

Witchcraft, Justice, and Human Rights in Africa: Cases from Malawi

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Abstract: The human rights approach to witchcraft accusations denies their validity and forecloses the possibility of a trial, fair or otherwise. While there is much to be said for a bracing rationalism in all aspects of life, evidence from Africa over the past couple of centuries shows no sign that witchcraft narratives lose their plausibility as a result of people being told that witches do not exist.

Résumé: L'exclusion des accusations de sorcellerie dans le contexte de la gestion des droits de l'homme annule leur réalité et exclut la possibilité de rendre justice en cas d'accusation infondée. Bien qu'il y ait beaucoup à dire pour soutenir un rationalisme solide dans tous les aspects de la vie, des études de cas menées au cours des deux derniers siècles en Afrique démontrent que les récits de sorcellerie n'ont rien perdu de leur crédibilité en dépit des discours publics niant l'existence des sorcières.

Keywords: Human rights; witchcraft; justice; Malawi

After all, it is putting a very high price on one's conjectures to have a man roasted alive because of them.
—Montaigne, *Of Cripples*.

Introduction: New Language, Old Obsessions

International human rights activists have recently become interested in violence perpetrated against accused witches, in Africa and elsewhere.

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The issue has received attention from, among others, the U.N. Special Rapporteur on Violence Against Women (2002), the U.N. Special Rapporteur on Extra-Judicial Killings (UNHCR 2009), the U.N. High Commission on Refugees (Schnoebelen 2009; UNHCR 2004, 2009, 2011), UNICEF (Cimpric 2010), and the European Parliament (Hanson & Ruggiero 2013), as well as NGOs such as Save the Children (Molinar 2006), HelpAge International (2011), and Stepping Stones (Foxcroft 2009). The latter NGO was founded by Gary Foxcroft, a young Englishman, specifically to address the plight of Nigerian children accused of witchcraft; Foxcroft has also been active in founding the Witchcraft and Human Rights Information Network (www.whrin.org). International conferences have been held to address violence against witches. Christian clergy have convened committees.¹ Campaigns have been launched.² Money is being raised.³ A novel has been published (Ormsby 2013). Law review papers proliferate (e.g., Ludsin 2003; Mgbako & Glenn 2011; Quarmyne 2011; Tebbe 2007). And documentaries have been made to raise awareness of the issue, such as *Saving Africa's Witch Children* about Foxcroft's work in Nigeria (Gavan & van der Valk 2009) and *The Witches of Gambaga* about a "witch camp" refuge for accused witches in northern Ghana (Badoe, 2010).

Lurid tales of grotesque violence serve as a rallying cry for the well-intentioned in their efforts to curb what they call "witchcraft violence" or "witchcraft abuse" (see Foxcroft 2009), or, more recently, with a view to a catchy acronym, "witchcraft accusation and persecution" or WAP (WHIRN 2013) as in this brochure advertising a two-day course in Oxford for lawyers working on asylum cases relating to witchcraft:

Accusations of witchcraft are occurring today in communities around the globe. Startling accounts of torture, starvation, abandonment and death have been documented. Accused witches have been executed by hanging, burying alive, drowning and burning, with paraffin or petrol thrown at them to ignite the fire. Victims are often from vulnerable groups: the elderly, the disabled and increasingly over the past two decades, children. (UNHCR & Fahamu Trust 2012).

A video of a group of accused witches being burned to death, probably in Kenya, has been circulating on the Internet in recent years, having been viewed more than a half million times at the time of writing (see www.liveleak.com/view?i=dae_1236854361). Refugee rights groups and asylum lawyers are also dealing with people, not only Africans, fleeing persecution as "witches" and seeking asylum in countries where witchcraft is not high on the list of public concerns and generally not well understood.⁴

In all these discussions, the issue of justice is presented as a matter that is so clear and unambiguous that it hardly needs to be raised: innocent people are being persecuted with "torture, starvation, abandonment, and death." Worse still, the most affected are members of

“vulnerable groups,” particularly women, children, and the elderly (see Adinkrah 2004; Federici 2008; Mgbako & Glenn 2011; Quarmyne 2011; Secker 2013). As one outspoken activist put it, “Witchcraft in much of the developing world—Africa, India, Southeast Asia, the Pacific, Central and South America—is at the core a human rights issue because millions of people are victimized for bogus, non-rational, non-scientific reasons” (Norman Miller, quoted in Barber 2012). Something, surely, must be done.

