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# TWO STORIES ABOUT SKIN COLOR AND INTERNATIONAL HUMAN RIGHTS ADVOCACY

WILLIAM J. ACEVES\*

## I. INTRODUCTION

This Article offers two stories about skin color and international human rights advocacy. The first story is well known while the second story is not. Both stories are unique because each story marks a distinct life. And, yet, these stories mirror the experiences of countless people around the world. Both stories address international law and the role of international human rights mechanisms in protecting individuals from discrimination and persecution based on skin color. And, both stories highlight the benefits of international human rights advocacy.

Color is an important but underdeveloped designation in international law. Color is identified as a protected category in several human rights documents, including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>1</sup> Despite its status as a protected category, there is no definition of color in these human rights documents. It is generally recognized, however, that color references skin color.

In the absence of an established definition, race is often used as a proxy for color. This poses its own set of challenges. Manfred Nowak has indicated that “[t]he question of when human beings differ from one another on account of their race and/or colour has been extensively investigated by different scientific disciplines, but there is no conclusive answer. The only settled aspect is that this involves personal qualities that

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\* William J. Aceves is the Dean Steven R. Smith Professor of Law at California Western School of Law. This Article is based on remarks presented at the Global Perspectives on Colorism Conference held at Washington University School of Law. I would like to thank Professors Leila Sadat and Kimberly Norwood for organizing this conference and inviting me to participate, and Taiba Munir for providing excellent research assistance.

1. As a point of comparison, color is not referenced as a protected category in the Genocide Convention, Refugee Convention, Convention against Torture, or the Convention on the Elimination of Discrimination against Women.

are congenital, unchangeable, and externally recognizable.”<sup>2</sup> There is also growing skepticism within the human rights community about the legitimacy of using racial categories to distinguish human beings. In the report, *Developing National Action Plans against Racial Discrimination*, for example, the U.N. High Commissioner for Human Rights indicated that “[t]he use of the term ‘race’ in this publication does not imply the acceptance of theories which attempt to determine the existence of separate human races.”<sup>3</sup> The High Commissioner referred to the Outcome Document of the Durban Review Conference with approval, which stated “that all peoples and individuals constitute one human family, rich in diversity, and that all human beings are born free and equal in dignity and rights; and strongly rejects any doctrine of racial superiority along with theories which attempt to determine the existence of so-called distinct human races.”<sup>4</sup> And, in its report, *The Situation of People of African Descent in the Americas*, the Inter-American Commission on Human Rights indicated that it “uses the term ‘racial’ not because it adheres to theories claiming the existence of different races in the human species, but rather in line with the nomenclature of Article 1 of the American Convention on Human Rights.”<sup>5</sup>

While race and color are often used interchangeably, it is important to treat color as a distinct category.<sup>6</sup> Race and color do not always match. This distinction is also significant in light of growing concerns about the legitimacy of racial categories and the continuing impact of skin color on human behavior. In this country and throughout the world, the difference between life and death can often be measured by degrees of pigmentation.

## II. THE STORY OF MICHAEL BROWN

On August 9, 2014, Michael Brown was shot and killed by a police officer in Ferguson, Missouri.<sup>7</sup> Brown, an 18-year old African-American

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2. MANFRED NOWAK, CCPR COMMENTARY 49 (2d rev. ed. 2010).

3. U.N. High Commissioner for Human Rights, *Developing National Action Plans against Racial Discrimination: A Practical Guide*, 1 n.2 (2014).

4. *Id.* (quoting *Outcome Document of the Durban Review Conference*, U.N. Doc. A/CONF.211/8 (Apr. 24, 2009)).

5. Inter-American Commission on Human Rights, *The Situation of People of African Descent in the Americas* vi n.1 (2011).

6. See generally Maureen Mswela & Mebdie Nothling-Slabbert, *Colour Discrimination against Persons with Albinism in South Africa*, 6 S. AFR. J. BIOETHICS & L. 25 (2013).

7. See Jack Healy, *Ferguson, Still Tense, Grows Calmer*, N.Y. TIMES, Nov. 27, 2014, at A24; Frances Robles & Julie Bosman, *Autopsy Shows Michael Brown Was Struck At Least 6 Times*, N.Y. TIMES, Aug. 18, 2014, at A1.

teenager, was shot at least six times after a brief struggle on the street. Brown was unarmed when he was shot.<sup>8</sup>

Michael Brown's death sparked massive protests and civil unrest in Missouri and throughout the United States.<sup>9</sup> Protestors denounced the killing and demanded accountability from local, state, and federal officials. The vast majority of these protests were peaceful with no injuries to persons or property.<sup>10</sup> However, destruction of property and some looting did occur in Ferguson. The police response to these protests exacerbated tensions within the community when police appeared in riot gear and arrested protestors and journalists, many without cause.<sup>11</sup> Tear gas was also used to disperse protestors. In response to the growing protests, the governor of Missouri declared a state of emergency and imposed a curfew in Ferguson. The National Guard was also deployed.<sup>12</sup>

No charges were ever brought for the death of Michael Brown. While the Justice Department also declined to file charges, a subsequent federal civil rights investigation identified pervasive racial discrimination within the Ferguson Police Department.<sup>13</sup> The investigation resulted in the termination or resignation of several police and local government officials in Ferguson.<sup>14</sup>

The situation in Ferguson raised significant concerns about color, race, and justice in the United States. It highlighted the growing epidemic of killings of people of color by law enforcement. It renewed concerns with law enforcement's response to protests. It also undermined confidence in the ability of the criminal justice system to address these issues.

While the Michael Brown case was a purely domestic matter, it soon developed international elements. On November 11, 2014, the parents of Michael Brown travelled to Geneva, Switzerland to offer testimony to the U.N. Committee against Torture (the "Committee").<sup>15</sup> The Committee was

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8. Some reports allege Brown was running toward the police officer when he was shot.

