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## Enforcement of the Witchcraft Law in Tanzania

### *A Socio-Legal Challenge*

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### Abstract

For many years, the witchcraft law has been in existence as a mechanism of regulating witchcraft activities in Tanzania. The law was enacted aiming at punishing people involved in witchcraft and related offence under the law. This article attempts to identify the history, application, achievements of the Witchcraft law and subsequent challenges facing it and its application in Tanzania. Following this analysis, the article argues that the law has fallen short of achieving its targeted objective as envisaged in it. The nature and secrecy of the commission of the offence, especially in establishing that a person is a witch, is considered to be responsible for the failure to meet its significant objective. In people's failure to provide evidence of one being witch, or possession of witchcraft instruments, the witchcraft law favors the accused. The article suggests that the witchcraft law be repealed from the statutes book because its applicability in the Tanzanian context is problematic; instead, extensive education to Tanzanian societies should be geared forthwith.

**Keywords:** Witchcraft, Instruments of witchcraft, Supernatural Power, Occult Power, Sorcery, Witchcraft Law

### 1. INTRODUCTION

Tanzania, like other countries in the world, is a country adhering to constitutional principles; important of which is the rule of law. Implementation of the principle on the other continuum accommodates and safeguards human rights or violates them depending on the set law. Various laws have been enacted in Tanzania to deal with various issues facing people in the country. One of such issues is witchcraft and its existence in the Tanzanian context. Despite the existence of the law, yet the problem of witchcraft beliefs and the effects of acts accompanying these beliefs persist. People, especially old people, have been killed due to witchcraft allegations in various places of the country. People who feel to have been bewitched exert punishments on the accused witches with illegal measures such as beatings, mob

violence, property destruction, or other extreme measures (Mgbako & Glenn, 2011:43). Chisoko (2016:74), for instance, did research in Rukwa region in 2016 regarding the life and social problems facing aged people. He found out that most old people face problems of witchcraft allegations among other problems. According to Chisoko, witchcraft allegations separate parents from their children and some of them hunted and destroyed together with their wealth (cf. Machangu, 2015; Kibuga & Dianga, 2000:30).

Furthermore, Chisoko reports on an existence of a group called SACCOS, a special group of youth at Singiwe village, alleged of destructing houses of people accused of witchcraft. This group of youth planned to eliminate all old people in order to get rid of witchcraft in the village. In the interview between Chisoko and the street chairperson at

Singiwe village, the street Chairperson averred that the killings happened recently. The Chairperson stated:

There was a football match that day. Immediately after the football match young people together with women shouting with ululations (*vigelegele*) entered in the street hunting the sorcerers and sorceresses. The first to be killed was Nachifunda who was hit by clubs and one boy (name withheld) chopped the woman by an axe thrice around the head. The dead body was left naked. The second to be killed was Nachizombo; at first she had hid (sic) herself near the bushes surrounding her house since she lived outside the village. The troop after missing her in the house decided to burn the house. After that she cried from her hiding place [saying:] ‘you have burned even my jaba (big plastic container)’ [a vessel] with which she used to store some of her properties. Having been seen ... she was caught and bitten to death. (Chisoko, 2016:74; cf. Kibuga & Dianga, 2000:29)

The above findings by Chisoko raise questions to us: How did the killers of suspects know beyond doubt that suspects were really witches? Could killers justify their witchcraft allegations in the court of law? How can the witchcraft law work in such context as the one described above? These questions, and the above incidents, indicate the seriousness of witchcraft allegations in various Tanzanian societies apart from Singiwe village in Rukwa despite the existence of the witchcraft law. Witchcraft allegations have been a motive behind the elders’ killings in various regions in Tanzania for years now. This motive contributes to the penetration of terrible acts of violence against unwilling victims and lead to exploitation and/or death of the accused (Msuya, 2016:189–204).

As pointed out above, among the enacted laws in Tanzania is the *Witchcraft Act* of the laws of the United Republic of Tanzania) (Cap 18 [R:E 2002] which, at the time of its enactment was aimed at regulating witchcraft activities in Tanzania, i.e., punishing witchcraft offenders. However, we argue in this article that despite its enactment, the enforcement of this witchcraft law is difficult, if not totally impossible, specifically in proving the witchcraft cases beyond reasonable doubts. Consequently, due to its impossibility, the law fails to meet its objective as envisaged in it. Therefore, this article argues for the need to revisit the law and see whether there is any standard of proof of witchcraft to justify its existence; and whether it needs some changes or, possibly, removing it from the statutes book.