Most Africans who worry about witchcraft, however—which is just about everyone at one time or another—see witchcraft as raising a very different issue of justice, one that goes beyond the simple problem of false accusation and involves harm done by witches to their victims. Perpetrators of witchcraft, from this perspective, are dangerous and powerful figures, not members of vulnerable groups, however frail-seeming they may be. Witches are said to cause illness, death, suffering, and misfortunes of all kinds. They are, in essence, perpetrators of criminal violence, albeit of a particular kind. For people who live in a world with witches, the dangers they pose are real and present. In such places the primary concern is security: how to protect against witchcraft and other forms of violence. A secondary issue is justice: what to do about perpetrators of harm when injury has been done. For people who live with the fear of witchcraft, the issue of justice in relation to witches is clear. Innocent people are being attacked, harmed, and killed. The question, then, is: how can the perpetrators best be identified, disarmed, and, if necessary, punished? Historically, this was a central problem facing political authorities. It remains so to this day.

The question I want to address in this article is: Can the rights of accused witches be protected while justice is done, and seen to be done, for their victims? That is, can there be justice for both accused witches and fearful communities in the era of human rights? Or, to put it in a slightly different form: Is it possible to protect the rights of an accused witch while still securing justice for a community that sees itself at risk of occult assault? A reading of the recent literature on the subject of “witchcraft violence” and human rights would suggest that the answer to these questions is a resounding *No*. From this perspective, the crimes of witches are imaginary, so the question of justice for their victims is moot.

If it is indeed the case that it is impossible to protect the rights of accused witches while serving the ends of justice for a fearful community, then the outlook for protecting accused witches as well as promoting respect for human rights in Africa is dim. For the victims of putative witches far outnumber those accused of witchcraft, and there is no sign that the plausibility of witchcraft narratives is diminishing in contemporary Africa. In this article, however, I shall argue that the question of justice need not be dismissed out of hand; that while there is a regrettable amount of suffering imposed on suspected witches, there is far more work taking place in

everyday contexts as well as indigenous and formal judicial institutions that addresses the problem of witchcraft in ways that not only uphold justice and rights, but also resolve conflicts (see Kgatla et al. 2003; ter Haar 2007; Crampton, 2013).

An obsession with spectacular aspects of anti-witchcraft violence obscures attention to developments that are taking place around the continent in the management of spiritual insecurity by Africans themselves, notably in forms of enthusiastic religion and new forms of jurisprudence of the sort Jean and John Comaroff (2004) call “organic African jurisprudence” (see also Fisiy 1998; Fisiy & Geschiere 1990; Fisiy & Rowlands 1990). In earlier work I wrote about the struggles of people accused of witchcraft in postapartheid Soweto, where there were no institutional forums for dealing with their problems. In one case my friend Madumo, accused of killing his mother with witchcraft, pursued a purely private resolution of his problem in the form of traditional healing to overcome what he saw as a “curse” (Ashforth 2000). In another case a friend, having searched in vain for a forum wherein the conflict could be resolved, was hounded to death by an accuser (Ashforth 2005). I have also written of religious enthusiasm as a form of engagement with powers deemed capable of overcoming spiritual insecurity (Ashforth 2011). Here I want to explore the question of justice in contemporary Malawi, where institutions dealing with cases of witchcraft do exist and are creating new forms of local jurisprudence to handle such accusations.

The key to this emergent jurisprudence is a shared commitment on the part of judicial authorities, in both formal and informal judicial forums, to the need for demonstrable evidence to sustain accusations of witchcraft and an insistence on a distinction between *being* a witch and *performing* witchcraft. This distinction echoes one that is operative in indigenous narratives of witchcraft and finds unexpected reinforcement in a judicial interpretation of the colonial era Witchcraft Act (which is still in force). In terms of this distinction, being a witch is a matter of shame and suspicion, but not, in and of itself, a crime; causing injury and harm by occult means, however, is unambiguously criminal, though devilishly hard to prove. Insisting on proof in cases of witchcraft, as the English experience of witch trials in the seventeenth century shows (Shapiro 1991), amplifies doubt in ways that can be more protective of suspected witches than an insistence on the nonexistence, and hence irrationality of believing in, witches and witchcraft. Or, to put it another way: epistemology trumps ontology when it comes to protecting African witches.

