outside unsupervised and they do not always have the strength to physically fend off the attackers.<sup>7</sup>

The other reason is that the attackers consider children as innocent with body-parts deemed more potent in producing the intended witchcraft results.<sup>8</sup> Al-Shaymaa Kwegyr who is an albino MP woman in one of the parliamentary sessions cried to the members of

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<sup>1</sup> Walker, J. (2013). Southern Africa's children Projects: Horrific African Witchcraft is Big Business in Tanzania: <http://www.southern-africa-children.org.uk/african-witchcraft.html> visited on 30 July 2015.

<sup>2</sup> Olagunju, O.S.(2012). Towards a Biblical Response to Myths and Discrimination Against the Human Right of Albinos in Yoruba Land, *Journal of Studies in Social Sciences*, ISSN2201-4624 Vol.1(2012) No 1, 46-58.

<sup>3</sup> Mboje Mawe and 3others V.R,Criminal appeal Case No 86/2010,Court of Appeal of Tanzania at Tabora(Unreported)

<sup>4</sup> [http:// www.bbc.com/news/world-africa-31849531](http://www.bbc.com/news/world-africa-31849531) visited on 20th december,2015

<sup>5</sup> Obama's Speech in the young African Leaders Initiative Presidential Summit-Washington DC. <http://www.cnsnews.com/.../Obama-tells-Africans-that-kill....>visited on 28<sup>th</sup> January 2016

<sup>6</sup> Dave, O. (2010) Albino killings in Tanzania: Implication for Security, *Peace studies Journal* ,Vol.3 Issue1 April 2010 p.69

<sup>7</sup> UTSS, (2012), Children with Albinism in Africa: Murder, Mutilation and Violence, A report on Tanzania with Parallel reference to other parts of Sub-Saharan Africa.

<sup>8</sup> UTSS, (2012), Children with Albinism in Africa: Murder, Mutilation and Violence, A report on Tanzania with Parallel reference to other parts of Sub-Saharan Africa.

parliament that people with albinism including herself are always living in fear of being attacked and killed, this situation led her to ask three shocking questions:

What have we done?

What sins have we committed to be treated like this?

Why are you doing this to us?

The members of parliament were all shocked and required the Government and the community to protect people with albinism.<sup>9</sup> This is because the attacks violate the right to life which is the most fundamental right on which all other rights depend on. In other words, if life is intentionally extinguished, then all other rights become meaningless.<sup>10</sup> The International community has condemned the killings and declared that people with albinism form an exceptional vulnerable community.<sup>11</sup>

Therefore, this study provides a critical analysis on the witchcraft based violation of the right to life, the adequacy of the Witchcraft Act and administrative mechanisms adopted by the Government of Tanzania to protect people with albinism against witchcraft beliefs and its impacts.

## **1.2 Background to the Study**

Violation of the right to life of persons with albinism has existed for decades due to the fact that, in most communities across the world, albinism is still profoundly misunderstood. However, it is amplified in the Sub-Saharan Africa largely because the light skin tone of people with Albinism (PWAs) stands out sharply in communities whose members are predominantly dark skinned.<sup>12</sup> In some parts of sub-Saharan Africa, the condition was traditionally thought as a curse or as some form of ‘punishment’ from the

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<sup>9</sup> The Guardian(21<sup>st</sup> August, 2014))

<sup>10</sup> Emmanuel, S. (2012) The Road to a new Constitution in Tanzania: A human Rights Primer, *Tuma Law Review*, Vol.1 p.65.

<sup>11</sup>Report of the office of the United Nations high Commissioner for Human Rights on the attacks and discrimination against persons with albinism submitted pursuant to Human Rights Council resolution 23/13 of June 2013. pp. 4-7.

<sup>12</sup> Muthee, T. (2011). Myths, Discrimination and Call for Special Rights for Persons with Albinism in Africa in Sub-Saharan Africa, p. 2.

gods or the ancestors for something wrong done by the parents and as a result they were killed by the family or tribe.<sup>13</sup>

This kind of stigma has led to the killing of Esther d/o more, a Kenyan child, born with albinism by her mother in August 2010. In court, the mother claimed that her husband had convinced her to kill the baby since she was born with albinism and hence a bad omen and a disgrace to the family.<sup>14</sup>

The Tanzania Commission for Human Rights and Good Governance report reveals that in most parts of Tanzania especially rural areas children with albinism were instantly killed at birth for fear of shame attached to the condition or beliefs that they carry bad luck.<sup>15</sup> Under the Same Sun report reveals that Sukuma, Masai, Chagga and Digo tribes traditionally killed their babies with albinism as soon as they were born or left in the forest to die.<sup>16</sup>

Tanzania has recently grown to be vulnerable to attacks and unwarranted killings from persons who believe that their body-parts/organs particularly genitals, limbs, breasts, fingers and the tongue can be used to generate income.<sup>17</sup> In other words, it is said that those body parts could bring success for traders or business people.<sup>18</sup> This finding was supported by the Tanzania Human Rights report that, an increase in the violation of the right to life through killings and torture is due to witchcraft beliefs whereby 72 killings of persons with albinism have been reported and documented since 2000.<sup>19</sup>

A recent study reveals that from 2006 to date more than 100 albinos have been violently attacked as a result, 76 died and more than 31 escaped, though many were left crippled and maimed<sup>20</sup>. Most of the killings so far have occurred in the lake zone regions namely

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<sup>13</sup>Muthee, T. (2011). Myths, Discrimination and Call for Special Rights for Persons with Albinism in Africa in Sub-Saharan Africa, p. 2.

<sup>14</sup> Mars group, mother jailed for killing albino baby. [http://www.marsgroupkenya.org/youth/index .php? Option=com](http://www.marsgroupkenya.org/youth/index.php?Option=com). visited on 30 June 2015.

<sup>15</sup> Report of the Commission for Human Rights and Good Governance –Tanzania(2010)

<sup>16</sup>Children with Albinism in Africa: Murder, Mutilation and Violence, report submitted to the Special Representative on Violence against Children by UTSS (2012).

<sup>17</sup> Salewi , D.H. (2011) the Killings of Persons with Albinism in Tanzania: A Social Legal Inquiry, Unpublished dissertation on the Partial fulfillment of the requirement for an award of LL.M of University of Pretoria .pp. 1-2.

<sup>18</sup> Adebayo, F. (2014 ). Advocacy for Minorities in Africa :Issues and Lessons in Advancing the Rights of Albinos in Tanzania and Osus in Nigeria ,*Asia Pacific Journal of Research*,Vol.1 Issue XVII p.116 .

<sup>19</sup>The Tanzania Human Rights Report (2013)

<sup>20</sup>Masanja, M .M (2014). Albinism:” Awareness, Attitude and Level of Albinos’ Predicament in Sukumaland”, Tanzania ,*Asian Journal of Applied Science and Engineering(ABC) Journals* ,VoL. III NO 5 p.2

Mwanza, Shinyanga, Simiyu, Geita, Kagera, Mara, and also in the Western Regions namely Tabora and Katavi.<sup>21</sup>

One of the most recent killings took place on 17th day of February, 2015 at Geita Region. Both Yohana's arms and legs were hacked off, followed by other four incidents: on March 7, 2015, where a six year old boy by the name of Baraka Cosmas lost his right hand in witchcraft related attack in the Kipeta Village within Sumbawanga District. On the 14th day of May, 2015 a 30 year old woman namely Limi Luchoma lost her right arm in witchcraft related machet attack in Katavi Region.<sup>22</sup>

On the 16th day of June, 2015 a six year old girl with albinism by the name of Magreth Hamisi was rescued from abduction after she went missing for several days in Kona nne Village within Nzega District in Tabora Region .The Police in Tabora set a trap and managed to arrest one, Masanja Mwanamila who was looking for the buyer who was willing to buy the said Magreth. On October 21, 2015 a 35year old man with albinism by the name of Mohamed Said was attacked at his home in Mukoranga Town. He sustained serious injuries to the right side of his head and ear because a machete was used to chop off some flesh from the right side of his head and ear and on 18th December 2015 an albino woman (70 years) namely Ester Togoloi Maganga, resident of Lushoto Tanga lost her finger after being chopped off by unknown people.<sup>23</sup>

Beliefs in witchcraft are not alien in Tanzania as pointed out by Kwikima Ag J. (as he then was) that,

Our people, whether we like it or not, have believed, and are believing and will continue to believe in witchcraft even if literacy were to become universal tomorrow morning. Science and technology have yet to explain the natural puzzles and phenomena which are peculiar to Africa. And judging from the very low level and slow pace of our technological advancement these beliefs shall remain with us for quite some time. Should we therefore face this fact and adjust the law accordingly?<sup>24</sup>

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<sup>21</sup> [www.underthesamesun.com/.../](http://www.underthesamesun.com/.../) ...retrieved on 12th June 2015 at 7.55hour

<sup>22</sup> Under the Same Sun (UTSS), Report on attacks of People with Albinism, November 6, 2015 p.48

<sup>23</sup> Under the Same Sun (UTSS), Report on attacks of People with Albinism, November 6, 2015 p.48

<sup>24</sup> Republic v.Juma Abdallah [1974] EA 336 and 338

Tanzania has a specific law on Witchcraft.<sup>25</sup> Under this Act, any person who by his statements or actions represents himself to have the power of witchcraft; makes, uses, has in possession or represents himself to possess any instruments of witchcraft; supplies to any other person any instrument of witchcraft, or advises any other person upon the use of witchcraft or any instrument of witchcraft; or threatens to use or resort to the use of witchcraft or any instrument of witchcraft upon or against any person or property commits an offence.<sup>26</sup> It is also an offence to employ, or solicit any other person to resort to the use of witchcraft or any instrument of witchcraft for any purpose.<sup>27</sup> Any person who commits an offence under this Act with intent to cause among other things death or injury to any community, or person is liable to imprisonment for not less than seven years.<sup>28</sup>

The Witchcraft Act is not the only law that suppresses witchcraft practices, but also The Traditional and Alternative Medicines Act.<sup>29</sup> Under this Act, Witchcraft practices are prohibited, but also any traditional or alternative health medicine practice dangerous to health or life of another person is prohibited.<sup>30</sup>

Furthermore, the Government of Tanzania did not end with the law only in its efforts to curb witchcraft practices dangerous to people especially PWA. In this respect, the government adopted Administrative mechanisms such as Public awareness campaigns to educate the people, and formation of the multi-disciplinary National Task Force. The country wide campaign intended to identify suspected perpetrators in the Albino killings, temporary suspension of all practicing certificates of traditional healers, secret ballot, and appointment of an MP who is an albino woman.<sup>31</sup>

Now, despite the existence of the law and Government administrative efforts, as well as the opposition from Christian and Islamic religious authorities, witchcraft remains an embedded part of the Tanzanian popular culture and recently it has turned into a threat to the lives and security of people with albinism.

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<sup>25</sup> The Witchcraft Act, 1928 [Cap 18 R.E 2002]

<sup>26</sup> Ibid Section 3

<sup>27</sup> Ibid Section 7

<sup>28</sup> Ibid Section 5(1)

<sup>29</sup> The Traditional and Alternative Medicines Act, 2002

<sup>30</sup> Section 30 of The Traditional and Alternative Medicines Act, 2002

<sup>31</sup> United Nations, International Covenant On Civil And Political Rights ,replies to the list of issues (CCPR/C/TZA/Q/4) to be taken up in connection with the consideration of the fourth periodic report of the United Republic Of Tanzania (CCPR/C/TZA/4) (17 June 2009).

This study comes forth to therefore assess the adequacy of the Witchcraft Act and the effectiveness of government administrative efforts in the protection of people with albinism against killings of the people with albinism fueled by witchcraft beliefs.

### **1.3 Statement of the Problem**

Despite the fact that right to life is guaranteed by the Constitution of the United Republic of Tanzania which is in line with both regional and international Human rights instruments, there have been problems related to this right especially attacks and killings of PWA due to witchcraft related beliefs that their body-parts bring fortune.<sup>32</sup> That belief is so serious in Tanzania society regardless of the existence of the Witchcraft Act<sup>33</sup> which was mainly enacted in order to quash witchcraft practices. Under this Act, it is an offence to practice, or advise any other person or employ him or her in order to practice the same against any other person with intent to cause death or injury or to supply to any other person any instrument of witchcraft.<sup>34</sup> This provision would of course include the harming or killing of Albinos for their body parts to be used in a magical spell. The Witchcraft Act, though prohibits witchcraft practices, has failed to give a clear meaning of witchcraft, and how to prove it before the court of law.

Now, despite the prohibition, the recent report<sup>35</sup> has shown that witch doctors use body-parts of PWA to make charms for the people or instruct gangs to kill the persons with albinism for them in exchange of money, or instruct those who normally go to them for help to carry albino body parts as one of the conditions. The albino body-parts are grind up with herbs, roots and sea water to make charms and spells capable of bringing good luck and wealth.<sup>36</sup>

Despite existence of the law and the administrative efforts, violation of the right to life and security for people PWA due to witchcraft beliefs and practices still exists and this is evidenced by the incidents reported in 2015 in which one young boy lost his life, while

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<sup>32</sup> Commission For Human Rights and Good Governance report of March 2011 submitted to the Human Rights Council? Universal Periodical Review Mechanism.

<sup>33</sup> Witchcraft Act [Cap 18 R.E 2002]

<sup>34</sup> Section 3 of the Witchcraft Act [Cap 18 R.E 2002]

<sup>35</sup> Report of United Nations High Commissioner for Human Rights on the attacks and Discrimination against persons with albinism(2013)

<sup>36</sup> Reuters ,January 14 2015

more than five survivors as already shown in the back ground of this study, were seriously injured.<sup>37</sup>

This study comes forth to therefore examine the weaknesses and/ or effectiveness of the law and Administrative initiatives adopted by the government in curbing the problem.

#### **1.4 Objectives of the Study**

##### **1.4.1 General Objective**

The general objective of this research is to assess the adequacy and effectiveness of the law together with administrative measures adopted by the government of Tanzania in protection of the PWA in Tanzania against killings fueled by witchcraft beliefs.

##### **1.4.2 Specific Objectives**

To examine the adequacy and effectiveness of law fighting against witchcraft practices leading to the killing of PWA.

To investigate the adequacy and effectiveness of administrative initiatives taken by the government to suppress witchcraft practices curtailing the lives of PWA.

To investigate legal measures to permanently ameliorate the killings of the PWA in Tanzania.

#### **1.5 Research Questions**

What is the attitude of people towards PWA, witchcraft and its ill-effects?

How effective is the law in controlling or preventing witchcraft practices leading to killing of PWA?

To what extent are the administrative initiatives employed by the government effective to end the killings of PWA?

#### **1.6 Significance of the Research**

The study shall help the community to know the importance of the right to life of every human being.

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<sup>37</sup>Under the Same Sun (UTSS) Report on attacks of People with Albinism, November 6, 2015.

The study shall serve as one of the teaching materials in the academic institutions, especially in the area of human rights.

The study shall help people to know the impacts of witchcraft practices.

The study shall provide other researchers with the necessary information for further research in the field.

The study shall help to propose the means to end the killing of PWA.

### **1.7 Literature Review**

This section provides the readers with a critical review of literature where successes or shortcomings are identified and therefore help to develop a gap of knowledge that need to be filled.

According to Walker.M.J (2013) <sup>38</sup> Africans with albinism look at every day as a challenge. It is hard to protect the skin from a merciless sun, which can easily cause painful burning. It is a challenge to keep ahead of a genetic disorder that could result in premature death due to skin cancer. It is difficult to learn to read and write because albinism affects the eyesight. But harder than all of those challenges is the daily challenge to stay alive in a society willing to murder albinos for profit .The report has managed to expose the major challenges that PWA are facing. However the same has not gone further to discuss how the challenges can be eradicated through legislation or other measures. That is a gap which needs to be addressed by this Study.

Concentrating on the problems facing PWA in Tanzania, the International Federation of Red Cross/Red Crescent carried out a study and finally published an advocacy report (2009) “Through Albino Eyes” which provided a qualitative perspective on the plight of albinos in East Africa. The report stated that at least 10,000 people with albinism were unable to trade, study, and cultivate their land for fear of hunters hired by witch doctors and big money traders to look for body parts for witchcraft. The report discussed the causes the causes of albino attacks and killings as being superstition beliefs. The report commended immediate government intervention. However, the report has not touched the weaknesses or strength of the of the Witchcraft law which has been in place since

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<sup>38</sup> Walker, J. (2013) Albino African Citizens Live In Fear of Witchcraft Money Maker available on <http://www.southern-africas-children.org.uk><...retrieved on 14<sup>th</sup> January, 2016

colonial era. This study therefore comes forth to address among other things the strength of the Witchcraft Act in fighting the said beliefs in Tanzania.

According to UNHCHR report (2013)<sup>39</sup>, in some communities, erroneous beliefs and myths, heavily influenced by superstition; put the security and lives of persons with albinism at constant risk. The report further cements that the killing of and attacks against – including the mutilation of – persons with albinism violate the right to life, the right to security of the person and the prohibition of torture and ill-treatment as enshrined in various international human rights treaties. That attack against persons with albinism is “manifestation of the worst forms of cruel, inhuman or degrading treatment and can never be justified.” The report touched Tanzania to great extent because serious incidents were found to have occurred in Tanzania. The same demonstrated the causes of albinism and the need for PWA to be protected, respected and treated with dignity. However, the report is silent as to whether there is wrong with Tanzania laws especially the Witchcraft Act, together with administrative mechanisms adopted by the government to curb the problem. This Study comes forth to break that chain of silent.