## 2. A WITCH AND WITCHCRAFT: AN OVERVIEW

In this section we survey the meaning, the supposed instruments used in witchcraft, the background of witchcraft activities before moving to the introduction of witchcraft law itself in Tanzania and its purpose. Various scholars in social sciences have attempted to provide the meaning of the term “witch” and “witchcraft.” The term “witch,” on the one hand, can be described as “a person with an incorrigible, conscious tendency to kill or disable others by magical means,” or as someone “who secretly uses supernatural power for nefarious purposes.” (Quarmyne, 2011:475–507) On the other hand, “witchcraft” refers to the practices of a

witch, especially in black magic (Garner, 2009:1738). To these scholars witchcraft is a belief in the practice of magic to make things happen (Machangu, 2013:182). The term witchcraft covers a wide range of beliefs and practices that can vary immensely from place to place, even within a single community. It is a controversial and ambiguous practice shrouded in secrecy leading people to do things they do not understand. Generally, it can be defined as the practice of using supernatural powers, knowingly or unknowingly, to harm or even kill others in order to achieve ones’ personal goal (Alum *et al.*, 2009:6; cf. Manala, 2004:1492).

Moreover, Moore dedicated a certain amount of ink in trying to explain what the term ‘witchcraft’ in Africa refers to. He points out that the term witchcraft “is used to cover a variety of activities, often of the nefarious sort, and that in much of the literature it is used almost interchangeably with terms like the occult, magic and enchantment, *i.e.*, a mystical and innate power.” (Moore & Sanders, 2001:3) This definition is important because it cuts across all areas related to witchcraft as it touches issues of witches, magic powers, and enchantment, *i.e.*, supernatural powers, despite hardly stating how witchcraft is practiced. The definition would be convincing if it provided the way witchcraft is practiced, and the main instruments used in the practice of witchcraft in society.

A legal definition of witchcraft is provided under the *Witchcraft Act* (Cap 18 [R:E 2002] of the laws of the United Republic of Tanzania). Under the law, the term witchcraft is defined to include sorcery, enchantment, bewitching, and the use of instruments of witchcraft, the purported exercise of any occult power and the purported possession of any occult knowledge (see S. 2 of the *Witchcraft Act* above). Looking at the above definitions, we find that, in one way or another, each definition refers to the magic, occult or supernatural powers one possesses secretly. The reference to magic means that the definitions provided above, implicitly or explicitly, pose the issue of possession and uses of supernatural powers in witchcraft activities. However, all definitions are silent on the issues of possession of supernatural power and the use of the same for good. It is pertinent to note that problems associated with witchcraft and its roots do not stem from the belief itself, but from the perversion of a belief system that is otherwise benign (Msuya, 2016). In the following paragraphs, we discuss about instruments used in witchcraft before stating the reasons for our held thesis.

### 2.1 Instruments of Witchcraft

The phrase “instruments of witchcraft” does not receive any ordinary meaning from other scholars; instead, it has been accommodated in the statutory meaning. The statute defines an instrument of witchcraft as:

anything which is used or intended to be used or is commonly used, or which is represented or generally believed to possess the power, to prevent or delay any person from doing any act which he [sic] 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

other act of which complaint is made, or to cause death, injury or disease to any person or damage to any property, or to put any person in fear, or by supernatural means to produce any natural phenomena, and includes charms and medicines commonly used for any of the purposes aforesaid. (S. 2 of the *Witchcraft Act* above)

The cited definition above requires critical analysis regarding its intention by the legislature in enacting the same because it creates difficulties in terms of its implementation, particularly in proving what exactly the alleging person alleges. It provides a wide range of interpretation to the complainant to interpret what it exactly means as an instrument of witchcraft; however, it hardly lays down the standard of proof for the same under the law.

## 2.2 Background of Witchcraft Activities

Hoke (2010) writes that the history of witchcraft dates back to the Greek civilization. He curiously avers that the history of witchcraft is craved from the creation story of the Greek god of fertility—*Diana* or *Artemis*. His contention deserves to be reproduced *ex tenso* hereunder:

In the beginning the Great Darkness, Diana, divided herself into two equal and opposite forces, night and day. The night was ruled over by Diana herself as the Moon, the day by her alter-ego and brother, Lucifer, the Sun. Diana, inasmuch as the Moon is ever pursuing the Sun across the sky, became enamored of her brother the Sun and seduced him in the shape of his pet cat. The offspring from this union was a daughter, Aradia [or Herodias,] the archetypal avatar or patroness of all witches. (Hoke, 2010:56)

The above assertion is supported by the biblical writing found in the book of Exodus 7:11–12 which *verbatim* provides that “The Pharaoh called in his sorcerers, the magicians of Egypt and they were able to do the same thing with their magical acts. Their rods became serpents too. But Aaron's serpent swallowed their serpents.”

