

NGO Submission for the Initial Universal Periodic Review of the Republic of Tanzania

Submitted by HelpAge International

Key Words

Rights of older people, right to life, witchcraft accusations, arbitrary killings of older people, widows' property grabbing

Introduction

1. This submission highlights a) the violation and abuse of older women's rights in Tanzania as a result of witchcraft accusations and b) the violation of widows' right to continue owning property when their husbands die. It examines the underlying causes, the severity of the problem and existing barriers to protection. Finally it makes recommendations for government action.
2. Most older people in Tanzania live in poverty and face problems of age discrimination, low incomes, poor health, limited access to healthcare services, illiteracy, marginalisation, lack of voice and representation. The situation is worse for older women who due to illiteracy, male chauvinism and as a result of their already fragile ability to take care of their daily needs, they easily become vulnerable to rights violation and abuse.

Underlying causes of witchcraft accusations

3. While belief in witchcraft is widespread in Tanzania, the situation in Sukumaland, located in the North Eastern part of the country, is particularly grave. Belief in witchcraft tends to result in isolation, rebuke, physical attack and killings of older women alleged to be witches in violation of their right to life. Reasons contributing to this situation in Sukumaland include people's very strong belief in their culture and traditions that tend to make them link every unusual event to witchcraft. High levels of illiteracy, deep rooted belief in traditional religion and lack of sufficient health facilities has contributed to most people relying on traditional healers for treatment and fortune telling. It is the traditional healers and fortune tellers that, when consulted, claim to identify the witches in the community.
4. Older women are targeted because of their red eyes which are associated with being a witch but are in fact the result of a lifetime of cooking in unventilated kitchens using smoky firewood and sometimes dry cow dung. Disputes over property ownership and inheritance have often led to violence, abuse and killings of older women on pretext of witchcraft allegations.

Severity of the problem

5. Reliable data on the number of witchcraft accusations and physical attacks is hard to come by. The responsible government institutions tend not to give the actual figures of attacks and killings. However according to the Legal and Human Rights Centre report (2009) there was a total of 2,585 killings of older women in 8 regions of Tanzania where the practise is predominant for the last five years prior to February 2009. This means an average of 517 killings per year. Statistics for Mwanza region alone, which has the highest older women killing rates, indicate that 698 older women were killed as a result of witchcraft allegations during that span of five years, being an average of 140 killings per year i.e. almost two killings every two days.

S/No	Region	Number of deaths in past five years – February 2009	An average of deaths per year/ region
1	Mwanza	698	140
2	Shinyanga	522	105
3	Tabora	508	102
4	Iringa	256	52
5	Mbeya	192	39
6	Kagera	186	37
7	Singida	120	24
8	Rukwa	103	21
	TOTAL	2,585	517

Source: Police report, February 2009 (Extracted from media by Legal Human Right Centre)

6. According to Philip Alston, the Special Rapporteur on extra judicial summary or arbitrary executions¹ the murder and persecution of people accused of witchcraft in Tanzania is better documented than in most countries. The figures vary widely but it is estimated as many as a thousand, mostly elderly Tanzanian women are targeted and killed annually.

Barriers to protection of older people's rights

7. Institutional and cultural barriers hinder the systematic collection of data relating to witchcraft accusations and rights violations. Given the community deep belief in witchcraft, there are instances where getting evidence on suspected perpetrators becomes difficult as the people consider the killers as good people who have removed a witch from their community.
8. The perpetrators of this violence include traditional healers who economically benefit from the situation, local militia who also benefit economically through bribery in order not to accuse someone of being a witch, the paid killers who also benefit economically.
9. In most cases it is family members who accuse an older woman in that family of being a witch – after seeking the advice of the traditional healers. This makes investigation of the killings difficult as there is limited cooperation from the family members.
10. In addition community members deep belief in witchcraft makes them consider the killer as good person for killing a 'witch', hence lessening the community defence of the older women. These circumstances make the identification of the killers difficult, and hence making the killing an easy thing for people to engage in for economic gain.
11. Structural obstacles limit the capacity and the mandate of the authorities to address the issue. Most national level human rights organisations are based cities hence being difficult to follow up rights violations in urban areas. Public authorities at all levels have failed to address the victimisation of older people, particularly older women. Duty bearers such as the police and the judiciary can be compromised by bribery and can be unwilling to engage in 'domestic' issues. The National Ageing Policy that has a clause on the killings of older women has for seven years not been regulated to make it legal binding. The general community marginalisation of older women's issues has made the media only report on the incidences but without analysis or follow up.

