

**International  
Institute of  
Social Studies**

*Erasmus*

**Protecting Tanzanian Elderly Women Against Witchcraft-Related Violence:  
The Role of the Anti-Witchcraft Law**

A Research Paper presented by:

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(Tanzania)

in partial fulfillment of the requirements for obtaining the degree of  
MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

**Human Rights, Gender and Conflict Studies: Social Justice Perspective**  
(SJP)

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The Hague, The Netherlands  
December 2018

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## **List of Acronyms**

CEDAW	Committee on the Elimination of all forms of Discrimination Against Women
CSO	Civil Society Organisation
FDG	Focus Group Discussion
GBV	Gender Based Violence
HRC	Human Rights Council
ISS	International Institute of Social Studies
LHRC	Legal and Human Rights Centre
LRCT	Law Reform Commission of Tanzania
MHCDGEC	Ministry of Health, Community Development, Elderly and Children
NGO	Non-Governmental Organisation
NPO	National Prosecution Office
NSEEK	National Strategy to Eradicate Elderly Killings
OHCHR	Office of the High Commissioner for Human Rights (UN)
SDGs	Sustainable Development Goals
TAWLAE	Tanzania Women in Leadership, Agriculture and the Environment
TV	Television
UN	United Nations
US	United States

## Acknowledgement

First and foremost, I would like to express my heartfelt gratitude to my learned Supervisor, Prof. Karin Arts and my learned Second Reader, Dr. Jeff Handmaker for their intellectual support, professionalism, patience, understanding, resilience, encouragement and the very valuable insights they provided in every stage of the process of writing this thesis. Their comments and criticism heavily enriched the final product of this thesis. I recognise their support in all its forms.

I highly appreciate the logistical support of Inspector Jacob from the Tanzania Police Force Headquarters, Mr. Ulindula from the Judiciary of Tanzania, and Ms. Ester Cheyo from the National Prosecution Office for facilitating my access to the field for data collection. I also acknowledge the support of Mr. Joseph Mbasha from Help Age International Tanzania Office, and Madam Nko from TAWLAE in Shinyanga for facilitating my field work.

I sincerely thank my parents, and my children Gody, Queen, Ottie and Faith for their unconditional love, support and understanding throughout the period of my studies in the Netherlands. I also salute the late Adam Biron Subi Onyango. May he rest in great heavenly peace.

Finally, I would like to offer my special thanks to Mr Design Chimwaradze (Zimbabwe), Ms. Melina Borrero Cruz (Ecuador), and my learned friend Ms Ubby Obot (Nigeria) for their inputs to enrich my thesis.

May God bless you all!

## Abstract

This research explored the role of the Witchcraft Act Cap 18 of laws of Tanzania in dealing with the problem of witchcraft. In particular, it interrogated how the law protects elderly women in Shinyanga region (Sukumaland) who are accused of witchcraft and exposed to serious violence including killing. Some of the issues considered in this research so as to facilitate the production of knowledge regarding the problem of witchcraft violence in Tanzania include the victimisation process of elderly women as witches, and the performance of the Witchcraft Act Cap 18 efforts in dealing with the problem of witchcraft violence. This research took the socio-legal form, combining social and legal aspects in exploring the problem of witchcraft violence.

Socially, the intersecting factors of gender, age, and socio-economic conditions of poverty contribute to making elderly women the victims of witchcraft accusation and killing. A high belief in witchcraft within the Sukuma ethnic group and the proliferation of witchdoctors' services to detect witches is at the centre of violence against elderly women. Witchdoctors in most cases detect women as witches in case of a severe illness or death in the family or neighbourhood. Further, it was revealed that elderly women in Sukumaland are targeted because witchcraft is inherited along the matrilineal line from mother to daughter whereas men only inherit traditional healing knowledge (as witchdoctors) from ancestors. This notion has perpetrated witchcraft-related violence and killing of elderly women, with the perpetrators (witchdoctors and hired killers) often enjoying impunity.

From the legal point of view, gaps in the Witchcraft Act Cap 18 such as the lack of a clear definition of witchcraft and a difficulty in proving witchcraft in court, diminishes the role of this law in dealing with the problem of witchcraft. Opinion is divided among the law enforcers who participated in this research on the validity of witchcraft law given its limited functioning. I therefore argue that it is debatable whether Witchcraft Act Cap 18 is (still) useful in eliminating witchcraft-related violence.

## Relevance to Development Studies

Witchcraft killings of elderly women are a gendered phenomenon and a form of Gender-Based Violence (GBV) which is reinforced by patriarchy system. Witchcraft violence and killings are also a grave violation of fundamental human rights which violate the right to life, and the freedom from torture, liberty and security of person, and is a form of discrimination against women. Development studies seek to analyse and challenge such culture-based oppression, normativity, and violation of domestic and international human rights law. Furthermore, investigating witchcraft-related violence as GBV is relevant to the global development agenda namely the Sustainable Development Goals (SDGs), particularly Goal 5 which seeks to eliminate all forms of violence against women.

This research employed the feminist theory of intersectionality and a functionalist approach to law as analytical frameworks to analyse the witchcraft phenomenon and gender-based violence against elderly women from the social and legal perspectives. These frameworks are useful since they will assist in producing empirical knowledge based on a socio-legal approach to analysing complex social problems such as witchcraft practice and violence.

## **Keywords**

Witchcraft, violence against women, elderly women, anti-witchcraft law, Tanzania.

# Chapter 1: Witchcraft: Meaning, context and statement of the problem

## 1.0 Introduction

Witchcraft belief is widespread in different parts of the world and has defied modernity in many senses, ranging from advancement in science and technology, education, to economic development (Harnischfeger 2000:101; Harris 1974:213; Leistner 2014:68; Cimpric 2010:37).

Tanzania is one of the few remaining countries in the world which have a specific law that criminalises and punishes witchcraft practice. Research done by the Law Reform Commission of Tanzania (LRCT) indicates that witchcraft is believed and practiced in the country not only by uneducated people but also by educated ones (LRCT 1994:27). Also, a Tanzanian anthropologist Simeon Mesaki has contended that “despite opposition by Christian and Islamic religious authorities, widespread access to basic education and strong legal penalties, witchcraft remains an embedded part of Tanzanian popular culture” (Mesaki 2009:133).

Pew Forum on Religion and Public Life, a Washington-based organization, suggests that about 93% of the Tanzanians, both Christians and Muslims, believe witchcraft exists but only 49% actually believe that the use of *juju* (service of witchdoctors) can protect them from bad evils (Pew Forum 2010:178-182).

The widespread ongoing witchcraft-related violence against elderly women in Tanzania confirms that “witchcraft is pervasive throughout Tanzania” (Help Age International 2011b: no page). Statistics show that a total of 23,000 elderly persons, 80% of them being women, were killed between 1970 to 2000 throughout the country including in Shinyanga (MHCDGEC 2017:18) after being accused of witchcraft by their families or community. From 2013 to 2016, a total of 1,098 elderly persons were reportedly killed while 115 were also attacked to death during the six months from January to June 2017 (LHRC 2017:9). The killings of alleged witches take the form of attacks using machetes (*mapanga* in Swahili language), stones, sticks and other traditional weapons, and they are carried out by so called hired professional killers, individual family members, and those killings done under the collective decision of a neighbourhood or clan (MHCDGEC 2017:17; Mesaki 1993:5). This situation exists despite the fact that the country has a longstanding legislation, the Witchcraft Act Cap 18, that criminalizes the accusation and practice of witchcraft.

In Circular No. 22 of 1919 the British colonial government stated that “[...] witchcraft as such may not be regarded as a crime, unless the acts and consequences of the practice of witchcraft are in themselves crimes independently of witchcraft [...]” (Mesaki 2009:133). Thus, the threat was established not to be the witchcraft science itself but rather the acts arising from it. The Circular paved the way for enactment of the current Witchcraft Act Cap 18 which was signed by the then British Governor in Tanganyika in December 1922 (Mesaki 2009:133) and amended from time to time until its last revision in 2002.

The main purpose of this study is to investigate the role played by Tanzania’s witchcraft law in dealing with the problem of witchcraft related killings of elderly women particularly in the Shinyanga region because “the killing of witches has become a normal thing in Shinyanga” Mesaki 1993:137.

## 1.1 Defining witchcraft

The term witchcraft originates from the Anglo-saxon term *wicca*, which is a form of religion whose believers are known as wiccans (Mesaki 1993:40). Witches allegedly use various crafts to bewitch whereby they can transform themselves into animals like a hyena, snake, lion, crocodile, dragon or any other animal (Leistner 2012:56; Miller 2012:129). They are believed to operate at night, exercising their crafts to cause death, illness, storms, accidents, preventing rain and causing various forms of misfortune and suffering in the society.

Social scientists define witchcraft as the possession of mysterious supernatural power and the exercise of that power to cause harm (GechikoNyabwari and NkongeKagema 2014:12; Help Age International 2011:4). Michael Bailey has described witchcraft as an evil force which operates in conspiracy with human beings for the purpose of inflicting harm (Bailey 2006: 122).

Anthropologists however dismiss the reality of witchcraft contending that witchcraft does not exist. While Miller (2012:193) argues that there is nothing supernatural on earth as everything in the world is natural and science is able to explain all things, Leistein (2014:54) criticised this argument pointing out that even modern science has failed to explicitly explain the origin and nature of evils.

Nevertheless, Tanzania's Witchcraft Act Cap 18 describes the term witchcraft to include "sorcery, enchantment, bewitching, the use of instrument of witchcraft, the purported exercise of any occult power and the purported possession of any occult knowledge" (Tanzania Witchcraft Act 1928: section 2). According to the Tanzanian law, an instrument of witchcraft includes any object that can be used to either prevent or delay anybody from doing something lawful which under normal circumstances he would do, or to indirectly force a person to act upon something he would otherwise not do (Tanzania Witchcraft Act 1928: section 2). The law criminalizes witchcraft practice whereby:

any person who [...] by his statements or actions represents himself to have the power of witchcraft; [...] makes, uses [...] possesses any instruments of witchcraft, [...], advises any other person upon the use of witchcraft [...] or threatens to use or resorts to the use of witchcraft [...] against any person or property, commits an offence [...]. (Tanzania Witchcraft Act 1928: section 3).

The law also criminalizes witchcraft acts done with the intent to cause death, disease, annoyance or misfortune to members of the community or animals. The punishment for this offence is imprisonment of not less than seven years. Without this intent, the punishment shall be not less than 5 years or a fine of not less than one hundred thousand shillings (Tanzania Witchcraft Act 1928: section 5(1)). On the other hand, the law prohibits naming a person a witch or indicating a particular person as such. The penalty for this offence is either an imprisonment of not less than five years or payment of a fine of Tanzanian Shillings 100,000 which is (equivalent to US \$ 43) (The Tanzania Witchcraft Act 1928: section 4-5). For the purpose of this research, the discussion will be premised on the meaning of witchcraft and all its aspects as provided in the Tanzanian Witchcraft Act Cap 18.

### **1.1.1 Witchcraft versus traditional healing**

Although witchcraft has been seen mostly for its dark side, it is important to note that, since the beginning of humanity in Africa, witchcraft is also used as a way of traditional healing and curing social problems and diseases. People have been seeking the services of traditional healers in various forms whereby they receive medicines and charms as well as using “experts such as diviners and medicine men to counteract the evil effects” of witchcraft (Miller 2012:3).

The law in Tanzania distinguishes witchcraft practice and traditional healing practice. While witchcraft practice is criminalized under the Witchcraft Act Cap 18, traditional healing practices are allowed under the Traditional and Alternative Medicines Act of 2002. The law recognizes traditional medicine as a:

combination of knowledge and practice, [...] used in diagnosing, preventing or eliminating a physical, mental or social disease and which may rely exclusively on past experience and observation handed down from one generation to another [...] (The Traditional and Alternative Medicines Act 2002: section 3).

The same law defines a traditional health practitioner as “a person who is recognized by the community [...] as competent to provide health care by using plants, animal, mineral substances and other methods based on social, cultural and religious [...]” (The Traditional and Alternative Medicines Act 2002: section 3).

Therefore, from the position of the laws in Tanzania, witchcraft and traditional healing practices are both based on some form of non-scientific knowledge (beliefs) and (supernatural) power. The difference between the two is that the Traditional and Alternative Medicines Law permits the use of supernatural powers (beliefs) for healing purposes while the Witchcraft Law prohibits supernatural powers when they are used to cause suffering or death to persons and animals or causing destruction to things.