Lund and Gaigher (2002)<sup>40</sup> conducted a study on the health intervention program for children with albinism at a special school in South Africa. The findings of the study revealed that albinism is the result of witchcraft. Furthermore, the study found similar myths that advocate that families with babies that have albinism are victims of witchcraft and that it is because of this that these babies are born with albinism. Their conclusion is to the effect that the lack of knowledge about albinism can lead to many superstitions. This work is relevant to this study because it exposed the researcher to the dangerous myths existing in other parts of the world.

Michael M.M. (2015)<sup>41</sup> on his side conducted a research on the albino plight in Tanzania and found that the most extreme form of marginalization and stigma is the killing of persons with albinism for their body parts as it is believed that albinos’ body-parts can make solutions against bad luck, poverty, and in winning in political elections. The

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<sup>39</sup>Report of United Nations High Commissioner for Human Rights on the attacks and Discrimination against persons with albinism (2013)

<sup>40</sup> Lund,& Gaigher (2001). “A health intervention program for children with albinism at a special School in South Africa”, in *Health Education Research*, vol. 17, P.3

<sup>41</sup> Masanja M.M.(2015). Albinos Plight: Will legal methods be Powerful Enough To Eradicate Albinos’ Scourge? *International journal of Education and Research*. Vol.3 No 5 May 2015

belief is driven by greed and superstitions rooted in traditional cultural beliefs.<sup>42</sup> The findings further revealed that, over time, the child with albinism was spared from the infanticide and allowed to grow to adulthood but would be buried alive with the Sukuma Chief when the latter died. In the Chagga tribe, newborns with albinism were traditionally left in the forests to die. In the Digo and Maasai tribes, newborn children with albinism were killed after a trial by ordeal. Currently, those who survived are also hunted regardless of their age and tribe.

That belief, for example, has led to the killing of one Matatizo Dunia where by the murderers were charged and convicted of murder before the High Court of Tabora and sentenced to suffer death by hanging. The convicts Appealed to the Court of Appeal of Tanzania. Dismissing an Appeal, the Court found that Lyaku s/o Willy was unlawfully killed and the motive was to get the deceased's body parts because of the most stupid and barbaric misconception that albinos' parts are charms and can make a person wealthy within a very short time.<sup>43</sup>

In another case one Masumbuko Matata who was charged with the offence of Murder disclosed that they killed an albino Matatizo s/o Dunia in order to obtain the body parts to be sold to a certain witchdoctor at Ramadi within Magu District in Mwanza Region.<sup>44</sup> The third case involved a Kenyan Nathan Mtei (28) who attempted 'sale' of a person with albinism, Robinson Mkwama (20), he was sent before the Resident Magistrate Court of Mwanza, charged and convicted upon his own plea of guilty to the offence of Human Trafficking, and sentenced to 17 years imprisonment and a fine of Tshs 80,000,000/= part of his admission was that, he was selling him so that his body parts could be harvested for making charms.<sup>45</sup>

Mesaki, S. (2009)<sup>46</sup> conducted a study on witchcraft and the law in Tanzania and found that the Government of Tanzania recognizes the seriousness of the witchcraft problem, considering it to be a block in national development whereby in its current national

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<sup>42</sup> Masanja, M.M.(2015). Albinos Plight: Will legal methods be Powerful Enough To Eradicate Albinos' Scourge? *International journal of Education and Research*, Vol.3 No 5 May 2015

<sup>43</sup> *Mboje Mawe and 3others v. R, Criminal Appeal Case No 86/2010 Court of Appeal of Tanzania at Tabora ( Unreported)*

<sup>44</sup> *Masumbuko Matata and 2others v. R Criminal Appeal Case No 318, Court of Appeal of Tanzania at Tabora .(Unreported)*

<sup>45</sup> Daily nation, ,man in plot to sell albino imprisoned,18<sup>th</sup> August 2010,www.co.ke/ visited on 9<sup>th</sup> January, 2016.

<sup>46</sup> Mesaki, S. (2009). "Witchcraft and the law in Tanzania". *International Journal of Sociology and Anthropology*, 1(8): pp, 132 – 138.

poverty eradication strategy, the government argues that the incidence of witchcraft is closely associated with poverty and therefore poverty reduction will reduce the incidence of witchcraft. Mesaki further argues that legislating against the practice of witchcraft raises the problem of evidence which is intriguing in legal parlance. He also argues that on the other hand legislation against accusing others of witchcraft provokes criticism that the state protects witches, rather than the victims of witchcraft. Current instruments in Tanzania against witchcraft focus solely on the law as the means of controlling witchcraft beliefs and practices, rather than on a wider portfolio of responses which could potentially address their negative impacts. The researcher has well demonstrated weaknesses the difficulties in eradicating witchcraft beliefs through legislation .However, the same has not far to address administrative mechanisms capable of curbing the problem. This Study addresses the said gap by showing the administrative initiatives adopted by the government of Tanzania, and assesses their effectiveness and adequacy in curbing albino attacks and killings fueled by witchcraft beliefs.

According to CHRAGG report (2014)<sup>47</sup>, Administrative initiatives such as education and awareness raising campaigns are very important in raising awareness of what albinism is, but also to know that they are human beings who deserve to enjoy Human Rights like other people. The report did not go further to discuss whether administrative mechanisms which were already in place, such as revocation of traditional Healer practicing licenses, establishment of Temporary Holding Centers were effective.

This Study comes forth to fill the gap by assessing among other things the adequacy and effectiveness administrative initiatives adopted by the government in its efforts to end the problem.

According to Boyack C., (2011)<sup>48</sup> the Government under the Constitution has the duty to respect and safeguard individual rights through among other things legislation and administrative measure. That it has the duty to raise people's awareness on the area of Human Rights.

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<sup>47</sup> CHRAGG Report,2014

<sup>48</sup> Boyack, C. (2011),. *Latter day-liberty; A Gospel Approach to Government and Politics* ,Cedar Fort.Inc

Urom, M. S (2014)<sup>49</sup> conducted a research on Violence against persons with albinism and older women. He argues that in some countries in Africa, persons with albinism are considered to simply vanish. In Tanzania, 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. Other frequent myths that threaten the life and physical integrity of persons with albinism include: that sexual intercourse with a woman or a girl with albinism can cure HIV/AIDS; that the sacrifice of persons with albinism can appease “the god of the mountain” when a volcano starts to erupt; or that pulling out the hair of a person with albinism brings good luck. It has been reported that miners use the bones of persons with albinism as amulets or bury them where they are drilling for gold, and that fishermen weave the hair of persons with albinism into their nets to improve their catches .The study demonstrated the myths surrounding albinism, but did not show derogatory names. The same did not expose the names used in Tanzania or the weaknesses of the Witchcraft Act. This Study comes forth to show among other things derogatory names used in Tanzania against PWA and effectiveness of the Witchcraft Act.

Olugunju, S. O. (2012)<sup>50</sup> conducted research on the Biblical response to myths and Discrimination against the Human Rights of Albino in Yoruba land (2012) and he argues that Albinos in some parts of Africa are kidnapped and killed for ritual purposes. The worst hit countries are Tanzania, South Africa and Burundi. This dastardly act against the Albinos is an outright disrespect for the sanctity of human life as assured by the Almighty and their right to live as entrenched by International Human Rights Law. God has given human beings life and the United Nations Declaration of Human Rights has guaranteed freedom for all people no matter their race, color and creed. It is unfortunate that the human rights of the Albinos are being abused. Worse than social ostracisation is the idea that albinos are worth more dead than alive. He concludes that a concerted effort should be made by all and sundry to protect the right of these people and save them from the hand of the ritual killers. The researcher has discussed the need to protect and respect the right to life as God given right. This work is relevant here because right to life forms the

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<sup>49</sup> Uromi, S. M. (2014). Violence against persons with albinism and older women: Tackling witchcraft accusations in Tanzania. *International Journal of Education and Research* 2(6): 323 - 338. ISSN: 2411-5681 [www.ijern.com](http://www.ijern.com).

<sup>50</sup> Samwel, O. O .(2012). Towards a Biblical Response to Myths and Discrimination against the Human Rights in Yoruba land, *Journal of Studies in Social Sciences* ISSN 2201-4624 Vol.1No 1, pp., 46-58.

base of the present study .However, the same does not show the proper way to do away traditional beliefs leading to attacks and killings of PWA. This study comes forth to address this gap.

Generally, the reviewed literature suggests that most studies on albinism have been conducted in the area of stigmatization, discrimination, myths and tales, and killings of PWA on witchcraft related beliefs. Another researched area involves the role of Administrative mechanism in curbing the problem. No previous research in the field of albinism in Tanzania has been carried out with regard to the adequacy of the Witchcraft Act, Cap 8 R.E 2002 in the suppression, or control of the Witchcraft beliefs leading to the attack and killing of PWA and resulted into tremendous violation of the right to life .Furthermore, no previous research conducted to particularly assess the effectiveness and adequacy of the administrative initiatives adopted by the government in fighting the problem This study, therefore, intends to address this gap.

## **1.8 Research Methodology**

### **1.8.1 Overview**

This part explains the strategies and the methodologies that were used to conduct the study. It presents the study design and approach, survey population, which explain who was involved in the interview and why and where they were found, the study area, a sampling design and procedure, the methods for data collection, methods for data analysis, and ethical issues.

### **1.8.2 Research Design**

Research design refers to the overall master plan of a research that throws light on how the study is conducted. Yin (2009) defines a research design as an action plan for getting from here to there, where ‘here’ may be defined as the initial set of questions to be answered and ‘there’ is some set of conclusions answers<sup>51</sup>.

This study employed survey design. This design involves creating, brainstorming, and verifying the survey goals, the sample from the target population, choosing survey methods, that is to say methods of data collection, analyzing and interpreting the data

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<sup>51</sup> Yin, R.K (2009). *Case study research: Design and Methods*, Sage, London P.19

gathered, and communicating the results<sup>52</sup>. This design has helped the researcher to conduct this study successfully.

### **1.8.3 Study Area**

This study has been carried out in Tabora region. This is because, the region is one of those highly characterized by violations of the rights for persons with albinism on witchcraft beliefs.

### **1.8.4 Limitations of the Study**

In this study, the researcher has encountered limitations such as unwillingness of people with albinism to speak to a stranger about their lives, on the ground that they are not sure of the research intention.

Others claimed that they have done several interviews with other researchers, but have seen no fruits .Unwillingness of the non-registered Traditional Healers to speak to the researcher on the ground that the researcher will expose them to the police and other authorities. Another limitation was transport problem to reach Tabora rural areas especially Loya, Tura and Bukumbi Villages within Uyui District. Kipili, Kitunda, Chabutwa, and Tutuo within Sikonge District. This problem was encountered due to the fact that the study was conducted during the months of January, February and March 2016 which were characterized by heavy rains, whereas infrastructure, especially roads were greatly damaged, and few for example Tabora –Sikonge road was closed for more than a week. Lastly, language barrier was also one of the challenges, especially in rural areas whereby some of the interviewed people were not well familiar with Kiswahili. Some people only knew their local language mostly kisukuma and kinyamwezi, now this was a serious difficulty the researcher encountered when carrying out the study. The study was not affected because the researcher was creative, ethical and rich in research techniques, therefore managed to overcome all challenges as demonstrated in the Delimitations of the Study

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<sup>52</sup> Fincham, E.J and Drauglis, R .J,(2013). The importance of Survey Research Standards :*American Journal of Pharmaceutical Education*., School of Pharmacy, The University of Missouri Kansas City, MO .p.1-7.

### **1.8.5 Delimitations of the Study**

The researcher managed to overcome the challenge of unwillingness of PWA to speak about their lives, by being accompanied by local leaders of the area, trusted by PWA and their relatives. The Local leaders used much time to introduce the researcher to them. In facing the challenge of Non-registered Traditional Healers the Researcher assured them that the information they provide is meant for academic purpose, and it will remain confidential. In mitigating the challenge of transport, the researcher in some areas where roads were damaged in such a way that motor vehicles cannot pass, opted the use of motorcycles and sometimes bicycle to reach the interior population especially witch doctors. In facing the challenge of language barrier, the researcher had to be creative by finding worth and trustful local translators who acted as a bridge between a researcher and interviewees.

### **1.8.6 Scope of the Study**

The study focuses on the right to life for PWA and its violation accelerated by witchcraft beliefs, and analyses the adequacy of the Witchcraft Act in suppressing those beliefs and practices.

### **1.8.7 Target Population**

Target population means people that a researcher has in the mind from which he/she can obtain information. In other words, it is a population from whom the findings will be generalized.<sup>53</sup>

In this study, respondents were purposively selected in order to obtain the correct and accurate information from them. The respondents were PWA, Registered Traditional healers (Witchdoctors), Non-registered witchdoctors, Judges, Practicing advocates, State Attorneys, Police officers, human rights Activist, religious leaders and the general public.

The approach that the researcher employed to get access to the herein respondents is through their association, institutions and the local authorities. The reason why the researcher has drawn respondents from these groups is that, judicial officers, namely judges and Magistrates who determined cases of persons killed or attacked PWA

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<sup>53</sup>Msabila, D.T & Nalaila, S. G (2013). *Research Proposal and Dissertation Writing Principles and Practices*. Dar es Salaam. Nyambari Nyangwine Publishers.

including those found with albino body parts. The state Attorneys are the prosecutors while the police are the arresting officers and the recorders of the complainant statements, and the caution statements given by the accused persons. PWA and their families are the victims. Traditional healers and witchdoctors were pointed by various reports to have been behind the attacks and killings. The witchdoctors, traditional healers and PWA all live in the community, thus the community has a word against or in favor of them. Indeed, the relevant information from the herein above named respondents has been obtained by the researcher.

#### **1.8.8.1 Sample Size**

The sample size refers to the number of respondents from whom the information is collected and the same should neither be excessive, nor too small, but should be optimum.<sup>54</sup>

In this study, the sample size was 150 respondents; fifteen police officers, fifteen State Attorneys, ten witchdoctors, five human rights activists, thirty ordinary public members, thirty five PWA, ten practicing Advocates, twenty Judicial officers, five religious leaders, and five politicians.

The researcher used such a sample size because it was reachable and possible to get accurate and correct data from it within the time located for research. The researcher also used this sample size because the study of the whole population was not possible.

#### **1.8.8.2 Sampling Technique**

Sampling techniques vary depending on the objective of the study; the nature of the population being sampled, and prior information about the population being sampled.<sup>55</sup> In this study, the researcher applied purposeful sampling technique to enable him to obtain from the respondents the in-depth information.

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<sup>54</sup>Enon, J.C (1998). *Education, Research, Statistics and Measurement*. Kampala: Department of Distance Education, Institute of Adult and Continuing Education, Makerere University.

<sup>55</sup>Enon, J.C (1998). *Education, Research, Statistics and Measurement*. Kampala: Department of Distance Education, Institute of Adult and Continuing Education, Makerere University.

## **1.9 Methods of Data Collection**

In this study the Researcher used interviews and questionnaire survey to collect information in the field. This is because the research approach is qualitative and the research design is a simple survey study.

### **1.9.1 Interview**

Interview is one of the main methods used to collect primary data, that is to say, first-hand information. It involves discussion between interviewer and interviewee on a particular topic in-depth.

It is a systematic method of data collection, which involves the presentation of oral-verbal stimuli and reply in terms of oral-verbal responses or talking and listening to people<sup>56</sup> Hennink et al (2011) describes interview as a conversation with a purpose of gaining insight into a particular topic. Interviews attempt to capture things that we cannot capture through other methods like observation.

In this study, the researcher used interview method to collect data due to the following reasons: It is useful to obtain detailed information about personal feelings, perceptions and opinions. It allows more detailed questions to be asked. It usually achieves a high response rate. Respondents' own words can be recorded. Ambiguities can be clarified and incomplete answers followed up. Lastly, precise wording can be tailored to respondents and the precise meaning of questions clarified.

In this study, the researcher has used interview guides as a tool to collect data. This tool helped the researcher to lead his respondents to confine themselves in the research topic. The researcher through this tool managed to obtain relevant information from the interviewed respondents, namely PWA, Traditional healers, Witchdoctors, Police, Politicians and the General public.

### **1.9.2 Questionnaire Survey**

This is a method in research in which information is obtained by the help of a set of questions prepared by the researcher and sent to respondents for them to answer.

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<sup>56</sup>Kothari,C.R. (2009). *Research Methodology: Methods And Techniques*. New Delhi: New Age International Publishers.

In this study, the researcher opted for this method due to the following reasons: The questionnaire survey is practical in nature. It allows large amounts of information to be collected from a large number of people in a short period of time and in a relatively cost effective way. Furthermore, it can be carried out by the researcher or by any number of people with limited effect to its validity and reliability. In addition to that, the results of the questionnaire survey can usually be quickly and easily quantified by either a researcher or through the use of a software package.