From the biblical point of view, it is authoritative evidence that from the creation story and from the Book of Exodus we are convinced that witchcraft or occult power has been in existence since ancient times. However, what we read from the biblical point of view has reflection to contemporary world (cf. Mesaki, 1993: 9–26; 40–44). This view is supported by Cunningham (2008:94) who once pointed out that “...Christians have traditionally made use of one particular moment to offer an analysis of the relationship between biblical stories and contemporary context. This occurs in the sermon or homily, which seeks to read and think through the biblical texts in light of contemporary circumstances.” Cunningham (2008:92) further contends, “one strategy for approaching the stories that we live by is to set them alongside the other stories that circulate widely in our culture. This allows us to make straightforward comparisons and to draw out the implications of the stories in the present context.” The implicit stories from the Bible as given above are normally explicitly contextual in our contemporary world. Insights put forth by Cunningham rightly contextualize the biblical stories to the real world we live today.

In the Tanzanian context, witchcraft activities are not a nightmare which came into existence all over the sudden; instead, it has its own history rooted in cultural practices in societies. Mesaki (2009:132) points out that “*recent anthropological accounts have emphasized the continuing salience of ideas about witchcraft for understanding contemporary African societies.*” Most societies in Tanzania hold beliefs in supernatural powers and superstitious beliefs. These are traditional and cultural beliefs which have cost lives of individuals in Tanzania for many years. For instance, it was believed that people with albinism were not seen to be dead; instead, they were disappearing naturally. However, the recent uncovered truth shows that people with albinism are being killed for the belief that parts of their bodies have power to make someone become rich or wealthy when maneuvered by the witch-doctors (Msuya, 2016). In other jurisdictions like Nigeria, a giving birth of a baby with albinism was seen as a misfortune in the family; so the child had to be left to die in the bush, *etc.* These examples represent society's belief in superstitious beliefs which is coupled with witchcraft activities in the world, and Tanzania in particular. The alarming question here is whether the law regulating witchcraft is adequate to circumvent the situation or not. This question is going to be dealt with in the following discussion in this article as we present the background for the law on witchcraft accusations in Tanzania.

## 3. INTRODUCTION OF WITCHCRAFT LAW IN TANZANIA

The history of witchcraft law in Tanzania is not a product of people of the then Tanganyika despite the existence of such beliefs among people in different tribes in the country. Instead, it was an effort and manifestation of the British colonial rule in Tanganyika whereby any law passed in Britain that time had to be transplanted into the British-African colonies, including Tanganyika, for the benefits of colonialists in their regime (Miguel, 2005:1155). The Witchcraft Ordinance was first introduced in Tanganyika in 1928 during the colonial rule and has almost remained unchanged until now

According to the report given by the Tanzania Law Reforms (URT, 1994:25), the Ordinance on witchcraft was enacted in 1928 and came into operation on 28<sup>th</sup> December 1928. It was enacted objectively “to provide for the punishment of witchcraft and of certain acts connected therewith.” The law was therefore enacted to curb activities of people engaged in sorcery, enchantment, bewitching, the use of instruments of witchcraft, the purported exercise of any occult power, and the purported possession of any occult knowledge (URT, 1994:25). The definition of instrument of witchcraft is very comprehensive as reflected in *section 2 of the Ordinance* and entails holding beliefs in mediums and things/phenomena such as charms. It is from the objective of the law that we are subjected to believe that witchcraft activities were and/or exist in our society.

However, the introduction of the witchcraft law is modeled into the *English Witchcraft Ordinance* of 1735, in which witchcraft beliefs and practices were referred to as

"pretended" offence and sought to punish those who pretended to engage in witchcraft; and the offence was described as, "(...) pretence to witchcraft, sorcery, enchantment or conjuration." Thus, when colonial legislators were called upon to deal with the problem of witchcraft in Africa, the official view was the skeptical English one based on the 1735 law (Mesaki, 2009:133). The *Nyalali Commission* also remarks that "this law dates back to colonial rule and it has remained to date (...)" (URT, 1994:26); the introduction of witchcraft law was a move of the British colonies of course to civilize the (primitive and uncivilized) people of Tanganyika. Sir Hamilton, a member of the British Parliament speaking about the imposition of British concepts of the rule of law and morality strongly asserted that; "it is the duty of the government to civilize and maintain peace and good order and this can only be done by the introduction of British concepts of wrong doing. Revenge and retribution as methods of punishing must go and crime must be regarded first and foremost as an offence against the community if the peoples of these territories are to advance in enlightenment and prosperity." (Mesaki, 2009:56) However, it should be born in mind that, the *Witchcraft Ordinance* was adopted and enacted by the Tanganyika Parliament after independence. The issue here is whether this law has achieved its objective as enshrined in it or not.

