

4th African Disability Rights Moot Court Competition

ZANIA ALBINISM FORUM v THE STATE OF ZANIA

Before the African Court on Human and Peoples' Rights

7 to 10 November 2016

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- 1 Zania is an African state located in sub-Saharan Africa. It has a population of 55 million people of which 51% are women and 60% are young persons under the age of 25. It is classified by the United Nations (UN) as a developing country (DC).
- 2 Zania is a member of the UN and the African Union (AU). By 2011, it had signed and ratified the following treaties: the African Charter on Human and Peoples' Rights (African Charter); the African Charter on the Rights and Welfare of the Child (African Children's Charter); the UN Convention on the Rights of the Child (CRC); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol); and the Convention on the Rights of Persons with Disabilities (CRPD). In 2013 Zania became a party to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), at the same time also making a declaration under article 34(6) of that Protocol. Zania is also a member of the Southern African Development Community (SADC). It has ratified the SADC Protocol on Gender and Development (SADC Gender Protocol).
- 3 Zania is a former British colony. The Constitution of the Republic of Zania, which was adopted in 1992 following a review of the Independence Constitution, contains a Bill of Rights that is modelled on the fundamental rights contained in the African Charter and the CRPD. Under Zania's Constitution, the High Court is the court of first instance in matters relating to the enforcement of constitutional rights. An appeal lies directly to the Constitutional Court which has final jurisdiction over all matters. The Constitution provides that international treaties

can only be directly enforced if they have been expressly incorporated into domestic legislation.

- 4 Part of the population in Zania is affected by a type of albinism medically described as *oculocutaneous albinism type 1* (OCA1). In 2010, the Medical Research Council of Zania (MRC), in partnership with a local non-governmental organisation (NGO), Zania Albinism Forum (ZAF), whose mission it is to promote the rights and welfare of persons with albinism in Zania, published a research report on albinism. ZAF was in 2010 granted observer status with the African Commission on Human and Peoples' Rights (African Commission). The MRC/ZAF report found that 1 in 2 000 people in Zania have OCA1. The report also found that the prevalence of OCA1 in Zania was significantly higher than the average prevalence in sub-Saharan countries. MRC/ZAF recommended that more research needed to be conducted to explain the higher prevalence of OCA1 in Zania. Persons with albinism in Zania have historically experienced insecurities with their health, education and life prospects.
- 5 MRC/ZAF found that persons with albinism in Zania were experiencing more than the average rate of skin cancers. These cancers could be prevented or substantially reduced by protection from sun exposure with appropriate skin-covering clothing and the use of sunscreen lotions that prevent burning. However, due to a general lack of appropriate health knowledge about albinism among the persons and families affected with albinism as well as the relative unaffordability of sunscreen lotions, preventative means have not made the positive difference they could have done, especially among the poor and rural-based population.
- 6 Persons with albinism in Zania have historically experienced difficulties with schooling due to reduced visual acuity. Learners with albinism have struggled with attempting to read small print in textbooks and writing on the blackboard. This has impacted adversely on their school performance. The MRC/ZAF recommended that appropriate support services be implemented by government to cater for persons with reduced vision.
- 7 The MRC/ZAF report also highlighted the fact that superstitious beliefs about persons with albinism are shared by many communities across Zania and that in rural areas, especially, these beliefs are deeply rooted. These beliefs associate albinism with the supernatural and have led to killings and mutilations driven by superstition and fuelled by a demand for, as well as trade in, body parts of persons with albinism, especially in rural areas. Witchcraft practices that treat the body parts of persons with albinism as magical and sources of wealth, power and

omens for good luck serve as catalysts. Young children are particularly vulnerable to abductions, killings and mutilations.