Moreover, it can be analyzed more scientifically and objectively than other forms of research, and when data has been quantified, it can be used to compare and contrast other researches and may be used to measure change.

In this study, the researcher prepared a list of printed questions, and distributed them to the intended respondents namely judges, State Attorneys, Private advocates and other public officials and their turn up was so good as reflected in Chapter Four.

### **1.9.3 Data Analysis**

When raw data has been collected, it is not always easy to make sense of the data, therefore a process is always followed in order to convert the data into information which is meaningful and interpretable, and this is called data analysis. Interpretation of data involves attaching significance to what was found, making sense of findings, offering explanations, drawing conclusions, extrapolating, making inferences, considering meanings and otherwise imposing order on unruly but surely patterned world<sup>57</sup> According to Krishna Swami (2009) Data analysis means a critical examination of the assembled and grouped data for studying the characteristics of the object under study and for determining the pattern of relationship among the variables relating to it.<sup>58</sup> The purpose of analyzing the data is to summarize the large mass of information to be more understandable and meaningful

In this study, the researcher has used a combination of qualitative and quantitative methods of data analysis. The researcher obtained detailed and in-depth information from PWA, general public, Traditional Healers and respondents to the questionnaire survey. In this study, data were synchronized and organized by transforming findings from the

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<sup>57</sup> Patton, M. Q. (2002) *Qualitative Research and Evaluation Methods*, London: Sage Publications p480

<sup>58</sup> Krishna, S. O. R. (2009). *Methodology of Research in Social Sciences*, Mumbai: Himalaya Publishing House.

fields into the system of categories and transformed into meaningful information for easy interpretation and understanding. They were then presented in tabular forms, and percentages being calculated for drawing up conclusions. Indeed, the results obtained from both the questionnaires, as well as interviews were discussed and interpreted according to the specific research objective.

### **1.10 Ethical Matters**

Being ethical means adhering to the code of conduct that evolved over the years for an acceptable professional practice<sup>59</sup>. In research, ethical issues are looked at with respect to the researchers themselves, respondents, or even sponsoring entities.<sup>60</sup> With regard to respondents, ethical issues surround such things as collecting information, seeking consent, providing incentive, seeking sensitive information, and maintaining confidentiality.<sup>61</sup> Researchers are also expected not to be bias, provide or deprive individuals of treatment, use unacceptable research methodology, inaccurate reporting, and inappropriate use of information.<sup>62</sup>

Having obtained permission from the Directorate of Postgraduate Studies of Mzumbe University to carry out this study, the Researcher well adhered to ethical matters by first ensuring that no document or any other piece of information was accessed through the use of incentives or illicit means. Furthermore, sought consent from the respondents prior to any interviews, or respond to the questionnaire, but also made clear to them about the purpose of the study, and finally guaranteed their anonymity (for those who did not wish to be exposed).

### **1.11 Chapterization**

This Dissertation is organized into five Chapters. Chapter one gives the general introduction to the study and the background to the research problem. Other important aspects which are covered in this chapter include: statement of the problem, literature review, objectives and significance of the study, research questions and the research

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<sup>59</sup> Possi, A. (2014) Persons with Disability's Right to Work in Africa: A comparative Study of Employment and Disability Laws, Policies and Relevant Institutional Mechanisms of Tanzania and Selected African States. Unpublished doctoral dissertation, University of Erlangen-Numb erg, p.38.

<sup>60</sup>Mulamba, M. (2011), Mainstreaming Disability into the Poverty Reduction Process in Uganda, the Role of Human Rights-based Approach to the National Development Plan: LAMBERT Academic Publishing GmbH and Co. KG, p. 248.

<sup>61</sup>ibid

<sup>62</sup>ibid

methodology which was applied in conducting the study. Chapter two gives the conceptual framework of the study in relation to the right to life and protection of PWA against attacks and killings associated with witchcraft beliefs.

The key terms used in this study have been defined in this chapter

Chapter three discusses the legal framework in relation to the topic. The chapter covers both International and domestic law responsible for the protection of PWA against violations of their right to life. It also gives clues about the role of police and the judiciary in fighting against albino attacks and killings.

Chapter Five discusses the major findings of the study, basing on the discussion on the objectives of the study. Chapter five gives the conclusion and recommendations of the study, observations of the researcher and suggestions that are considered important for the protection of PWA against violation of their right to life due to witchcraft beliefs.

### **1.12 Conclusion**

This Chapter gave the general introduction of the research and discussed the background to the problem where attacks and killings of PWA were traced from far back. Then the statement of the problem was stated in this chapter to show what prompted the researcher to conduct this study. The objectives of the research were also stipulated together with literature review surveyed to see what other authors already discussed in relation to the research topic. Moreover, research methodology and methods of data collection were also discussed in this Chapter.

## CHAPTER TWO

### CONCEPTUAL FRAMEWORK

#### 2.1 Introduction

This chapter, presents to the readers conceptual definitions of key terms and theories related to the right to life, and the protection of people with albinism against attack and killings related to witchcraft beliefs. Through this chapter the reader gets a broader meaning of the Right to life, the whole concept of Albinism, the myths surrounding albinism, witchcraft and its consequences.

##### 2.1.1 Right to Life

The right is a moral principle based on the belief that a human being has a right to live. Globally right to life is considered as the most fundamental right on which all other rights depend on, in other words, if life is extinguished then all other rights become meaningless.<sup>63</sup> The rights to life and dignity have been described in *State V.Makwanyane and Mchunu*<sup>64</sup> as the most important of all human<sup>64</sup> rights and the source of all other personal rights in the Bill of rights.

It is one of the right rooted in the recognition of the inherent dignity, worth of all human beings, regardless of their social background, gender, age, religion and health status due to the fact that all persons are born free and equal in rights and dignity.<sup>65</sup> The Supreme Court of India, in the case of *Bandhua Mukti Morcha v. Union of India*<sup>66</sup> held that the right to life would also include right to live in peace and to sleep in peace.

Justice O' Regan described the right to life in these terms:

*The right to life is, in one sense, antecedent to all other rights in the Constitution. Without life in the sense of existence, it would not be possible to exercise rights or to be the bearer of them. But the right to life was included in the Constitution not simply to enshrine the right to existence. It is not life as a mere organic matter that the Constitution cherishes but the right to human life: the right to share in experience of humanity.....the right to life thus understood incorporates the right*

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<sup>63</sup> Emmanuel. S. (.2012). "The Road to a new Constitution in Tanzania: A human Rights Primer"  
*Tuma Law Review*, Vol.1 p.65.

<sup>64</sup>*State v.Makwanyane and Mchunu*, [1995]3 SA 391(CC)

<sup>65</sup> Amnesty International Report on Human Rights 2015/2016 p.15

<sup>66</sup> *Bandhua Mukti Morcha V. Union of India*, AIR (1984)SC102

*to dignity. So the right to human dignity and life are entwined. The right to life is more than existence; it is a right to be treasured as a human being with dignity; without dignity human life is substantially diminished, without life there cannot be dignity.*<sup>67</sup>

This definition suggests that it is meaningless to have all other rights if the right to life is not adequately respected, protected, promoted and fulfilled by the state and the society in general.

### **2.1.2 Albinism and Albino: Biological Background**

The term albinism refers to a genetic condition in which a person lacks the gene for producing melanin –the pigment that protects the skin from ultraviolet light from the sun.<sup>68</sup> The exact prevalence of albinism in the human race is not clear, but estimates say that the ratio is about 1 in 17,000. Nevertheless, it is more prevalent in some parts of the world than in others. In Denmark, the prevalence is estimated at a ratio of 1:60,000. In parts of Nigeria, the prevalence is put at 1: 1,100 whereas in South Africa, it is estimated at 1:3900. In Tanzania, it is approximated that the prevalence stands at around 1:3,000. Estimates for Tanzania quote the total population of persons with albinism at about 170,000.<sup>69</sup>

The word Albino means a white person. It is derived from the Latin word “albus” meaning “white.” Since the 17th Century, the word Albino has been used to describe living creatures with Albinism, having little or no color in the skin, eyes and hair.<sup>70</sup> For humans the term people living with Albinism (PWA) are preferred because it emphasizes that these are people like anybody else who live with a special condition.<sup>71</sup> The terms “Albinism” and “Albino” are used interchangeably.

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<sup>67</sup> *Bandhua Mukti Morcha V. Union of India* AIR (1984)SC102 pp, 326-327

<sup>68</sup> National Organization for Albinism and Hypopigmentation, *What is Albinism*, [http://www.albinism.org/publications/what\\_is\\_albinism.html](http://www.albinism.org/publications/what_is_albinism.html) (last visited August 10, 2015)

<sup>69</sup> Muthee, T. (2011). Myths, Discrimination and Call for Special Rights for Persons with Albinism in Africa in Sub-Saharan Africa.p.2.

<sup>70</sup> Ibid

<sup>71</sup> Ibid

### **2.1.2.1 Types of Albinism**

There are three main types of albinism:

Oculotaneous Albinism. This is a type of albinism that is a result of reduced pigmentation in the skin and eye due to lack of the enzyme tyrosinase and they have partial eyesight.<sup>72</sup>

Oculocutaneous Albinism. This is a type of albinism caused by a lack of melanin pigmentation in the eyes, hair and skin where the enzyme tyrosinase is present, but other factors reduce the production of melanin.<sup>73</sup> These people are very sensitive to light and have no pigment.

Ocular Albinism. This is a type of albinism as a result of reduced melanin pigment in the eyes only.<sup>74</sup> People with this condition have slightly lighter skin and hair compared with other family members.<sup>75</sup> An individual with this type of albinism lacks pigmentation in the irises and has vision problems.<sup>76</sup>

Due to a lack of protection by the melanin pigment from ultraviolet rays [UVRs], people with albinism have to be careful by protecting themselves so that they are not exposed to the sun rays, because they are highly prone to many different types of skin cancers.<sup>77</sup>

Similarly to their hair and skin, their eyes too lack color, their iris appears pinkish and they often have eye problems. First of all, people with albinism suffer from severe sensitivity to bright light. Secondly, they also experience cases of extreme nearsightedness or farsightedness that cannot be completely corrected by glasses.<sup>78</sup> They are not blind, but their vision is impaired.

## **2.2 Two Contradicting Perceptions about PWA**

Currently, there are two contradicting perceptions of People with albinism in Tanzania. There are people who regard them as a curse and a blessing. Despite the contradiction, both perceptions are dangerous to the lives of PWA.

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<sup>72</sup>Sullivan, J. .(1998). Understanding albinism. Available at [www.albinismfellowship.com](http://www.albinismfellowship.com). Accessed 15 January 2016.

<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

### **2.2.1 Albinism is a Curse**

Similar to many other things in our diverse cultures, albinism is surrounded by many superstitious beliefs and stereotypes.<sup>79</sup> In some communities, it is forbidden to give birth to a child with albinism.<sup>80</sup> This is because, there is a conviction that such a child is a result of bewitchment in the family, or the child is a curse or it is punishment from an angry god for some wrong done by the family<sup>81</sup>.

### **2.2.2 Albinism is a Good Luck Charm or a Blessing**

In other parts of Africa, people with albinism are perceived as sacrificial lambs, wanted for their head or their genitals which are considered as the body's strongest parts.<sup>82</sup> In East Africa, especially Tanzania, the combination of cultural beliefs and Witchdoctors position of influence has resulted into a huge demand for albino body parts.<sup>83</sup> The witchdoctors who do not want to involve themselves directly in the murdering of PWA might simply mandate those who come to see them bring the body-parts themselves.<sup>84</sup>

## **2.3 Witchcraft**

The concept of witchcraft and the belief in its existence have existed throughout recorded history<sup>85</sup> and due to deep rooted beliefs in witchcraft, witchcraft beliefs have not declined with independence and development level but it has rather flourished in unexpected ways and entwined itself in political action and political thinking.<sup>86</sup> It not easy to define the term because it is controversial and ambiguous shrouded in secrecy leading people to do things they do not understand but generally it can be defined as the practice of using supernatural powers to achieve a personal goal.<sup>87</sup>

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<sup>79</sup> Muthee, T.(2011). Myths, Discrimination and Call for Special Rights for Persons with Albinism in Africa in Sub-Saharan Africa.p.2

<sup>80</sup> Ibid

<sup>81</sup> Ibid

<sup>82</sup> Report of the Office of the United Nations High Commissioner for Human Rights (2013) p.6

<sup>83</sup> Ibid

<sup>84</sup> Ibid

<sup>85</sup> Bengt, A. & Stuart, C. (2001). *Witchcraft and magic in Europe: Biblical and Pagan Societies* "University of Philadelphia Press, P, Xiii Magic is Central not only in Primitive Societies but in High Cultural Societies as well.

<sup>86</sup> Mohammed, A. D. (2004), *Conflict Between State and Legal Norms and Norms Underlying Popular Beliefs: Witchcraft in Africa as a Case Study*, 14 DUKE J. COMP. & INT'L L. 351, 355

<sup>87</sup> Tebbe, N.(2007). "Witchcraft and Sacrifice, Liberal Democracy in Africa",96 GEO.I.J 183,196.

Witchcraft practices include marketing of magical concoctions to ensure good luck, particularly with regard to economic advantages and occult shops around the world trade in such products.<sup>88</sup> Recently in Africa particularly Tanzania, the preparations of such concoctions often entails the pervasive practice of killing people mainly PWA to acquire body parts and organs that are sold by underground organ-hunters and then used as ingredients for the potions.<sup>89</sup> Sometimes the practice is referred to as MUTI- MURDER OR MEDICINE MURDER, that is to say a practice of killing someone and, using his or her body parts in a medicine to bring power or luck to the killer.<sup>90</sup>

Due to the adverse effect of witchcraft, there is a cry that witchcraft and its beliefs need to be eradicated before they eradicate our national developmental efforts our people<sup>91</sup> and this had long been a concern of Africans throughout East and Central Africa.<sup>92</sup> The practice teaches Africans that body parts of PWA hold some mystical and magical powers that can make people wealthy.<sup>93</sup>

#### **2.4 Consequences of Witchcraft Beliefs**

In places where witchcraft beliefs are abundant, development and its process are distorted due to fear of attacks through witchcraft therefore people hide their economic strength.<sup>94</sup> People in rural areas believe that establishing a business or building modern houses may lead to premature deaths or face serious problems.<sup>95</sup> It is obvious that witchcraft beliefs slow down economic growth, political advancement, technological development and social progress. Beliefs in witchcraft have serious negative economic implications as well. Those who are afraid of being bewitched are forced to spend a fortune to acquire the strongest protective medicine from witchdoctors which is renewable each year.

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<sup>88</sup> Cohan, J.A ..(2011) . “The problem of Witchcraft Violence in Africa”, *Suffolk University Law Review*, Vol.XLIV p. 865.

<sup>89</sup> Ibid

<sup>90</sup> Ibid.

<sup>91</sup> Tebbe N. (2007) “Witchcraft and Sacrifice, Liberal Democracy in Africa”,<sup>96</sup> *GEO.I.J* 183,196.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Mesaki, S. (2009.). “Witchcraft and the Law in Tanzania.” *International Journal of Sociology and Anthropology*, 1 (8): 132 – 138.

<sup>95</sup> Ibid.

Witchcraft crimes related continuing to be a problem, especially because that law enforcement structure often finds it difficult to deal with cases of this nature.<sup>96</sup>

Witchcraft beliefs continue to be a problem in health sectors due to different perceptions of the causes of diseases or illness. In most cases, disease or illness is believed to be due to intervention by an agent such as another human, witch, sorcerer, non-human, or supernatural force.

## **2.5 Legislative Approaches to Dealing with Witchcraft**

Commonly there are four main legislative approaches to dealing with witchcraft:

First approach, those who recognize the existence of witchcraft and focus on protecting society from the harm caused by witchcraft through legislation criminalizing the practice of witchcraft.<sup>97</sup>

The second approach, those that recognize the existence of witchcraft and focus on protecting society from the harm caused by witchcraft through the use of traditional forum, such as traditional or customary courts, with their own processes and evidence requirements which may operate alongside or in place of the formal court system.<sup>98</sup>

A third approach, those that do not recognize the existence of witchcraft and focus on protecting those accused of witchcraft through legislation aimed at eliminating the belief in witchcraft and criminalizing practices that target those accused of witchcraft.<sup>99</sup>

Fourth approach, those who do not recognize the existence of witchcraft and focus on the prosecution of acts of persecution and violence against those accused of witchcraft under existing criminal laws.<sup>100</sup>

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<sup>96</sup> Mesaki, S. (2009), "Witchcraft and the law in Tanzania." *International Journal of Sociology and Anthropology*, 1 (8): 132 – 138.

<sup>97</sup> Sleap .B.(2011). *Using law to tackle allegations of Witchcraft: Help age International*, London N1 9ZN,Uk . p.5.

<sup>98</sup> *ibid.*

<sup>99</sup> *ibid.*

<sup>100</sup> Sleap .B.(2011) *Using law to tackle allegations of Witchcraft: Help age International*, London N1 9ZN,Uk . p.5.