In the post-colonial period, witchcraft activities are pervasive in various societies based mainly on cultural points of view, social activities, and economic perspectives. In socio-cultural activities people believe that supernatural powers may cause harm such as disease, mental illness, *etc*, or misfortune (Mgbako, 2011:10) and may make things good as well. Under economic perspective, some people believe that supernatural powers can make one become rich as Sanders avers: "for many Tanzanians, the rationale for such witchcraft killings was all too obvious: private economic and political gain (...). 'The human skins and other body parts, including vaginas and penises, are said to be in demand by sorcerers who use them to make powerful concoctions, which are potent enough to make the rich richer, and the mighty mightier'" (Sanders, 2001:160 & 162). It is in this view that people with albinism and bald headed people have been apparently killed in some parts of Tanzania.

The killings of people with albinism, for instance, have in recent years been associated with politicians' succession in power for the killings within a decade now tend to happen in general election years. In fact, this is a stereotypical belief which is difficult to prove scientifically. In this regard, Rodney Needham as quoted by Mesaki is possibly right when he contends that a scientific account of witchcraft is not yet established (Mesaki, 2009:7).

#### 4. APPLICATION OF THE WITCHCRAFT LAW VERSUS REALITY

Following the difficulties to prove witchcraft activities, this section evaluates the application of the witchcraft law in Tanzania. Though Tanzania has the witchcraft law in place, its application faces a number of challenges in real

circumstances. That the practice of the occult power is partly used for protection, usually by businessmen or women, politicians, workers, *etc*, use it for economic gain at the cost of the life of others through killing and creating a nocturnal zombie labor forces, witches misanthropically reroute others' reproductive powers to their own illicit ends (Sanders, 2001:169-174). All these activities take place in a secret manner. For instance, X shot and caused serious bodily injuries to Y suspecting Y to have bewitched his son who suffered long from an unknown disease and finally died. When this matter is to be presented before the court, count of causing serious bodily injuries will easily be attended and evidence properly brought rather than count two of bewitching which highly lack evidence to prove the case on the side of the prosecution. Then it follows that, the prosecution will leave out the source of the second offence of causing bodily injury, *i.e.*, bewitching allegations, for want of evidence. In the circumstance, the application of the law is not easy to apply since what is alleged is done with an occult power. In *Rex v Mulumbix* (Milner, Nigerian Penal System (1972:1950) where sixty people were sentenced to death for having killed a woman they believed to be a witch. In sentencing them; the judge said "the government does want not to legalize the killing of witches so the court must be very strict." The implication here is that the government prohibits witchcraft activities under the law. Indeed, witchcraft is in practice never reported to the police instead, a person is alleged and is killed. Therefore, what is normally reported to the police stations is the death of the alleged witch and not the allegations of witchcraft.

#### 5. ACHIEVEMENT OF THE WITCHCRAFT LAW

The existence of the law is one limb and its achievement in society is another side of the limb. This statement means that the existence and achievement of the witchcraft law in Tanzania can be divided into parts. On the one hand, the law has failed to achieve its objective; and on the second part, to some extent, the law has achieved its objective due to the nature and circumstances under which witchcraft activities take place—in a secret manner. On the one hand, the law has failed to achieve its objective because of the difficulty to establish an offence that a particular person is without any doubt a witch. There is no, and hard to develop, mechanism of establishing that someone is a witch; rather, the justification is just based on suspicion or a belief, which is questionable in law. However, in the search for literature, we found no single precedent showing that a particular person was charged and proved beyond reasonable doubt to be a witch.

The distinction between witchcraft, witch-doctors and traditional healers in terms of their activities is a hindrance to the achievement of the law. People claiming to be traditional healers or witch-doctors are secretly performing witchcraft activities to harm others as well. And it is very unfortunate that these people who are sometimes used by government officials at District levels (Sanders, 2011:174) for their political power and gain are in turn given power under the law (S. 8 of the Witchcraft Act) to suppress the activities.



On the other hand, the law has achieved its objective as illustrated in the two witchcraft related offence below. A number of people in 1960s and 1970s were charged and convicted of the offence. The *first* was the offence of one representing oneself to possess or threaten to use witchcraft against others (S. 3 of the Witchcraft Act). This assertion was illustrated in the case of *R. v. Abdallah s/o Ngwale* ([1969] HCD no.140) (Hamlyn J.), the accused was convicted of threatening the use of witchcraft, and was sentenced to an unspecified fine. The court further opined:

Normally an offence of threatening the use of witchcraft is a serious one and may well lead to the persons threatened retaliating in a dangerous manner: such offences should be dealt with as deserving a considerable sentence of imprisonment. In the present case it is not proposed to interfere with the fine imposed by the court, but the trial magistrate should bear in mind the possible consequence of acts such as the accused was found to have committed.

The opinion of the court, in this case, tries to predict the degree of seriousness of the offence if left unattended thoroughly.

The *second* offence was employing or soliciting a person to witchcraft or use of instruments of witchcraft. This offence is viewed in the case of *R v. Andrea s/o Katwera* ([1967] HCD no.23) (Saidi, J.), where in this case the accused was convicted of employing another for the use of witchcraft, and ordered to pay a fine (Witchcraft Ordinance, Cap. 18, ss. 5, 7). The court held that: "Witchcraft practices must be discouraged. They have always caused so much trouble. In many instances they are the cause of murders. I agree that fines are not deterrent. Accordingly, the fine, which has been paid, is to be refunded to the accused."