In terms of this emergent jurisprudence, the rights of a person accused of practicing witchcraft are the same as those of anyone accused of a crime: habeus corpus, fair trial, no cruel and unusual punishment, no torture, and so on. And, as the history of witch trials in England, as opposed to continental Europe, shows, without torture, confessions and thus convictions for witchcraft are hard to come by (Langbein 1977). Indeed, under the terms

of the Universal Declaration of Human Rights and the Malawi Constitution, along with most other recent constitutions, the right of persons to identify themselves as witches, if they so desire, can be upheld in terms of the right to “freedom of belief”—even when such persons are widely despised.⁵ Further, the widespread commitment to the necessity of evidence in support of accusations of witchcraft and the requirement of proof “beyond a reasonable doubt,” at least in the formal legal system, open avenues for resolving conflicts involving accusations of witchcraft through discourse and dialogue.

To be clear: I shall be arguing that current humanitarian efforts regarding violence against suspected witches in Africa are misplaced. I am not opposed to acts of kindness, by Africans or outsiders, in the protection of people suffering cruelty in whatever form. I also am not engaging in a critique of the universalism of human rights discourses (see Mutua 2002), though much of the recent writings on saving Africans accused of witchcraft, especially the children, consist of veritable caricatures of the notorious triad of victim, savage, and outsider hero. But I am suspicious of interventions such as campaigns or policy initiatives premised on a presumption of superior knowledge and wisdom in relation to matters of witchcraft. I would argue that violence against and mistreatment of suspected witches reflect a failure of institutions of security and justice. So *if* there is an increase in violence against suspected witches—as many human rights groups are asserting, albeit without any hard evidence—then it is unwise to advocate policies that further undermine the possibilities of collective justice. And even more interesting than these issues is the question of how Africans are dealing with matters of security and justice relating to witchcraft in local communities.

Violence in a World of Witches and the New Anti-Anti-Witchcraft

The central feature of all talk of witchcraft, for those who fear the power of witches, is that it is a way for a person, or persons, to inflict harm on others. Witchcraft, in short, is a form of violence. Suppositions about matters of “witchcraft” have been found throughout all recorded human history and in virtually every place humans have been found, even if, in recent centuries, a section of the human community has prided itself, perhaps prematurely, on transcending the superstition and irrationality of talk of witchcraft.⁶ Vast bodies of literature document varieties of witchcraft. Incalculable amounts of time have been invested in documenting putative “systems of belief” pertaining to particular human collectivities and in attempting to describe and explain their peculiarities in relation to things like “social structure.” Much ink has also been spilled speculating about the connection between gender relations and witchcraft, seeking to explain why women predominate in the ranks of putative perpetrators. In all this talk and writing about witchcraft, however, one feature always recurs: speaking of “witchcraft” on the part of people who live in a world with witches, in all the varieties of terminology

that are used, is a way of construing injury as harm; that is, as a hurt deliberately inflicted on a victim, or victims, by a perpetrator or perpetrators. Witchcraft is a form of violence, albeit one perpetrated in secret with invisible—or, for want of a better word, occult—means.

For people who do not live in a world of witches, one of the most difficult issues to comprehend is the ontology of witchcraft as violence, as a variety of the multitudinous harms that humans are wont to inflict on one another. For such people witchcraft is a matter of “belief,” an issue pertaining to the domain of the cognitive.⁷ For people living in a world with witches, however, there is no essential ontological difference between the violence perpetrated by witches and the ordinary forms of violence perpetrated by physical means. Nor are they speaking metaphorically when referring to the violence perpetrated by witches. Witchcraft is also not merely an idiom through which other forms of conflict are expressed. The violence of witchcraft, for those who live in a world with witches, is every bit as real as any other form of violence; only the means and forms differ. In Africa, most Africans would agree, witchcraft is widespread.

