

Security of Tenure for Older Women

I. Introduction

Older women face tenure insecurity when inheritance laws do not protect them, and when their land is grabbed. Both threats occur frequently and systematically around the world. States have an obligation to ensure tenure security for their population, and in particular for the most disadvantaged. Older women are often the most disadvantaged in any population, and therefore states have a particular obligation to ensure their tenure security. This short note will briefly explore two major barriers to tenure security faced by older women in selected countries in Eastern Africa, and measures to learn from to increase their tenure security.

Today, 760 million people are over 60; by 2050, the number of older people will more than double to reach 2 billion, approximately 20 percent of the world's population.¹ Most of these people will live in developing countries. The rights violations they face will only increase as the proportion increases without specific attention to provide protection and redress.

Older women are often the poorest of the poor.ⁱ They face the cumulative effects of multiple discriminations across their lives: discrimination in education, employment, wages, and benefits all factor into their lack of power and violation of their rights. Given their low socioeconomic status in many societies, women – and especially uneducated women – are particularly vulnerable. In Mozambique, for example, literacy rates are approximately 5 percent for older women, compared with 33 percent for women over 15.ⁱⁱ This sort of reality has important implications: too often, older women do not have the legal empowerment, or the education, or the financial resources to defend their tenure.

II. Two Sources of Tenure Insecurity

With poverty and disempowerment, older women face two main threats to their security of tenure: the first is through formal and customary laws that discriminate against them in their right to own property or inherit it; the second is land grabs through violence and intimidation.

a. Formal and Customary Law: Inheritance and Property Rights

Property and inheritance rights are foundational to security of tenure for all people, and in accordance with international human rights, should not discriminate against women.ⁱⁱⁱ In some communities, women cannot hold title to property. In others, they have no right to inherit their property upon the death of a spouse. Women live longer than men, disproportionately outliving spouses, leading to property disputes that can place the security of their tenure in jeopardy.

For all but the most-privileged classes, informal customary mechanisms remain the most important mechanisms for land tenure, regardless of formal law.^{iv} With the death of a spouse, tenure is threatened regardless of socio-economic status, which is often quite low. The dominance of discriminatory customary laws can decrease older women's security of tenure on properties they own.

This problem of discrimination in law has been recognized for at least a decade at a variety of levels. In its policy framework for the Madrid International Plan of Action on Aging in 2002, the African Union included the recommendation to

member states to “Develop and review legislation to ensure that older people, especially women, receive equitable treatment from customary and statutory laws including reviews of legislation on property and land rights; inheritance laws;...”^v The Committee on the Elimination of Discrimination against Women’s General Recommendation No. 27 recognizes that “States parties must repeal all legislation that discriminates against older widows in respect of property and inheritance, and protect them from land grabbing.”^{vi} Some signs of national-level change are emerging: in 2004, the High Court in Tanzania used CEDAW to confirm that administrative rights to property belong to a widowed spouse, not her husband’s family.^{vii} A judge in a similar case wrote that such international law (CEDAW) protects widows from “uncouth relatives prying and/or attempting to alienate the estate of deceased fathers and mothers under the shield of custom.”^{viii}

Discrimination in law is not the only barrier to secure tenure that older women face. Tanzania, for example, has at least three laws of inheritance.^{ix} This fragmented system is creates legal uncertainty, particularly with customary law, which may contravene formal law, such as where inheritance laws prohibiting women from inheriting from their deceased husband’s estates were ruled to violate the Constitution of Tanzania.^x Similarly, in Kenya, the Court of Appeals found that the non-discrimination standard of Kenya’s Constitution and human rights agreements, including CEDAW, prevented the enforceability of customary law in inheritance.^{xi}

b. Land Grabs: Violence and Intimidation

Older women face extrajudicial challenges to their security of tenure as well. Many of these threats and intimidations take the form of accusations of witchcraft, which provide license for property grabbing, violence, and even murder. These accusations tend to increase with resource scarcity^{xii} and incidentally, relieve older women of their property.^{xiii} In interaction with inheritance law, a widow may even be accused of causing the death of her husband through witchcraft. After such an allegation, “The relatives then evict the widows from the family home and deny them all access to property.”^{xiv}