It is worthy speaking that the law has successfully managed to threaten witches from representing themselves to possess witchcraft, preventing one from naming or accusing another as being a witch and preventing one from threatening another through utterance as a witch. However, it has failed to prevent a person from practicing witchcraft activities secretly since no one has been convicted for want of evidence in most witchcraft incidences. It means that the secrecy nature of the offence inhibits investigation and prosecution of cases (Msuya, 2016).

## 6. CHALLENGES FACING THE WITCHCRAFT LAW

Following the above evaluation of the applicability of the witchcraft law, we now provide the main challenges facing it to substantiate our held thesis. Some of the challenges facing the witchcraft law are the following: the definition of witchcraft in the witchcraft law, the issue of religious belief, proving the offence of witchcraft, the dilemma between traditional healers, witchdoctors, and witches, and an unawareness of the existence of the law and disbelief to the law enforcers. We discuss each of these challenges at length.

### 6.1 Inadequate Definition of Witchcraft

At a glance, it should be noted that there is no existing universal definition of witchcraft. This is the cardinal truth

that applies to the definition provided by the Tanzanian witchcraft law. The interpretation section of the law provides for some definitions such as witchcraft and instruments of witchcraft. On the one hand, the definition of witchcraft itself is vague in the sense that it uses jargons which require the reader to resolve them into another interpretation aid book. Such terminologies include: *sorcerer*, *enchantment*, and *bewitching*. These words could have separately been given their definition for more understanding. Mutungi (1971:529) further emphasizes that the use of jargon in the definition, terms which also need a definition, serve very little purpose or no purpose at all towards the understanding of the law by readers. "Indeed, such a definition," says Mutungi, "hangs on the verge of absurdity." The use of such jargon indicates that the law has failed to provide a meaning using the simplest language possible for law enforcers to understand. Therefore, the definition seems to be superfluous in terms of being comprehensible and applicable. At most, the definition under this law is, so to speak, loose, making the application of the law arbitrary and dependent on individual judges' or enforcement officers' own convictions (HelpAge International, 2011:4).

The definition of "instruments of witchcraft," creates an avenue of questioning who is capable of proving that the instrument of witchcraft in possession of a certain person is intended for, or is commonly used in, witchcraft activities if such a person is not a witch anyway, for instance, the possession of charms or medicine used to harm another person. Though one could be a witch, how could he prove the same to an open court to the extent that everyone could understand his evidence free of doubt? Obviously, it is very difficult to prove it. In this case, the definition of instrument of witchcraft seems to be too vague in its meaning and untenable to law implementers to execute it without facing serious doubts benefiting the accused.

Moreover, the "interpretation section" of the law falls short of other important definitions to avoid confusion. Words like "traditional healer," "witch-doctor," "sorcery," "charm," "enchantment," and "witch" need to be accommodated in the interpretation section. In fact, clear definitions to these words would make it easy to readers or law enforcers to understand the terminology used in witchcraft activities. For instance, distinguishing definitions under the law between "traditional healer" and "witch-doctor" are of vital importance since the two terms conflict in meaning and in their application. The function of traditional healers is to counteract the effects of evil practices of witches, sorcerers and witchdoctors (for definitions of the concepts witches, witchdoctors and sorcerer see Manala, 2004:1493-1498).

### 6.2 Witchcraft and Religious Beliefs

Strongly speaking, the issue of witchcraft immensely deals with matters of belief. In religious perspectives belief is an understanding of a particular issue with ones belief patterns. The issue here is this; does the priest possessing a supernatural power be charged and convicted of witchcraft? Despite the fact that, witchcraft has been recognized to exist

in biblical writings, most religions discourage witchcraft beliefs and practices to their followers. At one time, the court in South Africa had a difficult time to decide whether a priest in the Zionist Church should be convicted of professing knowledge of witchcraft. This was in the case of *S v. Dlamini* (1973 [3] SA 629) that during the course of a religious ceremony, the priest used stones and objects that were supposed to have supernatural powers. The court refused to convict the priest because religious leaders are expected to have a relationship with God that may involve supernatural powers. The court explained thus:

To a member of the faith concerned the conduct of the accused would be absolutely normal in the discharge of his duties as a minister of God. However strange the ceremonies of the Zionist Church might seem to people outside the Church, *it is clear that there is no question of witchcraft involved here*. The accused professed a knowledge of God, and this seems prima facie to exclude a profession on his part of a knowledge of witchcraft. Nor does the use of symbolic objects or belief in the efficacy thereof constitute witchcraft. The pilgrim to Lourdes believes in the 'supernatural' quality of the waters of the grotto. Moreover, many shrines and even cathedrals housing relics would be unattended by pilgrims seeking divine assistance where the 'supernatural' objects of belief and intercession to be dismissed as no more than the tools of witchcraft.