However, anthropologists criticize the separation of witchcraft practitioners (witches) and traditional healers or witchdoctors contending that the word witchdoctor is only a journalistic term which “confuses things” (Miller: 2012:11), and that both of them invoke supernatural powers from ancestors or spirits (Leistner 2014:55).

### **1.2 Witchcraft violence in Shinyanga region**

Tanzania is located in Africa and has between 120 and 130 ethnic groups (Mesaki 1993:28; Rokke 2004:12). The Sukuma ethnic group – which occupies Shinyanga, Mwanza and the surrounding regions in the north-western part of Tanzania – is the largest in the country. It has a population of about 8.9 million which is 16% of the country’s total population of 54 million (National Bureau of Statistics 2018:53; World Atlas, 2017).

Christianity was introduced in Sukumaland including Shinyanga during the colonial period in 19<sup>th</sup> century but the majority of the Sukuma people still practice animism believing in ancestors. Traditional believers outnumber the conventional religions (Mesaki 1993:28; Rokke 2004:61). Witchcraft-related killings have been prevalent in the Shinyanga region (Oestigaard 2015:182, Mesaki, 1993), from the colonial period until to date, despite the presence of the Witchcraft Law throughout this period.

The branding of women as witches and ruling on their fate happens within male-dominated social structures whereby the identification of witches is done by witchdoctors who are mostly men (MHCDGEC 2017:28). Further, the local militia groups in Shinyanga known as *sungusungu* who are responsible for village security also carry out witch-hunt and in most cases identify elderly women as witches and kill them whereby all *sungusungu* members are male (Miguel 2005:1155). This reveals the gendered nature of witchcraft accusations and violence and killing (Mgbako and Glenn 2011:402).

Old age features of women such as wrinkled skin, red eyes which usually are caused by the use of smoky firewood as a source of cooking energy, and poverty contribute significantly to their vulnerability (Help Age International 2011:26; Mgbako and Glenn 2011:389).

## 1.3 Contextual background

In contextualising witchcraft and the law, this part will discuss briefly the general history of witchcraft and its criminalisation in Europe, Africa and then in Tanzania. This is relevant because the criminalization of witchcraft in Tanzania and other African countries is connected with the same in Europe. For Europe, the focus will be especially on Britain, Tanzania's colonial ruler. Thereafter I will situate witchcraft violence in the contexts of human rights and gender-based violence.

### 1.3.1 Witchcraft in Europe and its criminalisation

Witchcraft belief and related violence in Europe reached its peak during the 16<sup>th</sup> and 17<sup>th</sup> centuries. It was said to be vicious and entailed European women being accused of witchcraft whenever there was a failure of crops, death of children, suffering such as headache, an increase in the price of bread, and even when a cow aborted (Harris 1974:213-237). An estimated 60,000 to 100,000 alleged witches had been killed in Europe by the year 1750 under the sanction of the law in Britain, Germany, France, and other European countries. The majority of them were women (Leister 2014:54; Robbins 1963:548). Even in recent times, some incidences of witchcraft would still be noted in Europe and elsewhere.

Before the 15<sup>th</sup> century, witchcraft in Europe was taken lightly and the legal sanctions were light as well. In most cases such sanctions involved payment of a small compensation. From the 16<sup>th</sup> century onwards, heavy criminalisation of witchcraft started and witchcraft became qualified as a serious crime against Christianity and humans (Currie 1968:8).

Proving witchcraft in Europe during that time ought not to be beyond reasonable doubt because law enforcers believed that, if the regular rules of evidence were to be followed, no single witch would be found guilty and punished. Thus, “[t]he inquisition had used excessive torture, extorted confessions illegally, and given unjust sentences, including burning [...], because the judges [...] assumed the guilt of any woman brought before them” (Robbins 1963:554).

Between the 15<sup>th</sup> and the 18<sup>th</sup> century Britain enacted about six legislations regulating witchcraft. The First Witchcraft Ordinance was enacted in 1542. It made witchcraft practice punishable by the death penalty and confiscation of property (Rosen 1991:53-54). This

law was replaced by the English Witchcraft Act in 1563 which lessened the severity of the penalties and e.g. sanctioned the death penalty only where witchcraft had caused harm. In 1604, Britain passed the Conjuration and Witchcraft Act whereby the accused witches were accorded more legal rights such as the right to appeal if aggrieved by the decision of lower courts (Young, 2006). In 1735, a landmark Witchcraft Act was passed. It abolished the legally sanctioned witch-hunting and the execution of convicted witches. It criminalised using spirits to fortune-tell or to detect the whereabouts of stolen goods. The punishment for this crime was payment of a fine or short imprisonment (Gibson 2003:7). The Witchcraft Act (1735) was repealed by the 1951 Fraudulent Mediums Act which criminalised the use of spiritualistic mediums to deceive, or undertaking telepathy and similar matters.<sup>1</sup> The 1951 law was replaced by the Consumer Protection from Unfair Trading Regulations of 2008. This legislation prohibits any misleading business practices that will unduly make a client take a decision which he would otherwise not take. It criminalises “the exploitation by the trader of any [...] misfortune or circumstance [...] to impair the consumer’s judgment [...] so as to apply pressure, even without using [...] physical force [...] which significantly limits the consumer’s ability to make an informed decision” (Consumer Protection Act 2008:article 7).

### 1.3.2 Witchcraft criminalisation in Africa

Britain acquired a big share of the African continent during the 1884-1885 Berlin Conference on the partition of Africa. After the First World War (1914-1918), Britain was entrusted to administer Tanganyika (Tanzania) in 1919 which was originally a German colony.

Before colonialism, African countries used customary rules to handle witchcraft issues and punish offenders by way of compensation, social exclusion, enslavement, and execution in extreme cases (Harnischfeger 2000:100; Mesaki 2009:133).

In dealing with the problem of witchcraft in its colonies, Britain exported its own anti-witchcraft law to its African territories (Harnischfeger 2000:100; Mesaki 2009:133), including Kenya, Malawi, South Africa, Tanzania, Zambia and Zimbabwe. According to Help Age International, French-speaking African countries such as Burkina Faso, Cameroon, Côte d'Ivoire, and Senegal also have anti-witchcraft legislation; and Nigeria has anti-witchcraft provisions in its Criminal Code (Help Age International 2011:4).

Some view the criminalisation of witchcraft in Africa as a form of cultural imperialism on the account that the majority of Africans rely on traditional healing and appreciate magical arts in their daily life (Leistner 2014:69). Referring to current anti-witchcraft laws in Africa, Miller has noted that “the laws are not African” (Miller 2012:128) while others regard them as Eurocentric and as having worsened the situation of witch-hunt and witchcraft violence in modern Africa (Harnischfeger 2000:101; Leistner 2014:69).

The imported laws allegedly over-protect the witches, and instead punish those accusing or attacking the witches on self-defence. For example, the South African Witchcraft Suppression Act (1957) which was recently declared unconstitutional (in part) by the South

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<sup>1</sup> See Section 1 of the Fraudulent Mediums Act, 1951 available on [https://www.legislation.gov.uk/ukpga/1951/33/pdfs/ukpga\\_19510033\\_en.pdf](https://www.legislation.gov.uk/ukpga/1951/33/pdfs/ukpga_19510033_en.pdf)

African Law Reform Commission for violating freedom of religion and belief<sup>2</sup> of the country's pagan community is blamed for being lenient to witches whereby the police and the judicial officers are accused of failing to vigorously investigate and prosecute the alleged witches. According to the South African members of the public, law enforcers are not taking action whenever people report witchcraft incidents to the police. "We [...] have witches but when we go to the police to complain that the witches are eating us in the night, the police want to see the pots which they have cooked us in. The witches are happy because the police support them" (Harnischfeger 2000:101).

In one case in Malawi, a man complained in court that "he had paid a witch to turn his wife into a crocodile. When the transformation failed, the husband sued the practitioner for breach of contract" (Miller 2012:129). During the trial at the traditional court, the plaintiff won the case whereby the witch was found to have breached the contract. However, when the case went to the ordinary court for review upon appeal by the aggrieved witch, the court decided in favour of the appellant (the witch) and the case was dismissed for being an impossible contract (Miller 2012:129).

The existence of anti-witchcraft legislation and the perceived protection of witches by the law has resulted in increased mob violence whereby members of the public have resorted to taking law into their own hands and kill the persons suspected of witchcraft (Harnischfeger 2000:100; Help Age International 2011:9; Leistner 2014:54; Mgbako and Glenn 2011:414-415).

It has been argued that the Europeans introduced these lenient anti-witchcraft laws in Africa because they did not want to see the barbaric torture and punishment of witches they witnessed in Europe before the 18<sup>th</sup> century repeating in Africa (Harnischfeger 2000:100).

While members of the public may complain that the anti-witchcraft legal regimes in Africa protect witches, the United Nations (UN) and other actors are concerned about the failure of states to protect elderly women against witchcraft violence, and have called upon all the concerned governments to put more effort into prosecuting the perpetrators of witchcraft violence against elderly women (Help Age International 2011:6; OHCHR, 2009; Mgbako and Glenn 2011:394-396).

### **1.3.3 Criminalisation of witchcraft in Tanzania**

Witchcraft is deep-seated in Tanzania particularly in Shinyanga region. In this part of the country, when witchcraft allegedly causes death of a person, the suspected witch will be brutally killed by the concerned individuals, family or community as a form of retaliation. (Mesaki 1993:128).

As stated earlier, the Witchcraft Act Cap 18 of the laws of Tanzania was first enacted in 1922 during the British rule in Tanzania to deal with the problem. It was amended in

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<sup>2</sup> The South African Pagan Rights Alliance (SAPRA) claims that witchcraft is part of religious belief of its members, therefore prohibiting it under the country's anti-witchcraft law violates the freedom of religion provided under Section 15 of the South African Constitution.

See <https://www.paganrightsalliance.org/witchcraft-is-a-constitutionally-protected-religion-in-south-africa/>

1928, and last revised in 2002. The Witchcraft Act criminalises and punishes witchcraft accusation and practice. The penalties include payment of a fine or imprisonment of up to seven years (Tanzania Witchcraft Act 1928: section 3-5).

Despite the presence of this law, the situation concerning witchcraft-related violence has not changed significantly (Rokke 2004:24). For example, between 1970 and 1988, a total of 3,073 people were killed on witchcraft beliefs (Mesaki 1993:116). The killings continued at an alarming rate between the 1990s and 2000s. Between July 2015 and March 2016, a total of 475 elderly people were killed (NSEEK 2017:1).

The current witchcraft law of Tanzania has been criticized by the Presidential Commission headed by the former Chief Justice of Tanzania Francis Nyalali, whose 1992 report already categorized the Witchcraft Act Cap 18 as a bad law by stating that “the law is useless; it should be repealed” (LRCT 1994:26). Members of the Tanzanian Parliament vehemently criticized the Nyalali Report and called upon the country’s Law Reform Commission (LRCT) to conduct further research and collect more public opinion on the witchcraft law instead of repealing it. Following the research, the LRCT recommended that the Witchcraft Act Cap 18 should not be repealed but be retained with some amendments to intensify the punishment provided for (LRCT 1994:27).

### **1.3.4 Witchcraft violence as a human rights issue and as gender-based violence**

Women in Shinyanga have accounted for 90% of the victims of witchcraft-related violence in Tanzania, and the government seems incapable of stopping this form of violence which in most cases results in the killing (Mesaki 1993:113). Through its various mechanisms, including the Human Rights Council (HRC), the UN has recognized witchcraft killings as a serious violation of human rights (HRC 2018:9-16).

Witchcraft violence and killings violate a wide range of fundamental human rights of victims (especially elderly women), which include the right to life, freedom from violent attacks, liberty and security of person. They also are a form of discrimination against women (HRC 2018:15; Foxcroft 2014:86; Mgbako and Glenn 2011:393). These rights are recognised in international human rights law<sup>3</sup> as well as in the Constitution of the United Republic of Tanzania (1977).<sup>4</sup> Tanzania and other states have allegedly tolerated such grave violation of human rights by putting little effort to investigate and prosecute the perpetrators, thus affording them impunity (CEDAW 2008:6; HRC 2018:5-9).