Nevertheless, violence against witches, of the sort animating the current surge of interest in human rights circles, is rare. Although fears and suspicions of occult assault are widespread, open accusations of witchcraft are the exception in most African communities; still more rare are actual assaults on suspected witches. A report by the Witchcraft Human Rights Information Network, an organization devoted to raising alarm about the issue, found “a minimum of 865 will have experienced violations of their human rights in 2013 due to belief in witchcraft and other malevolent beliefs” (WHIRN 2013:3). Given the scale of misery on planet earth that year, these are not huge numbers. Anti-witchcraft violence, when it occurs, is mostly perpetrated by angry mobs, usually composed of young men (see, e.g., Commission of Inquiry into Witchcraft Violence and Ritual Murders 1996). Most people deplore such attacks, seeing them as evidence of a breakdown in social institutions that should protect communities both from the harms perpetrated by witches and the violence of the attackers. Violence against suspected witches is little different from other forms of vigilante vengeance; it flourishes in the absence of institutions serving justice (Taussig-Rubbo 2011).

Many human rights activists, inaccurately, call attacks on suspected witches “witchcraft violence,” “witchcraft abuse,” or “witchcraft-based violence,” and often lump it in, even more inaccurately, with acts of violence such as the notorious *muti* murder phenomenon of South Africa, or attacks on albinos in Tanzania, where people are killed and body parts harvested for magical purposes (see Cohan 2011; Hund 2003).⁸ Witchcraft violence, however, is violence perpetrated by witches. Violence against putative witches should properly be termed *anti-witchcraft* violence. The humanitarian interest in this violence, then, should be described as “anti-anti-witchcraft” violence, although I use the term somewhat sardonically, with a nod to Clifford Geertz (2000) and his stand on “anti-anti-relativism.” But I also

want to raise the logical question that the term suggests: does being anti-anti-witchcraft mean being pro-witchcraft? I would suggest that it does—at least when viewed from the perspective of people living in a world with witches.

While anti-witchcraft violence is rare, the violence perpetrated by purported witches is common. In a 2012 study of “witchcraft-based violence” in Malawi conducted by the Association of Secular Humanists (ASH) and funded by the Norwegian Embassy, Charles Chilimampungwa, a sociologist from Chancellor College, and George Thindwa, executive secretary of ASH, found that out of a sample of ninety-four “key informant” interviewees, ten had considered themselves victims of witchcraft attacks in the past two years. Of these, seven claimed to know the identity of the attacking witch, although only one directly confronted the assailant. Most victims and their families sought help from healers and pastors—of whom there are countless thousands in Malawi, as elsewhere in Africa, offering services of healing and protection. Of the witches who were openly accused—and the researchers found only fifteen in their sample of 638 households surveyed—eleven (73%) reported being subjected to some sort of “abuse” (Chilimampungwa & Thindwa 2012:61).

Although the ASH study did not draw on a random sample of the national population, the proportion of injury to insult among people who claim to have been bewitched is instructive. Remember: for every ten persons who found themselves injured by witches, only one took direct action against the suspected witch. By this reckoning, then, the problem of violence by witches is more than ten times greater than the problem of violence *against* witches—unless, of course, you believe the putative victims of witchcraft are merely imagining the harms they say they have suffered.

Most communities in Malawi, as elsewhere in Africa, manage most of the time to contain suspicions of witchcraft and deflect assaults on witches. Although the dangers and damages of witchcraft are deemed material, most people deplore violence. When well-respected figures are able to speak with authority in a community, it is usually possible to prevent mob justice from flaring up against suspected witches (van Beek 2007). Moreover, despite seeming “vulnerable” to outsiders, witches are feared for their power to cause harm, so it is usually prudent to protect against them rather than seek to punish them. Indeed, it is not always a bad thing to be thought a member of a group with extraordinary powers—especially, perhaps, for the otherwise vulnerable.⁹ Chilimampungwa and Thindwa, for example, quote a man who felt himself to be a victim of witchcraft but was advised to do nothing against the perpetrator “because of fear of what might happen next to him” (2012:61). Most of the retaliation against witches takes place through the mediums of traditional healing, whereby healers promise to deflect the damaging forces back onto the perpetrator, and of gossip, which undermines reputations.