The court further averred that the practices of the accused were in accordance with Christianity; and, at a minimum, the state had failed to meet the burden of proof that the priest professed knowledge of witchcraft.

It follows that the similar practices of some priests or religious preachers, as shown above, take place in Tanzania. However, no records are in place indicating that one of them has ever been prosecuted for possessing supernatural powers, practicing witchcraft or possessing occult power in their activities. Most likely, several witchcraft activities might have been practiced by priests or religious preachers without any legal challenge due to lack of evidence. This being the case, it is very important to determine whether we need to have a law regulating witchcraft beliefs which is ineffective to most situations of the Tanzanian communities. It is our submission that, depending on the nature of activities and the way they are conducted, and taking into account that the belief of a person on a particular issue is too personal, it does not require regulation under the law; rather, it only needs a dissemination of comprehensive education about the gist of witchcraft; and that, witchcraft and its activities is a bad belief and not welcomed by any civilized individuals.

Another occasion, in the case of *Athman v Republic*, ([1967] E.A. 401 [Kenya]) (*as cited by Mutungi in his article*) the High Court of Kenya failed to establish whether witchdoctors existed or not. In this case, *Athman* was charged of “obtaining money by falsely pretending that one is a witchdoctor (...).” (Mutungi, 1971:524) *Athman* claimed to be a witchdoctor who had a power to exercise evil spirits called *Majini* in Kiswahili, and was approached by Aloisi regarding the suffering of his wife, who suffered

from “headache, stomachache and eye pains.” *Athman* charged Aloisi and his wife one goat, two yams, and some money (Ksh. 418/-) as expenses for the exorcism. After a while, *Athman* confessed that he would not do the exorcising practice. He returned to Aloisi the goat and yams he received and not the 418 sum of money. This led Aloisi to file his complain to the police. The first question of the Court in this case fell into doubt whether the ‘witchdoctor’ existed, and that the appellant would be one of them, or not. The existence of witchdoctors is the justification of the existence of witches, a belief not held by the state. If they existed, anyway, the second question was how to identify who was the genuine witchdoctor and who was not. This is due to the fact that no criterion was established in Kenya or any other East African country. The third question was that since each tribe or ethnic group had its own criteria for the witch, how, or in which bases, would the court deal with the witchcraft case. In fact, there was no any definition of – “witch” binding to all ethnic groups in the *Witchcraft Act* noted by Mutungi within the East African statutes on witchcraft. The absence of a genuine definition in the East African statutes on witchcraft and the states denial of the belief in the existence of witchcraft (and, of course, witchdoctors) pose a dilemma in dealing with witchcraft-related offence. According to Mutungi, the lack of genuine definition and states’ denial of the existence of witchcraft is the main dilemma facing East African countries colonized by the British rule and their inherited Witchcraft Acts (Mutungi, 1971:524–531) We will illustrate this point in the next sub-section.

### 6.3 Proving the Offence of Witchcraft

If one goes through the witchcraft law, one will find that the law hardly adheres to established principles of criminal law regarding proof of offence. As shown above, one of the incidents which make the witchcraft law to be difficult to apply in Tanzania is its difficulty to prove the offence. It is a cardinal principle of criminal law that a person who alleges that another person has committed an offence against him or her has a duty to prove the commission of such alleged offence beyond all reasonable doubts. Any doubt raised due to failure to prove benefits the accused person. In most cases, the prosecution department fails to present cases relating to witchcraft for want of evidence. Donath and Mbuya (2013) are in line with this argument when they say; “while it is challenging to prove beyond a reasonable doubt, citizens choose to take actions in their own hands and unlawfully punish suspects, most of the time resulting in death. For instance, according to the 2012 Human Rights Report, 630 people were killed from January to December after they were suspected to be witches” (par.5).

In light of the cited authority above, we are of the two following opinions: *first*, it is true that proving the offence of witchcraft to an alleged person is very difficult and impossible due to the nature of the offence itself; and *secondly*, if a person alleged to be a witch and no proof of the same is in affirmative, then such person should not be subjected to mob justice by being killed. In this regard, the government must take necessary measures to safeguard individual’s rights and adherence to constitutional principle

of the rule of law. This position is illustrated in the case of *Rex v Mulumbix (supra)*. So what is normally reported is the death that occurred behind the motive of the alleged witch person. In fact, the perpetrators of the killing are normally uncovered and rarely are they apprehended by the police and charged for murder cases with the cause of the killing being witchcraft beliefs.