9. See generally John Eregon & Manny Fernandez, *From Plains to Both Coasts: Fury Boils Over*, N.Y. TIMES, Nov. 25, 2014, at A1.

10. *Id.*

11. Yamiche Alcindor, *Firsthand Fear, Awe on Ferguson Streets*, USA TODAY (Aug. 19, 2014), <http://www.usatoday.com/story/news/nation/2014/08/18/from-the-streets-of-ferguson/14260667/>.

12. Monica Davey et al., *Fitful Night in Ferguson as National Guard Arrives*, N.Y. TIMES, Aug. 19, 2014, at A1.

13. See Memorandum, Department of Justice, Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson (Mar. 4, 2015).

14. John Eligon, *Ferguson Police Chief Thomas Jackson Joins Exodus of City Officials*, N.Y. TIMES, Mar. 12, 2015, at A1.

15. Lindsey Bever, *Michael Brown's Parents Take Their Case to United Nations Torture Panel*, WASH. POST, Nov. 12, 2014.

established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”).<sup>16</sup> The Convention against Torture prohibits torture and other cruel, inhuman, or degrading treatment. In addition, the Convention requires States Parties to submit periodic reports to the Committee describing their compliance with the treaty. States Parties must also appear before the Committee to answer questions about their periodic reports.

As part of the state reporting process, members of civil society may submit reports for consideration by the Committee. These reports are often referred to as “shadow reports.”<sup>17</sup> In Geneva, the Brown family participated in a presentation based on a shadow report submitted with three other organizations: HandsUpUnited, the Organization for Black Struggle, and Missourians Organizing for Reform and Empowerment.<sup>18</sup> In addition to the shadow report, these organizations also developed and pursued a social media campaign designed to highlight the situation in Ferguson. Titled “From Ferguson to Geneva,” the campaign noted that “police violence in America is a human rights issue” and that advocacy before international human rights bodies was part of the solution.<sup>19</sup> Indeed, such international advocacy was necessary. “In the absence of justice from the local, state, and federal government, the family of Michael Brown and Ferguson protesters are ready to take our case before the global community.”<sup>20</sup>

The shadow report examined the killing of Michael Brown as well as the excessive use of force by law enforcement officers in response to the Ferguson protests. It highlighted the relevance of the Convention against Torture to cases involving police brutality against minority groups. The

16. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, art. 17, Dec. 10, 1984, 1465 U.N.T.S. 85.

17. See U.S. Human Rights Network, *Why Do “Shadow Reporting?”* (Apr. 2007), [http://www.njjn.org/uploads/digital-library/resource\\_492.pdf](http://www.njjn.org/uploads/digital-library/resource_492.pdf).

18. Family of Michael Brown et al., *Written Statement on the Police Shooting of Michael Brown and Ensuing Police Violence Against Protestors in Ferguson, Missouri* (2014), <http://fergusontogeneva.org/FergusonReport.pdf> (last visited Apr. 10, 2015) (“Brown Shadow Report”). The group also sent letters to several U.N. human rights mechanisms asking them to visit St. Louis under their respective mandates.

19. See Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States After Ferguson*, 12 HASTINGS RACE & POVERTY L.J. 101 (2015); See also #Ferguson to Geneva, <http://fergusontogeneva.org/> (last visited Apr. 10, 2015).

20. *Id.* For a discussion of these domestic advocacy efforts, see Douglas Pivnichny, *Ferguson and Geneva: Bringing Human Rights Treaties to the Heartland*, <http://law.wustl.edu/harris/lexlata/?p=298> (Jan. 21, 2015).

report then offered two sets of recommendations. One set of recommendations was specifically directed at the situation in Ferguson:

1. Immediately arrest Officer Darren Wilson, the police officer who killed Michael Brown.
2. Urge political accountability for the killing of Michael Brown and the excessive force on protestors.
3. Racial profiling and racially-biased police harassment across the jurisdictions surrounding Ferguson, Missouri must come to an end.<sup>21</sup>

The second set of recommendations focused on the national situation and addressed racial profiling and the use of force in the United States:

1. Provide mandatory guidelines with strict regulations on the use of force by state and local law enforcement.
2. Improve accountability for the use of force by police, particularly in black and brown communities.
3. Pass legislation to end racial profiling and police brutality against people of color.
4. Ensure transparency, accountability, and safety to communities by requiring front facing cameras in all police departments with records of racial disparities in stops, arrests, killings, and excessive force complaints.
5. Review and remediate laws regarding the use of deadly force.
6. The Attorney General and Department of Justice must conduct a nationwide investigation of systematic police brutality and harassment in black and brown communities, and youth in particular.<sup>22</sup>

During the Geneva hearings, the Committee against Torture asked the U.S. delegation about the situation in Ferguson, including whether there was independent oversight ensuring that police did not use excessive force in response to protests and whether measures had been taken to review the

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21. Brown Shadow Report, *supra* note 18, at 9.

22. *Id.* at 10.

distribution of military equipment to local police forces.<sup>23</sup> In response, the U.S. representatives indicated that a federal investigation was underway to determine whether civil rights violations had been committed in Ferguson.<sup>24</sup>

On December 19, 2014, the Committee against Torture issued its Concluding Observations regarding the U.S. periodic report. While it did not specifically reference the Michael Brown case, the Committee expressed concern about the “numerous reports of police brutality and excessive use of force by law enforcement officials, in particular against persons belonging to certain racial and ethnic groups, immigrants and LGBTI individuals[.]”<sup>25</sup> The Committee also expressed concern about “racial profiling by police and immigration offices and the growing militarization of policing activities.”<sup>26</sup> To address these concerns, the Committee offered several recommendations to the United States:

- (a) Ensure that all instances of police brutality and excessive use of force by law enforcement officers are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;
- (b) Prosecute persons suspected of torture or ill-treatment and, if found guilty, ensure that they are punished in accordance with the gravity of their acts;
- (c) Provide effective remedies and rehabilitation to the victims;
- (d) Provide redress for CPD torture survivors by supporting the passage of the Ordinance entitled Reparations for the Chicago Police Torture Survivors.<sup>27</sup>

On August 13, 2014, the United States appeared before the Committee on the Elimination of Racial Discrimination, which was established by the

23. Committee against Torture, Summary Record of the 1264th Meeting, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention 5 U.N. Doc. CAT/C/SR.1264 (Nov. 17, 2014).

