

## **NGO Submission for the Second Universal Periodic Review of the United Republic of Tanzania**

Submitted by HelpAge International  
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### **Key Words**

Rights of older women, right to life, witchcraft killings, ownership of property

### **Introduction**

1. This submission focuses on two commitments made in 2011 by the Government of the United Republic of Tanzania in its initial Universal Periodic Review (Working Group Report A/HRC/19/4) namely to: *harmonize the legislation to eliminate all forms of discrimination against women, notably to ensure equality relating to inheritance and land rights* (paragraph 85.24) and to *implement a comprehensive legal and policy framework to end practices which are discriminatory and lead to violence against women and girls, including witchcraft killings, rape, domestic violence and practices related to customary ownership and inheritance of land* (paragraph 85.25). It addresses both legal reform and policy response.

### **Right to own property**

2. The right to own property in Tanzania is a constitutional right, as stated under Article 24 of the Constitution of the United Republic of Tanzania of 1977 as amended<sup>1</sup>; and property, in its wider interpretation, includes land and landed property. Article 13 (1) of the same Constitution, accords every citizen of Tanzania equal protection by the law without any discrimination.
3. Despite this guarantee under the Constitution, realization of the right to own land and/or landed property by women, especially older women, has been a struggle. The main obstacle to the full realization of the right to inherit land and/or landed property has been the Government's reluctance to fully regulate the probate and administration of the estates regime. In Tanzania, the Probate and Administration of Estate Act and its Rules provide for the grant of probates of wills and letters of administration to the estates of deceased persons and to make provisions with regard to the powers and duties of executors and administrators; they do not provide for the modality as to how the deceased's estates should be distributed. It is the deceased's religion or way of life that determines which law should be applied in the distribution of his or her estates, be it Islamic Law for Muslims, Indian Succession Act for Christians and Hindus, Customary Law Declaration Order for pagans and traditionalists.<sup>2</sup> In the event customary law applies, then women cannot be allowed to inherit land because it is believed that women can only use and not inherit land. In matters of probate and administration of estates, courts can only deal with granting of probate of wills and letters of administration and the duties of the executors and administrators. The manner of distribution of the estates is left upon the administrator or executor and beneficiaries to decide and the court can only interfere where the distribution did not go as is supposed to be in accordance with the law the beneficiaries elect to use depending on the deceased's way of life or religion.

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<sup>1</sup> Hereinafter to be referred to as the Constitution.

<sup>2</sup> See INNOCENT MBILINYI, DECEASED [1969] HCD No. 283

4. Whilst the Land Act and the Law of Marriage Act allow women to own land in their own names during the existence of their marriage, the Customary Law as codified under the Customary Law Declaration Order does not allow women to own land through inheritance. These laws need to be harmonized as the Government has committed itself to do in paragraph 85.24 of A/HRC/19/4. However, nothing has been done so far to effect that commitment by the Government.
5. In its 2013 Human Rights Action Plan (2013 – 2017)<sup>3</sup> the Government acknowledged the challenges women face with respect to ownership of land and promised *to raise awareness of gender issues and women's rights in communities, enact a modern, gender-responsive inheritance and succession law and systematically implement policies and programmes addressing gender equality.*<sup>4</sup> In the Action Plan, the Government committed itself to *reform inheritance laws to ensure women's right to inherit and own land, housing and other property regardless of marital status*<sup>5</sup>.

### **Recommendation 1**

6. The Government should harmonize the legislation, rules, procedure and practices in the probate and administration of estates regime so as to allow women to own land in the same spirit as in the Constitution, the Land Act and the Law of Marriage Act.

### **Recommendation 2**

7. The Government should put more efforts towards realization of the promises and commitments made in the 2013-2017 Human Rights Action Plan as regards to women's right to own land through inheritance because as of now, some customary laws still prohibit women to own land through inheritance.

### **Right to life**

8. As per Article 14 of the Constitution, the right to life is one of the basic fundamental rights guaranteed to every citizen of the United Republic of Tanzania; and the society has been given the duty to protect the life of its members. Despite that constitutional guarantee, over the past years older women have been killed and others brutally wounded by members of the community on alleged witchcraft accusations. Section 8 of the Witchcraft Act, Cap 18 [R.E 2002] provides that every suspicion of witchcraft should be reported to the District Commissioner for action. The Commissioner is supposed to take action after making a due inquiry as to the truthfulness of the report.
9. Contrary to the requirement of the law, older women have been reportedly killed on a number of occasions on the basis of witchcraft allegations. According to the Legal and Human Rights Centre's Tanzania Human Rights Report 2014, around 9 women were killed by a vigilante group in Geita in the months of April and July 2014 and 15 women were also killed in Butihama and Geita between the months of January and April 2014. By June 2014, in total, 320 people had been killed on the basis of allegations of witchcraft. It has been reported by the Legal and Human Rights Centre in their report that some of the killings are aimed at alienating elderly women off their land. Furthermore, Legal and Human Rights Centre 2012 and 2013 reports indicated a total of 635 and 705 older people respectively, the majority of whom were women, were killed on the basis of witchcraft accusations.
10. The Witchcraft Act, which is the law governing matters related to witchcraft in Tanzania, has been often criticized as a colonial law which does not conform to the present day realities in Tanzania. The Act should have been amended to deal with the prevalence of witchcraft killings that have posed a threat to the right to life for older persons. Apart from the amendment to section 8 of the Act, which increased the penalty for an offence committed under the Act from imprisonment for a term of two

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<sup>3</sup> Ministry of Constitution and Legal Affairs, NATIONAL HUMAN RIGHTS ACTION PLAN (2013 – 2017), December 2013

<sup>4</sup> Ibid, at page 37

<sup>5</sup> Ibid, at page 106

months to a term of two years and from a fine of one hundred and fifty shillings (US\$69) to one million shillings (US\$461), the rest of the Act remains as it was before the Government's commitment in 2011 in paragraph 85.25 of A/HRC/19/4. It does not give a clear definition of witchcraft, its penalty for one who victimizes the other for witchcraft is not as severe as the end result of the victimization, it does not set the procedure of dealing with perpetrators, and it gives considerable powers to the District Commissioner.

11. In its 2013 Human Rights Action Plan (2013 – 2017) the Government acknowledged the challenges women face with respect to witchcraft related killings<sup>6</sup> and committed *to raise public awareness against harmful traditional beliefs and to enhance respect for the elderly.*<sup>7</sup> In terms of action, the Government committed to *mainstream and integrate issues related to the elderly into existing policies and plans, including health services, home-based care, shelter, gender-based violence, and nutrition and Mobilize NGOs and media to raise awareness on the rights of the elderly.*<sup>8</sup>

### **Recommendation 3**

12. The Government should review and revise the law to conform to the current situation in Tanzania and introduce effective legislation to deal with the serious issue of witchcraft related killings.

### **Recommendation 4**

13. The Government should devote more efforts in implementation of the 2013-2017 Human Rights Action Plan in addressing witchcraft related killings. Similar commitments were made in the 2003 National Ageing Policy in 2003<sup>9</sup> but the situation has not changed for the better.

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<sup>6</sup> Ibid, at page 44

<sup>7</sup> Ibid, at page 45

<sup>8</sup> Ibid, at page 129

<sup>9</sup> Ministry of Labour, Youth Development and Sports, NATIONAL AGING POLICY, September 2003, at page 14