In addition to Donath and Mbuya above, Bubani (2008), a lawyer and human rights activist, avers that “trying to use the legal system to adjudicate on matters of witchcraft is complicated.” (cf. Ashforth, 2001:15) The argument sought by Bubani does not go far from the reality that with the legal processes dealing with witchcraft activities is like debating whether God exist or not. Rather, it is more a matter of belief than of reality. Thus, looking on the spirit of the provisions of the witchcraft law, it falls short of its objective for its difficulty to prove one being a witch unless such a person confesses oneself to be a witch. However, the confession on evidence can only be admitted if it has been given freely and not under duress, torture, or fear (See the Evidence Act, 1967 [R:E 2002]). With reference to the words of Adam Ashforth, we would rather state; “in order for justice to be seen to be done in cases of witchcraft the guilty party must ultimately confess. Given the inherent secrecy of the act, only the guilty can know what he or she has done. As the authors of the fifteenth century handbook on witchcraft prosecutions, the *Malleus Maleficarum*, clearly noted, “common justice demands that a witch should not be condemned to death unless she is convicted by her own confession” (Ashforth, 2001:15).

Indeed, for a person accused under witchcraft law to confess as a witch or practicing witchcraft activities is hardly witnessed in any single case in Tanzania. It means that confession is something that hardly happens! In other jurisdictions such as that of Cameroon, people accused of witchcraft were charged and convicted based on the evidence adduced by the traditional healers or witchdoctors (Pelgrim, 2003:99). However, it is highly questionable to rely on the witchdoctor’s evidence to convict an accused person instead of one naming another as a witch proves his allegation. This use or endorsement of one’s own pronouncement as evidence shows that the State is concerned with the witchcraft belief. Moreover, this concern with witchcraft is most likely a thing that the Tanzanian state would not like to be charged of.

#### 6.4 Dilemma between Traditional Healers, Witch-Doctors and the Witches

There is a dilemma as to which form witchcraft is conducted. There are people called traditional healers, witch-doctors and witches. In Swahili, healers are known as *Waganga wa tiba asilia au mbadala* or implicated as “traditional health Practitioners.” Other names for them are: folk healers, herbalists, and leaf doctors. In Swahili, witchdoctors are known as *Waganga wa Kienyeji* or *Wapiga Ramli*. Other names for them are *diviners* and *seers*; they act as *laboratory technicians* to diagnose the causes of people’s illnesses and misfortunes in society (Kibuga & Dianga, 2000:30 [supra]). In Swahili, witches are known as

*Wachawi*. There are two types of witches: day witches and night witches. A ‘day witch’ is any ordinary individual who acquires the ability to use evil magic powers or spells from some expert, with which ability he/she tries to kill his/her identified prey, with or without cause (...). Day witchcraft can therefore be acquired by buying it from someone who practices witchcraft (...). Day witches therefore learn the practice of witchcraft. (...). Night witches “are said to be mostly women who walk naked at night, even during the coldest of nights. Night witches are feared, especially because they can enter closed huts, work during the night and make use of familiars such as hyenas, dogs, cats, owls, snakes, lightning, birds and so forth, to carry out their evil deeds (...).” (Manala, 2004:1494.

These people tend to distinguish themselves from one another in terms of personality and activities. On the one hand, traditional healers are statutorily recognized by the Tanzanian Government (The *Traditional and Alternative Medicines Act, No.21 of 2002*), and the law prohibits them from engaging in witchcraft activities or any dangerous treatments (S. 30 of the *Traditional Healers and Alternative Medicine Act* above). Interestingly, while the law prohibits traditional healers from engaging in witchcraft activities, yet the government does not believe in the existence of witchcraft. On the other hand, witch-doctors are not recognized by the Government but are implicated as traditional healers under the law by inferring their activities. The implicating provision deserves to be reproduced hereunder:

“traditional health Practitioner” means a person who is recognized by the community in which he lives as competent to provide health care by using plants, animal, mineral substances and *other methods based on social, cultural and religious background as well as on the knowledge, attitudes and beliefs that are prevalent in the community regarding physical, mental and social well being and the cause of disease and disability (...)*. (S. 3 of the *Witchcraft Act* above) [emphasis is ours].

The above cited provision provides a legal loophole for traditional healers and / or witch-doctors to perform other activities prohibited under the witchcraft law such as sorcery. The problem lies on the medicines and other elements used for activities of the groups mentioned above. Mligo Mentions the medicines used by Traditional Healers to be composed from “plants, herbs, powder of bones, seeds, roots, juices, leaves and minerals.” (See Mligo, 2013:29) Other elements used include “bones, excreta, oils, skin, fur, feathers, fishes, animal products (...).” (Mligo, 2013:29) Unfortunately, similar types of medicines are possibly used by all the mentioned groups. Under this situation, these are conflicting as well as confusing laws as one law prohibits certain activities and the other law allows the same activities in other way round.