These allegations are nearly always leveled at older women. Philip Alston, the Special Rapporteur on extra judicial summary or arbitrary executions, notes that the murder and persecution of people accused of witchcraft is rarely well-documented. In Tanzania, where the practice is relatively well-documented,^{xv} he has reported that “as many as a thousand, mostly elderly Tanzanian women are targeted and killed annually.”^{xvi} According to a report of the Legal and Human Rights Centre from 2004-2009, there were a total of 2,585 killings of older women in 8 regions of Tanzania where such activities are common.^{xvii} In an interview, one Tanzanian activist reported that “unlike other crimes, violence against older women is not just tolerated but accepted.”^{xviii} CEDAW has cited concerns over allegations of witchcraft in Mozambique as well.^{xix}

Older women who are not murdered, but rather are forced from their property should be empowered through legal means to reclaim their property. Vulnerability, power relations, and the legal system all have a role in the level of protection an older woman accused of witchcraft can find.^{xx}

III. Ways Forward

a. Eradicate discriminatory laws

Discrimination based on sex is prohibited by all international human rights treaties. All laws dealing with inheritance and property rights should be reviewed and revised if found to be discriminatory.

b. Criminalization of Property Grabbing

As with many issues disproportionately affecting women, land grabbing is often seen as a family issue rather than an issue for police.^{xxi} Laws need to be changed to criminalize land grabbing, and make clear to law enforcement that it is illegal. Criminalization of property grabbing clarifies the law for all citizens, and empowers police officers to intervene.

c. Paralegal Support

HelpAge and partners are training paralegal advisers for community disputes in Tanzania. They have dealt with almost 20,000 cases, nearly half of them disputes over inheritance and land rights, mostly brought by older women. In the areas where these programs operate, there has been up to a 99 percent reduction in the killing of older women, as well as a "significant reduction in disputes over land rights, inheritance and matrimonial issues, and over 30 per cent improvements in living conditions of older women."^{xxii}

There are some important considerations for successful paralegal programs. Sourcing paralegals from within target communities and working closely with communities can help to foster ownership, understanding and sustainability, as well as collaboration to ensure that effective referral systems are developed.

d. Awareness Raising

Awareness of women's rights to inherit their land after the death of a spouse is often extremely low. In one study of customary law conducted by Tanzania's National Organisation for Legal Assistance (NOLA) in two districts,^{xxiii} 59 percent of the respondents said that women are not entitled to own and inherit land including all what is attached to the land, 23 percent said that women were entitled, and 18 percent were unaware of any entitlements. This awareness is the first step toward change.

Reporting allegations of witchcraft remains highly controversial and is often dangerous. Efforts to implement change in the perceptions of older women through awareness-raising writing wills and keeping "memory books" can further empower older women and prevent violations of their inheritance rights. They can also facilitate mutual understanding and expectations between the different family generations.

IV. Conclusion

The examples discussed, drawn from Tanzania, Mozambique and Kenya are not unique, and these discriminatory laws are not limited to East Africa. In Botswana in October, 2012, the High Court accorded women the right to inherit family homes, directly overturning customary law.^{xxiv} Such progress must move quickly as the world grows older, more quickly. Similar stories unfold all over the world -and just as quietly- in Burkina Faso, Ghana, Indonesia, India and Cambodia.

The cycle of the story is a vicious one. The social disadvantages of older women are magnified by the tenure insecurity they face; it only increases their vulnerability, which, in turn, increases the likelihood that other older women will be targeted again.

