

George Washington International Law Review
2011

Article

***389** WITCHCRAFT ACCUSATIONS AND HUMAN RIGHTS: CASE STUDIES FROM MALAWI

Chi Adanna **Mgbako** [FN1]

Katherine Glenn [FNaa1]

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I. Introduction

In Africa, victims of witchcraft accusations, who are most commonly children and older women, face banishment from their communities, loss of property, arrest, imprisonment, and physical violence. [FN1] Even if steps are taken to “cure” the individual, the label of witch may follow an individual throughout her entire life. [FN2] Those accused of witchcraft may flee their home areas to escape anticipated harm or may be forced from their villages by the community. “Witch camps” and “witch sanctuaries” have been created in Ghana and South Africa to shelter accused witches. [FN3] When a community forces an accused witch to flee her home, she often ***390** suffers other consequences including psychological trauma and impoverishment due to loss of property and assets. [FN4]

People who suspect they are the victims of witchcraft may make an accusation on their own or may seek the services of a witch doctor to divine the identity of the witch who has harmed them. [FN5] Community members may also hire witch doctors to break the spell of bewitchment over children, sometimes through the use of poisonous substances or “operations” to remove the source of the bewitchment. [FN6] Accusers often demand that a witch undergo an exorcism, or some other procedure designed to purge her of her powers (or in the case of children, designed to break the spell of bewitchment cast over them). Exorcisms can be painful and dangerous. [FN7] Communities may also exact punishment on the accused witch including beatings, mob violence, property destruction, or other extreme measures. [FN8] In countries where witchcraft is criminalized, witches are often fined or imprisoned. [FN9]

***391** This Article explores potential community-based interventions to assist victims of witchcraft accusations, based on forty-five case studies from an experimental mobile legal-aid clinic in Malawi, a country in southeastern Africa where witchcraft accusations are widespread and often irreparably harm those accused. [FN10] In Malawi, the accused are mainly older women who are often blamed for bewitching young children. [FN11] These accusations have led to mob violence and the imprisonment of nearly ninety people in 2010 alone. [FN12]

This Article was inspired by a partnership between the Walter Leitner International Human Rights Clinic (Leitner) at Fordham Law School and the Center for Human Rights Education Advice and Assistance (CHREAA), a paralegal agency and human rights non-governmental organization based in Malawi. In Novem-

ber 2010, Leitner and CHREAA ran an experimental one-week mobile legal-aid clinic focusing on witchcraft cases in two rural communities in Malawi. This Article is based on forty-five case studies originating during the Leitner/CHREAA witchcraft clinic. The Leitner/CHREAA team focused on witchcraft in the mobile legal-aid clinic because these complex and challenging cases comprise a large portion of CHREAA's year-round caseload and because accusations of witchcraft often result in serious human rights violations.

Mobile legal-aid clinics enable legal service providers to bring their services directly to potential clients in remote and underserved communities. [FN13] The goal of the Leitner/CHREAA mobile clinic was to respond to the legal needs of rural villagers who regard witchcraft as a serious justice issue and often cannot afford to travel to CHREAA's urban-based legal-aid offices for assistance. The Leitner/CHREAA team received permission from traditional leaders to conduct the mobile clinic in two rural communities. *392 The village chiefs eagerly welcomed the Leitner/CHREAA team's efforts and acknowledged with alarm the pervasiveness of witchcraft accusations in their communities. The mobile clinic marked the first time that legal services were offered in the villages. The Leitner/CHREAA team, comprised of Fordham Law School faculty, students, and alumni and CHREAA paralegals, assisted clients at the free witchcraft clinic by providing legal advice, educating clients on the status of Malawi's Witchcraft Act (Witchcraft Act), drafting cease and desist notices to witchcraft accusers, preparing written police referrals in cases involving witchcraft accusations and violence, and conducting mediation services. [FN14]

Section II of this Article examines witchcraft accusations through an international human rights lens. It presents a brief comparative analysis of African witchcraft laws, the history and current status of Malawi's colonial-era Witchcraft Act, and the tensions between the Witchcraft Act and customary law in Malawi.

Section III briefly explores the debate among scholars regarding the role of witchcraft in African communities. Section III also presents Africa-wide and Malawi-specific research highlighting the gendered nature of witchcraft accusations and exploring the links between witchcraft accusations and children.

Section IV describes the best practices of the Leitner/CHREAA mobile legal-aid witchcraft clinic, based on forty-five client case studies. [FN15] Section IV also describes the tools the Leitner/CHREAA team used to protect those accused of witchcraft including: offering clients alternative explanations for phenomena attributed to witchcraft when appropriate; using the protective elements of the Witchcraft Act to provide legal counsel against witchcraft accusations; drafting cease and desist notices to witchcraft accusers; offering mediation as a way to uncover and address the underlying family and community tensions often at the root of some witchcraft accusations; referring witchcraft cases involving physical violence to the police with client consent; and using non-legal methods to creatively*393 address witchcraft cases when appeals to the law proved inadequate.

This Article takes a decidedly functionalist view of the role of witchcraft within contemporary African societies. Witchcraft accusations continue in part because individuals in poor communities seek supernatural explanations for the seemingly inexplicable deaths and misfortunes that plague their societies. [FN16] The effects of poverty destabilize communities making them more susceptible to the entrenched reality of witchcraft accusations. [FN17] In addition, people with legitimate frustrations about the lack of economic development in their communities, and without political outlets to express these grievances, may scapegoat marginalized members of their communities through witchcraft accusations. [FN18] This viewpoint, however, is not without its complications in determining what defines "justice" in communities in which individuals may view themselves as victims of witchcraft accusations or victims of "witchcraft" itself. Section V will explore these complications in the Article's concluding reflections.

II. Malawi's Witchcraft Act: International, Comparative, and Domestic Legal Framework

A. Witchcraft Accusations from a Human Rights Perspective

The consequences of witchcraft accusations violate a wide range of human rights. Attacks against the accused violate fundamental rights including the right to life, liberty and security, the right to hold property, and in some cases, the prohibition against torture.

The less tangible consequences of witchcraft accusations, including social and economic marginalization, are also human rights violations. Social ostracism resulting from an accusation violates the International Covenant on Civil and Political Rights' protection against "arbitrary or unlawful interference with [an individual's] privacy, family, home or correspondence, [and against] unlawful attacks on [an individual's] honor and reputation." [FN19] The International Covenant on Economic, Social and Cultural Rights recognizes the right of every person to have "the highest *394 attainable standard of physical and mental health," [FN20] a right damaged by the physical and mental trauma sustained by those accused of witchcraft.

Human rights organizations have taken notice of the violent consequences of witchcraft accusations, and have imposed obligations on states to combat these accusations. The United Nations Committee on the Rights of the Child (CRC Committee) has called for protective measures to prevent witchcraft accusations against children in Angola and the Democratic Republic of Congo. [FN21] The United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) categorizes witch-hunts as a form of violence against women and has urged many states, including Ghana, India, Mozambique, Papua New Guinea, South Africa, and Tanzania, to take action on witchcraft accusations. [FN22] The CEDAW Committee's recommendations range from calling upon states to "challenge traditional views" about older women and witchcraft to requiring that states investigate the torture and killing of suspected witches and prosecute the perpetrators. [FN23] The Special Rapporteur on extrajudicial, summary, or arbitrary executions released a report in 2009 that called upon national governments and the United Nations to "ensure that all killings of alleged *395 witches are treated as murder and investigated, prosecuted and punished accordingly." [FN24]

The special interest in witchcraft accusations taken by the CRC and CEDAW Committees reflects that women and children are at high risk of being accused. [FN25] The Convention on the Rights of the Child emphasizes the importance of providing children with a supportive and safe environment in which to grow, and obligates states to take all appropriate measures to protect children from physical and mental violence, injury, abuse, neglect, and maltreatment. [FN26] The Convention on the Elimination of All Forms of Discrimination against Women requires states to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women." [FN27] As a party to both the CRC and CEDAW, Malawi is obligated to protect women and children from the harm caused by witchcraft accusations. [FN28]

According to the United Nations High Commission for Refugees (UNHCR), witchcraft accusations force many individuals to flee and seek asylum in other countries. [FN29] In its guidelines on refugee claims, the UNHCR instructs asylum adjudicators to be sensitive to harmful cultural practices that disproportionately affect women, referencing witchcraft accusations and the severe violence that can result. [FN30] The UNHCR confirms that such circumstances constitute persecution, even when such accusations and violence are "culturally condoned in the claimant's community." [FN31]