In 2008, the Committee on the Elimination of Discrimination Against Women (CEDAW) raised its concern on the precarious situation of elderly women in Tanzania due to witchcraft violence. It also called upon the government to take rigorous actions to challenge the traditional view that associate women with witchcraft (CEDAW 2008:13). In 2009, the report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions revealed that witchcraft violence has increasingly become a human rights issue over recent years (HRC 2009:16-17). The Special Rapporteur however admitted that, for many years, witchcraft violence has not been in the regular agenda of the work of the UN: “[t]he relevance of the practice of witchcraft to human rights is clearly a complex matter, [...] The lack of

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<sup>3</sup> See Article 6, 7 of the International Covenant on Civil and Political Right (1966), and Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (1979)

<sup>4</sup> See Article 13(6)(e), 14, and 16 of the Constitution of the United Republic of Tanzania (1977).

attention paid to the issue is especially true of the various United Nations human rights bodies" (HRC 2009:13-15). However, this trend is currently being reversed. For example, in 2017 the UN Independent Expert on the Enjoyment of Human Rights by Persons with Albinism convened an Expert Workshop on Witchcraft and Human Rights which aimed at formulating concrete ways of dealing with the problem of witchcraft violence (HRC 2018:4). The UN workshop called on states to take immediate action to prevent and prosecute witchcraft-related "hate crimes" and required UN member states to "undertake training of the judiciary and law enforcement agencies on witchcraft-related harmful practices" (HRC 2018:15-17). The UN has also explicitly recognized witchcraft violence as an extreme form of Gender-Based Violence (GBV) due to the fact that most of those attacked are women (HRC 2018:9-16). The gendered nature of witchcraft violence is attributed to the deeply entrenched patriarchy system in the Shinyanga Sukumaland whereby men, including witchdoctors, dominate the traditional decision-making structures (Mgbako and Glenn 2011:402; Rokke 2004:10).

## 1.4 Statement of the research problem

Although the Witchcraft Act Cap 18 of Tanzania criminalizes the accusation and practicing of witchcraft, elderly women continue to be the victims of brutal violence which result in killing in many cases (Rokke 2004:4; Miguel 2005:1153; LHRC 2017:89). Very few cases related to these issues have been reported and successfully prosecuted in court (Help Age International, 2011). The combination of violent attacks of elderly women and inadequate efforts to bring to justice the perpetrators of violence has posed a contemporary threat to the right to life of elderly women in Tanzania particularly in Shinyanga.

Many cultures associate witchcraft with women, and even in Europe such a notion still prevails (Bailey 2006:122). In Tanzania, women aged above 45 and especially those who have red eyes are particularly targeted (Miller 2012:178).

The victimisation process of elderly women often starts when a tragedy such as a sudden severe illness or death occurs in the family or in the neighbourhood (Miguel 2005:1153-1154). Erich Leistner has elaborated further that, in order for the witchcraft suspect to be identified, the affected family consults a specialist (witchdoctor) who would be asked to detect supernaturally the cause of illness or death (Leistner 2014:56). In this process, often an elderly woman will be identified as a witch who is responsible for the tragedy whereafter the aggrieved family might kill the accused woman (Help Age International 2011:5; Miller 2012:120).

Apart from witchcraft allegation, victimisation also occurs out of personal hatred or greed for property. In the Sukuma ethnic group in Shinyanga region, "if you don't like a certain woman, or if she takes the land after the husband dies, you just tell the local (militia) *Sungusungu* she is a witch. Then she is either chased away or killed" (Rokke 2004:52). Factors contributing to the accusation and branding of elderly women as witches include gender discrimination, socio-economic conditions of women – that is poverty and their old age (Help Age International 2011:5).

The magnitude of the witchcraft violence in Tanzania is still a contentious matter. Available statistics might not depict the real situation on the ground since "statistics in Tanzania are highly unreliable, [...] regarding witch killings" (Stahl 2015:187). Mesaki (1993) also pointed out that "information managers (government and party leaders) provide half-truths and selective disclosure of vital information [...] especially of sensitive issues [...]" (Mesaki 1993:38). In 2008, the Committee on the Elimination of All Forms of

Discrimination against Women (CEDAW) expressed deep concern over the abuse and killings of elderly women on witchcraft allegations and called upon the government of Tanzania to pay special attention to the precarious situation of elderly women (United Nations 2008: para 142-143). Despite this UN concern, women are still persecuted in connection to witchcraft. In 2017, the United Nations Office of the High Commissioner for Human Rights (OHCHR) noted that “the figures vary widely but it is estimated that as many as a thousand, mostly elderly women are targeted and killed annually” (OHCHR 2009: web page). According to the Ministry of Health, Community Development, Gender, Elderly and Children (MHCDGEC), a total of 23,000 elderly persons (80% of them being women) were killed over the period between 1970 to 2000 in Tanzania including in Shinyanga on witchcraft accusation (MHCDGEC 2017:18). Further, 1,098 elderly people were said to be killed between 2013 to 2016, with other 115 killings which were recorded from January to June 2017 (LHRC 2017:9).

The killings of elderly women are sometimes perpetrated by close family members. In the appeal case of *Emmanuel Charles versus Republic* (Court of Appeal of Tanzania 2015: Criminal Appeal No. 369), the appellant revealed that in May 2010 he used a machete to kill an elderly woman alleged to be a witch. During the trial, the appellant informed the court that he was contracted by his sister and brother in-law to kill the elderly woman who was the mother of his brother in-law because she was allegedly bewitching them.

In August 2017, a group of 32 people were arraigned in court and charged with murder in connection to the killing of five women suspected of witchcraft by beating them to death and burning the corpses (Thomson Reuters Foundation, 2017).

It is contended that the Tanzanian legal system is generally unable to address the challenges of witchcraft. The government “does not accept the reality of witchcraft” and the country’s anti-witchcraft law is rather a “blunt instrument in dealing with the problem” (Mesaki 2009:132).

In light of the above, this research paper investigates the role of the Witchcraft Act Cap 18 in protecting elderly women who are accused, brutally attacked and in many cases killed as a result of witchcraft beliefs in Tanzania. In order to understand the level of protection afforded by this particular law, the research firstly tried to gain greater insight into the current magnitude of the problem of witchcraft violence against elderly women in Tanzania, with main focus in Shinyanga region. Secondly, the research documents the victimisation process, followed by an investigation of how the government has been dealing with this problem through the anti-witchcraft law. Finally, the research delved into the question why witchcraft violence has persisted in Shinyanga despite the presence of the law.

The research focussed on legal mechanisms such as the Police, the Judiciary, the National Prosecution Office and the Law Reform Commission. Taking a socio-legal approach in this research was important for understanding the complex problems of branding, accusing and attacking the elderly women in Sukumaland.

## 1.5 Research Objectives

As stated above, the main purpose of this study is to interrogate the role played by the Tanzanian witchcraft law in dealing with the problem of witchcraft violence against elderly women and protecting them against such violence. It does so regardless of the question whether witchcraft exists or not, because that is not the interest of this study.

### 1.5.1 Specific Objectives

- (i) To investigate how the Witchcraft Act Cap 18 has addressed the problem of witchcraft-related violence.
- (ii) To identify efforts made by the police, the judiciary, policy makers in the government and other relevant actors to address the problem of witchcraft-related violence against elderly Tanzanian women.
- (iii) To find out why the problem of witchcraft-related violence against elderly women persists despite the presence of the law prohibiting it.

## 1.6 Research Questions

The main research question is: what is the role of the Witchcraft Act Cap 18 of Tanzania in protecting elderly women from witchcraft-related victimization and violence?

### 1.6.1 Research sub-questions

1. What is the current situation concerning witchcraft-related violence against elderly women in Shinyanga region?
2. How does the victimisation of elderly women as witches occur in Shinyanga?
3. How does the government address the problem of witchcraft-related violence against elderly women in Tanzania including in Shinyanga?
4. Why does witchcraft-related violence against elderly women still occur in Shinyanga?

## 1.7 Organisation of the paper

This Research Paper is divided into four main chapters. Chapter 1 has explored the meaning of witchcraft, situated the research subject into its context and has stated the nature of the research problem.

Chapter 2 presents the theoretical framework and presents how the feminist theory of intersectionality and the functionalism approach to law are used in this study in order to make meaning of the complex problem of witchcraft and the performance of Tanzania's anti-witchcraft law. The chapter then delves into the methodology for this research.

Chapter 3 discusses the findings of the research highlighting the current prevalence of witchcraft belief and violence against elderly women, the victimisation of women as witches, measures taken by the government to address the problem, and the role of the witchcraft laws of Tanzania in dealing with the chronic problem of witchcraft violence practice and violence. Chapter 4 synthesizes the findings and provides conclusion on the findings of the research.

# Chapter 2: Theoretical framework and methodology

## 2.1 Introduction

This section discusses the theoretical framework and methodological strategies employed in this research. The chosen theoretical frameworks are intersectionality, which is used to analyse the situation of elderly women in Tanzania who are accused and killed on witchcraft belief; and a functionalist approach to law as a framework to investigate the role of the Witchcraft Act Cap 18 in dealing with the witchcraft problem in Tanzania. The framework for data analysis is also discussed. The methods used to collect and analyse data, ethical issues and the various choices made in relation to the quality of this research are also presented.

## 2.2 The Feminist theory of intersectionality

Intersectionality as a social science theory was developed out of lawsuits<sup>5</sup> by Kimberlé Crenshaw in 1989, and was promulgated by women of colour through feminist and womanist scholarship (Crenshaw 1989:141; Shields 2008:302). For coining this theory, Crenshaw analysed the decisions of American courts regarding a federal anti-discrimination law<sup>6</sup> which prohibited discrimination of individuals in employment matters based on race, colour, religion, sex, or nationality.

In the case of *De Graffenreid v General Motors*,<sup>7</sup> five black women filed a lawsuit against their employer General Motors challenging the organisation's seniority-based layoff policy whereby black women employed by the company after 1970 were laid off following the economic recession. The plaintiffs (women) attributed their loss of job to their dual social status of being women and black. In its decision, the court reasoned that:

plaintiffs have failed to cite any decisions which [...] stated that Black women are a special class to be protected from discrimination. [...] This lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, [...], but not a combination of both (Crenshaw 1989:141).

This court decision therefore required the claim on racial discrimination to be separated from the gender claim. Following this decision, feminist scholars criticised the judges for failing to consider jointly multiple factors that perpetuated discrimination against certain groups in the society whereby they viewed this as miscarriage of justice. Since then, the theory of intersectionality attracted social science researchers who further developed it and used it as an analytical tool for studying gender-related social phenomena.

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<sup>5</sup> See Kimberlé, C. (1989:141) on the cases of *De Graffenreid v General Motors*, *Moore v Hughes Helicopter*, and *Payne v Travenol*.

<sup>6</sup> See SEC. 2000e-2. [Section 703] of Title VII of the Civil Rights Act of 1964 at <https://www.eeoc.gov/laws/statutes/titlevii.cfm>

<sup>7</sup> Kimberlé *op cit.*, p. 141.

## 2.2.1 Feminist scholarship on intersectionality

Intersectionality can be defined to mean the interconnected discrimination against an individual or group in the society based on gender, class, race or another category, whether intentionally or otherwise, whereby the discriminated group becomes disadvantaged (Crenshaw 1989:150-151).

According to Kathy Davis, intersectionality is the “interaction between gender, race, and other categories of difference in individual lives, social practices, institutional arrangements, and cultural ideologies and the outcomes of these interactions in terms of power” (Davis 2008:68). According to feminist scholars, individuals occupy multiple, fluid social positions which contradict one another but are mutually reinforcing as well (Shields 2008:301; Fabrizio, 2007).

In intersectional analysis, gender is considered to be the starting point whereby its intersection with other categories of social identity either produces inequalities as a result of multi-layered oppressions and accumulated disadvantage, or affords an opportunity, or produces both. There is “[n]o single identity category that satisfactorily describes how we respond to our social environment or are responded to by others” (Shields 2008:304). Gender can intersect with race, age, economic condition, political class, physical condition (such as disability) and other categories which will position an individual in advantage or disadvantage, or in both positions depending on the situation.

Further, intersectionality investigates not only the differences between men and women but also the differences among men or women themselves (Fabrizio 2007). For instance, in the context of witchcraft killings in Shinyanga in Tanzania, this study examines the position of elderly women who are accused of witchcraft and killed not only in comparison with men, but also in comparison with other women who are elderly but not targeted. This is because women who are targeted in the killings are those who live in poverty, and who do not belong to a politically or socially influential family.

Intersecting identities are constructed within structural, institutional, ideological and cultural contexts whereby the identities such as gender, race, class, ethnicity and age mutually constitute and produce qualitative meanings and experiences (Davis 2008:68; Fabrizio 2007; Warner 2008: 454). Davis has asserted the importance of considering these identities as axes of oppression which interlock each other and function together in producing inequalities, particularly in relation to gender.