¹ <http://www.ohchr.org/EN/NEWSEVENTS/Pages/Witches21stCentury.aspx>

Recommendation 1

12. That the Government of Tanzania legislates the National Ageing Policy for it to be effective.

Recommendation 2

13. That the Government of Tanzania does all in its power to ensure that killings related to witchcraft are investigated, prosecuted and punished as murder by the police and judiciary.

Underlying causes of widows' property grabbing

14. Older women face further discrimination due to their gender, especially if they are widowed. Older women are more likely to outlive their husbands yet less likely to re-marry after the death of their spouse. Under the customary inheritance law widows lose their right to inherit homes, land and assets after their husband's death. It is the sons of the deceased who take over the ownership of larger share of that property, leaving very little to the daughters. In most circumstances the sons that inherit the bigger portion of the inherited property tend to neglect taking care of their widowed mothers.
15. With the loss of their loved ones and the property, most widowed older women have an added burden of caring for their orphaned grandchildren. This situation pushes them and those they are caring for into absolute poverty.
16. Older widows happen to suffer most as they cannot remarry and they are already frail to engage in strenuous income generating activities. In rare cases where widows happen to continue staying in their homestead, they are only allowed to till the land but not to own it. Normally the deceased relatives claim to take over caring for the orphaned children. However this is normally done as a way to access the property left behind by the deceased, and the orphaned children getting very little - if any; hence depending on their frail widowed mother. This has actually led to some orphaned children failing to continue at school because of failing to meet the needed school financial related requirements.
17. In areas where there is deep belief in witchcraft the widow would be threatened of being bewitched in case she wants to question the legality of her not getting a share of the property left behind by the deceased husband. Alternatively she might be accused of being a witch and subjected to physical attack and sometimes murder.

Severity of the problem

18. Reliable data on the number of widows whose property was grabbed by false inheritors is difficult to get as each suffers separately. However the severity of the problem was realised during the evaluation of donor funded programme by an independent consultant² where 40% of all cases presented by women during the programme were about inheritance. In the study done by the National Organisation for Legal Assistance (NOLA) in two districts of Tanzania³ 59% of the respondents said that women are not entitled to own and inherit land including all what is attached to the land, 23% said that women were entitled while 18% said they were not aware.
19. In the same NOLA study it was also found out that the customary inheritance law that prohibits women from inheriting from their deceased husband's estates violates the provision of Article 13 of the Constitution of Tanzania, 1977. For example, in *Bernado s/o Ephraim v. Holaria Pastory & Another*, Justice Mwalusanya found such provisions of customary law to be discriminatory; and, as such, unconstitutional.

² Final evaluation report of the older women inheritance rights project, May 2008

³ Excluding women from inheriting land through custom in Tanzania, 2009

Some of the cases given to justify the argument that the customary law is discriminatory are:

- Juma Ngosha Vs Amos Mutanda⁴
- Kagabo Mitaliha Vs Dandila Biguna⁵
- Dodas Lutabana Vs Deus Kashaga⁶

Barriers to protection of rights

20. Widespread gender inequality means that government decision making structures are dominated by men who support the present practice of denying widows right to inherit. This could lead to biasness while dealing with inheritance related cases presented by widows
21. Tanzania has three laws of inheritance: the Probate and administration of estate Act Cap no 352, the local Customary (Declaration Order) no 4, of 1963, GN 436 and the Islamic (the statement Act) GN 222, 1967. This multiple system is by itself confusing as it is not clear to all which law applies where and when.
22. Qualification to any of the three laws of inheritance depends on the type of life the deceased lived. Majority of Tanzanian women fall under the customary inheritance law 1963. For a Tanzanian not to fall under the customary inheritance law it has to be proved beyond reasonable doubt that the deceased had completely abandoned his culture, traditions and practises. This is in practice not possible and it has always been a barrier for widows who attempt to have the inheritance of their deceased husbands to be determined by the Indian Succession Act which, though discriminatory, is relatively better than the other two inheritance laws
23. There isn't enough civic education to enable people understand the human rights. This contributes into human rights being violated sometimes unknowingly. Preparing wills by men would have contributed into reducing the problem of widow's disinheritance. Unfortunately most men do not prepare wills as they tend to link preparation of the will and early death

Recommendation 3

24. That the Government of Tanzania reviews all the laws dealing with inheritance matters as all of them have elements of discrimination though at different levels.

Recommendation 4

25. That the Government of Tanzania deals with widows' property grabbing both as civil cases in inheritance and as criminal cases in the Tanzania Penal code, as this is practically allowed.

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⁴ Tanzania Law Report no 96 of 1989

⁵ High Court Digest no 428 of 1967

⁶ Tanzania Law Report no 122 of 1981