24. Committee against Torture, Summary Record of the 1267th Meeting, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention 4 U.N. Doc. CAT/C/SR.1267 (Nov. 19, 2014).

25. Committee against Torture, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America 13 U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014).

26. *Id.*

27. *Id.* at 13–14.

Convention on the Elimination of All Forms of Racial Discrimination.<sup>28</sup> Nouredine Amir, the Vice Chairman of the Committee, briefly addressed the Michael Brown case following the Committee's examination of the U.S. report.<sup>29</sup> He stated that "[t]he excessive use of force by law enforcement officials against racial and ethnic minorities is an ongoing issue of concern and particularly in light of the shooting of Michael Brown[.]"<sup>30</sup> He also noted this was not an isolated event and that it "illustrates a bigger problem in the United States, such as racial bias among law enforcement officials, the lack of proper implementation of rules and regulations governing the use of force, and the inadequacy of training of law enforcement officials."<sup>31</sup>

The Michael Brown case was further internationalized by several other U.N. human rights mechanisms. On November 24, 2014, for example, the U.N. High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, expressed concern about the situation in Ferguson and the clear disparities facing African-Americans in the U.S. criminal justice system:

Without knowing the details of the evidence laid before the Missouri Grand Jury—which in turn depends on the quality of the investigation into the killing of Michael Brown—I am not, at this point, able to comment on whether or not the verdict conforms with international human rights law. Nevertheless, I am deeply concerned at the disproportionate number of young African Americans who die in encounters with police officers, as well as the disproportionate number of African Americans in U.S. prisons and the disproportionate number of African Americans on Death Row. It is clear that, at least among some sectors of the population, there is a deep and festering lack of confidence in the fairness of the justice and law enforcement systems. I urge the US authorities to conduct in-depth examinations into how race-related issues are affecting law enforcement and the administration of justice, both at the federal and state levels.

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28. Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195.

29. Stephanie Nebehay, *U.N. Urges U.S. to Stop Police Brutality After Missouri Shooting*, REUTERS (Aug. 29, 2014), <http://www.reuters.com/article/2014/08/29/us-usa-missouri-shooting-un-idUSKBN0GT1ZQ20140829>.

30. *Id.*

31. *Id.*

Concerns about institutionalized discrimination in the US have repeatedly been raised, by respected national bodies and by UN bodies monitoring the implementation of international human rights treaties, ratified by the US. These include, this year alone, the Committee on the Elimination of Racial Discrimination, and the Human Rights Committee.<sup>32</sup>

The High Commissioner noted that any use of firearms must comply with the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“Basic Principles”). According to the Basic Principles, the lethal use of firearms must be a last resort, taken only when other less extreme means are insufficient.<sup>33</sup>

On December 5, 2014, five U.N. human rights experts issued a joint statement expressing concern about the Michael Brown and Eric Garner cases.<sup>34</sup> (Eric Garner was a 47-year old African-American man who was killed after being placed in a chokehold by New York City police officers.) Mireille Fanon-Mendes France of the U.N. Working Group of Experts on People of African Descent stated that “Michael Brown and Eric Garner’s cases have added to our existing concerns over the longstanding prevalence of racial discrimination faced by African-Americans, particularly in relation to access to justice and discriminatory police practices[.]”<sup>35</sup> While calling for prompt and fair resolution of both cases, she also requested “a comprehensive examination of all laws that could have discriminatory impact on African-Americans to ensure that such laws are in full compliance with the country’s international legal obligations and relevant international standards.”<sup>36</sup> Mutuma Ruteere, who served as the U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, expressed similar concerns: “There are numerous complaints stating that African Americans are disproportionately affected by such practices of racial profiling and the use of disproportionate and often lethal force.”<sup>37</sup> She called for an end to

32. Press Release, U.N. High Commissioner for Human Rights, Zeid Urges Restraint, and Determined Effort to Root Out Institutionalized Discrimination in Wake of U.S. Ferguson Verdict (Nov. 25, 2014).

33. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ¶ 9 U.N. Doc. A/CONF.144/28/Rev. 1, at 112 (1990).

34. Press Release, “Legitimate Concerns” Over Outcome of Michael Brown and Eric Garner Cases—UN Rights Experts (Dec. 5, 2014).

35. *Id.* (statement of Mireille Fanon-Mendes France).

36. *Id.*

37. *Id.* (statement of Mutuma Ruteere).

such practices. Rita Izsak, who served as the U.N. Special Rapporteur on Minority Issues, also expressed concerns regarding the legal process surrounding the Brown and Garner cases. She noted that a trial could address any disputes about the evidence in these cases. “A trial process would ensure that all the evidence is considered in detail and that justice can take its proper course . . . The decisions leave many with legitimate concerns relating to a pattern of impunity when the victims of excessive use of force come from African-American or other minority communities.”<sup>38</sup> Maina Kiai, who served as the U.N. Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, acknowledged the frustration felt by many regarding the two cases. He urged protestors to act in accordance with the law. He also urged police “to facilitate the right of protestors to demonstrate peacefully and to refrain from the use of excessive force against individuals exercising their freedom to peacefully protest.”<sup>39</sup> Finally, Christof Heyns, the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, called for a comprehensive review of laws regarding the use of force as well as “the kinds of weapons the police use, the training they receive, and the use of technology such as on-body cameras to ensure accountability.”<sup>40</sup>