Although intersectionality is viewed as an important feminist analytical framework, there is no consensus on whether it is a theory or just a concept. According to Davis (2008:68): “While others refer to intersectionality as a theory, others regard it as a concept or heuristic device, and [...] others see it as a reading strategy for doing feminist analysis”. In any case however, intersectionality is a useful analytical tool of intersecting multi-dimensions in oppressive social systems.

It is noted that intersectionality as a feminist theory has contributed enormously in the contemporary understanding of gender and “has transformed how gender is discussed”

(Shields 2008:301). It has enabled feminist scholars to comprehend that in investigating gender, issues of multiple identities should take the centre stage.

Contextualising intersectionality in my research on witchcraft-related accusations and killings of elderly women in Tanzania, the theory of intersectionality helped me to understand the overlapping factors that lead to the branding of elderly women in Shinyanga region as witches. Women are targeted by witchcraft killings not only because they are elderly but also because they live in economic poverty, and they have a health condition of red eyes, which is caused by the use of smoky cooking energy. These categories are crucial for understanding the context in which witchcraft-related violence occurs in Tanzania which in turn makes the concept of intersectionality an ideal analytical framework in my research.

### **2.2.2 Criticism of intersectionality theory**

Despite the widely acknowledged importance of intersectionality theory in analysing gender-related social phenomena, various scholars have criticised it as well. They argued for example that the concept's "lack of clear-cut definition or even specific parameters [...] to be drawn upon" can render an analysis ambiguous and open-ended since new intersecting identities can emerge and connect endlessly (Davis 2008:77). However, other scholars have dismissed this argument contending that the open-endedness of intersectionality is in fact the best aspect of it, and that criticising such an aspect is a neoliberal attempt to de-radicalise feminist scholars (Jibrin and Salem 2015:8-11). Intersectionality is further criticised for focusing mainly on issues within a particular social group rather than in society as a whole (Jibril and Salem 2015:11). However, despite the criticism, intersectionality theory remains to be a relevant framework in analysing social systems that result in discrimination and oppression of women and other disadvantaged groups.

## **2.2 A functionalist approach to law**

Functionalism or a functionalist approach is a theoretical perspective that cuts across almost all social science disciplines including sociology, psychology, economics, law and related disciplines. Functionalism was first propounded by Emile Durkheim in the 18<sup>th</sup> century and developed gradually through to the 21<sup>st</sup> century and became an important analytical tool in social science research (Crossman, 2018). Durkheim's interest in this theory was relating to understanding how social order could be maintained so as to keep the society stable.

### **2.2.1 Functionalism of the law**

Law can generally be described as a body of enforceable rules accompanied by legal sanctions that govern, regulate, direct or control the behaviour of members of the society.<sup>8</sup>

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<sup>8</sup> See Oxford Dictionary of Law (2003:280), available on [https://www.fd.unl.pt/docentes\\_docs/ma/wks\\_MA\\_21613.pdf](https://www.fd.unl.pt/docentes_docs/ma/wks_MA_21613.pdf). See also Bert Van Roermund (2015) 'Law and Functionalism: The Limited Function of Law', *Law and Method*, 4.

A functionalist approach to law is one of the popular analytical frameworks employed by legal scholars to investigate the role of law in society, by looking at its functions. Functionalism has become “historically one of the most influential approaches to the study of law” (Whytock 2009:1879). Some main proponents of functionalist approaches to law are Durkheim, Pound and Weber. Their socio-legal scholarship contributed greatly to the development of functionalist approaches to law (Schiff 1976:289).

Functionalist approaches tend to ask the question whether a particular law works to meet the purpose of its enactment. They examine the operation and effects of the law, and check whether the law reflects the interest of the society with minimal friction (Misterio, 2018). For example, functionalist researchers will endeavour to establish whether the Witchcraft Act Cap 18 of Tanzania meets the expectations of the society in terms of dealing with the problem of witchcraft practice and killings of elderly women, and whether the law operates without opposition from the society.

A functionalist approach to law recognises the roles of the law respectively as: regulating the behaviour of individuals and groups in the society (Bix 2017:6); helping in implementing public policies; allocating rights of individuals and groups; protecting the basic moral values of the society; and putting in order basic needs of the society (Van Roermund 2015).

Functionalism as part of a socio-legal approach should critically study the relationship between law and the prevailing social situation in order for the law to function properly. This is because in this outlook law cannot be enacted in isolation from a particular social situation where it is intended to apply (Schiff 1976:287). Such a functionalist framework also considers the ability of law to survive while ensuring that the law is, or becomes, responsive to the society’s particular situation (Kagan, 2001). For example, a functionalist researcher will interrogate whether the Witchcraft Act of Tanzania has been responsive to the witchcraft phenomenon.

Functionalism often presupposes the presence of flexible laws which adapt to the complex social environment and through its functions effectively address the underlying troubles of the society. According to Zumbansen (2008: no page): “Law answers to requirements, customs, and necessities emerging from social practice”. Any law ought to be a living law by way of its functioning or else it will remain to be law on the books. If the law is not enforced properly it may even “end up silently legitimizing violence and injustice in society” (Lopes and Filho 2014:98).

Further, law in its functioning generates praise and blame (Kagan, 2001) as is the case with the anti-witchcraft law in Tanzania. This law is blamed on the one hand for not affording adequate protection to elderly women who are accused of witchcraft, and on the other hand for being lenient to witches.

Feminist scholars caution on the over-reliance on the functioning of the law to solve all social problems particularly those touching on the rights and welfare of women. According to Smart (2005:5): “It is important to think of non-legal strategies and to discourage a resort to law as if it holds the key to unlock women’s oppression”.

## 2.2.2 Criticism of functionalist approaches to law

Various scholars have criticised functionalist approaches as a method of analysing socio-legal phenomena. They argued that functionalism focuses on the macro-level of social structures such as government, and pays too little attention to the micro-level dynamics and thus discourages social changes (Crossman, 2018). According to others, functionalism asserts the improvement of the law instead of exploring the real solution to the social problems. Some scholars “criticized functionalism for failing to take seriously the cultural, economic, political, and social context within which legal rules exist” (Whytock 2009:1897), and observed that “law is reluctant to tackle the underlying problem” (Roermund 2015: no page). Despite these alleged weaknesses of functionalist frameworks, Christopher Whytock has called upon socio-legal scholars to “build upon functionalism’s legacy” in their scholarly efforts to try to find legal solutions to the prevailing social problems (Whytock 2009:1904). This research responds to his call.

In conclusion, regarding the choice of theories, this thesis adopted intersectionality and functionalism of law as analytical frameworks. I decided to choose these two theories because the research interrogates both the social and legal aspects of witchcraft-related violence. While intersectionality is the appropriate framework for analysing the overlapping oppressive factors (Shields 2008:301) such as gender, age, and class; functionalism is useful and relevant in analysing the role of the law (Whytock 2009:1879) – in this case the Tanzanian anti-witchcraft law.

## 2.3 Methodology

Research methodology can be defined to mean “a theory and analysis of how research [...] should proceed” including the techniques of gathering evidence (Harding 1987:3). Methodology clarifies how research should be carried out in investigating a particular research problem including the choice of data collection methods such as interviews, observation and surveys (Kothari 2004:8; O’Leary 2004: 85). Research methodology and methods work together to produce a theory of knowledge (epistemology) that tells how a particular knowledge was produced, tested and legitimised as solid in social science (Harding 1987:3).

In this study, a qualitative approach was used as a methodological strategy. This involved interviews and Focus Group Discussion (FGD). A qualitative research approach endeavours to assess attitudes and opinion using a small and carefully selected sample size to meet the intended goal of the research project (Hesse-Biber 2017:54; Kothari 2004:5). This approach is useful for investigating and understanding the meanings assigned to the witchcraft practice in Tanzania and its consequences. I selected a qualitative approach because that helped me to generate first-hand data through interviews and focus group discussion, and because that helps to collect data which is “original in character” (Kothari 2004:95).

### 2.3.1 Data collection methods

The main methods employed in this research were interviews and Focus Group Discussion (FGD). Document review was also done to generate credible data (O’Leary 2014:136). This included reviewing documents such as laws, reports and policy documents.

### ***2.3.1.1 Interviews***

An interview is a data collection method which uses open-ended questions to get insight into the worldview of interviewees regarding the meaning of a particular phenomenon (O'Leary 2004:162; Kvale 1983:174). Interviews are particularly useful for obtaining information about personal experiences on a specific issue, that is, first-hand information (Hennink et al 2011:110-111).

In my research, I conducted semi-structured face to face and telephone interviews. A face to face interview involves direct physical communication between a researcher and an interviewee. Its advantage is that it: generates instant and natural answers from the interviewee; allows follow-up questions for clarifying unclear issues; and helps the researcher to observe the body language of the interviewee which can help a researcher gain more information on the basis of the non-verbal communication (Kothari 2004:97). The disadvantage of a face to face interview is that it may be costly to reach the participants physically wherever they will be; the researcher may lose track because he or she has to ask questions, listen and write at the same time; and, in case of a recorded interview, transcribing consumes a lot of time (Opdenakker 2006).

I also used a telephone interview to obtain data. This is a form of communication between a researcher and an interviewee using a telephone (Kothari 2004:100). This method is increasingly becoming common with the advancement of communication technology. Its advantages are that, it is quick, convenient, saves costs and time, and that it is easy to reach interviewees who could otherwise not be reached because of geographical distances (Opdenakker, 2006; Kothari 2004:100). I used this method to interview an elderly woman who is a victim of witchcraft violence who survived attack by a machete but lost one of her arms. I used my telephone for the interview because she travelled to a place far away from my field location (Shinyanga), where I could not easily reach her. The disadvantage of a telephone interview is that it does not allow a researcher and an interviewee to see each other face to face. Thus, the researcher has no possibility to observe the interviewee's body language which could help in gaining extra information from non-verbal signals.

### ***2.3.1.2 Focus group discussion***

Focus Group Discussion (FGD) is a data collection method which involves a group whose discussion centres on one specific issue (Hennink 2013:1). This method helps to get broader and diverse views of participants on an issue under investigation for a better understanding of the research problem. Its further advantages are that its interactive nature helps in producing valuable data which could not be obtained otherwise within a short period (Hesse-Biber 2017:200).

The disadvantage of a FGD is that, due to a lack of confidentiality from colleagues in the group, other individuals may be unable to contribute to the discussion particularly those with a dissenting opinion (Hennink 2013:1; Kitzinger, 1995). I used the FGD method with junior police officers. I mitigated this situation by encouraging them to speak and reminding them that I was granted the permission to interview them from the highest police authorities in the country, and that, anonymity will be maintained in the final research paper.

### **2.3.2 Data analysis method**

This research is a product of a qualitative data methodology and has employed thematic analysis to analyse field data. Thematic analysis can be defined as a “method for identifying, analyzing, organizing, describing, and reporting themes found within a data set” (Nowell et al 2017:2).

When analysing qualitative data, “understandings are built by a process of uncovering and discovering themes [....], and by interpreting the implication of those themes for the research questions” (O’Leary 2004:195). Thematic analysis is key in analysing and interpreting qualitative field data (Creswell, 2009).

My analysis of the data involved, organising the findings, understanding them, identifying the themes in the patterns and interpreting the findings to draw the meanings out of them. The coding of the themes was done by using key words recurring in the findings. The identified themes were then categorised and connected to the issues in the research questions as suggested in O’Leary (2004:195). The developed themes therefore guided the presentation format of the findings in Chapter 3.

I chose a thematic analysis method because it is convenient and widely used in qualitative research (Nowell et al 2017:2). According to Nowell, thematic analysis is quick to learn especially for unexperienced researchers and it facilitates presentation of the final research report in a clear manner. However, if themes are not carefully organised, thematic analysis can render the presentation format of the findings inconsistent (Nowell et al 2017:2).

### **2.3.3 Sampling of research participants**

The selection of the research participants was done carefully, targeting respondents who would enable me to get credible information. Since sampling of participants ought to be done strategically (O’Leary 2004:103), I used a purposive approach in selecting the participants. Purposive sampling “is the deliberate choice of an informant due to the qualities the informant possesses” (Tongco 2007:147). I also considered the representation of gender in sampling the participants. The respondents included police officers, judges, public prosecutors, legal officers in the central government and in selected civil society organisations (CSOs), academia and a victim of witchcraft violence. Participants came from the area where the problem is prevalent, that is Shinyanga region.

During the field work, I was able to speak to 24 participants (see table 1), a number which was above my target of 20 participants. Out of the 24 participants, eight (33%) were females.