*396 B. Laws on Witchcraft in Africa

Although witchcraft laws are not always enforced, practicing witchcraft is a criminal offense in many African countries. [FN32] Laws criminalizing witchcraft differ depending on a country's colonial history. Former French colonies typically ban only the practice of witchcraft; for example, Benin, Cameroon, Chad, Côte d'Ivoire, Gabon, Mali, and Mauritania all criminalize the practice. [FN33] Former British colonies generally use some version of the British Witchcraft Suppression Act, which criminalizes not only the practice of witchcraft but also accusing someone of witchcraft or representing oneself as a witch. [FN34] Kenya, South Africa, Uganda, Tanzania, and Zimbabwe all used some version of this law after independence, [FN35] but Zimbabwe revised its law in 2006. [FN36] The new Zimbabwe law recognizes the existence of witchcraft and only criminalizes witchcraft practices that harm others. [FN37] The new law also criminalizes "groundless" accusations of witchcraft. [FN38] South Africa is in the process of reforming its apartheid-era Witchcraft Suppression Act, also taken from the British. [FN39] Formal punishments for the practice of witchcraft can range from fines to execution. [FN40]

C. History and Status of Malawi's Witchcraft Act

Malawi's Witchcraft Act is a relic of the British colonial era, dating to 1911. [FN41] The Witchcraft Act bans certain types of "trial by ordeal," referring to the process of determining whether an individual is guilty of an offense. [FN42] The Witchcraft Act forbids any trial by ordeal that involves "poison, fire, boiling water, or . . . any ordeal which is likely directly or indirectly to result in the death of or bodily injury to any person." [FN43] The Witchcraft Act also forbids accusing anyone of being a witch or practicing witchcraft, employing*397 a "witchfinder" to identify "the perpetrator of any alleged crime or other act complained of," and representing oneself as "a wizard or witch or as having or exercising the power of witchcraft." [FN44] Malawi's Witchcraft Act does not explicitly criminalize the practice of witchcraft, but effectively does so by its prohibition on "pretending witchcraft" and outlawing the occupation of "witchfinder or witchdoctor." [FN45]

The Malawi Law Commission (Commission), an independent constitutional body charged with reviewing existing laws and making recommendations on amending them to conform to the Malawi constitution and international law, is currently studying Malawi's Witchcraft Act. [FN46] The Commission decided to review the Witchcraft Act after receiving "various calls for reform" from interested parties, including traditional healers, ethno-medical practitioners, non-governmental organizations, and faith-based groups. [FN47]

D. Witchcraft and Customary Law in Malawi

Malawi's Witchcraft Act is part of codified criminal law. [FN48] Prosecutions brought under the Witchcraft Act fall under the purview of Malawi's Magistrate Courts. [FN49] The vast majority of the Leitner/CHREAA clients were unaware of the Witchcraft Act's provisions. Clients who had attempted to resolve witchcraft problems prior to approaching the clinic had done so through local customary systems, usually approaching their village chief for advice or help, or paying a witch doctor to cure a bewitched person or identify the cause of bewitchment.

Customary law recognizes the existence of witchcraft where the Witchcraft Act does not. Local chiefs and religious leaders had dealt with many disputes involving witchcraft, including cases in which someone accused of witchcraft sought their help. They were mindful of the dangers of false accusations, but generally took the

view that witchcraft did exist and could cause great harm to others.

*398 III. Witchcraft in Context

A. The Role of Witchcraft in African Communities

Scholars have struggled to define, understand, and explain the role of witchcraft and witchcraft accusations in African societies. The dominant ideological strain posits that witchcraft accusations function as a mask for underlying social tensions in communities. [FN50] Monica Hunter Wilson argues that witchcraft accusations “are an expression of conflict.” [FN51] Max Gluckman has found that witchcraft beliefs help establish and maintain a society's moral code: “[T]he beliefs exert some pressure on men and women to observe the social virtues, and to feel the right sentiments, lest they be suspected of being witches.” [FN52] Gluckman has postulated that accusing someone of witchcraft allows the accuser to terminate a problematic relationship with another in a way that has the benefit of “social approval.” [FN53] Other scholars including Clyde Mitchell, Max Marwick, John Middleton, and Victor Turner have also argued that witchcraft accusations function as a mode of ending relationships that are no longer desirable to the accuser. [FN54] Victor Turner also argues that the practice is an attempt by communities without access to modern medicine and science to provide explanations for misfortune. [FN55] Jean and John Comaroff perceive current witchcraft beliefs in South Africa as a response to the economic disparities of modernity. [FN56] Discussing the witch burnings that occurred in the 1990s in South Africa, they argue that “concerns about wealth in *399 the countryside--about its production, distribution, and scarcity--have been translated into bitter generational, gendered opposition” and have played themselves out in witchcraft accusations. [FN57]

Adam Ashforth has critiqued the functionalism espoused by other scholars studying and writing about witchcraft in Africa, and has put forth a perspective that prioritizes the subjective views of those who live in communities where witchcraft is not viewed as a veil for underlying social tensions. [FN58] He notes that the “idea of witchcraft discourse as an idiom expressing other realities--usually ‘social and psychological strains’--has proved remarkably flexible in the hands of anthropologists and remains the predominant emphasis in the literature on witchcraft in Africa.” [FN59] In contrast, Ashforth argues that scholars should take the narratives of their informants at “face value,” without searching for hidden meanings and purposes. [FN60] As he studied witchcraft in South Africa, Ashforth “became steadily more aware of the fear of witchcraft lurking beneath the surface of everyday life.” [FN61] This fear and concern, he argues, as opposed to some unconscious motivation to resolve conflict or terminate a relationship, [FN62] is the driving force behind witchcraft-associated behavior.

B. The Gendered Nature of Witchcraft Accusations

Compared to their male counterparts, women in Africa are disproportionately accused of witchcraft. [FN63] Of the forty-five witchcraft cases in the Leitner/CHREAA Malawi mobile clinic, only four involved accusations of witchcraft against an adult male. In the vast *400 majority of cases, the alleged witch was either an older woman or a child. Older female victims of witchcraft accusations in Malawi often face emotional and physical abuse. [FN64] In one of the Leitner/CHREAA team's most disturbing cases, a man accused an elderly woman of practicing witchcraft, physically attacked her, and punched out her teeth.

Witchcraft accusations are also a gendered phenomenon in other parts of Africa. In South Africa, although

both men and women practice witchcraft, women are twice as likely to be accused. [FN65] In Tanzania, between 1998 and 2001, 17,220 women were reportedly the victims of abuse for allegedly practicing witchcraft. [FN66] Of the 17,220 women accused, 10% were killed. [FN67] In northern Ghana, an estimated 5,000 women have been driven from their communities and banished to witch camps. [FN68] Gendered witchcraft accusations, however, are not unique to Africa. During the witch-hunts in Europe from 1450 to 1650, between 75% and 80% of those accused of witchcraft were women--usually poor and elderly widows. [FN69] Women were also the main victims of the 1692 to 1693 Salem witch trials in colonial Massachusetts. [FN70] The pattern of gendered witchcraft accusations continues in various regions around the world, including Papua New Guinea, [FN71] India, [FN72] West Bengal, [FN73] Nepal, [FN74] and the Andean regions of South America. [FN75]

Witchcraft accusations against older women in Africa may be, in part, the result of economic pressures on poverty-stricken families.*401 [FN76] Edward Miguel argues that family members may seek to rid themselves of older female relatives who they view as economic burdens by accusing them of witchcraft. [FN77] A combination of poverty and gender discrimination may also lead poor communities to regard older females, already marginalized because of their gender and age, as witches, and as the cause of the community's economic woes. [FN78] Instead of blaming the complex economic system that has left them in poverty, economically stagnated communities may instead turn against the weaker members of their society and blame older women for the lack of economic development. [FN79]

The economic dimensions of gendered witchcraft accusations are also tied to women's complex relationships to property. Witchcraft accusers may target women who have secured an inheritance or property, and are therefore operating outside of traditional gender roles, in an effort to strip them of their assets. [FN80] In addition, women who are accused of witchcraft and lack access to property may also be more susceptible to banishment from their communities. Accusers can easily remove women from the community who do not own land or physical homes. By targeting the most marginalized members of the community, accusers increase the likelihood that their accusations will be successful. [FN81]