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- ⁱ UN HRC, *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona*, A/HRC/14/31, 31 March 2010, para 19.
- ⁱⁱ UNESCO UIS (*Institute for statistics*), *Ageing Population (65+) Literacy Rates and Illiterate Population by Country and Territory and UNESCO UIS*, <http://stats.uis.unesco.org/unesco>
- ⁱⁱⁱ UN, *International Covenant on Civil and Political Rights*, (1966) Article 3, Article 14.
- ^{iv} UN Habitat, *Law, Land Tenure and Gender Review – Southern Africa (Mozambique)*, p. 51, 2005.
- ^v African Union, *AU Policy Framework and Plan of Action on Ageing*, p. 8.
http://social.un.org/index/LinkClick.aspx?fileticket=Bd_YFGLRS5s%3d&tabid=330
- ^{vi} CEDAW, *General recommendation No. 27 on older women and protection of their human rights*, CEDAW/C/GC/27, 16 December 2010 para 52.
- ^{vii} *Chilla v. Chilla*, (January 6, 2004) High Court of Tanzania at Dar Es Salaam (citing Articles 13, 19, and 26 of the Tanzanian Constitution and Articles 2 and 16 of CEDAW).
- ^{viii} *Ndossi v. Ndossi*, (February 13, 2003) High Court of Tanzania at Dar Es Salaam.
- ^{ix} The Probate and Administration of Estate Act Cap no 352; The Local Customary Law (Declaration Order) no 4, of 1963, GN 436; and the Islamic Law (the Statement Act) GN 222, 1967.
- ^x See *Juma Ngosha Vs Amos Mutanda* Tanzania Law Report no 96 of 1989; *Dodas Lutabana v. Deus Kashaga* Tanzania Law Report no 122 of 1981.
- ^{xi} International Center for Research on Women, *Recognizing Rights, Promoting Progress, The Global Impact of the Convention of (sic) the Elimination of All Forms of Discrimination against Women (CEDAW)*, p. 10, 2010, citing *Rono v Rono & another*. 4-29-2005.
- ^{xii} Edward Miguel, *Poverty and Witch Killing*, *Review of Economic Studies* (2005) 72, 1153–1172, p. 1162.
- ^{xiii} See HelpAge International, Promo Femmes Développement Solidarité and Association le TOCSIN, *Joint NGO Submission for the Initial Universal Periodic Review of Burkina Faso in December 2008*, available at http://www.upr-info.org/IMG/pdf/HAI_BFA_UPR_S3_2008_HelpAgeInternational_Etal_uprsubmission.pdf
- ^{xiv} Tamar Ezer, *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters*, *The Georgetown Journal of Gender and the Law*, Vol. VII:599, p. 624.
- ^{xv} UNHCR, *Witchcraft allegations, refugee protection and human rights: a review of the evidence*, *New Issues in Refugee Research*, Research Paper No. 169, Jill Schnoebelen, 2009.
- ^{xvi} OHCHR, <http://www.ohchr.org/EN/NEWSEVENTS/Pages/Witches21stCentury.aspx>
- ^{xvii} Legal and Human Rights Centre, *Tanzania Human Rights Report*, 2009, p. 98.
<http://www.humanrights.or.tz/wp-content/uploads/2010/10/Tanzania-Human-Rights-Report-2009.pdf>
- ^{xviii} HelpAge International, *No Country for Old Women*, <http://www.helpage.org/newsroom/features/no-country-for-old-women/>
- ^{xix} CEDAW, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Mozambique* 11 June 2007 CEDAW/C/MOZ/CO/2 para. 42.
http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/Mozambique/Mozambique-CO-2.pdf
- ^{xx} UNHCR, *Witchcraft allegations, refugee protection and human rights: a review of the evidence*, *New Issues in Refugee Research*, Research Paper No. 169, Jill Schnoebelen, 2009, p. 40.
- ^{xxi} Tamar Ezer, *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters*, *The Georgetown Journal of Gender and the Law*, Vol. VII:599, p. 624.
- ^{xxii} HelpAge International, *Violence against older women: tackling witchcraft accusations in Tanzania*, by Bridget Sleaf, citing HelpAge International, *Final project evaluation TAN 133*, 2007, unpublished
- ^{xxiii} Julius Clemene Mashamba, *Excluding women from inheriting land through custom in Tanzania*, 2009.
- ^{xxiv} *Mmusi and Others v Ramantele and Another*, High Court of Botswana, October 2012,
<http://www.southernafricalitigationcentre.org/download/6/128>