**Table 1:Profile of participants who took part in the research from 20/08/2018 to 05/09/2018.**

Category of Participants	Number of participants	Gender		Method	Institution	Location
		Male	Female			
Senior Police officers	4	4	0	Interview	Tanzania Police Force	Shinyanga
Police officers (lower ranks) *	10	10	2	Focus Group Discussion	Tanzania Police Force	Shinyanga
Judges	2	1	1	Interview	High Court of Tanzania	Shinyanga
Public prosecutors	2	0	2	Interview	National Prosecution Office	Shinyanga
Principal legal officer	1	0	1	Interview	Law Reform Commission of Tanzania	Dar es Salaam
NGO representative	1	1	0	Interview	Help Age International	Dar es Salaam
NGO representative	1	1	0	Interview	Legal and Human Rights Centre	Dar es Salaam
NGO representative	1	0	1	Interview	TAWLAE	Shinyanga
Academic	1	1	0	Interview	University of Dar es Salaam	Dar es Salaam
Victim(survivor)	1	0	1	Interview (phone)		Shinyanga
<b>TOTAL</b>	<b>24</b>	<b>16</b>	<b>8</b>			

**Key:**

M = Male

F = Female

**Table 2:Junior police officers who participated in the Focus Group Discussion, and their ranks.**

Inspector of police	1
Sergeant of police	1
Corporal of police	3
Police constable	5
<b>Total</b>	<b>10</b>

### 2.3.4 Ethical issues, positionality and reflexivity

Being ethical in any research is indispensable. Ethics involve a range of issues to be considered by a researcher in order to legitimise the knowledge produced and to avoid harming the subjects of the research and the researcher her or himself. For this reason, there is a “need for ethical [...] awareness to be a mainstream consideration in the research process” (O’Leary 2004:42).

Ethics refers to a combination of social norms, individual conduct versus moral duty, and the process of making decisions about what is right or wrong (Akaranga and Makau 2016:1; Fouka and Mantzorou 2011:6). It is argued that “the moral duty and personal ethos can be stronger than legal requirements” (Fouka and Mantzorou 2011:6). Some of the ethical issues to be strictly observed in the research include obtaining informed consent of the research participants, being objective by avoiding bias, ensuring confidentiality of participants (and data in some situations), being truthful, avoiding deceiving the participants (and especially particular members of vulnerable groups such as aged people and children) in obtaining their consent (Kelman 1982:46; Jelsma and Clow 2005:4; Fouka and Mantzorou 2011:6).

In my research, I considered confidentiality as an indispensable requirement. For example, although I knew the names of my research participants, I opted not to reveal them in my thesis despite the fact that some of them consented to disclosure of their names. I also sought the consent of all participants before starting the interviews. I did this after explaining the theme and aim of the research. This was important in order for them to give their informed consent. In recording the interviews, I also sought the consent of the interviewees. Some of them allowed me to record, others were not willing. For example, the police and judicial officers were unwilling to be recorded while the prosecutors and interviewees from NGOs granted their consent to be recorded.

Regarding the vulnerability of participants, one of my research participants was a victim of witchcraft violence who was attacked but survived after having been accused of witchcraft. Given her old age (at the time of the interview she was 73 years old), I ensured that I duly secured her consent in the presence of an NGO official from the local community.

The principle of ‘do-no-harm’ was strictly adhered to during the research given the fact that the area that I was researching is a sensitive one involving senior and junior law enforcement officials (police, prosecutors and judges), and a survivor of witchcraft violence. Investigating the police can be politically detrimental (Dickson et al 2008:2), especially in Tanzania because reviewed literature has pointed out that statistics on witchcraft killings have suffered manipulation from the concerned authorities including the police. Therefore, interviews with the police can have “unwelcome consequences” (Lee and Renzetti 1990:511-512) which can cause harm to the individual police officers who participated in the research or to the researcher herself. Therefore, to avoid causing harm to the participants, I re-assured them of anonymity and confidentiality of the person and the data. Some of the data I obtained from the police are gruesome photographic images showing the dead bodies of elderly women who were brutally murdered on witchcraft accusation. This data is in my possession but, under ethical consideration, I decided not to publish them in this thesis.

Also, as part of the process to obtain consent and avoid doing harm to the victim of witchcraft violence, I sought to know if speaking to her (as survivor) would affect her emotionally. She assured me that it was not a problem.

Regarding positionality and reflexivity, it is important for a researcher to discover his or her own positionality by reflecting on how he or she fits himself and relates with the social and political realities of the researched community (Sultana 2007:379). Positionality can influence the knowledge production process. However, whether a researcher should disclose her position regarding political, social or cultural location is still a contentious matter. According to Choi (2006:437): “The problem of how to operationalize the researcher’s personal locations in research is still disputable. Interpretivists believe that when appropriate methods are employed, a researcher can grasp a truth/reality, know other’s lives and represent others from their perspectives”. Being a researcher on witchcraft which, according to the literature, is a deep-seated belief in Tanzania, my role as a trained researcher was therefore to investigate the truth using an appropriate methodology and to represent those truths according to the participants’ views.

On the other hand, my position as an academic researcher who is seeking to understand the dynamics around the enforcement of the anti-witchcraft law in Tanzania and my position as a Tanzanian enhanced my chances of receiving cooperation from the researched institutions (the Police, Judiciary, Prosecution Office and NGOs). My introduction letter from the International Institute of Social Studies introducing me as a student, my Tanzanian national identity card, and being a speaker of Swahili (the country’s national language) facilitated my access to the participants (albeit with some difficulties) since they felt that I am at least one of their own. The situation is sometimes different if a researcher is from outside Tanzania. He or she is likely to have greater difficulty in receiving cooperation.

### **2.3.5. Personal and field experience**

Researching on witchcraft was not an easy choice to proceed with. When I decided my research topic to be on witchcraft, I received varied reactions from colleagues within the ISS. Sometimes I felt ridiculous to mention my topic in front of my colleagues due to their remarks. While some colleagues encouraged me to do research on the topic, others discredited my choice or simply mocked me. Their contentions included questions like: ‘Why do you choose to research on witchcraft of all the topics?’, ‘Why do you opt to research such an outdated, controversial subject?’, ‘Do you want to become a witch yourself?’. However, I was determined to do research on this topic and my supervisor encouraged me to go ahead with the topic as it is relevant to development studies and will contribute to the academic knowledge of how witchcraft-related gender-based violence is a complex phenomenon, and what could be the role of law in dealing with witchcraft issues.

A researcher at the University of Minnesota in the United States encountered similar sentiments when he chose witchcraft as his PhD research topic. He then remarked that “in some instances witchcraft may be taken lightly, but [...] its consequences are grim” (Mesaki 1993:6).

My encounter with law enforcement mechanisms also left a lot to be desired. Gaining permission to research on the work of the police was not easy due to the fact that the police in Tanzania are frequently blamed and accused of different forms of malpractice such as extra-judicial killings, torture, and harassment of citizens (Kapinga 1990:52–56). This

conduct of the police prompts close scrutiny of any request to investigate the work of the police by way of research or otherwise.

Further, processing the permissions to have senior and junior police officers as my research participants was not easy. For example, I visited the office of the Inspector General of Police (IGP), who is Tanzania's Police Chief, located at the 6<sup>th</sup> floor of the building which houses the Ministry of Home Affairs. The 6<sup>th</sup> floor is where all the top-ranking police officers (Commissioners) work from. Therefore, visiting this floor requires special permission and a high-level security check. I had to visit this place several times to follow up my permissions with the top-ranking police officer who was assigned to handle my project. Because I was a stranger, I had to be thoroughly checked, 'scanned,' questioned, and escorted by a plain-cloth or uniformed police officer, both of them well-armed.

The situation was the same at the Judiciary when I indicated in the special application form that I was asked to fill at the judiciary that I wanted to speak to judges. I was simply told that I cannot have an interview with judges because my interview questions can be answered by any judicial officer below the rank of a judge. However, I explained how important it was for meeting my research objectives to access first-hand data from the very judicial officers who preside over, and decide on, murder cases, including those on witchcraft killings. After weeks of negotiations with the judicial officer who was assigned to handle my request, and me as a researcher being assertive, I got permission to interview the judges.

My interaction with judges needed me at least to observe some legal traditions. It is a legal tradition that judges of high courts or supreme courts are accorded great honour. For example, in England and in many other common law jurisdictions, high court and court of appeals judges are addressed as *my lord* or *your lordship*.<sup>9</sup> Such a way of addressing judges originates from the English legal tradition whereby justice was linked with the monarch. A law court therefore became part of the Royal Court thus making the law profession a royal profession - hence addressing judges as lordships and bowing before them.<sup>10</sup> Tanzania follows the common law system of England. Therefore, being a lawyer myself, I had to show respect to judges by bowing before them when entering or leaving their offices.

These experiences both negative and positive however did not affect my research as I was able to meet the objectives of my research without a hinderance. My legal background and the knowledge of the legal traditions especially helped me during the interview with judges, even when they used some legal jargon to explain some aspects of the witchcraft law and its functioning. I was able to understand and take charge of the interview process without a difficulty. Overall, being a law professional and trained researcher from the International Institute of Social Studies who is conversant with research ethics enhanced my confidence to overcome the challenges which could otherwise setback the realisation of my research objectives.

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<sup>9</sup> See <https://www.livelaw.in/lets-do-away-with-your-lordship-and-my-lord/>

<sup>10</sup> See <https://www.judiciary.uk/about-the-judiciary/the-justice-system/court-traditions/>

### **2.3.5 Scope and Limitations of the Research**

The research had a field research component and was partly conducted in the professional settings of relevant legal institutions (the police, judiciary and prosecution office) stationed in Shinyanga region, and selected NGOs. This limited the scope of my research in that I could not investigate the situation in other parts of Tanzania where witchcraft belief is also prevalent. This was caused by lack of adequate resources on my part.

Government bureaucratic tendencies in the process for obtaining the permission was another challenge. My research was initially scheduled to start mid-July and to end mid-August 2018. However, it started in late August and lasted till early September 2018. I had to visit the High Court, the Police and the National Prosecution Office in Shinyanga to conduct interviews but I had to obtain the permissions from their head-offices in Dar es Salaam (for the Police and Judiciary) and in Dodoma (for the Prosecution Office). However, being a civil servant myself and a lawyer, I managed to overcome the red tape by using internal contacts and known colleagues within these legal institutions to help speed up the process.

Another challenge was the sensitivity of the research topic itself and the target institutions, that is, the Police, High Court judges and public prosecutors. Research is sensitive when it investigates death, serious crimes, emotional feelings, harmful and illegal cultural practices, and it touches on the interest and welfare of the powerful people in the society (Dickson et al 2008:2; University of Leicester 2016:4; Lee and Renzetti 1990:510). My research on witchcraft and the law falls in this description of sensitive research because it touched and involved powerful people in the society (senior police officers, judges and prosecutors). It inquired about witchcraft-related killings, which is a serious crime. It touched on cultural practices (witchcraft) and could trigger emotional feelings of the victims of witchcraft violence. Therefore, I exercised a high level of ethics and professionalism in order to obtain the required data. Also, the fact that statistics on witchcraft murder have been hard to come-by from government authorities, investigating this matter can have political implications particularly to those who availed statistics during the research.

# Chapter 3: Findings and analysis

## 3.1 Introduction

This chapter presents and discusses the findings of the research. In this chapter, I will operationalise my theoretical framework to use intersectionality and functionalism as analytical tools to discuss the findings, based on the identified themes. Thus, I will start by describing the situation (prevalence) of witchcraft violence in Tanzania at the time of this research, followed by a recount of the victimisation of elderly women from an intersectionality perspective. Next a discussion of the efforts made by the government to address the problem will be discussed. Finally, under the guidance of a functionalist approach to law, I will interrogate the factors that lead to the continued existence of the problem of witchcraft violence despite the fact that there is a law in place. Overall, this will then allow me to assess the successes and challenges of the Witchcraft Act Cap 18 in dealing with the witchcraft phenomenon in Tanzania.

## 3.2 The prevalence of witchcraft belief, practice and violence in Tanzania

In this section, I will attempt to answer the first research question which seeks to shed some light on the current situation of witchcraft belief, practice and violence in Tanzania. It is important to understand the current state of the affairs rather than relying only on past research by other authors.

According to this research, as of September 2018 witchcraft belief is still high in Tanzania. Out of the 24 individuals who took part in the research, 22 (91.7%) said that witchcraft exists although perspectives on its real force differed among the participants. Out of the 22 participants who agreed that witchcraft exists, 15 (68%) thought that it can affect only those who have weak religious faith. They pointed out that, if an individual has a strong faith in God under the conventional religion, then the power of witchcraft is automatically neutralized. This finding supports the argument of the Tanzanian Law Reform Commission that the belief in witchcraft is high even among the educated population (LRCT 1994:27). In the case of this research that extends to law enforcers.