## 2.6 Witchdoctors

In African traditional knowledge witchdoctors are central characters in their respective communities because they are regarded as the link with ancestors.<sup>101</sup> Ancestors are believed to be more powerful and having influence on their living descendants.<sup>102</sup> Therefore, spiritual assistance is important in order for one to obtain good life on earth.<sup>103</sup> Traditional healers, witchdoctors or herbalists in principle are the same thing in African societies and therefore, in most cases, the words are used interchangeably<sup>104</sup>. However, now days many witch doctors prefer the term Traditional healer instead of witch doctor the latter being a colonial term that may connote straight forward witchcraft rather than healing.<sup>105</sup>

In Tanzania, those who are registered into the Register of Traditional and alternative health are termed as Traditional health practitioners, meaning, any person who is recognized by the community in which he lives as competent to provide health care by using plants, animal, mineral substances and other methods based on social, cultural and religious background as well as on the knowledge, attitudes and beliefs that are prevalent in the community regarding physical, mental and social well-being and the cause of disease and disability.<sup>106</sup> Nonetheless, it has been reported that there are traditional healers who abuse their profession and engage in nefarious activities like killing or demanding for albino body parts. That is why there is no way to call the genuine herbalists or traditional healers.<sup>107</sup>

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<sup>101</sup> Røkke, M. (2004) 'Witch' Hunt In Contemporary Tanzania Exploring Cultural And Structural Factors Leading To Violence Against Women In A Sukuma Village. Thesis submitted for fulfillment of requirement of Master Degree Program in Peace and Conflict Transformation of Centre for Peace Studies University of Tromsø Faculty of Social Sciences. P.90.

<sup>102</sup> Ibid.

<sup>103</sup> Westlund, D. (2006). *African indigenous Religions and Disease Causation: From Spiritual Beings to Living Humans*. Brill Leiden. Boston. P. 249

<sup>104</sup> Beck, A. (1979). "Traditional Healer in Tanzania", *A Journal of Opinion* 9 (3): 2 – 5.

<sup>105</sup> Cohan, J.A.(2011) Supra

<sup>106</sup> Section 3 of the Traditional Health and Alternative Medicine Act, 2002

<sup>107</sup> Tanner, R. (2010) Ideology and the killings of albinos in Tanzania: study in cultural relativities *Anthropologists* pp229-236.

According to Robinson witchdoctors are also spiritual specialists who attempt to counteract the powers of the witches who are believed to be causes of all undesirable situations in the community.<sup>108</sup>

## **2.7 Conclusion**

This chapter has presented the conceptual framework of this study by giving the meaning and definitions of various key terms used so as to make the reader or any consumer of this work understand it clearly. The same has also explained different perceptions available in the community towards PWA. Finally, it discussed witchcraft and its consequences; one of it is the killing of PWA.

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<sup>108</sup>Robinson,B.A,(2009) Witchcraft; Witchcraft in Asia and Sub-Saharan Africa .[http://www.religioustolerance.org/wic afri.htm](http://www.religioustolerance.org/wic_afri.htm).

## CHAPTER THREE

### LEGAL FRAMEWORK ON THE PROTECTION OF THE RIGHT TO LIFE FOR PEOPLE WITH ALBINISM

#### 3.1 Introduction

This chapter presents international and Regional conventions, together with Domestic law which provide for the protection of human rights. The chapter also provides for the administrative measures adopted to curb the problem as the institution with a key role in the protection of PWA. Human Rights protection is not merely linked to respect of individual autonomy but also to the social and cultural constructions of inclusive societies, in which prejudices and barriers are eliminated so that all people can live without social, legal or practical stigma.<sup>109</sup> People with albinism by virtue of being human beings are entitled to have their right to life and, security respected, and protected from all sorts of violations such torture and killings.

#### 3.2 International Conventions/Instruments

International human rights instruments can be divided into global instruments, to which any state in the World can be a party, and regional instruments, which are restricted to states in a particular region of the World.

Under International level, the Convention on the Rights of Persons with Disabilities is the Convention which specifically addresses issues of Persons with Disabilities; as a matter of fact PWA fall within the category of Persons with Disabilities because albinism affects several organs including eyes and skin. Also a general and broad interpretation of the provisions of other relevant International Conventions can be adopted in order to fully accommodate PWA.

In this context, Domestic courts have to construe domestic legislation in conformity with the developing International jurisprudence of Human Rights because a judicial decision has a greater legitimacy and will command more respect if it accords with International

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<sup>109</sup> Griffo, G. & Ortali, F. (2007). *Training Manual on the Human Rights of Persons with Disabilities* (2007) 15. [http://www.aifo.it/english/resources/online/books/cbr/manual\\_human\\_rights-disability-eng07.pdf](http://www.aifo.it/english/resources/online/books/cbr/manual_human_rights-disability-eng07.pdf), Visited on 14<sup>th</sup> February 2016

norms that have been accepted by many countries, than if it is based on the parochial experience or foibles of a particular judge or court.<sup>110</sup>

Tanzania being a member of the United Nations and the African Union follows a dualist system. Dualist system regard International law and domestic law as two separate systems, therefore International Conventions are to be incorporated through legislation before it is domestically applied.

However it is important to note that International Human Rights Treaties have established some principles for domestic application irrespective of their nature of the legal system. The basic principle governing domestic application of International Human Rights Treaties is that States when becoming party to an International treaty are deemed to submit themselves to a legal order in which they, for common good assume various obligations, not in relation to other States but towards all individuals within their jurisdiction<sup>111</sup>. It is fortunate that Tanzania has ratified many United Nations Human Rights Conventions and thus has made binding International commitments to adhere to the standard laid down in the Universal Human Rights documents.

### **3.2.1 Universal Declaration of Human Rights**

The Declaration<sup>112</sup> was intended to set up awareness of normative universal standards to be followed by all Nations and peoples of the United Nations, and therefore not binding to the member states.<sup>113</sup> It was up to the member states to implement them by incorporating them into their Constitutions or Statutes.<sup>114</sup> The Declaration provides that everyone is entitled to all the rights and freedoms set forth in the declaration, without

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<sup>110</sup> Gubbay, A.R. (1990). "Judicial Review in the Enjoyment of Rights" Vol. xvi No. 3 *Commonwealth Law Bulletin* P. 992.

<sup>111</sup> Thobias, M. (2013). "The challenges to the Enforcement of Economic, Social and Cultural Rights in the United Republic of Tanzania: A Critical Analysis", Unpublished Dissertation submitted in the Partial fulfillment of the requirement for an award of the Degree of Masters of Laws of the University of Mzumbe. p. 30.

<sup>112</sup> Universal Declaration of Human Rights, 1948.

<sup>113</sup> Sen, A.N. (2005). *Human Rights*, Sri Saw Law Publications 1035, Sector 16 Faridabad (Haryana) p. 78

<sup>114</sup> *ibid.*

distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>115</sup>

The message obtained from this Article, is that no one should be discriminated or restricted on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, birth or other status from enjoying these rights. Albinos being part of the human race are entitled like any other to enjoy all rights and freedoms contained in the Declaration. One of these rights is the right to life. It is clearly stipulated that everyone has the right to life, liberty and security of person.<sup>116</sup> In this article, the killing of albinos in order to harvest their body organs is the violation of their right to life. There is a misconception that albino body parts, especially genitals have magical powers to make people wealthy. The misconception suggests that PWA are not normal human beings.<sup>117</sup> Indeed PWA are normal human beings and therefore have the right to be free and to be protected from any kind of violation against their lives.<sup>118</sup>

### **3.2.2 The International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights<sup>119</sup> provides for protection of civil and political rights. The Convention imposes obligations on the States Parties to undertake the necessary steps to adopt legislative or other measures to give effect to the civil rights.<sup>120</sup> Another obligation is to ensure that a person whose rights are violated has an effective remedy, and that a person claiming that remedy has his right determined by competent authorities provided by States legal systems.<sup>121</sup>

The Convention provides that every human being has the inherent right to life,<sup>122</sup> security of person,<sup>123</sup> and the right to freedom from torture or cruel, inhuman or degrading

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<sup>115</sup> Article 2 of The Universal Declaration of Human Rights, 1948.

<sup>116</sup> Ibid Article 3

<sup>117</sup> Report of the Independence Expert on the enjoyment of human rights by persons with albinism: a preliminary survey on the root causes of attacks and discrimination against persons with albinism,(2016)

<sup>118</sup> Report of the Office of the United Nations High Commissioner for Human Rights(2013)

<sup>119</sup> The International Covenant on Civil and Political Rights, 1966

<sup>120</sup> Ibid, Article2(2)

<sup>121</sup> Ibid, Article 2(3)

<sup>122</sup> Ibid, Article 6

<sup>123</sup> Ibid, Article 9

treatment and punishment,<sup>124</sup> which may be violated when persons with disabilities including PWA are placed in an inappropriate environment. Therefore State Parties including Tanzania are duty bound to adhere to the obligations and put in place laws and policies necessary for the protection of human rights and regulate private and public practices that impact individual enjoyment of those rights.<sup>125</sup> This Covenant is relevant in the protection of PWA because it obligates State Parties to have good policies, and comprehensive laws in relation to protection of people's Rights.

### **3.2.3 The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

This is the key International Human Rights document that seeks to ensure that enforcement of the women Rights on an equal basis with men. Due to its comprehensiveness, it is often described as an International Bill of Rights for women .It was adopted by the United Nations General Assembly in 1979 ,and came into force in 1981.The substance of this Convention is based on three core interrelated principles: Principle of equality, Principle of non-discrimination, and Principle of State obligation

In this study, the Convention is relevant in the context of discrimination of women with albinism. In most of African rural societies the birth of a child with albinism is treated as a sign of woman's infidelity, or that a woman has slept with a white man. On these grounds, the said women are often mocked, rejected and subjected to discrimination by men and non-albino women.<sup>126</sup>

This Convention prohibits any form of distinction, exclusion, restriction, or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognitions ,enjoyment or exercise, on an equal footing of Human Rights and fundamental freedoms in political, economic, social, cultural or any other field of public life.<sup>127</sup>

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<sup>124</sup>Ibid, Article 7

<sup>125</sup> [http; //www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights frame work](http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-frame-work) ,visited on 25<sup>th</sup> May, 2016

<sup>126</sup> Report of the Office of the United Nations High Commissioner for Human Rights on Persons with Albinism, September, 2013.

<sup>127</sup> Article 1(1) of CEDAW.

Tanzania as of the State parties is obligated to respect and protect the rights of women including women with albinism or those who give births to children with albinism. It is duty bound to put in place good policies which promote equality and respect of human dignity, and do away any form of discrimination.

### **3.2.4 The Convention on the Rights of Persons with Disabilities**

The Convention<sup>128</sup> stipulates that the purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.<sup>129</sup> Article 1 also defines persons with disabilities to include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Albinism affects several organs including eyes and skin, therefore Persons with albinism fall within people with disabilities. The failure of the government to give special protection to Albinos exposes them to discrimination and reduces them to unequal members of society.<sup>130</sup>

Since Tanzania is a signatory to this Convention, it is bound to eliminate all discrimination on the basis of disability. It follows that since PWA fall within the ambit of People with Disabilities, and then the Republic of Tanzania is obliged to offer them effective legal protection against discrimination and stigmatization including attacks and killings fueled by witchcraft beliefs.

The Convention provides for the right to life for people with disability by stating that every human being has the inherent right to life and the state shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.<sup>131</sup> This article implies that no one is required to deprive another's right to life since it is inherent, inalienable, independent and indivisible

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<sup>128</sup>The Convention on the Rights of Persons with Disabilities, 2007

<sup>129</sup> Ibid, Article 1

<sup>130</sup> Ibid, Article 5

<sup>131</sup> Article 10 of the Convention on the Rights of Persons with Disabilities, 2007

The same further provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. There is no doubt that this provision is relevant because PWA have been suffering from torture inflicted on them by murderers.

### **3.3 Regional Human Rights Instruments**

#### **3.3.1 African Charter on Human and Peoples' Rights**

This Charter brings human rights closer to the people by consolidating International norms and applying them to specific Regional needs .The Charter<sup>132</sup> is mainly intended to promote and protect human rights and basic freedoms in Africa Continent. Tanzania ratified this instrument in February, 1984

The same provides that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune ,birth or other status.<sup>133</sup> It also provides that human beings are inviolable and that every human being shall be entitled respect for his life and the integrity of his person and no one may be arbitrarily deprived of this right.<sup>134</sup> Since people with albinism are normal like other human beings, their right to life must not be violated under any circumstance.

The killing of albino people amounts to violation of the right to life guaranteed by the Charter.

#### **3.3 2. African Charter on the Rights and Welfare of the Child**

Children with albinism have been at a great risk of being attacked and killed due to their availability and inability to physically defend themselves. This Charter was adopted by the Assembly of Heads of States and Governments of the Organization of African Unity (OAU) (Now African Union (AU) in 1990 in Addis Ababa Ethiopia and became operative in 1999, and was meant to promote development and protection of children in Africa. According to this Charter every child has an inherent right to life, which shall be

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<sup>132</sup> The African Charter on Human and Peoples Rights, (The Banjul Charter),1981/1986

<sup>133</sup> Ibid, Article 2

<sup>134</sup> Ibid, Article 4

protected by the law<sup>135</sup>. The Charter further provides that every child who is mentally or physically disabled has the right to special protection to ensure his or her dignity, promote his self-reliance and active participation in the community.<sup>136</sup>

According to this Charter, children should be protected from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment.<sup>137</sup> The Charter imposes a duty on the governments of all member states to do what they can to stop harmful social and cultural practices that affect the welfare of children<sup>138</sup> and, any custom, tradition or cultural practice that is inconsistent with the rights, duties and obligations contained in the Charter has to be discouraged.<sup>139</sup>

In deed the Charter can be used to protect Children with albinism against stigma, attacks, and killings in Tanzania and the whole region of Africa. Tanzania has ratified the Charter hence obligated to protect and promote the rights of children with albinism, as children of today are adults of tomorrow.

### **3.3.3 The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women (Maputo Protocol)**

Maputo Protocol is a progressive legal framework that comprehensively addresses the Political, Social and Economic Rights .It was adopted in Maputo- Mazambique on July 11<sup>th</sup> 2003 by Africa Union Leaders after prolonged advocacy from individuals and institutions in Africa. It is the first International Instrument to speak specifically to the Rights of women in African context. Protocol imposes upon the States Parties an obligation to combat all forms of discrimination against women through appropriate Legislative, Institutional, and other measures.<sup>140</sup>

The Protocol further provides for the right to life, integrity and security of the person.<sup>141</sup>The same further calls for the elimination of harmful practices affecting

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<sup>135</sup> Article 5 of the African Charter on the Rights and Welfare of the Child,1990

<sup>136</sup> Ibid, Article13

<sup>137</sup> Ibid, Article 16

<sup>138</sup> Ibid, Article 21

<sup>139</sup> Ibid, Article 3 (3)

<sup>140</sup> Article 1 of Maputo Protocol,2003

<sup>141</sup> Ibid, Article 4

women.<sup>142</sup> States Parties including Tanzania may overcome discrimination of women and girls with albinism through setting in place excellent policies, comprehensive legislations, and administrative measures for instance; education awareness campaigns.

### **3.3 Domestic Law in Respect of Right to Life and Protection of PWA**

This part presents domestic law responsible for the protection of people with albinism against violation of their right to life. The laws presented are The Constitution, The Witchcraft Act, The Penal Code, The Persons with Disabilities Act, and The Law of the Child Act.

#### **3.3.1 The Constitution of the United Republic of Tanzania**

Tanzania has more than 120 tribes, different religious groups, people with disabilities, and people of different status, but the Constitution<sup>143</sup> has brought reconciliation and put all the groups under one umbrella. The Constitution is the major source of law for the protection of human rights and the guiding law for every other law in the country.

The Bill of Rights which is referred to as The Basic Rights and Duties forms part III of Chapter I of the Constitution. The Constitution provides that all human beings are born free and entitled to have their dignity respected.<sup>144</sup> It further provides that every person has the right to life and to the protection of his life by the society in accordance with the law.<sup>145</sup>

Life here refers to human life. The right to life is to be enjoyed by every human being, regardless of his or her race, ethnic group, color, sex, language, religion, political or any other opinion, social origin, birth or other status. However, in Tanzania the death penalty is part of our laws, therefore a person if convicted of murder case, the enjoyment thereof comes to an end.<sup>146</sup>

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<sup>142</sup> Ibid, Article 5

<sup>143</sup> The Constitution of the United Republic of Tanzania, 1977 (as amended from time to time)

<sup>144</sup> Ibid, Article 12(1) and (2)

<sup>145</sup> Ibid, Article 14

<sup>146</sup> Section 197 of the Penal Code [Cap 16 R.E 2002]

The current situation where albinos are killed in Tanzania contravenes their right to life and to be protected as provided by the Constitution.<sup>147</sup> When the government fails to discharge its constitutional duties, legal actions may be taken against the government to secure those rights. For instance, in 2009 the Legal and Human Rights Centre (LHRC) together with Tanzania Albino Society (TAS) filed a Constitutional case<sup>148</sup> against the government in the High Court of Tanzania at Dar Es Salaam to challenge among other things the government's failure to secure the right to life, dignity and protection as provided for under the Articles 14 and 29(2) of the Constitution of the United Republic of Tanzania in respect to the rights of albinos. However three days later TAS national leaders officially withdrew the case to allow the Government to discharge its duties after it assured them that it has not failed to protect PWA because more administrative initiatives to curb the problem of albino attacks and killings were already in place.<sup>149</sup>

### **3.3.2 The Witchcraft Act**

This Act is a revised version of the Colonial legislation of 1928. Essentially this law was mainly enacted in order to provide for the punishment of witchcraft and of certain acts connected therewith and thereby suppress witchcraft practice due to its ill effects which led to fear, death of people, and underdevelopment.