In addition to U.N. human rights mechanisms, the Michael Brown case was also addressed by the Inter-American Commission on Human Rights, which is an autonomous body of the Organization of American States and is responsible for promoting respect for human rights in the Americas.<sup>41</sup> The Inter-American Commission noted that countries must conduct prompt, thorough, and independent investigations when state security forces use lethal force. In Michael Brown’s case, the Commission expressed concern “with the manner in which public authorities and the security forces have responded to the protests.”<sup>42</sup> In addition, the Commission indicated “that the killings of Mr. Garner and Mr. Brown represent the continuation of a disturbing pattern of excessive force on the part of police officers towards African-Americans and other persons of color[.]”<sup>43</sup> The Commission urged the United States “to give renewed attention to the possible links between these cases and past cases that

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38. *Id.* (statement of Rita Izsak).

39. *Id.* (statement of Maina Kiai).

40. *Id.* (statement of Christof Heyns).

41. Press Release, IACHR Expresses Concern over Police Killings of African-American Persons in the United States (Aug. 22, 2014).

42. *Id.*

43. *Id.*

demonstrated a pattern of use of excessive force against persons of color.”<sup>44</sup> The Commission also expressed concern regarding the treatment of journalists covering the protests in Ferguson.

### III. THE STORY OF GASPER ELIKANA

On October 21, 2009, Gasper Elikana, a 10-year old boy, was brutally killed at his home in the Geita district of the Mwanza region in Tanzania.<sup>45</sup> He was first decapitated. His leg was then cut off and taken by his attackers. Gasper was killed because of the color of his skin. He was born with albinism, which meant that his skin was pale white even though he was born to a black father and black mother. His attackers killed him because they believed his body parts had magical properties and were highly valued.<sup>46</sup>

Albinism is a genetic mutation that results in a lack of melanin production in the body. There are different degrees of albinism, which can affect the skin, hair, and eyes. The consequences of albinism are significant. Because persons with albinism lack pigmentation in their skin, they are susceptible to sunburns and cancerous lesions. Because it affects the eyes, persons with albinism are often visually impaired. There is no cure for albinism.

Albinism affects persons regardless of race or ethnicity and occurs throughout the world. In North America and Europe, it is estimated that 1 in every 17,000 to 20,000 people have some form of albinism.<sup>47</sup> The condition is more prevalent in sub-Saharan Africa.<sup>48</sup> In South Africa, for example, it is estimated that 1 in 3,900 people are affected although prevalence varies in urban and rural populations. In Zimbabwe, as many as 1 in 1,000 people suffer from albinism in certain tribal groups.

44. *Id.*

45. International Federation of Red Cross and Red Crescent Societies, *Through Albino Eyes: The Plight of Albino People in Africa’s Great Lakes Region and a Red Cross Response 5* (2009) (“IFRC Report”); Mwandishi Wetu, *Albino Victim Couldn’t Be Admitted to ‘Safe’ Mitindo*, IPP MEDIA (Dec. 6, 2009), <http://www.ippmedia.com/frontend/index.php?l=10859>.

46. Tom Odula, *10,000 Albinos in Hiding After Killings in East Africa*, HUFFINGTON POST, (May 25, 2011), [http://www.huffingtonpost.com/2009/11/29/10000-albinos-in-hiding-a\\_n\\_372976.html](http://www.huffingtonpost.com/2009/11/29/10000-albinos-in-hiding-a_n_372976.html).

47. *See* Under the Same Sun, *Frequency of Albinism/Rates of Occurrence*, <http://www.underthesamesun.com/sites/default/files/Frequency%20of%20Albinism.pdf>.

48. *See generally* Esther S. Hong et al., *Albinism in Africa as a Public Health Issue*, 6 BMC PUBLIC HEALTH 212 (2006).

Persons with albinism are subject to discrimination and persecution, particularly in Africa.<sup>49</sup> There are several reasons for this. First, persons with albinism look different from other members of the general population, which leads to ostracism and social exclusion. Second, they are seen as bad luck or evil omens, which leads to further isolation. Third, the body parts of persons with albinism are believed to offer protection against bad luck.<sup>50</sup> As a result, their body parts are often sold as magical talismans.<sup>51</sup> For this reason, persons with albinism have been subjected to ritualistic attacks and trafficking.<sup>52</sup> Because of their marginalized status, attacks against persons with albinism are not always investigated or punished. National governments do not always condemn these attacks or denounce the local practices and customs that perpetuate this violence.

Children with albinism are particularly vulnerable to abuse and persecution. According to the Special Representative of the U.N. Secretary-General on Violence against Children, “[c]hildren with albinism are at high risk of abandonment, stigmatization, and marginalization as a result of their appearance, and due to disability factors associated with their condition, such as impaired eyesight and sensitive skin.”<sup>53</sup> Children are also subject to significant threats because their body parts are considered to have magical powers. According to the Special Representative, “[c]hildren with albinism are exposed to severe incidents of violence, mutilation and murder. At times they become the target of witchcraft accusations, leading to the use of their body parts for ritual purposes.”<sup>54</sup>

Women with albinism are also subject to discrete threats. Some communities believe that having sex with a person with albinism can cure HIV/AIDS. This had led to several sexual assaults against women with albinism.<sup>55</sup> In addition, women who give birth to children with albinism

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49. While it is a widespread problem, most attacks against persons with albinism have been documented in Tanzania and Burundi.

50. See generally Andres Cruz-Inigo, *Albinism in Africa: Stigma, Slaughter and Awareness Campaigns*, 29 *DERMATOL. CLINICS* 79 (2011); Deborah Fahy Bryceson et al., *Miner's Magic: Artisanal Mining, the Albino Fetish and Murder in Tanzania*, 48 *J. MOD. AFR. STUD.* 353 (2010).