Although top political leaders from the government have been maintaining that witchcraft does not exist, the respondents in this study argued that the mere fact that the country has a law that criminalizes witchcraft is enough evidence that the government of Tanzania acknowledges the existence and reality of witchcraft. (Criminal) laws are after all enacted to cure an existing problem. The purpose of the Witchcraft Law of Tanzania is “to provide for the punishment of witchcraft and of certain acts connected therewith” (The Tanzania Witchcraft Act 1928: Long Title). By this position of the law, it is evident that witchcraft exists in the eyes of the government and the legislator.

*Is witchcraft violence on the decrease?*

According to the police statistics, the number of witchcraft related killings has been decreasing gradually in Shinyanga region. The decrease is attributed to the ongoing efforts to

counter this violence (but see the counter-argument of the decrease after the table below). For example, the Tanzania Police Force (TPF) in Lake Victoria zone (comprising of Mwanza, Shinyanga, Tabora, Geita, Simiyu and Mara regions) in 2012 formed a special task force namely the Anti-Homicide Squad to deal with the chronic problem of witchcraft killings in the area. The squad has been carrying out special operations to crack down on witchcraft activities in order to prevent the killings of elderly women. Its operations have included arresting and taking to court the witchdoctors who operate illegally (unlicensed) posing as traditional healers. Witchdoctors are believed to be the source of the killings through their fore-telling services (known in Swahili language as *ramli*) to identify the witches. Most of the time in Shinyanga region, identified witches through *ramli* are elderly women who are subsequently killed (MHCDGEC 2017:28).

When this researcher visited one of the police stations in the Shinyanga on 22 August 2018, there were 38 witchdoctors in police custody. They had all been arrested allegedly for being found in possession of witchcraft instruments contrary to Section 3(b) of the Witchcraft Act Cap 18, and for practising traditional healing without a license contrary to the Traditional and Alternative Medicines Act No. 23 of 2002. Out of the 38 arrested witchdoctors, six were women. I was also able to obtain three photographic images<sup>11</sup> of elderly women who were recently murdered brutally after being accused of witchcraft. The police were investigating these cases at the time of my field research.

The instruments of witchcraft which are used by witchdoctors for fore-telling and to detect witchcraft, which I found in police custody since they were seized during the witchdoctor crackdown campaign, included gourds, animal whisks, animal horns, beads, cowrie shells, tree barks, and money paid to witchdoctors as a service fee for *ramli*. The Tanzanian Witchcraft Act Cap 18 under Section 3 prohibits possession and use of instruments of witchcraft but does not name which things can be regarded as instruments of witchcraft.

**Table 3:Cases Recorded by the Central Police Station in Shinyanga region concerning witchcraft-related murders from 2010 to July 2018**

Year	Number of killings
2010	50
2011	43
2012	43
2013	50
2014	43
2015	37
2016	28
2017	08
2018 (as at July)	03
<b>Total</b>	<b>305</b>

Source: Shinyanga Central Police Station (August 2018)

<sup>11</sup> The photographic images of the killings are in the possession of this researcher. They cannot be published in this paper because of ethical issues.

Data from table 3 above suggests that witchcraft killings in Tanzania are decreasing relatively rapidly. However, the decrease has drawn criticism from some actors who argue that the responsible government authorities might be manipulating the figures for political reasons. As was pointed out:

reliable data on the number of witchcraft accusations and physical attacks on older women in Tanzania is hard to come by. The relevant government departments tend not to give the actual figures of attacks and killings. It is commonly accepted that these crimes are under-reported" (Help Age International 2011b: no page).

It is contended further that "there are, of course, uncertainties about the actual number of witch killings and many killings may not have been reported to the authorities" (Oestigaard 2015:187).

The police also admitted during the research that not all the killings are reported, especially when they are carried out by family members. The Police Officers who participated in a Focus Group Discussion (20/08/2018) had this to say:

The police rely on the informers from the public to report on the crimes happening in their localities. If we are not informed, it means we will not know about all the killings happening in the area. The issue becomes more difficult when family members are involved in the killings because they will try by all means to keep the secret and that case will not be reported to the police.

Therefore, even after this research it remains difficult to ascertain that witchcraft killings are decreasing or not because the findings confirm that there is under-reporting of the witch-killings.

#### *Witchdoctors' services as lucrative business*

Findings showed that practising as a witchdoctor is a lucrative business<sup>12</sup> in Shinyanga region compared to traditional healing. This is the case because witchdoctors claim (and are believed) to have the power to detect witchcraft, that is, to tell whether the client was bewitched or not. Traditional healers do not fore-tell, all they do is to prescribe traditional medicine, mostly in the form of herbs.

The research revealed further that there are about 30 to 50 witchdoctors in each village in Shinyanga,<sup>13</sup> and that the majority of the people in the villages resort to the services of witchdoctors when it comes to illnesses even where there are health facilities in the village.<sup>14</sup> A village in Tanzania has an average population of 3,000 people.<sup>15</sup> The villagers' preference for witchdoctors' services is attributed to the fact that traditional healing services are cheaper compared to conventional medical bills. For example, a fore-tell (*ramli*) and a simple traditional medicine dose can cost between 0.5 to 1 US dollar, an amount

<sup>12</sup> Focus Group Discussion with the Police Officers at Shinyanga Central Police Station, 20/08/2018.

<sup>13</sup> Interview with Senior Police Officer, Shinyanga, 20/08/2018.

<sup>14</sup> Interview with Executive Director of TAWLAE, Shinyanga, 23/08/2018

<sup>15</sup> See Population Distribution in Tanzania 2012 [http://ihi.eprints.org/2168/1/Village\\_Statistics.pdf](http://ihi.eprints.org/2168/1/Village_Statistics.pdf)

which is far low compared to conventional medical bill which can cost between US \$ 4 to 50, depending on the severity of the disease and the status of the health facility.<sup>16</sup>

Therefore, as long as the belief in witchcraft is still high in the Tanzanian society, the services of witchdoctors become a viable business project (Miller, 2012).

On the other hand, there is a practical challenge in the Tanzanian legal regime in so far as the traditional healing and witchdoctors' services are concerned. While traditional healing is recognized by the law, the practice of witchdoctors (witchcraft) is prohibited. Therefore, most witchdoctors represent themselves as traditional healers and it is difficult to distinguish their services. Erich Leistner supported this argument, stating that "the line between healing and witchcraft is thin and often crossed" (Leistner 2014:57). Leistner contended further that both the witchdoctor and the person seeking the service of a witchdoctor can be labelled as witches.

#### *Fear of witchcraft among law enforcers*

When asked about their personal experiences with witchcraft reality, interviewed law enforcers said that they have witnessed several incidences of witchcraft in the course of their work or have been threatened with witchcraft. According to a Senior Police Officer:

When we are in special operations, witchdoctors threaten to bewitch us. And we know they have bewitched us several times but because we believe in God, witchcraft does not work against us. This is why we are able to raid their homes, arrest them and confiscate the witchcraft paraphernalia they use in sorcery. Otherwise, we wouldn't be able to do our work (Interview with Senior Police Officer, Shinyanga, 22/08/2108).

Also, during the Focus Group Discussion, one of the police officers pointed out that he had witnessed accused persons behaving in strange ways in court rooms during the court sessions. He had this to say:

One accused person while in the witness box stuffed some things in the mouth and started chewing them as he was being cross-examined. In the process, the accused person became so confident and intimidating to the prosecutor, leading to the situation where the prosecutor lost control of his speech and started mumbling. When the accused person was ordered by the presiding judge to remove the stuffs in the mouth, the accused person who was earlier very confident lost his strength and started to behave normally whereby the prosecutor in return recovered the lost speech and the court session continued normally. It means that the stuffs that the accused person was chewing during the cross examination are connected to witchcraft so as to give the accused person extra (supernatural) powers to win the case against him. (Police Officer – Focus Group Discussion).

In the light of the remarks above, it can be inferred that some law enforcers believe that witchcraft can be invoked and can affect them in the course of their work. The over-

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<sup>16</sup> Interview with public prosecutors on 21/08/2018 and with the Executive Director of TAWLAE on 23/08/2018.

confidence of the accused person versus the prosecutor's loss of speech and the recovery of it after the accused person was 'stripped' off witchcraft is what made the law enforcers believe that witchcraft was at play. However, it is difficult to prove this because neither science (Leistner 2014:54) nor law (Harnischfeger 2000:68) has been able to prove witchcraft so far.

*Witchcraft murder cases in court, family conspiracy and perpetrators impunity*

The number of murder cases related to witchcraft is high in Sukumaland. According to the National Prosecution Office (NPO) Shinyanga zone, the majority of the murder cases tried by the High Court in Shinyanga concerns witchcraft violence. The table below shows the annual number of murder cases from 2010 to September 2018.

**Table 4:Murder cases handled by the National Prosecution Office, Shinyanga Zonal Office.**

<b>Year</b>	<b>Number of cases</b>
2010	30
2011	28
2012	64
2013	46
2014	39
2015	35
2016	24
2017	27
2018 (as of September)	19
<b>TOTAL</b>	<b>312</b>

**Source: National Prosecution Office - Shinyanga Zonal Office (August 2018)**

The public prosecutors interviewed during the research explained that 296 cases (95%) out of the 312 cases prosecuted between 2010 and 2018 related to witchcraft murder. This is an average of 33 witchcraft-related murders per year. Again, such statistics are subject to dispute as the findings from the police show that not all witchcraft murders are reported to law enforcement organs.

Interviewed judges on their side said that, despite the fact that the number of witchcraft murder cases is high, many of these cases do not result in a conviction and subsequent punishment because some cases are settled outside the court by the concerned individuals without the knowledge of the court. This happens especially when a witchcraft case involves neighbours or family members. My findings revealed that family members take the central role in plotting the killing of an elderly woman in the family or in the neighbourhood when the death of a child occurs, and that, families conspire and hire so-called professional killers to assist in executing the mission<sup>17</sup> (MHCDGEC 2017:25)

<sup>17</sup> Focus Group Discussion with police officers (20/08/2018) and interview with High Court judge (21/08/2018), Shinyanga.

An interviewed Judge had this to say:

When a witchcraft-related murder case is in court and the accused person is a neighbour or family member, the family of an elderly woman who was killed on witchcraft suspicion and the family of the person accused of murder will discuss and settle the matter on their own outside the court. What will happen is that the witnesses will not appear in court to testify against the accused person to enable the court to enter a conviction. The court will then acquit the accused person for lack of evidence.

Therefore, there seems to be impunity for the perpetrators of witchcraft violence caused by the efforts of family or neighbours to defeat justice by deliberately avoiding to testify in court. This situation can contribute to the magnitude of the witchcraft problem and violence.

### **3.3 Victimisation of women as witches from the intersectionality perspective**

This section is connected to research question number two which seeks to understand the victimisation process and the labelling of women as witches. I will first discuss the contributing factors for branding women as witches and then explore how the victimisation takes place. The discussion here will be guided by the intersectionality framework. This framework will help to understand how the multiple intersecting factors contribute to the victimisation of women as witches.

#### *Gender stereotypes and multiple identities of women*

Witchcraft violence is a manifestation of the normalization of violence against elderly women in the Shinyanga region whereby they are easily perceived to be witches and targeted for violence and even killing (Rokke 2004:4; Miguel 2005:1153; LHRC 2017:89). Witchcraft violence in the Shinyanga region is attributed to various intersecting factors which, besides gender, include age, socio-economic conditions (poverty), the social status of widowhood, and even the old women's health status of having red eyes which is a common feature of many rural elderly women caused by the prolonged use of smoky cooking energy. Elderly women are targeted because they are positioned in the intersection of two or more of these factors. According to the findings of the research, a woman in Shinyanga is especially prone to being accused of witchcraft and to being attacked if she is at least over 45 years of age and poor. The risk increases if she is widowed and has red eyes. One reason for not targeting women who are below 45 according seems to be that young women are incapable of practising witchcraft on their own because they are still under the mentorship of elderly witches.

In an interview with a victim of witchcraft violence who survived a brutal attack with a machete, she informed me that in her experience she had never seen a woman who is elderly but from a well-to-do family being accused of witchcraft. According to the personal experience of this victim, the main intersecting factors that can render a person vulnerable to witchcraft killings in Shinyanga are first of all being a woman, secondly being of old age, and thirdly being poor. Other identities, such as widowhood and having red eyes, only con-

tributed to the risk. In her case, she was even attacked (in 2001) while her husband was still alive.