Under section 3 of this Act<sup>150</sup>, a person commits an offence if;

*(a) By his statements or actions represents himself to have the power of witchcraft;*

*(b) Makes, uses, has in possession, or represents himself to possess any instruments of witchcraft;*

*(c) Supplies to any other person any instrument of witchcraft;*

*(d) Advises any other person upon the use of witchcraft or any instrument of witchcraft;*  
*or*

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<sup>147</sup> Section 14 of the Constitution of the United Republic of Tanzania, 1977

<sup>148</sup> Legal and Human Centre and another v The Attorney General and three others, Miscellaneous Civil Cause NO.15/2009 filed at the High Court of Tanzania in Dar es Salaam.

<sup>149</sup> The Guardian, (30<sup>th</sup> March 2009)

<sup>150</sup> Section 3 of the Witchcraft Act, [Cap.18 R E2002]

*(e) Threatens to use or resort to the use of witchcraft or any instrument of witchcraft upon or against any person or property.*

The Act further provides that,

*Any person who employs or solicits any other person to resort to the use of witchcraft or any instrument of witchcraft for any purpose whatsoever commits an offence under the Act.<sup>151</sup>*

The Act does not create offences without punishment. Section 5 provides that,

Any person who commits an offence under this Act with intent to cause death, disease, injury, or misfortune to any community, class of persons, person or animal, or to cause any injury to any property shall be liable to imprisonment not less than seven years, but if no such intention, to a fine of not less than one hundred thousand shillings or imprisonment of not less than five years<sup>152</sup>.

Prior to the amendment effected in 2009, through the Written Laws(Miscellaneous Amendments) Act No,3 of 2009, it was impossible to commence trial of a person who commits an offence under this Act, with no intent to cause among other things death or injury unless the consent of the Attorney-General or the Zonal State Attorney in-charge is obtained. That requirement is no longer there.

Under this Act, the District Commissioner may order persons practicing witchcraft to reside in certain places. The Act provides

*If it is reported to the District Commissioner that a person is suspected of practicing witchcraft, and the District commissioner ,after due inquiry, is satisfied that the person so suspected causes or likely to accuse fear, annoyance, or injury in mind, person or property to any other person by means of pretended witchcraft or is practicing witchcraft for gain or reward, he may for reasons to be recorded, order the person so suspected to reside in any specified locality within his district until such order is varied or revoked<sup>153</sup> and any person who, without lawful excuses refuses or neglects the order lawfully made by the District Commissioner*

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<sup>151</sup> Section 7 of the Witchcraft Act,[ Cap.18 R.E 2002].

<sup>152</sup> Ibid, Section 5 (1) and (2)

<sup>153</sup> Section 8(1) of the Witchcraft Act,[ Cap. 18R.E 2002].

*is liable to a fine not less than one million shillings or imprisonment for a term not exceeding two years*<sup>154</sup>.

In fact this law has existed in Tanzania since colonial era but the practice has gone higher, where as a great use of albino body parts such as fingers, nails, hair, crushed bones, blood or genitalia in making charms has been reported.<sup>155</sup> The point created here is that the legal system copes inadequately with the challenges of witchcraft because it does not accept the reality of witchcraft and the colonial inherited law is a blunt instrument in dealing with the problem.<sup>156</sup>

In February 1991, The Nyalali Commission was appointed comprising eminent and distinguished personalities in Tanzania headed by Francis Nyalali, the then Chief Justice of Tanzania. The Commission submitted its report on 17th February 1992 in which it not only did recommend changes in both the union (Tanzania) and Zanzibar constitutions, but also identified forty (40) laws as being oppressive in nature, unconstitutional and in some cases outdated. One of such laws was that relating to witchcraft.<sup>157</sup>

However, the Minister for Justice and Constitutional Affairs was of a different view that, some of these laws, including Witchcraft Act, which were recommended for repeal; cater for such matters as public tranquility and safety within the context of the conditions and circumstances prevailing in the country. The Minister who is representing the government was worried that the repeal of the Witchcraft Act, without putting anything in place or without suggesting how the mischief, for which the laws were enacted, will be taken care of, would leave a dangerous vacuum.<sup>158</sup>

The Ministry of Justice and Constitutional Affairs' worry led The Law Reform Commission in its report to opinion that there was validity and justification for the continued existence of the law on Witchcraft because fears arising from beliefs in

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<sup>154</sup>Section 8 (7) of the Witchcraft Act as amended by the Written Laws(Miscellaneous Amendments)Act No 3 of 2011 .

<sup>155</sup> Stacy. L. (2011). "Magic, Mutilation, and Murder: A case of Granting Asylum to Tanzanian Nationals with albinism" ,*Pace International Law Review*, On line companion vol. 2, No. 8 of March 2011

<sup>156</sup>Mesaki, S. (2009). "Witchcraft and the law in Tanzania", *International Journal of Sociology and Anthropology*, Vol. Viii, P. 132 – 138.

<sup>157</sup> The Report of the Nyalali Presidential Commission(1992)

<sup>158</sup> The Law Reform Commission of Tanzania, Final Report on Designated Legislation in the Nyalali Commission Report presented to the Minister of justice and Constitutional Affairs(1994)

witchcraft among the people persisted.<sup>159</sup> The law then continued to date and currently the country has been experiencing the new trend of Witchcraft belief in which Persons with Albinism are rarely negatively viewed as compared to past decades.

Currently, PWA are greatly viewed as sources of wealth through the use of their body parts believed to possess magical powers to make people wealthy within a very short time.<sup>160</sup> The existence of this belief suggests that the law is ineffective and inadequate. The Witchcraft Act does not contain a true definition of witchcraft, but merely refers to various synonyms for witchcraft.

The Act, invested powers over the District Commissioner to order persons who are suspected of practicing witchcraft to reside in certain places. This power is capable of being abused by relocating innocent people on suspicion basis instead of taking them to the court of law vested with powers to administer and dispense justice in the country. More over the maximum punishment of seven years imprisonment or fine of one million shillings is not sufficient as lesson to the convicts or as a warning to other person who would wish to practice witchcraft for gain or reward.

According to LHRC report<sup>161</sup> this law is contradictory, such that it is difficult to ascertain whether it recognizes the existence of witchcraft or not, while on the other hand it acknowledges that witchcraft can cause harm or even death. The Act does not address the challenges of proving supernatural practices in a court of law (the “evidentiary challenge. Generally, the same has failed to address challenges posed by witchcraft beliefs in the country. The report suggests that in order to address such a problem a social-economic solution is necessary.

As pointed out by the Nyalali Commission, the witchcraft legislation remained entrenched in the colonial experience, and it has proved ineffective hence useless, thus, should be repealed.<sup>162</sup> The Witchcraft Act has failed to prevent, and provide redress to

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<sup>159</sup> The Law Reform Commission of Tanzania, Final Report on Designated Legislation in the Nyalali Commission Report presented to the Minister of Justice and Constitutional Affairs(1994)

<sup>160</sup> LHRC, Tanzania Human Rights Report of 2014

<sup>161</sup> LHRC,(2014) supra

<sup>162</sup>Government of the United Republic of Tanzania, *the Report and Recommendations of the Presidential Commission on Single Party or Multi-party System in Tanzania,1991 on Democratic System in Tanzania*, Dar es Salaam, Dar es Salaam University Press,1992 (Book 1)

victims of violence and murder.<sup>163</sup> The Act seems to protect witches rather than protect against the harm that witches are popularly believed to cause. As a result, witnesses are unwilling to testify and name perpetrators of violence.<sup>164</sup>

According to Mesaki, the implementation of the witchcraft Act is as hard as defining it. Kato<sup>165</sup> as quoted in (Mesaki 1993) is of the opinion that the witchcraft law must reconcile itself with the fact that there are people who genuinely believe in witchcraft even if these beliefs may appear false to others.<sup>166</sup> His advice is that witchcraft, like belief in any religion or racism, may not be eradicated by the stroke of the pen or fortuitous prosecutions, the cure is the removal of ignorance by introducing a scientific view of the world through educating the masses.<sup>167</sup>

### **3.3.3 The Penal Code Cap 16 R.E 2002**

The Penal Code establishes an offence of murder and provides that “any person who with malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.<sup>168</sup> People with albinism are people like others and according to Tanzania Constitution all people have the right to live and to the protection of their life by the society in accordance with the law.<sup>169</sup> The Penal Code stipulates that causing another person’s death leads to death sentence or punishment if found guilty.<sup>170</sup> The heartless people who are murdering albinos deserve this kind of punishment.

The Penal Code also criminalizes the possession of human beings parts. The Penal Code provides that any person who is found in unlawful possession of human beings parts commits an offense and shall, upon be liable to imprisonment for a period not exceeding thirty years.<sup>171</sup>.The same criminalizes acts of grievous harm. The term grievous harm means any harm which amounts to a maim or dangerous harm, or seriously or

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<sup>163</sup> Help Age International (2011). “*Using the Law to tackle witchcraft: Help Age International’s position*”, Published by Help Age International. P.26

<sup>164</sup> *ibid*

<sup>165</sup> Kato, L. (1969), *Rethinking Ant-witchcraft legislation in East Africa in Social Sciences Conference*, University of Dar es Salaam Press.

<sup>166</sup> Mesaki, S. (1993). “Witchcraft and witchcraft killing in Tanzania”, Unpublished doctoral dissertation, University of Minnesota. p. 142

<sup>167</sup> *ibid*

<sup>168</sup> Section 196 of the Penal Code Cap 16 R.E 2002

<sup>169</sup> Article 14 of the Constitution of The United Republic of Tanzania, 1977

<sup>170</sup> Section 197 of the Penal Code Cap 16 R.E 2002

<sup>171</sup> *Ibid* Section 222A

permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious to any external or internal organ, member or sense<sup>172</sup>. Therefore any person who unlawfully does grievous harm to another is guilty of an offence, and on conviction shall be liable to imprisonment for seven years<sup>173</sup>

The court records of Tabora showed that, persons who were accused to have murdered, or attempted to murder, or caused grievous harm to PWA, found in possession of body parts suspected of being albino body parts were charged under this law, and those who were found guilty were convicted and sentenced depending on the offence and the punishment provided thereof. Therefore it is very useful law in the battle against attacks and killings of PWA.

#### **3.3.4 The Law of the Child Act, 2009**

provides that a child shall have a right to life<sup>174</sup> and the right to live free from any discrimination and a person shall not discriminate against a child on the grounds of gender, race, age, religion, language, political opinion, disability, health status, custom, ethnic origin, rural or urban background, birth, socio-economic status, being a refugee or of other status.<sup>175</sup> While this provision highlights the need to protect children against discrimination and their right to life, these rights as guaranteed continue to be violated through the brutal killing of children with albinism. The same further states that a person shall not subject a child to torture, or other cruel, inhuman punishment or degrading treatment including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child.<sup>176</sup> However, the killing of Albino children has exposed them to torture and physical injury while those who have escaped this mess are psychologically suffering.

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<sup>172</sup> Ibid Section 5

<sup>173</sup> Ibid Section 225

<sup>174</sup> Section 9 of the law of the Child Act, 2009

<sup>175</sup> Section 5 of the Law of the Child Act, 2009

<sup>176</sup> Section 13 of the Law of the Child Act, 2009

### **3.4 Reaction of International Community on the attacks and killings of PWA**

The International community did not remain silent on the persecutions of people with in Tanzania and elsewhere. Few notable measures taken are as here under;

#### **3.4.1 Resolution Condemning the Killings and Attacks PWA**

On September, 2008 European Parliament resolution of the killings of PWA was adopted condemning the killings of PWA. The resolution urged the government of Tanzania to protect PWA, and raise awareness in the rural areas so the people can do away with superstitious beliefs.<sup>177</sup> Likewise on 22nd February 2010, the US House of Representatives passed Human Rights Resolutions condemning the attacks and killings of PWA, categorizing them as human rights violations, hence urged the government of Tanzania to vigorously prosecute such cases and to conduct education campaigns to combat the superstitious beliefs leading to killings of PWA.<sup>178</sup>

Furthermore, in 2013 the United Nations human rights Council passed a resolution condemning attacks and discrimination that had been recorded globally against people with albinism.<sup>179</sup> In the same year, the African Commission on people's rights passed a resolution (263) denouncing discrimination faced by persons with albinism and reaffirming the fundamental rights of all people to human dignity, together with special rights of persons with disabilities including people with albinism to measures of protection in line with physical and moral needs. States are urged to respect the rights of all people regardless of their disabilities.

#### **3.4.2 Proclamation of June 13 as the International Albinism Awareness Day (Effective 2015)**

On 18th day of November 2014, the International Albinism Awareness Day (IAAD) was endorsed by the United Nations to be celebrated throughout the world on June 13th each year. June 13th, therefore has been noted as a significant date in the history of albinism being the date of the United Nations' adoption of a historic resolution recognizing and

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<sup>177</sup> European Parliament,(2008),European Parliament Resolutions on Human Rights issues in Mauritania, Iran and Tanzania. Available in <http://www.europa.eu-un-org/articles/eu/article-8123-en.ht> retrieved on 20th February, 2016.

<sup>178</sup> The Us House of Representatives (2010) Resolutions on Human Rights in Tanzania.

<sup>179</sup> UNOCHR Report,2013

addressing attacks and discrimination facing people with albinism.<sup>180</sup> The resolution welcomes increased international attention, noting that, in many parts of the world, awareness of the human rights situation of persons with albinism remains limited.<sup>181</sup> Further, it recognizes the importance of increasing awareness and understanding of albinism in order to fight against global discrimination and stigma against persons with albinism.<sup>182</sup>

Generally, IAAD focuses on rising public awareness of albinism and preventing attacks and discrimination against PWA. All United Nations member States and Organizations, as well as International and local organizations and civil societies are stake holders of this Day which seeks to end abuses against PWA. Tanzania being a member of United Nations is duty bound to raise public awareness of its people so as to end attacks and killings of people with albinism.

### **3.5 Measures Taken by the Government of Tanzania in Combating Witchcraft Based Violations of the Right to Life for PWA**

Tanzania having seen seriousness of the attacks introduced different administrative mechanisms to stop the attacks and the killings. Some of those mechanisms are as here under;

#### **3.5.1 Public Awareness Campaigns**

The large population of Tanzania is found in the rural areas where the myths surrounding PWA are rampant and strong. The reported incidents of attacks, brutal killings, grave robberies and abduction of Children with albinism occurred in Rural areas particularly in Mwanza, Tabora, Shinyanga, Kagera, Mara, Katavi, and Rukwa Regions<sup>183</sup>. Public campaigns were introduced by the Government as one of the mechanism of curbing this problem, especially to do away the myths leading to discrimination, attack, killings or, mistreatment of PWA.<sup>184</sup> Education was given by Top Government Leaders in their

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<sup>180</sup>History of International Albinism Awareness Day, available in [www.albinismday.com](http://www.albinismday.com), and [www.albinism.org](http://www.albinism.org), and <http://www.albinism.org> visited on 30 January 2016

<sup>181</sup>ibid

<sup>182</sup> ibid.

<sup>183</sup> UTSS Report (2012) Children with Albinism in Africa: Murder Mutilation and Violence a report on Tanzania with parallel references to other parts of Sub-Sahara Africa

<sup>184</sup> European Parliament Resolution of 4<sup>th</sup> September, 2008 on the killings of Albinos in Tanzania

Speeches to the public .Other means which were used include, special live programs through Televisions, and radios. Newspapers and Public forums were used with the purpose of increasing awareness and understanding on albinism.<sup>185</sup>

Non-governmental Organizations, religious leaders, and musicians were also involved in the exercise<sup>186</sup>. The Public was intended to get the factual truth that. Children born with albinism may look white due to lack or reduced pigmentation contrary to the existing belief that they are born white because the mother slept with a white man.<sup>187</sup>

That albinism is not at all a punishment or curse from the gods or ancestral spirits due to wrong done in the family but, it is a genetic condition.<sup>188</sup>

That body parts of PWA have no magical powers of making non albinos rich.<sup>189</sup> That a person can only prosper through hard working and proper use of resources.<sup>190</sup>

That having sexual intercourse with a person with albinism can never cure HIV/AIDS.<sup>191</sup>

That PWA do not simply vanish, but die like all other pigmented persons, that such a myths was set in place to justify their killings.<sup>192</sup>

That PWA are our fellow human beings, therefore, do not deserve to be discriminated, attacked, killed or mistreated.