- 8 Under the criminal laws of Zania, the killing and mutilation of persons with albinism constitute a serious criminal offence. Furthermore, under the Witchcraft Act of Zania, which dates back to the colonial days, the practice of witchcraft constitutes a crime. According to police records from 1992 to 2012, an average of 20 persons with albinism were either killed or mutilated each year for body parts. While some prosecutions were brought against suspected perpetrators of the violence and witchcraft practitioners, there were few convictions due to a lack of willing witnesses. Since 2011, however, the number of persons killed or mutilated has started to diminish to an average of 10 per year. The decrease in the killings and mutilations is accredited to the action taken by the government of Zania in 2013, to take children with albinism into protective care. Nonetheless, on account of continued killings and mutilations, albeit diminished, persons with albinism continue to live in fear for their lives.
- 9 In 2013, in response to the MRC/ZAF research report, the government of Zania made optometric services and sunscreen lotions available free of charge to persons with albinism in state health centres. Furthermore, it erected four 'temporary shelters' in the four main administrative regions of Zania (the northern, southern, eastern and western regions), and took all children with albinism under the age of 10 years into the shelters for protective care with the undertaking of relocating the children and returning them to their original communities once it is able to stem the violence. Parents of children who are under five years of age are allowed to accompany their children into protective care. The Children's Act of Zania empowers the state to take 'reasonable measures', including removing children from 'places of danger in order to provide for their safety and to keep them in such places for as long as it is necessary to ensure safety'.
- 10 Government policy is first to place children with albinism in the shelter of the region in which they reside unless the shelter has reached its capacity and is unable to accommodate more children. Within each shelter, government has made provision for accommodation, education and recreational services that take into account the needs of children with albinism. Because of the need to balance capacity in each shelter and prevent overcrowding of facilities, 10% of children from the southern and eastern regions have had to be apportioned to the northern and western regions. The four regions broadly represent separate linguistic communities. Although Swahili is the *lingua franca* of Zania, it is in fact

a second language as each region has a distinct common language as its first language.

- 11 Because of concerns that Zania has a prevalence of OCA1 which is significantly higher than other sub-Saharan countries, the government is providing free genetic testing to allow individuals to know whether they are carrying a gene which may cause OCA1 in their offspring so that they can make their own reproductive decisions in light of this knowledge. The tests are only offered to adults and are promoted through radio announcements and billboards.
- 12 The Constitution of Zania permits organisations with a *bona fide* interest in vindicating violations of fundamental rights to bring an action before the High Court on behalf of any individual or group of persons whose fundamental rights are alleged to have been violated or are likely to be violated in the near future.
- 13 In 2014, ZAF brought an action before the High Court alleging that the government of Zania is in breach of the fundamental rights of persons with albinism. In the main, the arguments of ZAF were as follows:
 - (a) The failure to bring a stop of the killing and mutilation of persons with albinism constitutes a violation of the rights to health, security of the person and life of persons with albinism.
 - (b) The taking of children into care since 2013 constitutes a violation of the right to family and community life and freedom to choose their own residence.
 - (c) Attending school in the temporary shelters is a violation of the right to education of learners with albinism and is discriminatory as they have a right to attend school with other learners without albinism.
 - (d) Promoting genetic testing for OCA1 constitutes discrimination as it conveys a message that persons with albinism are persons less worthy than persons without albinism.
- 14 The High Court ruled that the state was not in violation of the fundamental rights of persons with albinism, for the reasons that
 - (i) in order to protect health and life, it is within the competence of the state to remove children from danger and place them in places of safety until it is safe to return them to their ordinary homes and communities;

- (ii) it is inevitable that in removing children to places of safety, their right to family and community life, their right to choose their own residence, and their right to attend school with learners without disabilities would be affected but for reasons of the greater good of children with albinism;
- (iii) the promotion of genetic testing is not discriminatory as individuals can decide for themselves what they wish to do with the information, including whether to have children who may be born with albinism or may become a carrier of the OCA1 gene; and
- (iv) the state fulsomely condemns the killings and mutilations of persons with albinism through its laws that criminalise assault, causing grievous bodily harm, unlawful killing and witchcraft practice, but cannot be expected to guarantee that no violence shall be perpetrated on persons with albinism other than to allow the prosecution authorities to bring the perpetrators of the violence to book.

By the end of 2014, ZAF appealed the decision to the Constitutional Court. The Constitutional Court upheld decision of the High Court.

15 In 2015, ZAF decided that it should take the case to the African Court on Human and Peoples' Rights (African Court). The case is now before the African Court, and the matter is scheduled for hearing from 7 to 10 November 2016. In light of the given facts, prepare heads of arguments for the applicant (ZAF) and the respondent (the State of Zania) on the following issues:

- (a) Is the removal of children with albinism from their homes and communities and placing them into care a violation of the relevant international human rights law?
- (b) Is attending schools in the temporary shelters that are meant for learners with albinism only a violation of the relevant international human rights law?
- (c) Does the failure to bring the killing and mutilation of persons with albinism to a halt constitute a violation of the relevant international human rights law?
- (d) Does promoting genetic testing for OCA1 constitute a violation of the relevant international human rights law?