This victim's experience is in line with ideas advanced by feminist scholars such as Crenshaw (1989:150-151), Davis (2008:68) and Shields (2008:301) who agree that the multiple social positions of individuals can put him or her in a disadvantaged or advantaged position, depending on the intersecting identities. The intersecting identities of elderly women in Shinyanga clearly put them in a disadvantaged position of being vulnerable to witchcraft killings.

Further, the prevailing cultural and gender stereotypes within the Sukuma community in Shinyanga is that male persons cannot be witches because witchcraft follows the matri-lineal line as it is passed on from mother to daughter whereas men only inherit from ancestors the traditional healing knowledge as witchdoctors (Mgbako and Glenn 2011:400; Leistner 2014:56). This cultural stereotype, which was confirmed during the research, maintains the status quo of men as a superior class while women are portrayed as inferior. This categorisation again puts women in the disadvantaged position of being connected with evil activities which can make them vulnerable to witchcraft related violence.

The Sukuma ethnic group is a deeply patriarchal community in which men dominate the traditional decision-making structures including decisions concerning witchcraft (Mgbako and Glenn 2011:402; Rokke 2004:10). This argument is supported by the fact that, decision-makers in the identification of witches are mostly men who are witchdoctors.<sup>18</sup>

#### *The victimisation of elderly women as witches*

According to Miller (2012:195) the victimizations process of witches is:

a process and a practice. It starts with a tragic event, which leads to the suspicion of witchcraft, then to a search for someone to blame. [...]. Then, some kind of action follows. Somebody is attacked, wounded, beaten or [...] even killed. [...]. An accusation is the heart of the matter.

The above citation typically reflects how the victimisation of women as witches in Shinyanga region happens. The experience of the surviving victim of witchcraft related violence also serves to explain the victimisation process:

On the evening of 6 June 2001 as I was heading home from my business of selling local brew, I was attacked with a machete on the head, shoulders and arms by an unknown young man. The attack left me unconscious with one of my arms chopped off. Three days later, I gained consciousness and found myself in hospital undergoing medical treatment. My family members who visited me in hospital told me that I was attacked by a neighbour after suspecting me of bewitching his five-year-old son, who was suffering from sickle-cell. I was informed that my neighbour visited a witchdoctor (male), who detected me as the one who was bewitching his child. This is why my neighbour took the decision to kill me, but fortunately I survived the attack (Interview with Bi Mkubwa – not real name, 31/08/2018).

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<sup>18</sup> Interview with Senior Police Office Officer, Shinyanga, 22/08/2018. See also MHCDGEC (2017:28).

Witchcraft victimisation is a gendered process. According to the victim's ordeal above, the process of her attack started with a tragedy of sickness of a neighbour's child whereby the neighbour decided to find someone to blame for the illness of his son. Upon visiting the witchdoctor who was a male, the witchdoctors pointed the accusation finger to an elderly woman in the neighbourhood. Then the attack to eliminate the alleged witch through killing was launched.

From the intersectionality point of view, Bi Mkubwa was attacked because she was a woman who is old and poor. She informed this researcher that her business of selling local brew earned her a maximum of 1 US dollar as profit whenever she made and sold the brew. According to her, that amount did not free her family of five children from poverty, so they lived in poor economic conditions.

Women become victims witchcraft related violence due their multiple social identities (or categories). In order for the victimisation process to be complete, these identities must intersect and operate mutually, interdependently and simultaneously in order to produce the social meaning (Warner 2008:454, Shields 2008:304) of being a witch and put the concerned individual like Bi Mkubwa in a disadvantaged position.

## **6.0 Efforts made to address the problem of witchcraft violence in Tanzania**

This part answers research question three, with a view of assessing how the government addresses the problem of witchcraft killings in Tanzania. In this discussion, I will focus on three main strategies which were operational at the time of this research. The strategies are: the National Ageing Policy; the Anti-Homicide Squad; and the National Strategy to Eradicate Elderly Killings (NSEEK).

### **3.6.1 The National Ageing Policy**

Tanzania adopted the National Ageing Policy in 2003. The Policy conceptualizes old age as being the “final stage of human growth from childhood, youth to old age” (National Ageing Policy 2003:2).

According to the Policy, older women are particularly affected by old age problems. This is because women live longer than men, and they suffer multiple social problems including witchcraft killings, and bearing huge family burdens whereby their health deteriorates rapidly (National Ageing Policy 2003:4).

The objectives of the National Ageing Policy are, among others, to ensure that older people are accorded due recognition in the family and society; that they are provided with quality health services; and have an opportunity to participate effectively and meaningfully in the daily life of the society. The Policy also emphasizes the need to enact a specific law that protects the rights and welfare of old people (National Ageing Policy 2003:7).

However, the government of Tanzania has been criticised for the poor implementation of the National Ageing Policy by failing to take concrete measures towards its full implementation (Malalika 2016:23). Further, the government was blamed for failing to take any measures to enact specific legislation on old age despite promises made in the Policy (MHCDGEC 2017:28).

The interviewed research participants also doubted the government effort and commitment towards eliminating the problem of witchcraft violence against elderly women. A participant from Help Age International Tanzania had this to say:

By the fact that the government has not enacted a law on ageing despite the concrete promise made 15 years ago in the 2003 National Ageing Policy, it seems it is not committed to eliminate the problem of witchcraft. This has rendered this policy a blunt instrument since its implementation is not binding (Help Age International Tanzania, 11/08/2018).

From the findings and discussion above, the government's efforts to eliminate the witchcraft killings of elderly women through the Policy still have a long way to go.

### **3.6.2 Establishment of the Anti-Homicide Squad within the Police**

In 2012, the Tanzania Police Force established a special task force – namely the Anti-Homicide Squad – to deal with the problem of witchcraft-related killings. The main purpose of the Squad is to rigorously combat crimes related to witchcraft killings by taking various measures such as carrying out special operations to crack down on the activities of witchdoctors, fast-tracking investigations and prosecution of cases related to witchcraft killings, carrying out public awareness campaigns to sensitise the public on the negative effects of witchcraft related violence; and the legal consequences of committing a witchcraft crime.<sup>19</sup>

Findings of this research revealed that the Anti-Homicide Squad lacks adequate funding and equipment such as motor vehicles to enable it to undertake rapid response operations especially in reaching the crime scenes on time, and for pursuing the perpetrators<sup>20</sup>.

Research revealed further that the Squad also lacks cooperation from the public particularly on reporting the crimes of witchcraft killings and during investigations due to the fact that in many cases family members are responsible for (organizing) the killings.<sup>21</sup> Based on these findings, the government ought to avail adequate resource to facilitate the work of the Squad, or else the Squad will be doomed to fail.

### **3.6.3 Adoption of the National Strategy to Eradicate Elderly Killings**

The National Strategy to Eradicate Elderly Killings (NSEEK) in Tanzania was adopted in 2017. The overall goal of the Strategy is to have “Tanzania with sustained wellbeing of elderly without witchcraft threats, discrimination, torture and killings [...]” (MHCDHEC 2017: preamble). The strategy envisions zero-tolerance and to attain a zero digit of elderly killings by the year 2022. The implementation of this newly adopted Strategy is done jointly by all relevant stakeholders in the government and civil society organizations.

The Strategy's main areas of focus include creating awareness of the negative effects of witchcraft beliefs and killings; ensuring the effective implementation of the National Ageing Policy and reviewing various legislations to harmonise them and make them more re-

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<sup>19</sup> Interview with Senior Police Officer, Shinyanga, 20/08/2018.

<sup>20</sup> Ibid

<sup>21</sup> Interview with Senior Police Officer, Shinyanga, 22/08/2018.

sponsive to the current situation and needs of elderly persons; to fast-track investigations, prosecution and court proceedings of cases involving elderly people (both male and female), relating to both criminal and civil matters (NSEEK 2017:58-69).

However, during the interview with some of the research participants,<sup>22</sup> they raised doubt over the successful implementation of the NSEEK. They argued that, just like many other government strategies, this Strategy might be hampered by the lack of resources to facilitate its implementation. They described the Strategy as being too ambitious due its target of zero witchcraft killings by 2022, which is less than four years from the time of writing this thesis. As was noted by Mesaki (1993:21) witchcraft “murders seem to go on indefinitely without the governments being capable of stopping them.”

From the foregoing discussions in this part, there is no concrete evidence that the ongoing government efforts will help end the problem of witchcraft violence at least in the near future.

### **3.4 The role of the Witchcraft Act Cap 18 in dealing with the problem of witchcraft**

This section responds to question four of this research. It explores, from the socio-legal perspective and under a functionalism approach, why the problem of witchcraft violence continues despite the presence of a specific law to deal with this problem. In particular, the discussion focuses on the role played by the Witchcraft Act Cap 18 by investigating the achievements and failure of this law.

#### **3.4.1 Achievement of the Witchcraft Act Cap 18**

The functionalist approach to law recognizes the role of law as being to regulate the behaviour of individuals in the society (Van Roermund 2015:10). The Witchcraft Act Cap 18 is therefore expected to serve as an instrument of regulating the behaviour of members of the society by punishing the witchcraft criminals, that is, witchcraft practitioners including witchdoctors, and the perpetrators of witchcraft violence such as those who accuse elderly women to be witches.

Some notable achievement of Witchcraft Act Cap 18 was in the prevention of witchcraft accusations, that is, the prohibition of naming or indicating a person a witch. Available data from the National Prosecution Office (NPO) Shinyanga zone shows that the Witchcraft Act Cap 18 has been successfully invoked especially as regards crimes related to accusing a person of witchcraft. The majority of the cases prosecuted by the NPO Shinyanga concerning accusations of witchcraft secured convictions, mainly under Section 4 of Cap 18.<sup>23</sup> Thus this law has helped to prevent the witchcraft accusation albeit to a small extent. For example, between 2010 and September 2018, a total of 57 cases were prosecuted under the Witchcraft Act Cap 18. (see table 4).

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<sup>22</sup> Interview with Executive Director of TAWLAE 22/08/2018 and with Programme Officer of LHRC, 31/08/2018.

<sup>23</sup> Interview with public prosecutors, Shinyanga, 21/08/2018

According to the interviewed public prosecutors, the successful prosecution and punishment of people who accuse others of witchcraft help to send the message to the public that committing the crime of accusing someone of witchcraft is practically punishable. The same was also observed by the interviewed police officers who remarked that such a successful prosecution might at least have constrained some members of the public from committing the crimes of witchcraft accusation. One of the police officers had this to say:

Members of the public who have seen others being punished under the Witchcraft Act Cap 18 become aware that this law actually works, and the punishment is imposed if a person is found guilty of witchcraft practice or accusation. Therefore, the mere presence of this law can help to restrain people from committing witchcraft offences (Interview with Senior Police Officer, 20/08/2018).

**Table 4. Cases of naming a person a witch prosecuted in court by the National Prosecution Office under the Witchcraft Act Cap 18 of Laws of Tanzania.**

Year	Number of cases
2010	10
2011	12
2012	4
2013	3
2014	4
2015	6
2016	6
2017	11
2018 (as of August)	1
<b>TOTAL</b>	<b>57</b>

Source: National Prosecution Office - Shinyanga Zonal Office (21/08/2018).

Statistics in table 4 above show that the Witchcraft Act Cap is working to a limited to a limited extent by punishing witchcraft accusation, and this might be helpful in preventing witchcraft violence against elderly women. From the figures, it is difficult to predict whether the cases increase or decrease gradually because the figures show neither a steady increase nor a steady decrease. The important thing to note from the figures above is that the Witchcraft Law is at least functional as evidenced by the fact that all the 57 cases prosecuted in Shinyanga region alone secured a conviction under Section 5(2) of Witchcraft Act Cap 18. The punishment under this law is either payment of a fine of not less than Tanzanian shillings 100,000 (approximately US \$43) or imprisonment of not less than five years.

Since functionalism requires to establish whether the law is working or not to control people's behaviour (Misterio, 2018; Bix 2017:6;), the role of Witchcraft Act Cap 18 can be seen at least in the context of the 57 cases prosecuted in Shinyanga region under this law. This can somehow help to prevent informal accusations of witchcraft and can have an impact on reducing witchcraft violence against elderly women.

### 3.4.2 Weaknesses of the Witchcraft Act Cap 18

Despite the role that the Witchcraft Act Cap 18 plays in dealing with the problem of witchcraft, there are some challenges which hinder the implementation of this law. The challenges are discussed hereunder.