The then President Jakaya Mrisho Kikwete in his speech<sup>193</sup> to the Nation said; We strongly condemn the killing of albinos. These are acts of brutality that are not expected in any society of civilized people, of people who worship God. The President went on

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<sup>185</sup> Burk, J.,Theresa, .,J , & Johanes, J. (2014). Media Analysis of Albino killings in Tanzania :A Social Work and Human Rights ,Ethics and Social Welfare, PP. 117-134

<sup>186</sup> Ibid

<sup>187</sup>UTSS Report (2012) Children with Albinism in Africa: Murder Mutilation and Violence a report on Tanzania with parallel references to other parts of Sub-Sahara Africa.

<sup>188</sup> UTSS Report (2012) Children with Albinism in Africa: Murder Mutilation and Violence a report on Tanzania with parallel references to other parts of Sub-Sahara Africa.

<sup>189</sup> Haki Elimu,(2009), Vita dhidi ya Albino ni wajibu wa kila mtu ,toleo la 20, 2009 ISSN18215076

<sup>190</sup> Ibid

<sup>191</sup> Ibid

<sup>192</sup> UTSS Report (2012) Children with Albinism in Africa: Murder Mutilation and Violence a report on Tanzania with parallel references to other parts of Sub-Sahara Africa.

<sup>193</sup> Speech by the President of the United Republic of Tanzania , the then His Excellence, Dr. Jakaya Mrisho Kikwete delivered to the Nation in March, 2015

saying people with albinism are fellow human beings, with the same rights to life and protection of their lives as other humans.

His Excellency added that they do not deserve what is being done to them; they should not live in fear in their own village, their neighborhoods or in their country. The President cemented that in truth, the killings of PWA disgraces and demeans our country. They are intolerable acts.

Moreover, His Excellency said to completely eradicate cases of murder and dismemberment of people with albinism is possible however, that is will depend on people abandoning superstitions beliefs. That it is ignorance that leads a person to believe that his or her success will not depend on his or her own efforts and knowledge but comes from possessing the body parts of his or her fellow human being, one with albinism

He cemented that if possession of albino body parts could bring someone financial success in their business, then people with albinism not would be the highest earners in the country and in the world for they do only have body parts but the whole body.

The President finalized his speech by saying due to the presence of these false beliefs, efforts to educate communities to overcome this mistaken belief must be increased, and this should be a corner stone in this struggle.

### **3.5.2 Revocation of licenses of all Traditional Healers**

In January 2009, the Government of Tanzania through the then Prime Minister Hon. Mizengo Pinda revoked the licenses of all traditional healers and officially banned them from consulting their clients.<sup>194</sup> The goal behind this was to eliminate the market for albino body parts by prohibiting traditional healers to practice.<sup>195</sup> On the other hand, many of the witchdoctor suspects were arrested and some have been remanded in custody.<sup>196</sup>

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<sup>194</sup>Alum, A.,(2009). Hocus Pocus, Witchcraft, and Murder: the plight of Tanzania Albinos, International Team Project, Tanzania P.17

<sup>195</sup>ibid

<sup>196</sup>ibid

### **3.5.3 Secret Ballots**

The government launched this initiative because it suspected that people with valuable information concerning the killings might refuse to contact authorities out of fear that if identified, witchdoctors would use their magical powers to do them harm.<sup>197</sup> The government's suspicions are certainly well founded since traditionally, even police officials have felt intimidated by witchdoctors and have refused to act against them, particularly in rural areas.<sup>198</sup> Moreover, "some officers have been accused of turning a blind eye when attacks on albinos occur."<sup>199</sup>

The then His Excellency President Jakaya Kikwete insisted Tanzanians to make available any information they might have about the perpetrators of such acts and through secret referendum, citizens were invited to write down the names of suspected albino killers and the names be handled to police for further investigations. Such names were gathered and handed over to the police for further investigations.<sup>200</sup>

Unfortunately, Police have not yet given any report of the Investigations to the public, therefore it is not known whether the investigations are complete or not.

### **3.5.4 Appointment of a Woman with Albinism as the MP and a Young Man as a Deputy Minister**

In 2008 the then His Excellency Jakaya Mrisho Kikwete appointed Al-Shaymaa J. Kwegyir, who was an advocate for the rights of PWA before her appointment.<sup>201</sup> The President appointed her to show solidarity with the Tanzania albino community to do away stigma and doubt over albinos intelligence.<sup>202</sup>

The President of the United Republic of Tanzania, Dr. Joseph. Magufuli in December 2015 went a step further and appointed Dr, Abdalla Possi as a Deputy Minister in the Prime Minister's office responsible for policy coordination, Parliamentary affairs,

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<sup>197</sup>IPPMedia.com, *Special referendum for albino killers for ...*, THE GUARDIAN, Mar. 2, 2009, <http://ippmedia.com/ipp/guardian/2009/03/02/132647.htm>

<sup>198</sup>ibid

<sup>199</sup>ibid

<sup>200</sup>ibid

<sup>201</sup> Salewi, (2011) *supra*

<sup>202</sup>ibid

employment and persons with disabilities. His appointment is said to have renewed hope in the ongoing fight against albino killings.<sup>203</sup>

### **3.5.5 Registration of People with Albinism**

The Ministry of Home Affairs was assigned to register PWA all over the country so as to know their where about. However the process was incomplete and there are no known records produced. The only other known register of PWA is the database of TAS which has over 8000 PWA registered despite that there are an estimated 150 thousand PWA in the country.<sup>204</sup>

### **3.5.6 Establishment of Temporary Holding Centers for PWA**

In efforts to curb physical attacks on children with albinism the government established Temporary Holding Centers (THCs) as safe houses for them.<sup>205</sup> Currently there are 32 THCs for such children in Tanzania, the biggest one being Buhangija in Shinyanga which hosts about 301 Children.<sup>206</sup> Other big centers include Bukumbi and Mitindo in Mwanza Region, Kitengule and Mugeza in Kagera Region, Furaha, Missionaries of charity and Children Trust Fund in Tabora Region, Kabanga in Kigoma Region and Pongwe in Tanga Region. The children are taken there by the government officials or family members.<sup>207</sup> The centers were meant to be temporary as the name Temporary Holding Centers suggests

### **3.5.7 Special Task Force**

In 2009 the then President Jakaya Kikwete set up a task force to investigate the killings of PWA in the country, however up to date the Task force has never released the results of their findings to the public nor publicly comment that their work is completed.<sup>208</sup>

Despite all these attempts the attacks and killings of PWA have continued. This is evidenced by four incidents of 2015 whereby on the 17th day of February 2015 one year

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<sup>203</sup> Speech delivered by the President of the United Republic of , His Excellence, Dr. Joseph Pombe Magufuli in the Pan African Albinism Conference held in Dar es Salaam in December,2015

<sup>204</sup> TAS report ,2016,available in [www.org.tz](http://www.org.tz)

<sup>205</sup> The Citizen ,Tuesday May 10<sup>th</sup> 2016

<sup>206</sup> Report on the Investigative Mission on the situation of Children with Albinism in Temporary Holding Centers in Tanzania, March, 2016

<sup>207</sup> UTSS Survey, (2011), Situation Assessment of the Centers of Displaced persons with albinism

old albino boy namely Yohana s/o Bahati was brutally killed by hacking off his two arms and the two legs. This incident took place in Ilemela village within Chato District in Geita Region.<sup>209</sup>

Moreover, on the 7th day of march 2015 at Kibete village within Sumbawanga district in Rukwa Region unknown individuals chopped off the right hand of a six year old boy with albinism Baraka s/o Comas Rusambo and disappeared with it,<sup>210</sup> while on the 14th day of May a 30 years old woman with albinism Limi/d/o Luchoma was attacked in the Kabunde village within Mill district in Katavi Region. The attackers chopped off her arm just below the elbow and disappeared with it.<sup>211</sup>

Lastly but not least, on 21st October, Mohamed Said was attacked at his home in Mukoranga Town in Pwani Region and sustained serious injuries to the right side of his head and ear because a machete was used to chop off some flesh from the right side of his head and ear.<sup>212</sup>

### **3.6 Role of Tanzania Police Force in Fighting Against Albino Attacks and Killings**

The Tanzania Police Force is one of the very important institutions in the protection of the right to life for PWA. The core functions of the Police Force are; the prevention and detection of crime, the apprehension and guarding of offenders and the protection of property.<sup>213</sup>

In efforts to end albino killings in Tanzania, the Police have engaged in the exercise of preventing and combating attacks and killings of PWA. About 200 witchdoctors were arrested after being linked to albino killings and most were taken to the court of law.<sup>214</sup>

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<sup>209</sup> Under the Same Sun (UTTS) Report on Current killings and attacks of PWA, 2015 available in [www.underthesamesun.com](http://www.underthesamesun.com) retrieved on 3<sup>rd</sup> March, 2016.

<sup>210</sup> *ibid.*

<sup>211</sup> Under the Same Sun (UTTS) Report on Current killings and attacks of PWA, 2015 available in [www.underthesamesun.com](http://www.underthesamesun.com) retrieved on 3<sup>rd</sup> March, 2016

<sup>212</sup> The Guardian (October 24<sup>th</sup>, 2015)

<sup>213</sup> Section 5 of the Police Force and Auxiliary Services Act [Cap322 R.E 2002]

<sup>214</sup> Masanja, M.M (2015). ‘‘ Albinos plight: Will Legal methods be Powerful Enough To Eradicates Albinos, Scourage’’? *International Journal of Education and Research*, Vol.3 No 5 May2015

For example, the police in Tabora in their effort managed to rescue Magreth d/s Hamisi from the hands of Mwinamila Masanja who was seeking a market for the child.<sup>215</sup>

Despite the efforts taken by the Police, there are challenges facing them, including poor cooperation from the people of rural areas because they still have negative attitudes towards the police by thinking that they are trapping them with the purpose of charging them with offences they never committed.<sup>216</sup> Most of the incidents take place in the rural areas where infrastructure is still a big challenge, hence making the police not to react to the situation.<sup>217</sup> That most of these attacks are done in secrecy mostly during night hours and sometimes relatives collude with the attackers therefore the question of evidence in court is also a challenge.<sup>218</sup>

### **3.7 Role of the Judiciary of Tanzania in Fighting Albino Attacks and Killings**

The Constitution of the United Republic of Tanzania, 1977 vests the authority and responsibility to administer justice in the Judiciary of Tanzania. The same provides that “The Judiciary shall be the authority with final decision in dispensation of justice in the United Republic of Tanzania<sup>219</sup> and shall do so without delay.”<sup>220</sup>

In this regard the judiciary has taken positive steps to address the problems of albino killings. For instance, in 2009 three men namely Masumbukos/o Matata @ Matata, Emmanuel s/o Masangwa and Charles s/o Karamji were convicted and sentenced to death by the High Court of Tanzania at Tabora for brutally killing of a 14 years old albino boy namely Matatizo s/o Dunia, resident of Bunyihuna Village, Bukombe District in the Region of Shinyanga. The convicts chopped off the legs at the knee and disappeared with them. They were not satisfied with both conviction and sentence, therefore appealed to the Court of appeal which is the higher Court in the hierarchy. On the 11th day of June 2010 the Court of Appeal of Tanzania at Tabora dismissed the appeal.

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<sup>215</sup>Regional Report on the protection of PWA in Tabora (2015 )

<sup>216</sup>Salewi(2011) supra

<sup>217</sup> ibid.

<sup>218</sup> ibid.

<sup>219</sup>Article 107A(1) of the Constitution of the United Republic of Tanzania, 1977

<sup>220</sup> Article 107A (2)(b)

The Justices of Appeal namely Ramadhani, C.J; Rutakanngwa, J. A.; and Massati, J.A. concluded the court judgment in that the killing of an innocent young boy Matatizo Dunia was the most atrocious, heinous and a dastardly act. Therefore, people should disclose people including wealthy people who hire stupid young fellows to perform the callous acts.<sup>221</sup>

In the same year of 2009 four people namely; Mboje s/o Mawe, Chenyewe s/o Maganyale, Sayi s/o Gamaya Mwanapili and Sayi s/o Mafizi were convicted and sentenced by the High Court of Tanzania at Tabora to suffer death by hanging for killing Lyaku s/o Willy an albino young boy by drowning him into the river and when became unconscious, they cut his head using a dagger, and then amputated his legs. Aggrieved by the conviction and sentence, preferred the appeal. The appeal was dismissed by the Court of Appeal of Tanzania for want of merit.<sup>222</sup>

On the 21st day of June 2015 the Nzega District Magistrate court in Tabora Region convicted and sentenced one Masanja Mwinamila 44 years a resident of the Ugembe village to ten (10) years imprisonment after being found guilty of an attempt to sell Magreth d/o Hamisi, aged 6 years<sup>223</sup>

These cases and the punishments passed by the courts signify the role of judiciary in fighting with albino killings in Tanzania. The speed of hearing such cases has increased as compared to last years' experience<sup>224</sup>.

However, few challenges are still there, including the fear of further attacks, reprisal or further stigmatization, difficulty in finding witnesses testify due to fear of revenge from the witch doctors or dealers of albino body parts, little knowledge of human rights, and Involvement of family members in the attacks.<sup>225</sup>

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<sup>221</sup> *Masumbuko Matata and 2 others Criminal Appeal Case NO.318 of 2009, Court of Appeal of Tanzania at Tabora (Unreported) p.23*

<sup>222</sup> *Mboje and 3 others(2010) supra*

<sup>223</sup> *R v. Masanja Mwinamila, Criminal case no 122 of 2015, Nzega District court at Nzega.(Unreported)*

<sup>224</sup> Speech of the Chief Justice of Tanzania, His Lordship Othman Chande ,delivered on the Climax of the Law Day week held on 4<sup>th</sup> day of February,2016 at Dar es Salaam .p.3, retrieved from [www.judiciary.org](http://www.judiciary.org)

<sup>225</sup> OHCHR Report, 2014 par.53

### **3.8 Conclusion**

This chapter covered the legal frame work in which both International instruments and domestic legislation relevant for the protection of the right to life of PWA were discussed. In this chapter, the researcher has discussed in deep the Witchcraft Act and shown its ineffectiveness in fighting the problem of albino killings. The researcher further explored administrative initiatives adopted by the government of Tanzania, due to the failure of the Witchcraft Act to suppress witchcraft beliefs. Finally, it demonstrated the role of the Judiciary and the police force in that battle. It is observed that despite various efforts taken by the government to ensure that the ongoing atrocities against PWA come to an end, the problem is still eating our nation due to a major challenge posed by beliefs in witchcraft.

## CHAPTER FOUR

### PRESENTATION AND DISCUSSION OF RESEARCH FINDINGS

#### 4.1 Introduction

Basing on the objectives of this study clearly stipulated in chapter one, this chapter presents analysis and interprets the findings in relation to those objectives. This study was carried out in tabora Region, a region made up of seven districts namely; Tabora, Nzega, Igunga, Urambo, Sikonge, Kaliua and Uyui. The districts were reasonably connected through roads; however, some of the roads are rough and therefore not so friendly especially during rainy season. The tools which were used by the researcher to collect data were in-depth interviews and questionnaires distributed to the respondents.

In this Study the sample size was 150 respondents categorized as follows; 10 Police Officers, 35 PWA, 20 Judicial Officers, 10 Practicing Advocates, 15 State Attorneys, 5 Religious leaders, 30 Public members, 10 Traditional Healers (Witchdoctors), 5 Human Rights Activists and 5 Politicians. The researcher got the response from 135 respondents through questionnaires and interviews<sup>226</sup>.

With exception of the witchdoctors, the respondents were open to the researcher. Many of them were curious to ask why the researcher had chosen to carry out a study on PWA, but were also thankful to share what they knew in relation to the research topic.

The study investigated the adequacy and effectiveness of the Witchcraft Act together with the effectiveness of the government administrative mechanisms adopted in the protection of PWA against attacks and killings fueled by witchcraft beliefs. Here the findings are organized in respect of each specific objective.

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<sup>226</sup> See Table A

**Effectiveness and adequacy of the Witchcraft Act in fighting against witchcraft practices leading to the killings of PWA**

**Table A: Respondents response on adequacy and effectiveness of the witchcraft Act; CAP. 18 R. E 2002, in the protection of PWA against attacks and killings fueled by witchcraft beliefs**

CATEGORY	SAMPLE SIZE	TOTAL OF RESPONDENTS	EFFICTIVE/ADEQUATE	ANSWERS NOT ADEQUATE	NO ANSWERS
POLICE	15	14	2	12	0
PEOPLE WITH ALBINISM	35	35	0	35	0
JUDICIAL OFFICERS	20	18	1	16	1
ADVOCATES	10	8	1	7	0
STATE ATTORNEYS	15	13	3	10	0
RELIGIOUS LEADERS	5	5	0	5	0
PUBLIC MEMBERS	30	27	6	20	1
WITCHDOCTORS/TRADITIONAL HEALERS	10	8	1	6	1
HUMAN RIGHTS ACTIVISTS	5	3	0	3	0
POLITICIANS	5	4	3	1	0
TOTAL	150	135	17	115	3

Source; Researcher (2016) Questionnaires and Interviews

The findings revealed that the Witchcraft Act of 2002 does not contain a true definition of witchcraft, but merely refers to various synonyms for witchcraft, and that is a major problem because failure to have a clear definition of the term witchcraft, which is a starting point, makes it difficult for a person to understand probably the whole statute. Most of the respondents, especially lawyers, including Judges, Magistrates, State Attorneys and Private advocates were open that they have read the definition several times, but instead of getting the clear meaning, they ended getting more questions than answers.