51. See generally Cruz-Inigo, *supra* note 50; Bryceson, *supra* note 50.

52. See generally Cruz-Inigo, *supra* note 50; Bryceson, *supra* note 50.

53. U.N. General Assembly, Annual Report of the Special Representative of the Secretary-General on Violence against Children ¶ 34 U.N. Doc. A/69/264 (Aug. 6, 2014).

54. *Id.* ¶ 36.

55. *HIV+ Men Rape Women with Albinism in Cure Belief*, SUNDAY NEWS REPORTER (Sept. 28, 2014), <http://www.sundaynews.co.zw/hiv-men-rape-women-with-albinism-in-cure-belief/>.

are often rejected by their husbands and families. Their children are viewed as bad omens or signs of infidelity.<sup>56</sup>

For years, a variety of nongovernmental organizations have been advocating on behalf of persons with albinism. For example, Under the Same Sun is a nonprofit organization established in Canada with offices in Dar es Salaam, Tanzania.<sup>57</sup> This organization conducts advocacy campaigns on behalf of persons with albinism and supports educational initiatives for children with albinism. Other organizations (such as Salif Keita Global Foundation, the Fondation Albinos Mwimba Texas, the Tanzania Albinism Society, and The Albino Foundation) offer similar support and services in Africa.<sup>58</sup> These groups have been vocal advocates on behalf of persons with albinism. They have provided educational opportunities to children with albinism. They have developed information campaigns to address misunderstandings about albinism and discrimination against persons with albinism. They have also written reports and lobbied governments and international human rights bodies.

One of the earliest reports to document the persecution of persons with albinism in Africa was prepared by the International Federation of Red Cross and Red Crescent Societies. Its 2009 report, *Through Albino Eyes: The Plight of Albino People in Africa's Great Lakes Region and a Red Cross Response*, examined the challenges confronting persons with albinism in the Great Lakes region of Africa.<sup>59</sup> It documented several stories of persons with albinism, including individuals who had been attacked by hunters seeking body parts. It also described the physical challenges faced by persons with albinism, including cancer and blindness. The report identified several action items to address these issues:

- [1.] Better protection for albinos by law-enforcement agencies. . . .
- [2.] A fully integrated response to the albino crisis, as unencumbered by professional demarcation and agency mandates as possible. . . .

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56. IFRC Report, *supra* note 45, at 5, 11.

57. Under the Same Sun, <http://www.underthesamesun.com> (last visited Nov. 11, 2015).

58. See SALIF KEITA GLOBAL FOUNDATION, <http://www.salifkeita.us> (last visited Aug. 19, 2015); FONDATION ALBINOS MWIMBA TEXAS, <http://www.albinosfmt.com> (last visited Aug. 19, 2015); TANZANIA ALBINISM SOCIETY, <https://www.betterplace.org/en/organisations/spellofthealbino> (last visited Aug. 19, 2015); THE ALBINO FOUNDATION, <http://albinofoundation.org> (last visited Aug. 19, 2015).

59. IFRC Report, *supra* note 45, at 20–21.

[3.] Urgently improving the living conditions in safe havens like Kabanga and Mitindo schools where albinos are protected by national authorities and assisted by the Red Cross. . . .

[4.] Skin-cancer prevention and protection including if judged appropriate by local medical professionals the provision of sunblock lotion. . . .

[5.] Vocal advocacy for education to eliminate violence and discrimination against people with albinism.<sup>60</sup>

It has only been in recent years that the many issues facing persons with albinism have received significant attention by the international community.<sup>61</sup> In the past two years alone, there has been an extraordinary movement within the United Nations to recognize and protect persons with albinism.

On May 4, 2013, a group of six U.N. human rights experts issued a joint statement expressing concern about the rights of persons with albinism. The group stated that persons with albinism are often “regarded as ghosts and not human beings who can be wiped off the global map.”<sup>62</sup> Juan Mendez, who served as the U.N. Special Rapporteur on Torture, called on the relevant authorities to investigate attacks on persons with albinism and bring perpetrators to justice. Christof Heyns, the U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, echoed this call by noting that “[s]tates bear full responsibility to undertake thorough, prompt and impartial investigations of all killings of persons with albinism[.]”<sup>63</sup> Rita Izsak, the U.N. Independent Expert on Minority Issues, noted that persons with albinism do not fall within the international definition of minority. “However, their stigma, the lifelong social exclusion and general discrimination they face is a similar experience to those vulnerable racial minorities because of their different skin colour.”<sup>64</sup> Similarly, Mutuma Rutere, the U.N. Special Rapporteur on Racism, stated that all persons are entitled to enjoy their human rights

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60. *Id.* at 20–21.

61. Some studies indicate that ritualistic attacks against persons with albinism in Africa are themselves a recent phenomenon.

62. Press Release, “Not Ghosts, But Human Beings . . . Persons with Albinism” (May 4, 2013). The title of this press release became the basis for a website and campaign established by the Office of the High Commissioner for Human Rights on the rights of persons with albinism. *See* UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER, PEOPLE WITH ALBINISM: NOT GHOSTS BUT HUMAN BEINGS, [www.albinism.ohchr.org/](http://www.albinism.ohchr.org/) (last visited Aug. 20, 2015).

63. *Id.* (statement of Juan Mendez).