Theoretically, traditional healers are recognized to carry on their activities for good while witch-doctors for bad omen. In practice both traditional healers and witch-doctors seem to perform witchcraft activities such as sorcery (Moore & Sanders, 2001:3; cf. URT, 2013); though in a secret manner so that they are not identified by the society. Witches are



neither recognized nor identified in society since are totally believed to cause harm and other misfortunes to individuals in society. It is our contention that since activities relating to witchcraft are done secretly, it is very difficult to regulate them. Proving witchcraft to someone charged under the witchcraft law is difficult, if not totally impossible.

### 6.5 Law Enforcers' Disbelief and Unawareness of Existence of Witchcraft and the Law

The existence of the law is one thing, and the awareness about the law among users is another thing. Mostly, law enforcers such as the police are not fully aware of the existence of the witchcraft law to enforce it. If they are aware at all, they hardly believe in witchcraft and ought not to believe in it according to the nature of their work. The later perception is taken by the view that the government does not believe in witchcraft; and in fact, it does not have a religion. In the circumstance such as this, ordinary people unaware of the existence of the law also encounter the same problems leading them to taking justice on their own hands (mob justice or lynch law) by killing suspected witches similar to what happened in Sumbawanga as illustrated in the introduction of this article.

## 7. CONCLUSION

After examining the challenges facing the *Witchcraft Act* above, it is our submission that the available witchcraft law into the statute book is superfluous, difficult to apply in reality, and controversial. Certainly, it encourages persecutions of alleged witches and being potentially very harmful towards persons accused of witchcraft (HelpAge International, 2011:5) The legislative approaches in Tanzania have shown that belief in witchcraft is widely held by almost all sections of society. Therefore, the introduction of a legislation criminalizing witchcraft very likely provides protection to the accused because it goes against popular belief, often seen to unfairly protect witches, and unlikely to be enforced as well.

As noted earlier in this article, the objective of the *Witchcraft Act* in Tanzania was “to provide for the punishment of witchcraft and of certain acts connected therewith.” This paper has shown that the core objective of the witchcraft law is hardly achievable since the nature of the offence alleged is committed in secret and mystical manner and/or with an occult power inaccessible for evidence. Using the words from the *Witchcraft* online Magazine (2020) we would rather state that “as regards environment, whenever you wish to perform an operation of witchcraft solo, all you basically need is a corner of your own home, the only prerequisite being privacy and a modicum of soundproofing. The latter is required not so much as a precaution against the neighbour's objecting to your noise, but rather as a further aid to the discarding of inhibitions, which is of such primary importance in all magic.” (Witchcraft Magazine, 2020, par. 1) Therefore, this argument enlightens us that it is very difficult to bring one into the cobweb of justice and prove the case against him or her since it requires possession of similar knowledge and power to prove it; something which is an offence again possessing an occult power under the law.

An extensive legislative jurisdictional research is needed in order to ascertain the applicability of the witchcraft law to the Tanzanian society. The possible question to answer in the proposed research should be based on the rationale of colonialists to enact it and whether such a law makes sense in the twenty-first world of science and technology. It is our cardinal opinion that the said law be repealed from the statute books until a satisfactory research about its application is done. Zimbabwe, one of the countries colonized by the British rule and which transplanted the *Witchcraft Act*, revised it in 2006 to site the context of its people (see Magbako & Glenn, 2011:396). We hope that it is possible for Tanzania to do what Zimbabwe did because the context which the colonialists enacted the law is not the same as that of today. Moreover, the question of evidence to prove against witchcraft activities need to be fully considered in the revised version for it to be effective.

Meel (2009:61–64) convincingly argues that “the issue of witchcraft and counter killing of witches is mostly associated with lack of education. People need to be educated to avoid the myths of lightning strike.” This assertion reflects on one of the few post-apartheid witch-killing trials in South Africa, where the court explicitly accepted the western premise that witchcraft belief is primitive and uncivilized. The court found that the defendant was uneducated and genuinely believed in witchcraft, yet refused to accept the belief as a mitigating factor to a murder conviction arguing that “the accused, the victims, and their families do not come from a primitive society, and the message which my sentence must shed out is not a message from a primitive society” (*S v. Phama*, 1997 [1] SACR, 487–88).

We are of the firm opinion that the South African situation of ignorance about the law and unbelief is no different from that faced by most people in Tanzanian societies. In such circumstances, regular, intensive, and comprehensive education to the Tanzanian society should be geared towards getting rid of witchcraft belief and witchcraft activities instead of relying on the ineffective law. Ignorance of the people pushes them into witchcraft beliefs and other activities associated to it. The main possible solution to ignorance is providing them with sufficient education. Though education does not exonerate someone from his or her belief, it reduces the boldness of the believer in witchcraft to a greater extent. It is our conviction that Tanzanians provided with education will be able to scrutinize upon issues before venturing on witchcraft beliefs and its activities.

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