The respondents especially Judges, Magistrates and State Attorneys went back to 1992 where the Nyalali Commission, which was established to make recommendations on Tanzania's legal and political future, observed that the Witchcraft legislation remained entrenched in the colonial experience, noting that it was "useless" and that it should be repealed. The same statute has not been repealed; however, it was amended in 2009 through written laws (Miscellaneous Amendments) Act No3 of 2009. Surprisingly the amendment has not brought any positive change to the law because it has amended Section 5 of the Act, by deleting Section 5(3) which was to the effect that, no commencement of trial of a person who commits an offence under this Act, with no intent to cause among other things death or injury unless the consent of the Attorney-General or the Zonal State Attorney in-charge is obtained.

However, that requirement is no longer there, it has made no difference as far as the attacks and killings of PWA are concern because no offence is committed by the attackers or assailant without intention to cause death or injury in their evil business to get Albino body parts. The punishment of seven years is not enough to person who has committed an offence with intent to cause death or injury to persons including PWA.

It was further amended in 2011 through Written Laws (Miscellaneous Amendments) Act No 3 of 2011 where Section 8(7) was amended by increasing a sum payable as fine to be not less than one million shillings or imprisonment for a term not exceeding two years, instead of a sum not exceeding one hundred and fifty shillings or to imprisonment to a term not exceeding two months. Despite the amendments the findings stand unshaken that the law is outdated like colonialism itself. Currently, the same is useless and it has totally failed to produce the desired results. In other words, it has failed to suppress, quash witchcraft practices and beliefs or provide thorough punishment of witchcraft and of certain acts connected therewith; therefore, we cannot be proud of it.

The findings further revealed that, the Witchcraft Act is failing to prevent, and provide redress to PWA specifically victims of the attacks and murder. Most cases filed in courts in relation to the attacks or murders were filed under the provision of the Penal Code and not the Witchcraft Act.

Moreover, the findings showed that, the Witchcraft Act does not address the challenges of proving supernatural practices in a court of law that is to say the “evidentiary challenge”. Furthermore, the findings disclosed that, the power given to the District Commissioner by the Witchcraft Act, to relocate a person suspected of practicing witchcraft is open to abuse and contravenes the Constitution of Tanzania and the international human rights legislation Tanzania has ratified.

The respondents in this aspect concluded that witchcraft beliefs are too strong to be driven out by legal methods. They advocated for the removal of ignorance that albino body parts can make people wealthy. They insisted that the government of Tanzania has to accept the existence of those beliefs and fight against it through mass education. They strongly pointed out that, religious leaders have a major role in shaping the community to abstain wrongs, and do away the myths leading to discrimination, attacks, killings or mistreatment of PWA

#### **4.2 Attitudes towards Albinos**

The interviewed respondents claimed that attacks and killings of PWA are based on superstition beliefs and myths spread among the people. To them the main dangerous belief is the belief that albino body parts can be blended with medicines to make powerful charms capable of making people wealthy within a very short time. They have mentioned existing myth in the rural population of Tabora Region that albino is a curse which needs to be eradicated for safety and betterment of the family. Another myth is that PWA are not normal human beings but are ghosts who never die but disappear or vanish.

This myth has existed for many years and through it many PWA went missing in their families, but no person bothered to trace them on the ground that they are ghost who come and disappear at any time. However, currently the strength of that myth has gone down due to public education on albinism and its causes.

The respondents especially PWA did put clear that in rural areas some people intentionally and with intent to annoy them, use derogatory names such as “**Mzungu,**” “**Zeruzeru**” “**Dili**”, “**Mkwanja**” or “**Mbilimwili**” in Sukuma language. They insisted their demand to be called by their names instead of the fake and discriminatory names.

During interview one lady with albinism, a resident of Urambo currently schooling at Kazima Secondary school, while with a sorrowful face said she faces unexpected challenges in her life; and there is a lot of discrimination against PWA. That she sometimes lack the company of friends because some people believe that she is a not human being and therefore never die while others believe that she is a curse from gods and that anyone who touches her will also be cursed, but worse of all she is worried of being hunted and killed by witchdoctors so that they can obtain her body parts for witchcraft purposes.

In her own words she said;

*“To my understanding, three albinos have been killed in Tabora, while two of them were seriously injured. For example on 1st day of February 2013 our fellow albino Lugolola s/o Bunzari was brutally killed after his hand was cut off, his hair pulled off his head and the fore head skin removed. That incident shocked me so much because I may be the next person. On 5th August 2014 a girl called Pendo d/o Sengerema was brutally attacked and her right arm hacked off at the elbow. We are not secured at all, and would wish the community to know that PWA are the creatures of God like them, and they did not apply for albinism, let them not discriminate or kill us. I remember, in 2012 one student, instead of calling my name, she called me Zeruzeru. Having heard so, I felt discriminated and my dignity not respected.”<sup>227</sup>*

The findings obtained from court<sup>228</sup> revealed that two individuals namely Johns/o Fumbuka (63 years) and Madukas/o Nzuki @ Kabisi residents of Usinge village within Kaliua District in Tabora Region were arrested in respect of the attack of Pendo d/o Sengerema and charged with the Offence of Attempted Murder.<sup>229</sup> The particulars of the charge are to the effect that the accused persons on the 5th day of August during the night hours at Usinge village within Kaliua District did attempt to unlawfully cause death of one Pendo d/o Sengerema, an albino girl of 15years old by chopping off her right hand.<sup>230</sup>

The findings further revealed that the case file is currently in the office of the State Attorney at Tabora, so the accused persons have not yet been committed for trial in the High Court. The investigator assigned to investigate the matter, during interview told the

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<sup>227</sup> Interview with Christina Bonage, a student of Kazima Secondary school, 7<sup>th</sup> March, 2016.

<sup>228</sup> Resident Magistrate Court of Tabora at Tabora

<sup>229</sup> Section 211 (a) and (b) of the Penal Code [Cap.16 R.E 2002]

<sup>230</sup> PI Case No.63 of 2014-Resident Magistrate court of Tabora.

researcher that the investigation has taken a long time because of the complexities surrounding the matter.<sup>231</sup>

Another respondent with albinism, resident of Kaliua District during the interview said

*“Albino attacks and killings has been a tragedy in this country. It is very sad to see that we PWA are living like refugees in our own country simply because of our skin .We are being judged and punished for our skin color .We need to live like other people, because we have the right to enjoy the right to live like others, and the government is duty bound to promote and protect us.”<sup>232</sup>*

Another interviewed person with albinism said in the past years, their great enemy was the sun, but currently, the sun is no longer their great enemy .Its position has been taken by the tripartite network whose key players are traditional healers, their customers and contract killers. He added that, these three enemies would wish to see PWA dead, crippled or living in fear. Now, unless efforts of the community and the government in particular, concentrate on fighting this network, the ongoing witchcraft-associated stigma, attacks and killings will persist.<sup>233</sup>

### **Effectiveness of Administrative Measures adopted by the Government to Curb the Problem of Albino Attacks and Killings**

The findings have shown that the government has tried its best to stop the problem, but the problem has not stopped because the measures were not effective and adequate. The respondents have commended that the government has been more theoretical than practical. The table below shows the respondents response to the question as to whether administrative initiatives were effective and adequate in curbing the problem.

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<sup>231</sup> Interview with the Investigator on 1<sup>st</sup> March, 2016

<sup>232</sup> Interview with Ramadhani Said, 3<sup>rd</sup> March, 2016 at Kaliua District.

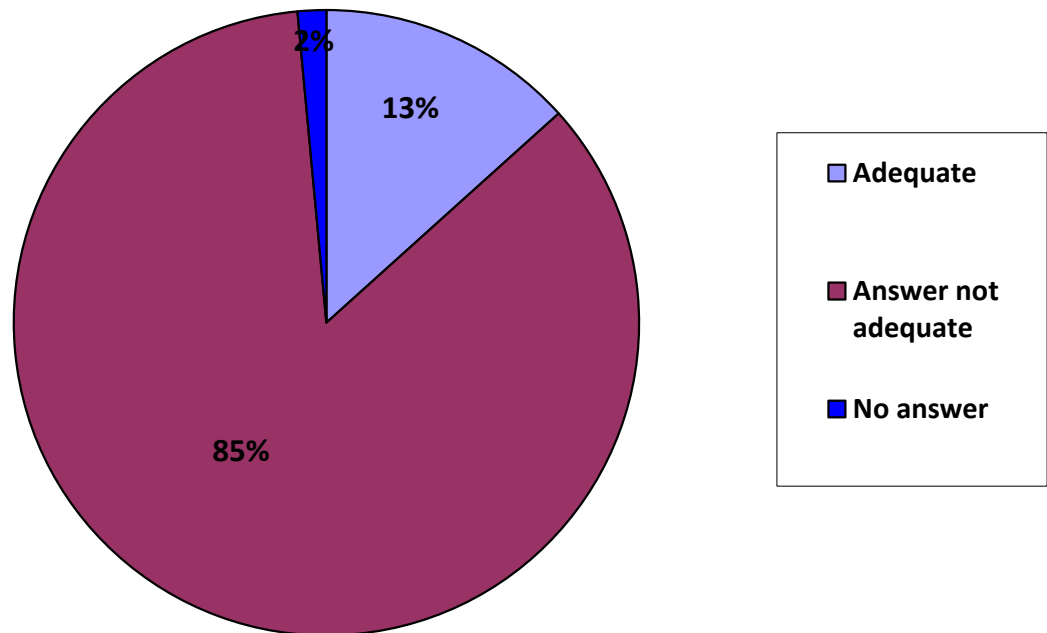
<sup>233</sup> Interview with yohana s/s Daudi on 5<sup>th</sup> March,2016 at Sikonge District

**Table: B: Adequacy and effectiveness of Administrative Measures Adopted by the Government of Tanzania to Curb Albino Killings**

CATEGORY	SAMPLE SIZE	TOTAL OF RESPONDENTS	ADEQUATE	ANSWERS NOT ADEQUATE	NO ANSWER
PEOPLE WITH ALBINISM (PWA )	35	35	0	35	0
TRADITIONAL HEALERS/WITCH DOCTORS	10	8	3	5	0
POLICE	15	14	2	12	0
JUDICIAL OFFICERS	20	18	0	18	0
ADVOCATES	10	8	1	7	0
STATE ATTORNEYS	15	13	3	10	0
RELIGIOUS LEADERS	5	5	0	5	0
PUBLIC MEMBERS	30	27	5	22	0
HUMAN RIGHTS ACTIVISTS	5	3	0	2	1
POLITICIANS	5	4	4	0	0
TOTAL	150	135	18	116	1

Source; Researcher (2016) Questionnaires and Interviews

**Figure A: The pie chart shows Percentage of respondents reacted on effectiveness and adequacy of administrative initiatives adopted by the government to curb Albino Killings**



#### **4.3 Arrest and Detention of Witchdoctors and Sooth Sayers**

The findings have revealed that the government of Tanzania has arrested and detained over 200 witchdoctors and soothsayers who were operating without a license. They were found in possession of lizard skin, warthog teeth, monkey tails, bird dawns, mule tails, and lion skin. The respondents claimed that this is not the first time that Tanzania has taken action against witch doctors and traditional healers, but still the practice continued. The findings further revealed that in the Municipality of Tabora, sixteen witch doctors were arrested and charged with the offense of illegal practicing traditional health contrary to section 45 (1) of the Traditional and Alternative Medicine Act. Indeed, no one was found guilty, instead all the cases collapsed on the way as shown in the table below.

**Table C: Cases Filed Against Traditional Healers in Tabora**

NO	PARTIES	CHARGE	OUTCOME
41/2015	REP VS MANENO TANGANYIKA	ILLEGAL PRACTISING TRADITION HELTH C/S 45 OF THE TRADITIONAL ALTERNATIVE MEDICIAN ACT NO 23/2002	DISCHARGED U/S 91(1) CPA CAP 20 RE 2002
42/2015	REP VS MLOLWA SHABA	DO	DO
43/2015	REP VS MIRAMBO IDDI MZEE	DO	DO
44/2015	REP VS ZAINABU MUSSA	DO	DO
45/2015	REP VS RAMADHAN HAMIS	DO	DO
46/2015	REP VS MASSOD JAFFAR	DO	DO
47/2015	REP VS HENRY JACOB	DO	DO
48/2015	REP VS SEIF HAMIS KATWALE	DO	DO
49/2015	REP VS MOSH SALUM	DO	DISMISSED U/S 225 OF C CAP. 20 R.E 2002
50/2015	REP VS AMINA MOHAMMAD	DO	DISCHARGED U/S 91(1) CPA CAP 20 RE 2002
52/2015	REP VS ELIAS KENAGUJI	DO	DO
53/2015	REP VS MLIAMBELELE IBAN	DO	DO
54/2015	REP VS ASHA SALUM	DO	DISMISSED U/S 225 OF C CAP 20 RE 2002
55/2015	REP VS MLIMA TUNGU	DO	DO
56/2015	REP VS MBESHI SHIGELA	DO	DO
57/2015	REP VS LATU MSHOJA LIFU	DO	DO

Source; Researcher (2016)

The findings showed that no report produced by the government to show that the arrested witch doctors, by not being licensed, were really involving themselves in the attack or killings of PWA. The findings suggest that Traditional healers should not be kept in the same basket and condemned as albino killers. The best way is to involve them in the battle because they know each other as to who is abusing the profession and who is not. The findings exposed that when all are accused, they will not cooperate with the government, and therefore the battle will grow tougher. This is because, there are those traditional healers who abuse their profession and engage in nefarious activities like killing or demand of albino body parts, therefore there is a need to distinguish between the genuine traditional healers and those who want to exploit the existing legal, policy or structural loopholes for their benefit.

The findings also revealed that in 1970s, for the same purpose the government of Tanzania collected witchdoctors from lake Regions of Mwanza and Shinyanga and gathered them into a forest in Ng'wang'holo and tortured them, as a result the then Minister of Home Affairs Alhaj Alli Hassan Mwinyi took responsibility of the killings by resigning from his position. Yet the killings accelerated by witchdoctors did not stop, meaning there is something wrong with the government mechanism in dealing with witchdoctors. If the issue of witchdoctors is not properly addressed, people may turn and kill them on suspicions that they are albino killers.

For example, in January 2015 one woman by the name of Jane Faidha Bakari (58) was killed by villagers after being accused that she was killing albinos for witchcraft purposes. The husband Moses Bakari was interviewed and he said in January 2015 during night time about 200 angry villagers, mostly youths carrying axes, machetes, and knives invaded his home while he was asleep with his wife Jane Faidha. They broke into the house and hacked his wife with the machetes and knives. Then, they burned her and later set fire to his house. The reason behind is that they claimed that his wife was practicing witchcraft and killing albinos.<sup>234</sup>

One witch doctor during an interview said, there are witch doctors or traditional healers who are not ethical or faithful. They persuade people to bring to them human body parts so that they can make powerful medicine for them. Most of them are not registered and therefore have no practicing licenses. These are dangerous people and the government has to open its eyes over them. But on his side, he does not believe that albino body possesses magical powers capable of making the user rich.<sup>235</sup>

As per obtained information, the whole Region of Tabora by the end of December 2015 had 362 registered traditional healers; 47 from Tabora Municipality, 74 from Nzega, 85 from Uyui, 46 from Igunga, 38 from Sikonge, 22 from Urambo and 50 from Kaliua.<sup>236</sup>

The findings further revealed that there are more than 500 witchdoctors who have not been registered for better reasons known to themselves. That many were arrested but later

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<sup>234</sup> Interview with Moses Bakari on 11<sup>th</sup> March, 2016 Tabora rural

<sup>235</sup> Interview with Maulid Hassan, a traditional healer of Ipuli- Tabora, 9<sup>th</sup> March, 2016.

<sup>236</sup> Interview with Baraka, the Regional Welfare Officer, on 8<sup>th</sup> March 2016

released for want of evidence as reflected in Table C Currently the Region is struggling to make sure they are identified and registered so as to monitor their movements.<sup>237</sup>

#### **4.4 Education Campaigns**

The findings revealed that this was the only way to set the community free from wrong beliefs and practices, unfortunately people living in the rural areas were forgotten.<sup>238</sup> The rural population is poor, with little education and un-conducive environment in terms of security and infrastructure. The findings further showed that these people have no access to television, newspapers, radio and other advanced means of communication, and therefore they were left behind. That education campaigns were successful in urban areas only.<sup>239</sup>

One of the interviewees said, the government has forgotten the countryside population. Most of the NGOS are centered in towns, seminars and workshops were held in towns, when they happen to go into the villages they are always in a hurry. Education is the most powerful weapon to liberate our people, but the weapon was mishandled that is why it did not give the expected fruits.

However, the government is not too late if it is serious. The government here must provide financial support to NGOS committed in educating the public, especially in the rural areas. He added that it is the right time for the Commission for Human Rights and Good Governance to execute its functions one being to educate the public. They are not doing justice to their fellow Tanzanians if they continue staying in their offices in Dar Es Salaam or in big cities.<sup>240</sup>

The findings have revealed that even in towns of Tabora Region, no books or materials distributed by the Region itself or central government to the general public or schools to enable them get the right information and knowledge that finally will make them recognize PWA as normal people with equal rights, feelings and needs and highly capable if given the same chance in a friendly and supportive environment.