The Leitner/CHREAA mobile clinic observed that it was often relatives who accused older female victims of witchcraft. Samuel Chiwa and Jackson Chisulo, for instance, are cousins who accused their seventy-year-old aunt of practicing witchcraft. As many as ten other relatives had also accused the aunt of witchcraft. Cleo Buseje claimed that her grandmother-in-law had cast a spell on Cleo's three-year-old daughter. Isaiah Asale's grandmother had been accused of witchcraft by her own son. All of our cases involved individuals from the Chewa, a matrilineal ethnic group, and these intra-family accusations may also be reflective of the centrality of accusations within matrilineages. [FN82]

*402 Beliefs in the matrilineal inheritance of witchcraft practice and the male-dominated power structures that identify and decide the fate of witches lead to the further targeting of women. [FN83] Some communities believe that the practice of witchcraft is passed from mother to daughter through matrilineal linkage; this belief is present among the Akans, [FN84] Mamprusi, and Tallensi [FN85] of Ghana, South Africa's Northern Sotho [FN86] and Lovendu, [FN87] and the Gusii of southeastern Kenya. [FN88] The male-dominated social structures that identify witches and rule on their fate also illuminate the gendered nature of witchcraft accusations. [FN89] Witchdoctors who claim to be able to identify witches are often men. [FN90] Women accused of witchcraft are bound by the verdicts of groups of elder men who dominate traditional community leadership structures. [FN91] Women are often excluded from these powerful groups, and thus it is primarily men deciding the fate of women accused of witchcraft. [FN92]

Although women are disproportionately the victims of witchcraft accusations, the young men who attack older women they believe to be witches often “do not think they are killing weak and marginal members of society.” [FN93] For instance, some community members in Soweto, South Africa, believe that women will generally resort to witchcraft, rather than physical force, as a mode of violence because of their relative lack of physical strength. [FN94] Thus, individuals may view elderly women suspected of witchcraft not as socially weak and marginalized but as extremely powerful and dangerous. [FN95]

C. Children and Witchcraft Accusations

In countries like the Democratic Republic of Congo and Angola, accusations of witchcraft against children appear to be linked to *403 extreme poverty as parents seek to reduce the family's financial burden. [FN96] Changes in family structures, in particular the relationship between parents and children, brought about by urban life and the spread of capitalism are also thought to drive accusations against children. [FN97] Armed conflict, which destroys family networks and leaves many children in vulnerable positions, is another contributing factor. [FN98]

Children who stand out in some way are at particular risk of being accused of witchcraft, including albino children, children who are exceptionally bright or outspoken, autistic children, those born with birth defects, and children who exhibit particularly withdrawn or aggressive behavior. [FN99] Children who have lost one or both parents are also at higher risk, as they lack the protection of adults and may be sent to live with distant relatives who view them as an unwanted nuisance. [FN100]

At the Leitner/CHREAA clinic, most of the individuals accused of witchcraft were either older women or children. There was usually a link between these two groups; the cases and allegations brought to the clinic often involved children who had been bewitched or who were being taught witchcraft by older women. [FN101] These cases manifested differently than the phenomenon of child-witches described above in countries such as Angola and the Democratic Republic of Congo. [FN102] The children in Malawi were both feared and pitied; they were seen as bewitched, and therefore blameless, but they were also seen as a potential danger to the family or community. Worried mothers who approached the Leitner/CHREAA clinic repeated similar stories: “My child is telling me her grandmother takes her away at night;” “I think my neighbor [a widow in her seventies] is teaching my children witchcraft;” “My child is saying she has been ordered to kill her grandmother.” The *404 older women accused of bewitching the children were perceived to be the true evildoers. Despite this, the allegedly bewitched children were still subjected to treatments from witch doctors or an exorcism to try to break the spell of bewitchment. The conceptualization of witchcraft as something taught by old women to children, and the subsequent suspicions raised against both, are common in many parts of Africa. [FN103]

IV. Best Practices of the Leitner/CHREAA Witchcraft Mobile Legal Aid Clinic: Case Studies

In this Section, we use case studies of individual clients to illustrate the strategies the Leitner/CHREAA team found most helpful in preventing and halting witchcraft accusations during our legal-aid clinic.

A. Offering Clients Alternative Explanations for Phenomena Attributed to Witchcraft

When there was a clear scientific explanation for an event that a client had attributed to witchcraft, the Leitner/CHREAA goal was simple: present the client with the real non-witchcraft related cause of misfortune. Al-

though the goal was never to categorically dispel the client's belief in witchcraft in all circumstances, [FN104] when science did provide an explanation for phenomena attributed to the occult, the Leitner/CHREAA clinic presented this information to its clients, who were free to engage or disregard.

Thomas Ateefah, a seventeen-year-old albino high school student who dreams of becoming a lawyer, came to the Leitner/CHREAA clinic with his schoolmates, curious about the status of Malawi's Witchcraft Act. Thomas inquired whether it is illegal to accuse someone of witchcraft, and he was puzzled when informed that Malawian law outlaws it. He asserted that frustrated farmers in his village, who believed they had been cheated out of government agricultural subsidies, had cursed the village by swearing that the rains would disappear. Thomas was perplexed that witchcraft accusations against the disgruntled farmers were illegal because his village had subsequently suffered through periods without rain to sustain their crops. He asked the Leitner/CHREAA clinic members*405 how the lack of rains could be the result of anything but witchcraft.

Malawi has suffered a series of frequent droughts. [FN105] The Leitner/CHREAA clinic demonstrated to Thomas that science and climate change, not witchcraft, explained the village's drought. The results of drought in rural communities sustained by subsistence farming are often catastrophic. [FN106] The loss of agricultural production caused by drought leads to food insecurity, and scarcity results in rising food prices. [FN107] In 2005, a drought swept across southern Africa affecting 12 million people. [FN108] It is understandable why such devastating results coupled with a lack of knowledge about climate change led Thomas to attribute the lack of rains to witchcraft. Thomas was deeply engaged in his conversation with the Leitner/CHREAA clinic about drought and receptive to the suggestion that the lack of rains was not the result of witchcraft but easily explained by science. He peppered the Leitner/CHREAA clinic with questions about drought and confessed that in the past he had accused someone of witchcraft but now realized that he should refrain from doing so.

Samuel Chiwa and Jackson Chisulo, cousins who attended the clinic seeking a legal basis to accuse their elderly aunt of witchcraft, reasoned that witchcraft had to exist in the world because there was no other explanation for the sudden deaths of seemingly healthy people that plagued their community. Life expectancy in Malawi is a meager thirty-six years. [FN109] Malawi has one medical doctor per 50,000 people, [FN110] with many rural people living outside the reach of the doctors clustered in urban centers. When Malawians unexpectedly succumb to disease, their surviving relatives and friends have little access to autopsies or other methods of modern medicine that provide cause of death. The family's grief necessitates an explanation when medical science is unavailable to provide*406 one. When unexplained deaths strike, people often seek out witchdoctors who routinely attribute the deaths to witchcraft and often claim to have identified the alleged witch who caused the misfortune. Both Samuel and Jackson were somewhat receptive to our contention that seemingly inexplicable deaths can often be explained through science. They noted that most Malawians do not have access to medical doctors who could provide them with these scientific explanations.

Patty Bomani, the mother of four children all accused of witchcraft, came to our clinic struggling to decipher if her children's unruly behavior-- throwing stones, disrespecting their elders, and performing poorly in school-- was a sign that they were witches. Patty noted that her children themselves had never claimed to be witches. To point Patty toward non-witchcraft related explanations for her children's behavior, the Leitner/CHREAA clinic asked her if she thought there might be other causes for her children's conduct. "Sometimes I think they are witches, but other times I think their behavior might have something to do with my husband's background," she answered. When her husband was young, he misbehaved much in the same way her children did. Over time, her husband matured and outgrew his rowdy behavior. "Maybe your children are just misbehaving as your husband did when he was young," Leitner/CHREAA clinic members suggested. "Yes, maybe they will grow up and

change the way he did, but maybe they know something about witchcraft,” Patty replied, considering the two possibilities. The dialogue was meant to encourage Patty to independently identify possible alternative explanations for her children's behavior, and once she did, to capitalize on our momentum.

Based on Patty's description of her children's behavior it was clear that they were simply misbehaving as many normal adolescents do. The Leitner/CHREAA clinic discussed with Patty the many reasons that children misbehave, such as difficulties in school or the family or the normal “growing pains” of adolescence. She intently listened and asked, “Do you believe my children will be good like their father?” “Absolutely,” we replied. The Leitner/CHREAA clinic used the law to capitalize on this discussion and strengthen Patty's resolve to protect her children from accusations of witchcraft. Patty learned that it is illegal for her friends to accuse her children of witchcraft: “You have the right to protect your children from accusations of witchcraft. You have the right to believe that your children are good--you know them best. The *407 more confident you are in saying that your children are not witches, the more people will listen to you and believe you.”