Many communities, however, do not have authority figures capable of resolving issues of witchcraft when accusations surface. Many are riven by conflicts between competing authorities, leaving victims of witchcraft in

confusion about where to turn for help and a sense that their only hope is to take matters of justice into their own hands. Sometimes political and religious leaders have a direct interest in fomenting conflict and hostility. Witch hunts do happen. Chilimampungu and Thindwa estimate that in Malawi, a country of about 16 million, violent witch hunts took place about once a week in 2011, the year preceding their study.¹⁰ Sometimes anti-witchcraft movements can sweep whole regions, causing large-scale damage and disruption, as in the Northern Transvaal region of South Africa in the 1980s when, by some estimates, several hundred suspected witches were killed by youthful vigilantes in the context of the struggle against apartheid (Ralushai 1996; Ritchken 1988).

There are no reliable statistics concerning the prevalence of witch killing in Africa and few explanations for the variations that occur across time and place. One of the more systematic studies, by the economist Edward Miguel (2005), found that a woman over the age of fifty in the Sukumaland region of Tanzania, the area with the highest levels of witch killings in that country, had a one in five hundred chance of being killed in a given year.¹¹ Nonetheless, it is important to remember that violence against witches is the exception rather than the norm. Every community knows its witches, and they are mostly left unmolested. Knowledge of who they are circulates within communities in the form of rumor and gossip (Ashforth 2005; Stewart & Strathern 2004). The woman everyone knew as the witch in the neighborhood where I used to live in Soweto, for example, lived peacefully with her family and died of old age in her nineties. Being a witch, it seems, is one thing. But doing the things witches do—such as killing innocent victims or teaching the trade to children—is another.

Why Malawi?

Malawi is a good place to examine issues of justice and witchcraft. It is a peaceful and relatively stable, if very poor, democracy since the founding president, the old-school African dictator Hastings Kamuzu Banda, was ousted in 1994 in a surge of democratic sentiment catalyzed by an encyclical letter from Catholic bishops (see McCracken 1998). It has a court system that is reasonably functional, at least in urban areas, and unlike in South Africa, where the courts are still dominated by the descendants of white settlers, its courts are thoroughly Africanized. According to the National Victimization Survey of 2004, the justice system also enjoys a high degree of legitimacy in the public's eyes (Kanyongolo 2006).

After independence President Banda retained the colonial legal system founded on English Common and Statute Law. The law continues today to be shaped by English procedures, practices, and precedents, albeit in an African context where the so-called Traditional Authorities (TAs) also hold sway in local affairs and exercise considerable juridical authority (see Cammack, Kanyongolo, & O'Neil 2009; Kapindu 2009). Principles of customary law occasionally intrude into the formal courtrooms, particularly

at the lowest levels. Despite recent efforts at restructuring the court system to formalize the relationship between customary jurisdictions and the formal system, a great deal of confusion remains (Kaunda 2011).

During the reign of President Banda (from 1964 to 1994), a system of Traditional Courts with jurisdiction over both customary and criminal cases was established in parallel with the formal courts. These courts, which were notorious for being used by the regime to punish political dissidents, were disbanded in 1994, leaving customary cases in the hands of informal chiefs' courts. Chiefs' courts mostly handle family disputes and land issues, along with most of the other disturbances of peaceful life in the roughly twenty-four thousand villages in the country (Schärf et al. 2002). Land disputes, it should be mentioned, are becoming more intense and more common in this densely populated country, often exacerbating claims of witchcraft in the process (Peters 2002). In 2011, in an effort to better coordinate relations between the domains of customary and formal law, the government introduced legislation to establish Local Courts, once again with criminal as well as customary jurisdiction (Kaunda 2011). Implementation of this legislation, however, has been slow, and the two main domains of law remain the chief's court under the tree, and the Magistrate's Court in the town.

Malawi has been the subject of some classic writings on the issues of law and custom in Africa (e.g., Chanock 1985), which provide the historical perspective to the cases discussed here. It is also the scene of an ongoing project being implemented by the ASH and generously funded by the Norwegian government to protect the rights of witches by "sensitizing" various authorities, such as magistrates, police, and traditional leaders, to the prohibitions against anti-witchcraft activities contained in the colonial-era Witchcraft Act. In other words, the ASH has given its support to an approach that is diametrically opposed to the one that I advocate here. Convinced that witchcraft does not exist, and intent on protecting the rights of the accused, its project seeks to make it impossible for any institution in the country to respond to the desire for justice among people who feel themselves victims of witchcraft. I would advocate an approach that respects the desires of communities for justice and security in relation to witchcraft while strengthening the commitment to evidence among those called on to adjudicate cases.