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<sup>237</sup> Interview with Baraka, the Regional Welfare Officer, on 8<sup>th</sup> March 2016

<sup>238</sup> Interview with Bishop Mkumbo on 8<sup>th</sup> March, 2016

<sup>239</sup> Interview with Mr John Kabendera-, Journalist and Human Rights Activist on 9<sup>th</sup> March, 2016

<sup>240</sup> Interview with Matron of Tabora girls Secondary School, a school with 11 albino students, 3<sup>rd</sup> March, 2016

#### **4.5 Registration of PWA**

The findings have shown that the total number of PWA in Tanzania is not yet known. The only known register of PWA is that of TAS in which over 8000 PWA have been registered despite that there are an estimated 150 thousand PWA in the country. According to the findings obtained from the Regional Welfare office, by December 2015, the total number of PWA in Tabora is 352, that is to say 199 females and 153 males. However, the interviewed officer admitted that not all PWA have been registered due to poor infrastructure of the Region of Tabora but also Minimum Corporation of the community. Therefore, there is still a lot to be done in this area.

#### **4.6 Albino Temporary Holding Centers**

The findings have revealed that despite good work of the government to establish 32 Temporary Holding Centers to protect children from further attacks and killings, the Centers are no longer temporary and they are not serving the best interest of the children.<sup>241</sup> They feature more like detention centers than safe houses. Most of them such as Buhangija in Shinyanga and Faraja in Tabora are overcrowded, characterized by poor infrastructures, shortage of learning and teaching materials. Diseases are also rampant due to poor health conditions and nutrition.<sup>242</sup> In Urambo District within Tabora Region, there is a camp/center called the Children Trust Fund, with 60 children with albinism, but the camp has no fence and it is overcrowded.<sup>243</sup>

The respondents suggested that, long term plans have to be set in place which will at the end of the day enable PWA to join their families and relatives; otherwise those centers will provide convenient escape mechanism for the parents and relatives wanting to divest the responsibility to take care for their children with albinism. The respondents have also shown their worry of assembling PWA in camps for years because it may accelerate

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<sup>241</sup> African Committee of Experts on the Rights and Welfare of the Child, Report on the Investigative Mission on the Situation of Children with Albinism in Temporary Holding Shelters in Tanzania, March, 2016

<sup>242</sup> African Committee of Experts on the Rights and Welfare of the Child, Report on the Investigative Mission on the Situation of Children with Albinism in Temporary Holding Shelters in Tanzania, March, 2016

<sup>243</sup> Interview with the Manager of the Centre, March 13<sup>th</sup> 2016

more discrimination which normally affect PWA psychologically due to lack of socialization with their family members.<sup>244</sup>

One of the children with albinism during an interview said:

*“I am not at all happy to stay away from my parents and relatives, we are psychologically tortured. For how long should we stay in the camps? When will the community recognize and see us as part of it? It is impossible to have our own universe, now where should we go? In fact we have more questions than answers. We have seen the commitment of the Government of our President Dr. Magufuli in addressing peoples’ issues. We hope the government will play its role to promote and protect PWA against violation and create a friendly environment for us so that eventually we may join our family, relatives and friends<sup>245</sup>.”*

#### **4.7 Conclusion**

This chapter revealed the findings on the adequacies and effectiveness of the witchcraft Act in fighting witchcraft beliefs based on violations of the right to life of Albinos in Tanzania. The same demonstrated findings in respect of the administrative initiatives taken by the government to suppress witchcraft practices curtailing the lives of PWA.

Moreover, the chapter exposed the findings in respect to the attitudes of Tabora people towards PWA that in this century, there are some people who still believe that albino is a curse to be eradicated, while others believe that albinos are not normal human beings but ghosts who never die. The current worse belief is that of seeing PWA as products to harvest at any time for their body parts believed to possess magical powers to make non-albinos wealthy within a very short time.

The general observation is that the witchcraft Act is a blunt and useless law, as it has totally failed to yield the expected fruits. That, administrative measures were coupled with challenges because the government was smart theoretically, but not practically; consequently the total number of PWA in the country is not yet known. The findings of the secret ballot are not yet out. Temporary Holding Centers feature more like detention centers than safe places. Schools having a large number of students with albinism have no fences and qualified watchmen. A good example is Kazima Secondary school in Tabora. Despite the presence of 4 students with albinism, the school has no fence at all;

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<sup>244</sup> Interviewed religious leaders of Tabora Region, 15<sup>th</sup> March, 2016

<sup>245</sup> Interview with Magdalena Malendecha, Trust Fund Camp, Urambo, 17<sup>th</sup> March, 2016

likewise Tabora Girls Secondary School with 11 students with albinism, the school has no fence and qualified watchmen.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 Introduction

This is the last chapter of this study and it presents the two aspects of the study namely conclusion and recommendations.

#### 5.2 Conclusion

All persons are born free and equal in rights and dignity. Persons with albinism and old women are human beings and they deserve all rights and freedoms enjoyed by normally pigmented persons. They are part of the human society and the diversities that make it. When they suffer discrimination, violations, and abuses, the human race suffers too. Their genetic condition requires that the society treats them as a special vulnerable group. Human beings are supposed to value each other and treat each other with equal respect. Everyone ought to see that killings or attacks of albinos for their body parts are a cruelty and inhumane act, which can never be justified and tolerated in modern societies.

Witchcraft practices are not allowed in Tanzania but it has been so difficult to uproot witchcraft beliefs in the minds of the people through legislation. The legislation in Tanzania existed since 1928, but has totally failed to eliminate such practice, that is why attacks and killing of PWA on witchcraft beliefs is still persisting. In such a situation education has been seen as alternative major weapon capable of liberating a person's mind to the truth that development can never come through witchcraft but hard working through the use of proper skills. This becomes possible through the involvement of all stakeholders – government, regional organizations, NGOs, schools, churches and families.

Administrative initiatives adopted by the government of Tanzania were inadequate though, they have at least reduced the attacks and killings of PWA. From January May 2016 no attack publically reported but that does not mean the problem is over because killings are normally done in secrecy and where the family members are involved no report will be released. The government has to be more serious and practical than theoretical.

### 5.3 Recommendations

In order to successfully protect the right to life of people with albinism as stipulated in the Constitution of the United Republic of Tanzania and International Instruments, the following recommendations are offered.

1. Sustainable education of behavior and mindset change campaign should be set in place in order to eliminate people's ignorance and remove the widespread witchcraft practices and myths that being an albino is a curse and therefore not deserve to live, or that albinos are creatures to be harvested for their body parts believed to possess magical powers capable of making non albinos wealthy. The campaign should aim to make the community understand that development can never come through witchcraft beliefs but by hard work and investing in education, including science and technology.

Education campaigns must also aim to make people know the cause of albinism. According to Vendor Kolk, lack of understanding creates prejudice that can be corrected and reversed through education.<sup>246</sup> Dr Possi who is a Tanzanian with albinism added that, in a society like this where belief that body parts of PWA can make some rich, it is not easy to control the situation unless we first remove superstitious beliefs and focus on development activities, because development can never come through the superstitious beliefs but by hard work and investing in education.<sup>247</sup>

Therefore, it is important that Tanzania include in its educational curricula, courses that would enlighten people of the rights of persons with albinism.

The Commission for Human Rights and Good Governance, a constitutionally created body which is mandated, amongst others, to promote within Tanzania the protection and the preservation of human rights,<sup>248</sup> should play its role of educating the public

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<sup>246</sup> Vendor, K. and Bright, B.C. (1983), "Albinism: A survey of Attitudes and Behaviour", Journal of Visual Impairment and Blinds.p77

<sup>247</sup> The Guardian 9<sup>th</sup> March 2015

<sup>248</sup> Section 129 and 130 of the Constitution of the United Republic of Tanzania, 1977.

The government also has to provide technical and financial support to enable NGOs and CSOs and other stakeholders to conduct various studies and educate the rural population to do away with witchcraft beliefs. This strategy might help more because most of the rural people do not have access to television, newspapers or radio.

2. The problem of albino attacks and killings is a tragedy in the whole country; therefore the whole society has to be involved in this battle, instead of wholly depending on the police and other human rights institutions. Indeed, persons with albinism are part and parcel of the society; therefore the fight should start from the household level to the national and international level.
3. The laws governing human rights are there, therefore in order to have proper implementation of the law the government has to empower the police force and the judiciary in terms of resources and human rights education. Timely investigation and prosecution is necessary. The police should be granted modern working tools and the working conditions can be improved especially salaries and shelter. To a great extent a good working conditions might increase working morale and put them away from the temptations of corruption.
4. The law makers should look into the possibility of repealing the Witchcraft Act because the same is a Colonial product; it has even failed to clearly define the term witchcraft. In 1992 Nyalali Commission pointed out that the Witchcraft law in Tanzania is useless, but to date the same law is still in place. The law has been inadequate in addressing issues of albino attacks and killings fuelled by witchcraft practices. The law is very blunt, thus it has not gained any status. I think, it is still useless as pointed out by the Nyalali Commission since 1992.

Where necessary some of the provisions are to be accommodated in the Penal code. According to Simon Mesaki (2009) witchcraft beliefs are too strong to be driven out by legal methods an instead advocates for the removal of ignorance.

5. The Penal Code Cap 16 R.E is still a very good law to protect PWA. The offences such as Murder, Attempt murder, Causing grievous harm, Found in unlawful possession of Human being body parts, and Rape are well covered in this law. The law Makers should look into the possibility of amending the Penal

Code by introducing heavy punishment; instead of the existing punishment which is seven (7) in respect of the offence of Grievous Harm. The law makers should also look into the possibility of amending the Traditional and Alternative Medicine Act, 2002 to put clear that Use of animal body parts in Traditional and Alternative Medicine does not include albino body parts, despite the custom which still consider PWA as animals or lambs of sacrifice.

6. The Persons with Disabilities Act<sup>249</sup> should clearly mention that PWA form part of persons with disabilities. This law imposes among other things a duty upon the government to promote the well-being and protect the rights of persons with disabilities, and provide for related matters. The inclusion of such provision will have a massive impact on PWA on the implementation that law of by the government.
7. The International Community should increase technical and financial support to help Tanzania, which is among the poorest countries in Africa so as to reach its rural population easily and within a very reasonable time. In order to succeed here, Tanzania is urged to develop good relationships with donor countries; together with International Organizations.
8. It is also important to involve religious authorities to protect people with albinism and discourage any attack against them. In fact, religious leaders are usually well-placed to provide followers with guidance which would address the problems faced by people with albinism and could suggest remedial measures for these problems as well as protective measures that would contribute to the promotion and protection of their rights.
9. It is also recommended that in order to protect people with albinism, verdicts of prosecutions should be publicized. This would save as deterrence and at the same time warn other persons with the same habit, hence increase protection of the safety and the rights of PWA.
10. The government should join efforts with the neighboring countries to find permanent solutions to curb the problem because the same is also persisting in the

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<sup>249</sup> Persons with Disabilities Act, 2010

neighboring countries. The neighboring countries should look into the possibility of having a special and comprehensive legislation to protect PWA.

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**APPENDICES**

**APPENDIX I**

Questionnaire Form A (To be filled by judges, magistrates, State Attorneys, Advocates, Solicitors and Human Rights Activists)

I Emanuel Loitare, a student of Mzumbe University with Reg. No. 151100007/ T. 14, Pursuing Master’s Degree of Law (LL.M), Currently doing research on “Combating Witchcraft based violation of the right to life of albinos in Tanzania: A critique on law and other Measures.”

Below are questionnaires of my research topic, in which I kindly ask for your support in filling the questionnaire so that I get the information needed. I assure you that information you provide will not be used otherwise. It is for academic purpose and it will remain confidential between you and I only. It is part of the academic requirement for my Master’s Degree of Law at Mzumbe University.

Names (Optional).....

Occupation.....

Place.....

1. Have you ever handled a case in respect of Albino attacks or killing?

YES [    ]

NO [    ]

2. If your answer is YES, How many cases

.....

3. What was/were the reasons for the attack or killing

.....  
.....

4. Do you think the witchcraft Act is sufficient to protect people with Albinism (PWA) against attacks and killings fueled by witchcraft beliefs

YES [    ]

NO [    ]

5. If your answer is Yes, give reasons to support your answer

.....  
.....  
.....

6. If your answer is to the above question is NO, why and what should be done at that Law?

.....  
.....  
.....

7. Do you think deep noted beliefs of witchcraft can be removed with a piece of Legislation/

YES [    ]

NO [    ]

8. If your answer is Yes, give reasons to support your answer

.....  
.....

What other Measures (If any) have been set in place in Tanzania to ensure the elimination of attacks and killings of PWA

.....  
.....

9. Were the measures (if any) adequate in curbing the problem?

YES [    ]

NO [    ]

Give reasons to support your answer

.....  
.....

How can the measures (if any) be improved?

.....  
.....

What other measures you think can solve the problem permanently

.....  
.....

***Thank you.***

**INTERVIEW GUIDE QUESTIONS FOR PEOPLE WITH ALBINISM**

1. What is your name? (Optional)
2. What is your occupation
3. Where do you reside here in Tabora?
4. Have you ever heard about Albino Killings or attacks in your area  
YES [    ]  
  
NO [    ]
5. If your answer is YES, when and how many times? Briefly Explain
6. Have you ever faced any attempt related to killing or any other violation?  
YES [    ]  
  
NO [    ]
7. If your answer is YES, What action did you take?
8. According to your understanding what are the causes of Albino attacks and killings?
9. Is there traditional healers/ witch doctors at your area?
10. If your answer is YES, How many?
11. Do you think that they are responsible for Albino attack or killings?  
YES [    ]  
  
NO [    ]  
  
Give reasons to support your answer  
.....  
.....  
Do you think that witchcraft practice in Tanzania is illegal?
12. What Measures Tanzania has taken in place to curb the problem of Albino attacks and killing? Mention at least four?

13. Did the country through these measures succeeded to stop attacks and killings of people with Albinism?

YES [    ]

NO [    ]

Give reasons to support your answer

.....  
.....

14. What should be done to permanently eliminate the problem of attacks and killing of PWA in Tanzania?

## APPENDIX III

### INTERVIEW GUIDE QUESTIONS FOR POLICE OFFICERS

1. What is your name? (Optional)
2. What is your occupation?
3. What is your place of work?
4. In your normal duty of service, have you ever arrested or searched people accused of killing or attacking of PWA?  
YES [    ]  
  
NO [    ]
5. If YES, What type of case was it?  
Albino Killing  
  
Albino attacks  
  
Albino assault
6. When and where?
7. What re the difficulties you faced in dealing with incidences pertaining to albino attacks and killing.
8. As Police force what kind of security do you provide to PWA living in your area.
9. During the arrest of traditional healers, how many of them were found in possession of albino body parts?
10. What measures have been set in place by the police force here in Tabora to protect PWA?
11. What was the response of the witnesses who were called before the court to testify against albino attackers and killers?
12. What should be done to end the problem of albino killings in Tanzania?

*Thank you*

## APPENDIX IV

**INTERVIEW GUIDE QUESTIONS FOR TRADITIONAL HEALERS/  
WITCHDOCTORS)**

1. What is your name? (Optional)
2. What is your occupation?
3. In which place do you reside here in Tabora?
4. What is your main source of income in this area?
5. How long have you been in this business?
6. Are you a member of the Traditional Healer Association?  
YES [    ]  
  
NO [    ]
7. If YES, How many are you.....
8. If NO, Why you have not registered yourself as a traditional healer?
9. Traditional healers are much blamed to be a source of Albino attacks and killings.
10. What can you say about this?
11. To what extent the arrest and detention of witch doctors help to curb the problem?
12. In your opinion, what should be done to stop the attacks and killings of albino in Tabora and Tanzania in general?

*Thank you*

**INTERVIEW GUIDE QUESTIONS FOR GENERAL MEMBERS OF THE  
COMMUNITY**

1. What is your name? (Optional)
2. What is your occupation?
3. Where do you reside?
4. What is Albinism?
5. What names do you call PWA in your area?  
Mention the names, and reasons for the name.
6. How do you consider PWA in your area?  
Normal Human being  
Abnormal Human being  
Curse  
A blessing  
Ghosts
7. Have you ever heard of Albino killing or attack at your area  
YES [    ]  
  
NO [    ]
8. If yes, how many times?
9. Do you think protection of PWA offered by the government is sufficient?  
YES [    ]  
NO [    ]
10. Why do you think it is sufficient or not sufficient?
11. How many witchdoctors do you have in your area?
12. Have you ever gone to them for help?  
YES [    ]  
NO [    ]
13. If YES, Is there anyone who ever demanded an albino body part, so that he or she can make medicine for you?

14. What measures ( if any) do you know that were set in place by the government of Tanzania to curb the problem?
15. Were they adequate?  
YES [    ]  
NO [    ]  
Give reasons to support your answer
16. Have you ever heard about the existence of the witchcraft Law in Tanzania
17. What should the community do to curb the problem permanently

*Thank you*