64. *Id.* (statement of Rita Izsak).

without distinction. “Regardless of whether one has a lighter or a darker skin compared to the majority population in a country or a community, everyone is entitled to the same rights, dignity and treatment[.]”<sup>65</sup> Anand Grover, the U.N. Special Rapporteur on the Right to Health, noted that persons with albinism face significant health issues, including visual impairment, lung disease, and skin cancers. Accordingly, he urged “all relevant authorities to assess the needs of people living with albinism to increase their life chances and ensure their enjoyment of the right to physical and mental health[.]”<sup>66</sup> Finally, Kishore Singh, the U.N. Special Rapporteur on the Right to Education, noted that teachers could use several methodologies and teaching techniques to assist children with albinism in the classroom.<sup>67</sup>

On June 13, 2013, the U.N. Human Rights Council adopted the first of several resolutions addressing persons with albinism. Resolution 23/13 addressed attacks and discrimination against persons with albinism.<sup>68</sup> The resolution was proposed by Gabon on behalf of the Group of African States. The resolution expressed concern at the “widespread discrimination, stigma and social exclusion suffered by persons with albinism[.]”<sup>69</sup> It noted that attacks against persons with albinism were often committed with impunity. The resolution noted with approval the efforts made by several countries to condemn attacks on persons with albinism and to hold perpetrators accountable. The resolution then proposed several action items:

1. Urges States to take all measures necessary to ensure the effective protection of persons with albinism, and their family members;
2. Calls upon States to ensure accountability through the conduct of impartial, speedy and effective investigations into attacks against persons with albinism falling within their jurisdiction, and to bring those responsible to justice, and to ensure that victims and family members have access to appropriate remedies:

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65. *Id.* (statement of Mutuma Rutere).

66. *Id.* (statement of Anand Grover).

67. *Id.* (statement of Kishore Singh).

68. Human Rights Council, Resolution 23/13: Attacks and Discrimination against Persons with Albinism, U.N. Doc. A/HRC/RES/23/13 (June 13, 2013).

69. *Id.*

3. Also calls upon States to take effective measures to eliminate any type of discrimination against persons with albinism, and to accelerate education and public awareness-raising activities;
4. Encourages States to share best practices in protecting and promoting the rights of persons with albinism;
5. Invites relevant special procedures of the Human Rights Council, as appropriate, in the framework of their mandate, to address the relevant aspects of the safety and non-discrimination of persons with albinism;
6. Invites States, in collaboration with relevant regional and international organizations, to promote bilateral, regional and international initiatives to support the protection of persons with albinism;
7. Requests the Office of the United Nations High Commissioner of Human Rights to submit a preliminary report on attacks and discrimination against persons with albinism to the Human Rights Council at its twenty-fourth session;
8. Decides to remain seized of the matter.<sup>70</sup>

In response to the Human Rights Council's request, the U.N. High Commissioner for Human Rights conducted an investigation on the situation of persons with albinism. On September 12, 2013, the High Commissioner presented her report to the Human Rights Council.<sup>71</sup> The report was based, in part, on submissions from a variety of sources, including several countries, U.N. bodies, national human rights institutions, and members of civil society. It noted that persons with albinism suffered from significant discrimination and that this was a global phenomenon: "[P]ersons with albinism have difficulties getting the health care they require and accessing education, employment, legal protection and redress. This situation is compounded by deeply entrenched societal prejudices against and stereotypes of persons with albinism."<sup>72</sup> Women and children were particularly vulnerable to such forms of discrimination. The report also indicated that persons with albinism were at risk from ritualistic attacks based on societal practices and beliefs,

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70. *Id.*

71. Human Rights Council, Report of the United Nations High Commissioner: Persons with Albinism, U.N. Doc. A/HRC/24/57 (Sept. 12, 2013) ("OHCHR Report").

72. *Id.* ¶ 65.

including witchcraft. Such attacks often led to trade in organs, trafficking in persons, and the sale of children. The report emphasized the obligation of states to respond to discrimination and attacks on persons with albinism. It then offered a set of recommendations to states, international and regional human rights mechanisms, and the international community.

On October 8, 2013, the Human Rights Council adopted its second resolution on the situation of persons with albinism. Resolution 24/33 addressed the need for technical cooperation for the prevention of attacks against persons with albinism.<sup>73</sup> It reaffirmed the Human Rights Council's grave concerns regarding continued attacks on persons with albinism. It called on the various U.N. human rights treaty bodies and special procedures to address the situation of persons with albinism. It again called upon states "to ensure accountability" and "bring to justice" those responsible for attacks on persons with albinism and to "ensure that victims and family members have access to appropriate remedies[.]"<sup>74</sup> Finally, the resolution called upon the Human Rights Council Advisory Committee to prepare a more detailed study on the human rights situation of persons with albinism.<sup>75</sup>

On June 16, 2014, the Human Rights Council adopted its third resolution. Recognizing the importance of highlighting the situation facing persons with albinism, Resolution 26/10 recommended that the U.N. General Assembly proclaim an International Albinism Awareness Day.<sup>76</sup> The General Assembly subsequently proclaimed June 13 to be International Albinism Awareness Day.<sup>77</sup>

On July 30, 2014, the Human Rights Council Advisory Committee issued its preliminary study on the human rights situation of persons with albinism.<sup>78</sup> It submitted its final report to the Human Rights Council on February 10, 2015.<sup>79</sup> In researching the situation of persons with albinism, the Advisory Committee sought input from states, national human rights

73. Human Rights Council, Resolution 24/33: Technical Cooperation for the Prevention of Attacks against Persons with Albinism, U.N. Doc. A/HRC/RES/24/33 (Oct. 8, 2013).

74. *Id.*

75. *Id.* at 17–18.

76. Human Rights Council, Resolution 26/10: International Albinism Awareness Day, U.N. Doc. A/HRC/RES/26/10 (July 14, 2014).

77. U.N. General Assembly, Resolution 69/170, International Albinism Awareness Day, U.N. Doc. A/RES/69/170 (Feb. 10, 2015).

78. Human Rights Council, Preliminary Study on the Situation of Human Rights of Persons Living with Albinism, U.N. Doc. A/HRC/AC/13/CRP.1 (July 30, 2014).