“Sometimes I have not backed up my children because of how they behave and because I was not sure they are not witches,” Patty confessed. “But I've heard everything you've said and I now have a new idea of how to deal with the situation. While I used to stand behind the accusers of my children, now I understand that I need to protect my children. I will tell the accusers what the law is and what I've learned: that it is illegal for them to accuse my children of witchcraft.” The Leitner/CHREAA clinic also encouraged Patty to share this information with her husband so that he would support her in her newfound resolve.

The ultimate goal was to convince Patty to embrace alternative explanations for her children's behavior. Patty's own suggestion that her children's behavior could mirror her husband's ultimately positive journey through adolescence was particularly helpful in achieving this goal. Not all of the Leitner/CHREAA clinic's clients, however, were as open to alternative explanations regarding children and witchcraft. Elizabeth Bomani, Doris Shimanga, and Justice Phimsima were three friends who came to the Leitner/CHREAA clinic concerned about the bewitchment of children in their villages. They were seeking advice on what to do in situations where children reported that witches took them away at night to teach them witchcraft. The Leitner/CHREAA clinic suggested that these tales might be the result of the children's dreams or imaginations. Elizabeth, Doris, and Justice did not believe this was a plausible explanation.

When clients strongly rejected alternative explanations for events they attributed to witchcraft, the Leitner/CHREAA clinic accepted the client's rejection and presented other constructive suggestions for moving forward. In Elizabeth, Doris, and Justice's case, the Leitner/CHREAA clinic members suggested that when the women were confronted with a child claiming that someone is bewitching them they should not accuse the alleged witch, as it is against the law to do so, but seek mediation between the parties involved. When alternative explanations to witchcraft were unsuccessful, the Leitner/CHREAA clinic sought other solutions and tools to determine the best methods for each given situation.

***408 B. Using Provisions of the Witchcraft Act to Prevent and Halt Witchcraft Accusations**

The Leitner/CHREAA team encountered many cases in which clients sought legal advice on whether they could accuse someone of practicing witchcraft. These cases presented the unique opportunity to use the Witchcraft Act's protective elements to intervene before the often-irreversible harm of witchcraft accusations was realized. With the law's criminalization of witchcraft accusations as our foundation, the Leitner/CHREAA team was often able to convince potential accusers not to publicly indict their family or community members. Despite

many clients' general receptivity to the Witchcraft Act's protective elements, some clients remained skeptical and questioned what they viewed as the law's perplexing protection of witches. In other cases, when victims of witchcraft accusations inquired about their legal rights, the law provided us with a strong legal basis to send cease and desist notices on Leitner/CHREAA letterhead to the victims' accusers, outlining the Witchcraft Act's provisions that criminalize accusations of witchcraft.

Ava Asmaa, a twenty-two-year-old widow, sought our legal advice on whether she could make a witchcraft accusation against her uncle who she suspected of causing her romantic misfortunes. Since Ava's husband's death several years ago, all of her serious romantic relationships have ended shortly before they progressed to marriage. Ava's friends convinced her that this was the result of witchcraft and encouraged her to determine the witch responsible. Ava suspected her uncle because of his starring role in the recurring nightmares she had before the end of her romantic relationships. She believed the nightmares, in which her uncle chased her, were an ominous sign that he was the source of her misfortune. It seemed that Ava's mere presence at the clinic was a sign that, despite her stated desire to accuse her uncle of witchcraft, she was ambivalent about the prospect—convinced that he was to blame but nursing a nagging sense that it was not right to accuse him.

First, a Leitner/CHREAA-sponsored mediation between Ava and her uncle was proposed in the hopes that the parties' communication in a controlled, non-adversarial environment might help alleviate Ava's anxiety. Ava politely rejected this option and said that she only sought our legal counsel regarding her proposed action. Expressing sympathy for her situation, the Leitner/CHREAA team told Ava that our legal advice, based on the Witchcraft Act, was that she should not make an accusation of witchcraft against her uncle. *409 Despite Ava's disappointment, she decided to follow the legal advice; “I will leave it to God,” she said.

The Leitner/CHREAA team was also successful in preventing a potential accusation of witchcraft in Gloria Makamo's case. Gloria came to the clinic suggesting that a neighborhood child was a witch who had fallen under a spell cast by the child's grandmother. Gloria noted that some villagers had reported the grandmother to the police for bewitching the child, to no avail. The Leitner/CHREAA team encouraged Gloria to refrain from accusing either the child or the grandmother of witchcraft, based on the law's criminalization of accusations. She was initially confused as to why the accusers who had reported the child's grandmother to the police had not been arrested for engaging in witchcraft accusations if such action was illegal under the Witchcraft Act. The Leitner/CHREAA team discussed with Gloria that many police officers are unaware of or simply disregard the Witchcraft Act's complexities. Gloria, who appeared satisfied with the legal counsel, vowed to stop making accusations of witchcraft and said she would convey the message to members of her village.

The law against witchcraft accusations also aided in providing helpful legal assistance to victims who had already been accused of witchcraft. One of the most popular intervention methods was the drafting of Leitner/CHREAA cease and desist notices on behalf of victims, in Chichewa, the local language, requesting that accusers cease their accusations pursuant to the Witchcraft Act. Many clients who were victims of accusations appreciated and chose this intervention. They understood that the power of a professional, typed letter from a human rights organization carried a lot of weight in rural, poor communities. Highlighting the success of this approach is the case of Ruth Willy. After an incident in church, in which Ruth's son said “Amen” much louder than other congregation members, Ruth's friend Mrs. Livingstone began publicly accusing Ruth's son of being a witch, irreparably damaging their friendship. Ruth came to the clinic searching for measures she could take to protect her son from Mrs. Livingstone's accusations. The Leitner/CHREAA team offered to draft and send a legal notice to Mrs. Livingstone, outlining the provisions of the Witchcraft Act that criminalized accusations of witchcraft, stated that her actions were in violation of the law, and insisted she immediately cease the accusa-

tions. Ruth appreciated and eagerly accepted this popular option, as did many other of the Leitner/CHREAA clients in similar situations.

***410** Finally, the law against witchcraft accusations helped us in aiding progressive chiefs to identify a foundational basis for dissuading witchcraft accusations in their communities. Chief Kilembe, an older woman who serves as chief of an area near the clinic's location, came to speak with the Leitner/CHREAA team. She, like many of the Leitner/CHREAA Clinic's clients, was unaware of the Witchcraft Act's provisions, and came to the clinic to learn the law. Chief Kilembe had experienced many problems in her village caused by witchcraft. She was deeply concerned about violence resulting from witchcraft accusations, and had come up with her own solution well before the clinic started. She told the Leitner/CHREAA team, "I hold sessions in my village and tell people that they should refrain from accusing each other." When she learned that the Witchcraft Act criminalized accusations, she was thrilled. Knowledge of the Witchcraft Act gave her a legal foundation for the work she was already doing, and strengthened her resolve to continue her efforts. Chief Kilembe's concern about violence and her efforts to reduce the number of accusations in her village were impressive and encouraging; she demonstrated that views on witchcraft are not uniform in Malawi, and that some local leaders are already making efforts to protect those vulnerable to accusation.

C. Mediation: Powerful Tool to Resolve Witchcraft Cases

Paralegal organizations working in resource poor settings, particularly in the developing world, often use mediation as a tool to settle disputes. [\[FN111\]](#) If opposing parties in witchcraft conflicts agree to voluntary mediation, conducted by respected agents such as paralegals or village chiefs, it can be a powerful means of uncovering and resolving the roots of intra-familial and intra-communal conflicts which often manifest as witchcraft accusations. The case of Chisomo Kondwani is an example of a successful family mediation conducted during the Leitner/CHREAA mobile clinic. What at first blush appeared to be a witchcraft case was actually family disunity requiring mediation to break open the chains of communication.