Before we address the implications of these new forms of anti-anti-witchcraft activism, let us examine some contemporary witchcraft trials from Malawi's courts. My cases are drawn from the records of proceedings in the Balaka Magistrate's Court.¹²

Two Recent Witchcraft Cases

The Case of the Kasitos

In June 2009 Magistrate First Grade Damson Banda presided over a criminal witchcraft trial in the Balaka Magistrate's Court. I was able to obtain a copy of the written judgment in the case and later interviewed the

magistrate (June 26, 2013) about his approach to these matters. Balaka is a small market town in the south-central region of Malawi. The case arose when a man named Masautso Kasito accused his father, Bartret, his sister, Annie, and her son Shybu of teaching witchcraft to young children in the family.

Of all the witchcraft narratives current in Malawi in recent years, none are more horrifying than those telling of the teaching of witchcraft to children. For, on top of all the ordinary abuse—physical, sexual, psychological—that parents anywhere might imagine their child exposed to in the ordinary nightmares of life, children suffering under the infernal pedagogy of witchcraft are turned into serial killing cannibals, addicted to preying upon their own kin. This they will do until they themselves are killed. Malawians, understandably, take this matter very seriously.

At the time that these cases were heard, Malawi had for two decades been suffering under a severe burden from the HIV/AIDS epidemic. Some fifty thousand people a year were dying, leaving behind seven hundred thousand orphans (UNAIDS, 2013). While these narratives of children being taught witchcraft in order to cannibalize kin cannot be reduced to a mere idiom for speaking about AIDS, they do, however, serve to catalyze anxieties about the possible role of children in the deaths of parents and other kin. Whatever else is in play when people tell stories of children being taught witchcraft—and there is much—a simple fact underpins the context: as a result of AIDS, there is a huge increase in the amount of death needing narration (Ashforth & Watkins, 2015).

In the case mentioned above, Masautso Kasito claimed, on the strength of a consultation with an “herbalist”—by which he meant a diviner, or *sing’anga*, in Chichewa—that the witches in his family, as well as teaching children witchcraft, had killed his brother Fabiano with a magic hammer and were planning to attack him with the same weapon. The police brought charges against the three accused, and three young children, aged between five and seven, gave evidence accusing their teachers. Magistrate Banda heard the prosecution’s evidence, decided there was a legitimate complaint, heard the testimony of the defendants, and passed judgment.

In the text of the judgment read in court, the magistrate explained the legal issues in question. He reminded the court “that the accused persons are appearing before this court charged under Section 6 of the Witchcraft Act CAP 7:02 of the Laws of Malawi.” He then proceeded to read Section 6: “Any person who by his statements or actions represents himself/herself to be a wizard/witch or as having or exercising the power of witchcraft shall be liable for a fine of 50 pounds and to imprisonment for 10 years.” Next followed an observation that the magistrate is fond of repeating in relation to witchcraft cases: “The section penalizes any pretences to witchcraft, while the whole Act ironically does not recognize the practice of witchcraft.” In this case, however, the irony in Section 6 was compounded by the apparent

foolishness of the police and the prosecution, which “charged the three accused persons with actual[ly] practicing witchcraft[,] a thing which all of them are denying in totality.” In other words, the State charged the three defendants with committing acts that were not criminal according to statutory law, which did not recognize the reality of witchcraft; but if the defendants had pleaded guilty to the nonexistent crime, they would have committed a real crime by representing themselves as having the power of witchcraft, which is contrary to Section 6.