There was a general concern among the law enforcers that the Witchcraft Act Cap 18 lacks a clear definition of the term witchcraft and instruments of witchcraft. According to the research, mentioning of synonyms such as sorcery, enchantment and others render the law unclear. The term witchcraft is defined by the Witchcraft Act as follows:

“witchcraft” includes sorcery, enchantment, bewitching, the use of instrument of witchcraft, the purported exercise of any occult power and the purported possession of any occult knowledge (The Witchcraft Act 1928: Section 2).

Participants in this research are of the opinion that this definition lacks a clear meaning of witchcraft since the mentioning of synonyms such as sorcery and enchantment render the law vague and make it difficult for ordinary people to understand it<sup>24</sup>.

In relation to “instruments of witchcraft”, the law is also criticised for not expressly mentioning these instruments. The law defines instruments of witchcraft as follows:

“instrument of witchcraft” means anything which is used or intended to be used [...] or generally believed to possess the power, to prevent or delay any person from doing any act which he may lawfully do, or to compel any person to do any act which he may lawfully refrain from doing, or to discover the person guilty of any alleged crime [...], or to cause death, injury or disease to any person or damage to any property, [...] or by supernatural means to produce any natural phenomena [...].

This kind of definition leaves the law rather vague and open to wide interpretation as regards the instruments of witchcraft. For example, the instruments of witchcraft found at one of the police stations at the time of the research included a gourd, cowrie shells, animal whiskers and horns. Such instruments can have multiple purposes in the society, and it is therefore difficult to connect them directly or exclusively with witchcraft. It was advised that the law should have at least mentioned some examples of instruments of witchcraft through a schedule to the law as that would be helpful in guiding law enforcers to identify witchcraft paraphernalia.<sup>25</sup>

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<sup>24</sup> Interview with High Court judge in Shinyanga, 21/08/2018 and with Programme Officer, LHRC 31/08/2018.

<sup>25</sup> Interview with Programme Officer, LHRC 31/08/2018.

### 3.4.3 The difficulty of proving witchcraft

The role of the Tanzanian anti-witchcraft law is hindered by the difficulty of proving witchcraft in court. Under this law, it is difficult to prove the commission of a witchcraft offence since witchcraft acts are normally carried out undercover, away from the public eye, and there is no clear link between supernatural power and an act allegedly resulting from witchcraft. After reviewing witchcraft legislation in seven African countries, Help Age International had this to say:

Under established legal principles, circumstantial evidence, hearsay or speculation are not enough to secure a safe conviction. [...] Evidence given to prove the practice of witchcraft [...] has to prove that harm has been caused by supernatural means. Evidence has to prove a causal link between the supernatural act and the harm caused. This is impossible to do through material evidence and therefore prosecutions to prove that someone has carried out a supernatural act often rely heavily on hearsay, circumstantial and confession evidence. Safe convictions under these circumstances are virtually impossible. This means that the legislation is counter-productive [...] (Help Age International 2011a:7)

This assertion was also echoed by the High Court Judge in Shinyanga who during an interview stated that, if a witchcraft case is to be taken to court, it is often technically difficult to prove witchcraft, hence the law cannot function in its punishment role. This may contribute to witchcraft violence since the witchcraft practitioners including witchdoctors cannot be held responsible under the Witchcraft Act Cap 18 for lack of evidence. As a result, they may continue with the practice of using supernatural powers (witchcraft) to identify witches (elderly women) who are subsequently violently attacked.

Another difficulty in proving witchcraft was noted in the case of *Republic versus Sambo Chaba and two Others* (High Court of Tanzania 1985: Criminal Case No. 99). In this case, the accused persons (Chaba and others) were charged with the killing of an elderly woman after suspecting her of witchcraft. Chaba and others pleaded that they did so because the old woman was a witch. In its reasoning, the Court ruled that in order for the defence of witchcraft to be successfully invoked, Chaba and others had to prove beyond reasonable doubt that the victim (elderly woman) provoked them by performing witchcraft acts against them in their actual presence (Wamala et al 2005:76). Chaba and two others were subsequently found guilty of murder under the country's Penal Code Cap 16, and were sentenced to death by hanging.

From the discussion in the case of Sambo Chaba above, it is clear that the courts in Tanzania do not accept the defence of witchcraft for the same reason that it is difficult to prove witchcraft. However, in South Africa, judges often accept the defence of witchcraft if the offence was committed upon "sincere belief" in witchcraft (Leistner 2014:70).

Therefore, proving witchcraft is difficult at least in the context of Tanzania, and this poses a great challenge in the functioning of the Tanzania's Witchcraft Act Cap 18 in dealing with the problem of witchcraft. Under a functionalist approach, the law must be able to

deal with social problems that led to its enactment, failure of which renders it non-functional (Zumbansen 2008: no page).

### **3.4.4 The perception of law enforcers on witchcraft and the general fear of witchcraft**

There is a general perception that law enforcers try to avoid witchcraft cases allegedly for fear of retaliation from witches or members of the public who see the law enforcers as protecting witches (Harnischfeger 2000:101). However, law enforcers who were interviewed during this research on their personal views on witchcraft showed mixed feeling on this issue. Some of them agreed that since they live and work in a society where witchcraft is deep-seated, it is therefore difficult to control their biases. This researcher sought to know how the police officers handle cases where elderly women report to the police that they have received a threat of being killed on a witchcraft suspicion. A senior police officer had this to say:

It is difficult to control how an individual police officer views witchcraft. I agree that some might be reluctant to deal with witchcraft cases depending on the nature of the case. However, that should not be taken as the position of the Police as an institution. That is purely an individual way of viewing cultural issues that surround the community in which police officers live.

Regarding the general enforceability of the law, the research revealed a number of reasons that lead to the poor enforcement of the Witchcraft Act Cap 18. Interviewed participants, both from legal institutions and non-governmental organizations cited the sensitivity of the witchcraft phenomenon and the general fear of witchcraft by the public as big challenges in the implementation of this law. For example, members of the public hardly come out to testify in witchcraft cases. The reason for this is two-fold. If the case involves a witchdoctor, witnesses never appear in court for fear of being bewitched. If the case is about a person who killed an elderly woman on witchcraft suspicion, people will also not testify in court for fear of being persecuted if the perpetrator is implicated in the case.

It was noted by the police and prosecutors that sometimes they can prepare witnesses to testify in a particular witchcraft case. However, on the hearing day of the case, the witnesses may simply disappear or will turn hostile during the trial, thus affecting the outcome of the case. Therefore, the general fear of witchcraft facilitates the impunity of perpetrators of witchcraft violence. in that way it is difficult for the law to operate fully in addressing the problem of witchcraft.

### **3.4.5 Can the Witchcraft Act Cap 18 be a solution to the witchcraft problem in Tanzania?**

There is a divided opinion on the role and usefulness of the Witchcraft Act Cap 18 among the participants of this research – that is, police officers, judges, prosecutors, and other legal experts from the government and NGOs – on whether the law should be retained in the statute books or be repealed.

Those who favoured the existence of the law argued that the mere presence of the Witchcraft Act Cap 18 has helped in regulating the conduct of individuals in the society which is evidenced by the presence of court cases. They thought that vigorous enforcement of this law will help to deal with the problem of witchcraft. Those who denounced the role of the Witchcraft Act contended that the law has been a blunt instrument, rendering itself unenforceable because of the vagueness of the definition of witchcraft, and the difficulty in proving witchcraft. They are of the view that using law to deal with the problem of witchcrafts can be a wrong approach. Law alone cannot deal with complex social problems like witchcraft (Mesaki 2009:137-138) because the law fights the outcome of witchcraft (practice and consequences) but not the belief itself which is the source of the problem (Harnischfeger 2000:101). therefore, undertaking legal mobilization and at the same time public awareness creation on human rights should be part of everyday life in the society (Woodiwiss 2006:34).

A functionalist approach to the law requires that laws be enacted to reflect the social realities and society's interest and that a critical study of the prevailing social situation on the ground is needed before enactment (Schiff 1976:287; Miserio, 2018). It is in line with this view that a legal expert from the Law Reform Commission of Tanzania who was interviewed during the research recommended a fresh research on the role of the Witchcraft Act Cap 18. She informed that the last research on the anti-witchcraft law was done in 2004.

According to this legal expert, society's belief in witchcraft was still high, and the role of witchcraft legislation was still indispensable. She therefore advised that repealing or amending the Witchcraft Act Cap 18 will require a comprehensive approach that should include extensive public consultation and awareness programmes to educate the people about the negative effect of witchcraft belief and practice. She informed me further that the current anti-witchcraft legislation was enacted during the colonial period using a top-down approach whereby the society was not consulted.

On the other hand, a sociologist from the University of Dar es Salaam opined that witchcraft belief is a cultural ideology which cannot be easily discarded by the society, particularly within the Sukuma ethnic group. He had this to say during the interview:

Attempting to eliminate witchcraft belief and practice in Tanzania through law is as good as day-dreaming. Law cannot stamp out such a deep-laid cultural ideology in people's mind. It needs another good ideology that will reset people's mind in order to get rid of this dangerous ideology (Interview with Academician, 27/08/2018).

Therefore, the question whether Witchcraft Act Cap 18 can be a solution to the witchcraft problem in Tanzania or not, cannot be answered by this research. More research with a socio-legal orientation is needed in order to come up with a fresh public view and broader expert opinion in order to explore potentially better ways of containing the witchcraft problem in Tanzania.



## Chapter 4: Conclusion

This study aimed to investigate the role of the Witchcraft Act Cap 18 of Tanzania in dealing with the problem of witchcraft practice and the related violence in Tanzania. The main question focused on how the Witchcraft Act Cap 18 protects elderly women from witchcraft-related violence. This question was to be answered mainly by research audiences with representatives of relevant legal sector institutions namely the Police, the Judiciary, Public Prosecutors, the Law Reform Commission of Tanzania as well as actors from selected NGOs. The research was socio-legal in nature and took place in Shinyanga region, Tanzania.

Methodologically, two theoretical frameworks were employed as tools to analyze the findings of the research. The first one was the feminist theory of intersectionality which served as a useful lens to understand the intersecting social factors that lead to the victimisation, that is, accusation of elderly women as witches and the subsequent violent attacks which in many cases take the form of killing. The second framework was that of a functionalist approach to law, which helped to interrogate the role of the Witchcraft Act Cap 18 by looking at its strength and weakness in dealing with the problem of witchcraft practice and related violence.

The research findings showed that women aged 45 and above who lived in poverty were especially targeted for the witchcraft killings. The reason for targeting women more than men is that witchcraft is inherited along matrilineal lines, that is, from mother to daughter. Men only inherit traditional healing knowledge from ancestors. Therefore, the main intersecting factors that lead to the victimisation of women as witches are: being elderly (age), being a woman (gender), and living in poverty (class).

Further findings revealed that witchcraft belief, even among law enforcers was still high. Although consulted literature, including recent sources, showed that the number of witchcraft killings was still high in Tanzania, statistics from the Police and the National Prosecution Office in Shinyanga showed a marked decline from 2010 to mid-2018. The decline was subject to controversy because even the police themselves admitted that there was underreporting of cases related to witchcraft killings.

Efforts so far undertaken by the government to combat the witchcraft problem such as the National Ageing Policy, the Anti-Homicide Squad, and the National Strategy for Eradication of Elderly Killings (NSEEK) do not seem to be a solution to the problem since these frameworks either lack political will to implement them (such as the Policy) or lack the necessary resources to facilitate their implementation.

On the other hand, the role of the Witchcraft Act Cap 18 in dealing with the problem of witchcraft in Tanzania is still debatable according to the findings of this research. The law seems to be working only with regards to prosecuting and punishing those who extra-judicially accuse (indicate) others as being witches. The law does not work with regard to prosecuting and punishing those who practice witchcraft such as witchdoctors whereby its failure was attributed to a difficulty in proving witchcraft in court. Witchdoctors have been pointed out to be contributing to witchcraft violence against elderly women because they are the ones who in most cases detect women as witches. Therefore punishing them might help in preventing witchcraft violence.

Opinion is still divided on the role of Tanzania's witchcraft law and whether it should be retained or repealed. More research should therefore be done involving wide public consultation especially at the grassroots level to ascertain the reasons for continued retention of the Witchcraft Act Cap 18 in its current format, amending it, or repealing it. A bottom-up approach in reforming this law will be ideal since the law touches on the rather sensitive cultural issue of witchcraft.

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## Appendix

The map of Tanzania indicating Shinyanga region.



Source: Nations online 2018