79. Human Rights Council, Report of the Human Rights Council Advisory Committee on the Study on the Situation of Human Rights of Persons Living with Albinism, U.N. Doc. A/HRC/28/75 (Feb. 10, 2015) ("HRC Report").

institutions, other U.N. bodies, and nongovernmental organizations. It submitted detailed questionnaires to each group and received a total of 41 responses, including 15 from states, 9 from national human rights institutions, 7 from U.N. bodies, and 10 from nongovernmental organizations. The Advisory Committee's report incorporated work from the earlier report of the U.N. High Commissioner for Human Rights.

The Advisory Committee noted that discrimination against persons with albinism exists throughout the world although the severity of discrimination varies by region. In Western Europe and North America, "discrimination often consists of name-calling, persistent teasing and bullying of children with albinism."<sup>80</sup> In Africa, however, physical attacks against persons with albinism are prevalent. Such variation was explained, in part, by differences in degrees of pigmentation between local communities and persons with albinism.<sup>81</sup>

Persons with albinism face more severe forms of discrimination and violence in those regions where the majority of the general population are relatively dark-skinned. The degree of contrast in pigmentation between the majority and the person with albinism in a community tends to correlate positively with the severity and intensity of discrimination faced by persons with albinism. In other words, a greater degree of contrast in pigmentation often gives rise to a greater degree of discrimination. That appears to be the case in some sub-Saharan African countries where albinism is shrouded in myth and dangerous and erroneous beliefs.<sup>82</sup>

The Advisory Committee added, however, that additional information was needed to better understand the scope of the problem facing persons with albinism throughout the world.

Substantively, the Advisory Committee identified the lifelong threats faced by persons with albinism:

[I]f they survive infanticide at birth, they face a constant threat of physical attacks. Should they survive those physical threats, they are unlikely to be educated, owing to the absence of reasonable accommodation for their poor eyesight. A lack of education leads to unemployment or employment outdoors in the sun, where they are vulnerable to developing skin cancer. Skin cancer remains a life-

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80. *Id.* ¶ 40.

81. *Id.* ¶ 41.

82. *Id.*

threatening condition for most persons with albinism under the age of 40.<sup>83</sup>

The Advisory Committee highlighted the special challenges faced by women and children, who were particularly vulnerable “as they are exposed to intersecting and multiple forms of discrimination.”<sup>84</sup> Children were often rejected by their families. If they survived, they became targets for ritual killings. Women who gave birth to children with albinism were often rejected by their husbands and families. Impunity was a significant problem because discrimination and persecution of persons with albinism often went unaddressed. Indeed, the Committee noted that “law enforcement authorities and some members of the judiciary tend to share the same superstitious beliefs entrenched in the communities, including and not limited to, considering persons with albinism as subhuman beings.”<sup>85</sup>

In response, the Advisory Committee issued a wide-ranging set of recommendations targeting states, families, civil society, and the international community. With respect to state action, the Advisory Committee noted that states are the primary guardians of human rights and should offer protection to persons with albinism.<sup>86</sup> For example, laws that specifically criminalize acts of violence against persons with albinism should be enacted. Such acts of violence should be considered aggravated crimes that result in more severe punishment. Verdicts that punish such aggravated crimes should be publicized. In addition to changes in the criminal law, more effective regulation of traditional health practices, targeting traditional healers and practitioners of witchcraft, should be undertaken.

The Advisory Committee recommended that states should promote greater awareness of the situation facing persons with albinism. For example, states should support efforts to register children with albinism at birth. They should develop public education campaigns using television, radio, mass media, and social media to raise awareness about persons with albinism. “Given the powerful potential of such campaigns for dispelling superstition and misinformation about albinism, they remain indispensable tools for curbing violations of the human rights of persons with

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83. *Id.* ¶ 27.

84. *Id.* ¶ 35 (quoting OHCHR Report, *supra* note 71, ¶ 74.).

85. *Id.* ¶ 30.

86. *Id.* ¶ 62.

albinism.”<sup>87</sup> As part of such public education and outreach campaigns, states should involve nongovernmental organizations and religious leaders, whose support is critical.

Finally, the Advisory Committee called upon international and regional mechanisms to address the many issues faced by persons with albinism. As part of such efforts, it was necessary to collect information that would facilitate effective preventive and remedial action. Because such efforts would require targeted action, the Advisory Committee further recommended the establishment of a “specific dedicated mechanism to work on ending violence against persons with albinism and the structural and multi-layered discrimination they face.”<sup>88</sup>

In response to the Advisory Committee’s report and recommendations, the Human Rights Council adopted a resolution on March 25, 2015 authorizing the establishment of an Independent Expert on the Enjoyment of Human Rights of Persons with Albinism. The Independent Expert will be appointed for a period of three years. Its mandate is “[t]o raise awareness of the rights of persons with albinism, and to combat stereotypes, prejudices and harmful traditional practices and beliefs that hinder their enjoyment of human rights and participation in society on an equal basis with others[.]”<sup>89</sup> The Independent Expert was asked “to integrate a gender perspective throughout the work of the mandate and to pay specific attention to the challenges and needs of women and girls to address the multiple, intersecting and aggravated forms of discrimination faced by women and girls with albinism[.]”<sup>90</sup> The U.N. High Commissioner for Human Rights has also established a dedicated website to publicize and promote the rights of persons with albinism.<sup>91</sup>

In addition to U.N. human rights mechanisms, the situation of persons with albinism was first addressed by African regional human rights bodies in 2013.<sup>92</sup> On November 5, 2013, the African Commission on Human and Peoples’ Rights adopted its first resolution on the situation facing persons

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87. *Id.* ¶ 68.

88. *Id.* ¶ 75.