Chisomo, a lean man in his sixties, arrived early in the morning on the mobile clinic's last day of operation, eager to be the first case of the day. As his eyes welled with tears, he said that he was desperate for assistance because his sisters and brother were accusing ***411** him of witchcraft, and he feared his family would soon irreparably break apart without outside intervention. Chisomo is one of ten surviving siblings. In 2006, before his father died he designated Chisomo, the second eldest son, as the family patriarch and guardian of the family's property. Chisomo believed his father bypassed his eldest son Elijah in favor of Chisomo because of Elijah's alcoholism. Elijah, furious over their father's deathbed snub, accused Chisomo of using witchcraft to cause their father's death. With a deep sense of sadness, Chisomo reported that all of his siblings now accuse him of witchcraft behind his back, especially when their children fall ill. "I have cried often about being accused," Chisomo noted with tears streaming down his face. "I only want my family to be unified as we were before my father died. I have often thought about moving away so that I will not feel the pain of my siblings accusing me of witchcraft." Despite these feelings of desperation, Chisomo believed his family's ties were not totally severed. He held out hope for reconciliation because his siblings, despite the witchcraft accusations still sought his assistance and counsel regarding other family disputes and challenges.

It was clear that witchcraft was simply a mask for deeper family issues within the Kondwani clan. If the family agreed to mediation, it was possible they could resolve their issues without resorting to damaging witchcraft accusations. Chisomo was thrilled with the option of a family mediation conducted by the Leitner/

CHREAA clinic. With his permission, his siblings were invited to mediation conducted by two CHREAA paralegals within a week of the initial meeting with Chisomo. Two of Chisomo's sisters, Ruth and Awurama, and his older brother, Elijah, voluntarily participated in the mediation and represented the other family members who were unable to attend.

During the mediation, Chisomo retold his side of the story, noting that because of his siblings' witchcraft accusations he was afraid to move into the new house that his children had built for him. At first, his siblings were defensive and denied ever accusing Chisomo of witchcraft. The Leitner/CHREAA team reminded the family of the non-adversarial nature of the proceedings and reassured the family members that the goal of the mediation was family re-unification, Awurama confided that, "We have been avoiding contact with Chisomo because he is a very hard and angry person whenever we approach him with our problems. He often swears at our children and us when we approach him." She requested that, instead, he receive them with "warmth and respect" when they seek his *412 assistance. Chisomo said that he was "joyful over the news" and vowed to change his attitude in order to relieve the tension between him and his siblings. "I will be a good man who will be watching my tongue," he promised. Chisomo then requested that his siblings stop accusing him of witchcraft. Ruth, on behalf of all the siblings, replied: "We are all more than happy to hear that Chisomo from now on will be respecting us warmly when we approach him. We have no problem to stop accusing Chisomo of practicing witchcraft."

At the end of the mediation, the once opposing parties warmly shook hands, thanked the Leitner/CHREAA team for facilitating the mediation, and stated that the mediation was better than a trial because it "restored unity" back to their family. The Kondwanis left the mediation chanting and celebrating as they headed back to their village together. This successful mediation demonstrates how witchcraft accusations are often a cover for underlying resentment and problems within families. In this case, witchcraft accusations masked a serious breakdown in family communication. Mediation can serve as a powerful tool because instead of playing into, and feeding, witchcraft accusations, it can uncover and resolve the real reasons for disputes.

D. Police Referrals

The Leitner/CHREAA clinic also used police referral letters to resolve witchcraft cases. On CHREAA letterhead, the clinic members drafted letters addressed to the nearest police station with a brief factual summary of a particular case. Each letter contained a paragraph detailing the provisions of Malawi's Witchcraft Act and emphasizing that the Witchcraft Act prohibits witchcraft accusations, and further emphasizing that the Leitner/CHREAA clinic trusted that the police would do their duty to address the matter. Clients could either bring the letter to the police immediately or keep the letter for future use. In some cases the Leitner/CHREAA team delivered letters to the police on the client's behalf.

Before the clinic started, the Leitner/CHREAA team worked to identify the types of cases that would be referred to police with the client's approval. Clients were encouraged to use mediation wherever feasible, but in cases where violence was imminent, or in which violence had already taken place, a police referral letter might be preferable. For cases where violence has already occurred, the Leitner/CHREAA clinic had a firm rule to refer those cases to the police immediately upon consent of the victim.

*413 Maya Mutandwa's case put this rule into action. Maya came to the clinic desperate to help her elderly mother, who had been attacked twice by a man who accused her of being a witch. Maya explained the backstory, which revealed a possible underlying motive for the accusation: "My mother lives on her employer's property. This man [the accuser] wants full-time work on the property, and he wants to stay in the house where my mother

is living. But the widow [the employer] tells him she does not have work for him. So I think he is trying to chase my mother away because he thinks he can get a job then.”

The accuser had been menacing Maya's mother for months, shouting drunken insults and accusations at her. After the first attack, Maya went to the police and asked them to investigate. The police said they would investigate, but as Maya explained, “This man buys them beer; he is friends with them. So they never investigated.” The second time the man attacked Maya's mother so forcefully that he knocked out some of her teeth. Maya reported the attack to the police, who promised to arrest him, but never did. Maya's mother recovered from both attacks, but Maya worried that it was only a matter of time before he attacked her mother again.

Rather than addressing a police referral letter to the lower-ranking officers who Maya had already spoken to twice; the Leitner/CHREAA clinic drafted a referral letter specifically addressed to the officer-in-charge at Maya's nearest police station. The Leitner/CHREAA team gave Maya the letter to deliver and believed that the organization's letterhead and a firm explanation of the law would produce better results than her past visits to the police. Maya also took CHREAA's contact information so that if the police were unresponsive, she would have someone else to call for help.

Ella Ligoya came to the clinic because she feared for her daughter's safety. Her twelve-year-old daughter, Zora, had been accused of witchcraft after their neighbor's daughter fell ill in January 2010. The neighbor swore to Ella, “If my daughter dies, I will kill Zora and bury them in the same coffin.” When the girl recovered, the neighbor ceased her threats, but the threats haunted Ella who did not know how to protect her daughter. She had gone to their village chief, who suggested she take Zora to a witch doctor, but Ella did not have enough money to do that.

The Leitner/CHREAA clinic first proposed mediation to resolve the issue between Ella and her neighbor, but Ella feared mediation would only anger her neighbor and renew the accusations against Zora. The Leitner/CHREAA team asked for a few minutes to discuss*414 options and the team found itself divided. Two of the team's paralegals thought a police referral letter would be inappropriate because it might anger Ella's neighbor—something Ella wanted to avoid. Two other team members worried that Zora was in danger and that the police needed to be informed. A senior CHREAA paralegal made an important point: If the police were not informed about the past threats, if the neighbor renewed her threats, the police would not realize how serious the situation was. He felt strongly that the police needed to know about the January threats and suggested that a letter to alert the police to the threats and let them know that no action was necessary at the present time, but requesting that they open a file on Ella's case. Ella approved of this idea and the Leitner/CHREAA team drafted and delivered a letter to the police station. Ella left the clinic after reviewing the steps she would take if her neighbor began threatening Zora again.

E. The Law is Not Always Adequate

During the mobile legal aid clinic, the Leitner/CHREAA team tailored potential legal solutions to each client's case, including legal advice dissuading clients from making witchcraft accusations, cease and desist notices informing parties of their legal obligation to refrain from making witchcraft accusations, mediation when appropriate, and referral letters to the police in serious cases of violence. In some cases, however, these legal options were not helpful or rejected by clients, necessitating creative non-legal interventions. At times, the law was simply unable to provide a satisfying outcome for every client. No case better displayed the need to engage non-legal interventions than the case of Selene and Emma Chabwera.

Over a year ago, Selene's nine-year-old daughter Emma began waking up every morning and saying that witches were taking her to the woods at night to teach her witchcraft. Selene, a gentle farmer and fiercely protective mother, soon noticed that Emma was also experiencing weight loss, mood swings, and chronic morning fatigue. Determined to help her daughter, Selene tried to save enough money to bring Emma to a powerful witchdoctor despite her suspicion that many are charlatans. Selene had heard about the Leitner/CHREAA mobile legal-aid clinic and came to the clinic for help. Selene found the Leitner/CHREAA's explanations of Malawi's witchcraft law to be unhelpful. She did not believe the law offered an appealing solution to her predicament. The *415 Leitner/CHREAA clinic had to seek creative solutions and asked Selene to bring Emma into the clinic.

During the first meeting, Emma told the Leitner/CHREAA team that the witches had punished her for discussing their nightly trips to the forest. "I've heard of other children who are also taken at night by witches," she said sadly. At one point, she said the "spirits" were watching her, and she became quiet and withdrawn. Selene and Emma truly believed something terrible had befallen Emma. Appeals to the law had proven inadequate, so the team attempted to use non-legal solutions. The goal of the intervention was for Selene and Emma, who were devout Christians who had fervently prayed for Emma's protection, to psychologically reject the idea that Emma was bewitched. While the Leitner/CHREAA team was a collection of atheists, Jews, Sikhs, Christians, and spiritualists, the team attempted to dislodge Selene's and Emma's belief that Emma was bewitched by appealing to their unwavering confidence in the protective, positive elements of their faith.

The Leitner/CHREAA first suggested that Selene and Emma chant nightly affirmations rejecting the idea that Emma is a witch. They were directed to repeat these affirmations when Emma awoke in the night and when other children teased her. The team, Emma, and Selene held hands in a circle and chanted in unison, "Emma is not a witch. Emma is a daughter of God." Repeating the chant in both English and the local language Chichewa, Emma eagerly looked around and followed the movement of each person's lips. The next day Selene and Emma returned to the clinic for a follow-up session. Selene and Emma reported that for the first time in a year Emma had slept peacefully through the night. The witches had not come to take her. Instead, Emma had a dream about the team and Selene forming a circle of protection around her. The Leitner/CHREAA team then wrote a "contract" to bind the group--a written affirmation in Chichewa rejecting the idea that Emma is, or ever was, a witch--and the team signed their names and gave it to Emma for safe-keeping. The team then repeated the affirmation; "Emma is not a witch. Emma is a daughter of God." CHREAA conducts monthly follow-up checks with Selene and Emma. Selene happily reports that Emma is thriving and blossoming. The approach in this case, although highly unconventional, was a success. In this instance, the intervention was psychological (for Selene and Emma it was spiritual) and not legal in nature. The combination of flexibility and creativity outside the law is essential when dealing with witchcraft cases.

***416 V. Concluding Reflections: Human Rights and Community-Based "Justice" in Witchcraft Cases**

The Malawi Witchcraft Act, and its prohibition on witchcraft accusations, is one of the most powerful tools for addressing the problem of witchcraft in Malawi. It was effective as protection for those who had been accused, in the form of cease and desist letters to the accuser or referrals to the police, and in dissuading people from making witchcraft accusations. For this reason, any reform of the Witchcraft Act should maintain the prohibition against witchcraft accusations. However, when discussing the existing Witchcraft Act with clients who believed they were victims of witchcraft, the chief complaint raised was that the Act was unfair to victims of witchcraft and overly protective of alleged witches. This response highlighted an important tension in our intervention: The victims of witchcraft accusations often expressed that our interventions were helpful, but some cli-

ents who viewed themselves as victims of witchcraft itself remained frustrated. They believed they, too, were fully entitled to justice, which they defined as punishment of the witch in question. [FN112] These individuals often hold an entirely different notion of how the framework of human rights should apply in these situations:

For people who live in a world with witches, the willingness of a person to practice witchcraft automatically cancels their rights to membership in the human community; indeed, it negates their claim to be considered human. If witches are something other than human, they can hardly claim human rights to protect themselves from the righteous anger and justice of the community. [FN113]

Thus, from the perspective of those who view themselves as victims of witches, it is they who are in danger of having their human rights violated, not those accused. Although we sympathized with the individuals who came to our clinic and truly believed occult forces were operating in their lives, from an international human rights perspective our primary goal remained the prevention of harm to and protection of victims of witchcraft accusations. But the complicated question remains: Is this type of community intervention delivering justice, if it only responds to half of the justice issue as the community understands it? While we acknowledge the importance of this question for those struggling to develop successful*417 methods of community-based intervention regarding witchcraft cases, the international human rights framework demands a conception of justice in these cases that prevents and addresses the kinds of harm disproportionately suffered by women and children in the case of witchcraft accusations.

[FNa1]. Clinical Associate Professor of Law, Fordham Law School; Founding Director, Walter Leitner International Human Rights Clinic. J.D. Harvard Law School; B.A. Columbia University.

[FNaa1]. Clinical Teaching Fellow, Walter Leitner International Human Rights Clinic, Fordham Law School. J.D. Harvard Law School; B.A. Princeton University.

The authors co-supervised the Leitner/CHREAA experimental mobile legal-aid witchcraft clinic upon which this Article is based. We wish to thank Victor Mhango, Lusako Phambana, Siphwe Maliherah, Joyness Dziwani, and the rest of the team at the Center for Human Rights, Education, Advice, and Assistance; Helen Shin, Esq., pro-bono clinical supervisor in the Walter Leitner International Human Rights Clinic; Fordham Law School alumni and students Amit Aulakh, Jocelyn Brooks, Alexandra Rizio, and Ted Sangalis; and research assistants Rita Astoor, Jocelyn Brooks, and Allison Chandler. We thank Adam Ashforth for a withering and invaluable critique of an earlier draft of this Article; our gratitude, however, does not imply that Dr. Ashforth is in agreement with our analysis or conclusions.

[FN1]. Chi Mgbako, *Witchcraft Legal Aid in Africa*, N.Y. Times (Feb. 17, 2011), <http://www.nytimes.com/2011/02/18/opinion/18iht-edmgbako18.html>.

[FN2]. Aleksandra Cimpric, *Children Accused of Witchcraft: An Anthropological Study of Contemporary Practices in Africa* 44 (2010); see also Pilirani Semu-Banda, *Witchcraft and Mob Justice in Malawi*, WIP (May 21, 2008), http://www.thewip.net/contributors/2008/05/mob_justice_in_malawi_accused.html (chronicling various attempts to “cure” those accused of witchcraft, often with fatal results for the “patients”).

[FN3]. While the most publicized “witch camps” are in Northern Ghana, see Yaba Badoe, *What Makes a Woman a Witch?*, 5 *Feminist Afr.* 37 (2005) (report highlighting the narrative of accused witches in the northern region of Ghana), there are camps throughout Southern and East Africa, see Cimpric, *supra* note 2, at 5. In fact, local police forces in South Africa have helped to create official “witch sanctuaries” in the Northern Province,

intended to prevent witch killings in South African villages by providing alleged witches a refuge. See Rena Singer, *New South African Law Targets Old Fear of Occult*, *Christian Sci. Monitor* (Dec. 6, 2000), <http://www.csmonitor.com/2000/1206/p7s2.html>.

[FN4]. HelpAge Int'l, *Discrimination Against Older Women in Burkina Faso* 5 (July 2010).

[FN5]. See Cimpric, *supra* note 2, at 37-39 (describing various procedures used by witch doctors); Nelson Tebbe, *Witchcraft and Statecraft: Liberal Democracy in Africa*, 96 *Geo. L.J.* 183, 195 (2007) (discussing the belief that diviners are able to detect witchcraft).

[FN6]. Cimpric, *supra* note 2, at 37-38. The authors distinguish witch doctors, who generally advertise their powers of divination and their ability to harness the same occult forces that witches do, from traditional healers, who may claim spiritual powers but who also use indigenous knowledge of medicine and medicinal plants to heal physical illness. For more on traditional healers, see Tebbe, *supra* note 5, at 194-95.

[FN7]. Mark Dummett, *DR Congo's Unhappy Child 'Witches'*, *BBC News* (Jan. 17, 2003), <http://news.bbc.co.uk/2/hi/africa/2660757.stm>. In the name of exorcism, those accused of witchcraft are subjected to punishments such as being thrown into a river, buried alive, or other forms of torture. Leo Igwe, *Dismantling the Myth of Witchcraft in Africa*, *AllAfrica* (Aug. 28, 2011), <http://allafrica.com/stories/201108290373.html>; John Ukah, *Child Abuse - Stop These Fake Pastors*, *AllAfrica* (Oct. 27, 2010), <http://allafrica.com/stories/201010290583.html>.

[FN8]. Daniel Dickinson, *Tackling 'Witch Murders' in Tanzania*, *BBC News* (Oct. 29, 2002), <http://news.bbc.co.uk/2/hi/africa/2372907.stm>; Silvia Federici, *Witch-Hunting, Globalization, and Feminist Solidarity in Africa Today*, *Commoner*, at 7 (2008), http://www.commoner.org.uk/wp-content/uploads/2008/10/federici_witch-hunt.pdf; Louis Okamba, *Church Takes In The Forgotten Senior Citizens*, *Inter Press Service* (June 14, 1999), <http://www.hartford-hwp.com/archives/35/072.html>; Lucy Jones, *Hundreds Accused of Witchcraft in Central African Republic, but Many Deaths Actually From AIDS*, *San Francisco Chron.* (Aug. 10, 2002), http://articles.sfgate.com/2002-08-10/news/17555881_1_central-african-republic-bangui-witchcraft.