89. Human Rights Council, Resolution 28/6, Independent Expert on the Enjoyment of Human Rights of Persons with Albinism, U.N. Doc. A/HRC/28/6 (Mar. 31, 2015).

90. *Id.* ¶ 3.

91. See UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER, PEOPLE WITH ALBINISM: NOT GHOSTS BUT HUMAN BEINGS, [www.albinism.ohchr.org/](http://www.albinism.ohchr.org/) (last visited Aug. 20, 2015).

92. Other U.N. human rights mechanisms have also recognized the challenges faced by persons with albinism in recent years, including the Committee on Economic, Social and Cultural Rights, Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, Human Rights Committee, and the Working Group on Older Persons and People with Disabilities.

with albinism.<sup>93</sup> The African Commission expressed concern “at the widespread discrimination, stigma and social exclusion directed at persons with albinism” and was even more deeply concerned “at reports of systematic attacks against persons with albinism, including against women and children.”<sup>94</sup> The Commission then identified several action items:

1. Urges State Parties to take all measures necessary to ensure the effective protection of persons with albinism and members of their families;
2. Calls upon State Parties to ensure accountability through the conduct of impartial, speedy and effective investigations into attacks against persons with albinism, the prosecution of those responsible, and by ensuring that victims and members of their families have access to appropriate remedies;
3. Also calls upon State Parties to take effective measures to eliminate all forms of discrimination against persons with albinism, and to increase education and public awareness-raising activities;
4. Requests State Parties to include in their reports submitted to the African Commission under Article 62 of the African Charter information on the situation of persons with albinism including good practices in protecting and promoting the rights of persons with albinism;
5. Invites State Parties to promote, in collaboration with relevant regional and international organizations, bilateral, regional and international initiatives aimed at protecting persons with albinism;
6. Invites its special mechanisms, as part of their respective mandates, to address the relevant aspects of the safety and non-discrimination of persons with albinism; and
7. Invites its Working Group on Older Persons and People with Disabilities to include guarantees of the rights of persons with albinism in the envisaged Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of People with Disabilities in Africa.<sup>95</sup>

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93. African Commission on Human and People’s Rights, Resolution 263: Resolution on the Prevention of Attacks and Discrimination against Persons with Albinism (Nov. 5, 2013).

94. *Id.*

95. *Id.*

The African Committee of Experts on the Rights and Welfare of the Child also addressed the situation of children with albinism at its Twenty-Second Session in November 2013.<sup>96</sup> A representative from the Office of the U.N. High Commissioner for Human Rights spoke to the Committee about the discrimination and persecution of persons with albinism. The nongovernmental organization, Under the Same Sun, also appeared before the Committee to discuss its work on behalf of children with albinism in Tanzania. It called upon the Committee to investigate and address the situation of children with albinism, including their treatment in shelters for abandoned children. It also discussed the possibility of establishing a Day of Children with Albinism in Africa.<sup>97</sup>

#### IV. CONCLUSION

The stories of Michael Brown and Gasper Elikana share much in common. They reveal the continuing significance of skin color as a defining characteristic of human beings. In explaining discrimination, these stories reveal that skin color matters.<sup>98</sup> It remains one of the easiest ways to differentiate human beings. As the Human Rights Council Advisory Committee explained, levels of discrimination with respect to persons with albinism can be explained, in part, by differences in degrees of pigmentation between victim and perpetrator.<sup>99</sup> While this statement was addressing the situation of persons with albinism, it could easily apply to the treatment of all persons of color and, in fact, to the treatment of all people.

These stories reveal that color is a concept that needs greater attention in international law. While color is referenced as a protected category in several human rights instruments, it is not defined. And, using race as a proxy for color poses its own problems. Race and color are not interchangeable.

These stories expose the role that fear, ignorance, and prejudice play in how people view differences in skin color. They highlight the need for education to overcome such beliefs. Education is particularly important when beliefs are ingrained in local customs or historical practices. Social

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96. African Committee of Experts on the Rights and Welfare of the Child, Report: Twenty Second Session (Nov. 4–8, 2013), ACERWC/RPT (XXII), <http://acerwc.org/?wpdmdl=8812>.

97. *Id.* ¶ 76.

98. See generally KIMBERLY J. NORWOOD, COLOR MATTERS: SKIN TONE BIAS AND THE MYTH OF A POSTRACIAL AMERICA (Kimberly Jade Norwood ed., 2014); SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS (Evelyn Nakano Glenn ed. 2009).

99. HRC Report, *supra* note 79, ¶ 41.

and cultural norms must be changed to promote tolerance and respect. But these stories also reveal the need for greater accountability to combat impunity that allows discrimination and persecution of individuals based on skin color to go unanswered. All too often, abuse is ignored. Indeed, the failure of government institutions to denounce mistreatment and punish abuse perpetuates this behavior. Education, tolerance, respect, and accountability—these principles are needed to combat discrimination based on skin color regardless of whether it occurs in Ferguson, Missouri or Geita, Tanzania. Finally, the stories of Michael Brown and Gasper Elikana highlight the important role that international human rights advocacy can play in addressing discrimination based on skin color. A multiplicity of human rights norms are implicated when people are treated differently because of their skin color, including the right to life, the right to be free from torture and other cruel, inhuman, or degrading treatment, the right to be free from discrimination, and the right to freedom of peaceful assembly and of association. A variety of human rights institutions are responsible for protecting these norms. These institutions can offer additional resources to address domestic concerns, including training and educational programs as well as accountability mechanisms.

International human rights advocacy thus provides a distinct framework for addressing discrimination and persecution of individuals based on skin color. It offers a forum for claims and an independent interlocutor to critique state practice. While international human rights advocacy cannot replace domestic advocacy, it can serve as an effective complement to local efforts. The ongoing and escalating harms facing persons of color in the United States and persons with albinism in Tanzania call for such a multi-faceted response.