[FN9]. Igwe, *supra* note 7; Mohammed Diwan, Note, *Conflict Between State Legal Norms and Norms Underlying Popular Beliefs: Witchcraft in Africa as a Case Study*, 14 *Duke J. Comp. & Int'l L.* 351, 353 (2004) (discussing anti-witchcraft laws in South Africa, Zimbabwe, Tanzania, and Cameroon).

[FN10]. See Mgbako, *supra* note 1.

[FN11]. See Gregory Gondwe, *Witchcraft Strife Storms Malawi*, *Ground Rep.* (Feb. 3, 2008), <http://www.groundreport.com/World/Witchcraft-Strife-Storms-Malawi/2854513>; David Smith, *Dozens Jailed for Witchcraft in Malawi*, *Guardian* (Oct. 14, 2010), <http://www.guardian.co.uk/world/2010/oct/14/dozens-jailed-witchcraft-malawi-women>; Felix Mponda, *Malawi's 'Witches' Challenge Colonial-era Sorcery Law*, *Mail & Guardian Online* (June 5, 2011), <http://mg.co.za/article/2011-06-05-malawis-witches-challenge-colonialera-sorcery-law>; Malawi Plea to Free Convicted 'Witches', *BBC News* (Oct. 13, 2010), <http://www.bbc.co.uk/news/world-africa-11535155>.

[FN12]. Mponda, *supra* note 11; Malawi Plea to Free Convicted 'Witches', *supra* note 11.

[FN13]. See, e.g., Walter Leitner Int'l Human Rights Clinic, *A Handbook for the Justice and Peace Commission* 63 (2008).

[FN14]. In order to publicize the clinic, the Leitner/CHREAA team conducted radio advertisements and made public announcements and hung banners at the village sites notifying community members of the opportunity to receive legal services regarding witchcraft cases. During the operation of the clinic, a senior CHREAA paralegal used a P.A. system to attract passers-by to the clinic. CHREAA Probono Program Reaches Out to 39 Homicide Inmates, Center for Hum. Rts. Educ. Advice & Assistance, http://chreaa.org/?page_id=11 (last visited Jan. 23, 2012).

[FN15]. The names of all clients in this Article have been changed to protect client confidentiality.

[FN16]. See Mgbako, *supra* note 1.

[FN17]. *Id.*

[FN18]. *Id.*

[FN19]. International Covenant on Civil and Political Rights art. 17, Dec. 16, 1966, 999 U.N.T.S. 171.

[FN20]. International Covenant on Economic, Social and Cultural Rights art. 12, Dec. 16, 1966, 993 U.N.T.S. 3.

[FN21]. U.N. Comm. on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Concluding Observations: Angola*, P 31, U.N. Doc. CRC/C/15/Add.246 (Nov. 3, 2004); U.N. Comm. on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Concluding Observations: Democratic Republic of Congo*, P 79, U.N. Doc. CRC/C/COD/CO/2 (Feb. 10, 2009).

[FN22]. U.N. Comm. on the Elimination of Discrimination against Women, *Concluding Comments: India*, P 26, U.N. Doc. CEDAW/C/IND/CO/3 (Feb. 2, 2007); U.N. Comm. on the Elimination of Discrimination against Women, *Concluding Observations: Papua New Guinea*, P 28, U.N. Doc. CEDAW/C/PNG/CO/3 (July 30, 2010); U.N. Comm. on the Elimination of Discrimination against Women, *Concluding Observations: United Republic of Tanzania*, P 143, U.N. Doc. CEDAW/C/TZA/CO/6 (July 18, 2008); U.N. Comm. on the Elimination of Discrimination against Women, *Concluding Observations: Mozambique*, U.N. Doc. CEDAW/C/MOZ/CO/2 (June 1, 2007); U.N. Comm. on the Elimination of Discrimination against Women, *Concluding Observations: Ghana*, PP 21-22, U.N. Doc. CEDAW/C/GHA/CO/5 (Aug. 25, 2006); U.N. Comm. on the Elimination of Discrimination against Women, *Concluding Comments: South Africa*, P 33, U.N. Doc. CEDAW/C/1998/II/L.1/Add.3 (July 10, 1998).

[FN23]. *Concluding Observations: United Republic of Tanzania*, *supra* note 22, P 143; *Concluding Observations: India*, *supra* note 22, P 27.

[FN24]. U.N. Human Rights Council, Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, PP 57, 68, U.N. Doc. A/HRC/11/2 (May 27, 2009) (Philip Alston).

[FN25]. See Cimpric, *supra* note 2, at 16; Jill Schnoebelen, *Witchcraft Allegations, Refugee Protection and Human Rights: A Review of the Evidence* 3, 8-11 (U.N. High Comm'r for Refugees, Research Paper No.169, 2009).

[FN26]. Convention on the Rights of the Child art. 19, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

[FN27]. Convention on the Elimination of All Forms of Discrimination against Women art. 2(f), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

[FN28]. See CRC, *supra* note 26, art. 19; CEDAW, *supra* note 27, art. 2(f).

[FN29]. Jeff Crisp, U.N. High Comm'r for Refugees, Witchcraft and Displacement, 31 *Forced Migration Rev.* 74 (2008).

[FN30]. U.N. High Comm'r for Refugees, Guidelines on Int'l Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, P 24, U.N. Doc. HCR/GIP/04/06 (Apr. 28, 2004).

[FN31]. *Id.*

[FN32]. Cimpric, *supra* note 2, at 39.

[FN33]. *Id.*

[FN34]. *Id.* at 39 n.76.

[FN35]. *Id.*; Malawi Law Comm'n, Witchcraft Act Review Programme 10-12 (Issues Paper 2009), available at http://www.lawcom.mw/docs/ip_witchcraft.pdf.

[FN36]. Witchcraft Act Review Programme, *supra* note 35, at 11-12.

[FN37]. Criminal Law (Codification and Reform) Act 9:23 of 2004 §§ 97-102 (Zim).

[FN38]. *Id.* § 99.

[FN39]. See generally Tebbe, *supra* note 5, at 185-89 (discussing the need to reform South Africa's witchcraft law due to the popularity of occult practices).

[FN40]. Jones, *supra* note 8.

[FN41]. The Witchcraft Ordinance, No. 4 (1911), Nyasaland Government Gazette, Vol. 18, at 99 (Malawi).

[FN42]. *Id.* § 2.

[FN43]. *Id.*

[FN44]. *Id.* §§ 4-6.

[FN45]. *Id.* §§ 6, 8.

[FN46]. See Malawi Const. art. 135(a); Witchcraft Act Review Programme, *supra* note 35, at 5.

[FN47]. Witchcraft Act Review Programme, *supra* note 35, at 3, 5, n.6-10.

[FN48]. Witchcraft Act, Cap 7:02, Laws of Malawi.

[FN49]. State-sanctioned traditional courts instituted by Prime Minister Hastings Banda were largely discredited due to Banda's undue influence over their decisions. After Banda left power in 1994, these courts were reformed and their jurisdiction is now limited strictly to civil matters that fall under customary law. See Christina Jones, *The Exogenous and the Indigenous in the Arguments for Reforming the Traditional Courts System in Malawi*, 32 *Afr. Spectrum* 281, 288, 292 (1997); Malawi Const. art. 110(3).

[FN50]. Adam Ashforth, *Witchcraft, Violence, and Democracy in South Africa* 114 (2005) (internal citations omitted).

[FN51]. Monica Hunter Wilson, *Witch Beliefs and Social Structure*, 56 *Am. J. Soc.* 307, 311, 313 (1951).

[FN52]. Max Gluckman, *Custom and Conflict in Africa* 94 (1955).

[FN53]. *Id.* at 98.

[FN54]. See Mary Douglas, *Techniques of Sorcery Control in Central Africa*, in *Witchcraft and Sorcery in East Africa* 123, 124 (John Middleton & E.H. Winter eds., 1963) (“[W]itchcraft beliefs and accusations provide a means of rupturing relations which have become intolerably strained.”). Mary Douglas notes that Clyde Mitchell, Max Marwick, John Middleton and Victor Turner all “interpreted the accusation of witchcraft primarily as an instrument for breaking off relations. The accuser [per these anthropologists] was using a legitimate form of attack which absolved him of unwanted obligations.” Mary Douglas, *Introduction to Witchcraft Confessions & Accusations*, at xxi (Mary Douglas ed., 1970).

[FN55]. Victor Turner describes beliefs regarding witchcraft as “attempts to explain the inexplicable and control the uncontrollable by societies with only limited technological capacity to cope with a hostile environment.” Victor W. Turner, *Witchcraft and Sorcery: Taxonomy Versus Dynamics*, 34 *J. Int'l Afr. Inst.* 314, 315 (1964).

[FN56]. See generally John Comaroff & Jean Comaroff, [Policing Culture, Cultural Policing: Law and Social Order in Postcolonial South Africa](#), 29 *Law & Soc. Inquiry* 513 (2004).

[FN57]. *Id.* at 526.

[FN58]. Ashforth, *supra* note 50, at 114.

[FN59]. *Id.* (internal citations omitted).

[FN60]. *Id.* (“While this [functionalist] literature has revealed much about African social life, it suffers from the singular defect ... of treating statements that Africans clearly intend as literal, or factual, as if they were meant to be metaphorical or figurative. One of the principal challenges facing the writer on African witchcraft today is that of building upon the insights of these earlier writers while treating the statements of African interlocutors as literal--without thereby reverting to prejudices about African irrationality.”); Adam Ashforth, *Reflections on Spiritual Insecurity in a Modern African City (Soweto)*, 41 *Afr. Stud. Rev.* 39, 64-65 (1998).

[FN61]. See Adam Ashforth, *Madumo: A Man Bewitched* 97 (2000).

[FN62]. See, e.g., *supra* notes 10-13 and accompanying text.

[FN63]. See Mensah Adinkrah, Witchcraft Accusations and Female Homicide Victimization in Contemporary Ghana, 10 *Violence Against Women*, 325, 338-40, 345-46 (2004); Hallie Ludsin, *Cultural Denial: What South Africa's Treatment of Witchcraft Says for the Future of Its Customary Law*, 21 *Berkeley J. Int'l L.* 62, 80 (2003); Maakor Quarmyne, *Witchcraft: A Human Rights Conflict Between Customary/Traditional Laws and the Legal Protection of Women in Contemporary Sub-Saharan Africa*, 17 *Wm. & Mary J. Women & L.* 475, 476, 478 (2011).

[FN64]. See Adinkrah, *supra* note 63.

[FN65]. U.N. Econ. and Soc. Council, Comm'n on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective*, P 46, U.N. Doc. E/CN.4/2002/83 (Jan. 31, 2002) (Radhika Coomaraswamy) [hereinafter *Human Rights of Women and the Gender Perspective*].

[FN66]. Schnoebelen, *supra* note 25, at 12.

[FN67]. *Id.*

[FN68]. *Id.* at 21.

[FN69]. Edward Miguel, *Poverty and Witch Killing*, 72 *Rev. of Econ. Stud.* 1153, 1156 (2005); Adinkrah, *supra* note 63, at 346; *Human Rights of Women and the Gender Perspective*, *supra* note 65, P 45; *Case Study: The European Witch-Hunts, c. 1450-1750 and Witch Hunts Today*, *Gendercide*, http://www.gendercide.org/case_witchhunts.html (last visited Jan. 23, 2012).

[FN70]. Susan Drucker-Brown, *Witchcraft, Subversion and Changing Gender Relations*, 63 *Africa: J. of the Int'l Afr. Inst.* 531, 546 (1993).

[FN71]. Schnoebelen, *supra* note 25, at 9.

[FN72]. Puja Roy, *Sanctioned Violence: Development and the Persecution of Women as Witches in South Bihar*, 8 *Dev. in Prac.* 136, 143-44 (1998).

[FN73]. *Human Rights of Women and the Gender Perspective*, *supra* note 65, P 47.

[FN74]. *Id.* P 48; Schnoebelen, *supra* note 25, at 11.

[FN75]. Miguel, *supra* note 69, at 1156.

[FN76]. See *id.*

[FN77]. See *id.* at 1157.

[FN78]. Adinkrah, *supra* note 63, at 348.

[FN79]. *Id.*

[FN80]. Isak Niehaus, *Witchcraft and the Sexuality of Evil in the South African Lowveld*, 32 *J. of Religion in Afr.* 269, 276 (2002).

[FN81]. See Ludsin, *supra* note 63, at 83.

[FN82]. “Sorcerers never attack strangers ... they always attack their relatives. As the Cewa trace descent through women ... sorcerers confine their attacks to their matrilineal relatives.” M.G. Marwick, *Sorcery In Its Social Setting: A Study of the Northern Rhodesia Cewa 3* (1965) (internal quotations omitted).

[FN83]. See Adinkrah, *supra* note 63, at 335; Ludsin, *supra* note 63, at 76, 80-81; Quarmyne, *supra* note 63, at 478-79; Miguel, *supra* note 69, at 1158.

[FN84]. Adinkrah, *supra* note 63, at 335.

[FN85]. Drucker-Brown, *supra* note 70, at 533.

[FN86]. Niehaus, *supra* note 80, at 273; Ludsin, *supra* note 63, at 76, 80.

[FN87]. Quarmyne, *supra* note 63, at 478-79.

[FN88]. *Id.*

[FN89]. Dirk Kohnert, *Magic and Witchcraft: Implications for Democratization and Poverty-Alleviating Aid in Africa*, 24 *World Dev.* 1347, 1348 (1996).

[FN90]. See Miguel, *supra* note 69, at 1155-56; Kohnert, *supra* note 89, at 1348.

[FN91]. Miguel, *supra* note 69, at 1158.

[FN92]. *Id.*

[FN93]. Ashforth, *supra* note 50, at 76.

[FN94]. See *id.* at 74.

[FN95]. *Id.* at 75-76.

[FN96]. See Dummett, *supra* note 7; Katrina Manson, *Congo's Children Battle Witchcraft Accusations*, Reuters (July 22, 2010), <http://af.reuters.com/article/worldNews/idAFTRE66L2TT20100722?sp=true>; Cimpric, *supra* note 2, at 2; Sharon LaFraniere, *African Crucible: Cast as Witches, Then Cast Out*, N.Y. Times (Nov. 15, 2007), <http://www.nytimes.com/2007/11/15/world/africa/15witches.html>; “Witchcraft” An Excuse for Child Abuse in Angola, African Online News (Dec. 12, 2006), <http://www.afrol.com/articles/23283>; Angola Witchcraft's Child Victims, BBC News (July 13, 2005), <http://news.bbc.co.uk/2/hi/4677969.stm>.

[FN97]. Cimpric, *supra* note 2, at 2, 21.

[FN98]. See *id.* at 23.

[FN99]. *Id.* at 2, 17; Konye Obaji Ori, *Africa: Child-Witchcraft or Autism Symptoms?*, Afrik News (July 9, 2010), <http://www.afrik-news.com/article17924.html>.

[FN100]. Cimpric, *supra* note 2, at 17, 23.

[FN101]. See *id.* at 19.

[FN102]. See generally *id.*

[FN103]. *Id.* at 19.

[FN104]. The authors and the Leitner/CHREAA clinic acknowledge that there are occurrences that defy scientific explanation.

[FN105]. Futoshi Yamauchi et al., *Natural Disasters, Self-Insurance, and Human Capital Investment: Evidence from Bangladesh, Ethiopia, and Malawi*, at vii (Int'l Food Policy Research Inst. Discussion Paper No. 00881, 2009).

[FN106]. Karl Pauw et al., *Droughts and Floods in Malawi: Assessing the Economywide Effects 1* (Int'l Food Policy Research Inst. Discussion Paper No. 00962, 2010).

[FN107]. *Id.* at v.

[FN108]. Craig Timberg, *Drought Magnifies Hunger, Suffering of Children in Malawi*, *Wash. Post* (Nov. 4, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/03/AR2005110302257.html>.

[FN109]. *Malawi Stops HIV Cash Allowance for Civil Servants*, *BBC News* (June 9, 2011), <http://www.bbc.co.uk/news/13713109>.

[FN110]. *HIV & AIDS in Malawi*, *AVERT*, <http://www.avert.org/aids-malawi.html> (last visited Jan. 23, 2012).

[FN111]. See *Handbook for the Justice and Peace Commission*, *supra* note 13, at 14-69 (highlighting numerous paralegal organizations in the developing world that use mediation).

[FN112]. Ashforth, *supra* note 50, at 249 (“Despite the promise of occult revenge in the course of healing, the desire to bring the responsible person to justice remains strong among people finding themselves victims of witchcraft.”).

[FN113]. Ashforth, *supra* note 61, at 260.
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