At this point in the proceedings, a less sagacious judge would have declared the case closed, ordered the mistaken charges withdrawn, and sent everyone home. Reading the text of his judgment in this case, I could not help wondering why a busy magistrate would bother sitting through hours of confusing testimony and laboriously writing down every word when he knew, in point of law, that there was no case to be answered. Magistrate Banda, however, is wise to the duties of his office. The police may have made a mistake in formulating the charge, but despite that detail, along with the fact that witchcraft is not illegal, he knew perfectly well when he took the case that he would in fact be conducting a witch trial. And he knew that a refusal to hear the case would have left everyone dissatisfied—not only Kasito and the accused, but also the citizens of Balaka at large. Trust in the authority of his court and his office would have been undermined.

Magistrate Banda knows well what is at stake in these sorts of cases. When we met in 2013, the magistrate took pains to explain to me that some things that happen can in fact be explained only by witchcraft. “I know about these things,” he said. “I live in the community.” He told me a story from his youth. One night when he was out harvesting white ants from their mound, he saw a ball of fire that rose up above the height of the trees. “I said [to my friends], there are wizards there,” he told me, although they still wanted to harvest the ants. “These things really happen, he said. They cannot be explained.”

So, rather than shutting down proceedings by noting the police’s mistake, the wise magistrate heard the case in full. Well aware of the limits of the law, he took upon himself the responsibility of assessing the evidence of actual witchcraft as well as the evidence for possible infringement of the law. Despite the fact that the three accused denied “in totality” the charge of practicing witchcraft, they might still have been guilty of pretending to the powers thereof outside the courtroom, in contravention of Section 6 of the Witchcraft Act. Or, while technically innocent of infractions of the law, they might still be witches and thus pose the sort of danger to society that a magistrate is duty bound to forestall. They might even be guilty of practicing witchcraft, in this case teaching children the trade, while yet being safe from conviction by virtue of their refusal to confess. “Sometimes a case may fail because of a technicality,” he told me during our interview, “and people will be very upset. Sometimes, you know things are happening but you have to dismiss the case on a technicality”—the technicality being that there is no proof of the accused having pretended to possess the powers of witchcraft.

He understands these issues and how people feel about them, he told me, and his job was to make sure that conflicts were resolved within the framework of the law, without people taking the law into their own hands and committing crimes against suspected witches.

The prosecution's case in relation to the Kasitos was based on the evidence provided by three children who "told this court they were taught the trade of practicing witchcraft by the accused themselves and that they have over the period been flying out to Mponda graveyard, uncovering grave pits and then eating human flesh at the instruction of the accused in the dock, and that the late Fabiano Kasito was actually hit by a magic hammer by the third accused person [Masautso Kasito's nephew, Shybu] at about 13:00 hours. . . . However, in defence," wrote Magistrate Banda, "the accused have said that . . . Fabiano Kasito was a sick man and had been told never to be drinking beers by the medical authorities, but that he did not take heed of that advice and that his death should be attributed to noncompliance with the advice."

If there was any doubt that the magistrate did not consider the youth Shybu a witch or guilty of witchcraft, he later repeated that there was no evidence that Shybu killed his uncle with a hammer. If there was, he told the prosecutor, a charge of murder should have been brought. This was a central point: the crime alleged was *murder*; witchcraft was merely the means. Proving murder by witchcraft demands the same standard of evidence as proving it when perpetrated by any other means—by a material hammer, for example. Since Shybu was not charged with murder, talk of the magic hammer was irrelevant. The sole legally relevant fact was whether or not Shybu had participated in teaching the children witchcraft—which would be a crime, since it would be tantamount to pretending to possess the powers of a witch. However, while the hammer issue was legally irrelevant, there was an important substantive issue that the magistrate also needed to address: Was Shybu a witch? In this regard, the implausibility of the story about his alcoholic uncle dying from causes other than beer undermined the credibility of assertions that the young man was a witch.

In relation to the first and second accused, Magistrate Banda rehearsed at greater length the evidence that they might be witches. He noted that Masautso Kasito's father, Bartret, had had many accusations made against him and had been taken before village headmen. The central plank of the old man's defense in this trial—which, as we shall see, might or might not have been proof of his innocence—was that after hearings in the Village Headman's Court and the Group Village Headman's Court he had been "made to drink some *mankhwala* [medicine]," a poison ordeal from which he had survived.¹³ But despite his denials, the magistrate noted, even his children were unsure about Mr. Kasito. His son Humphrey testified that "he has the belief that his father is a wizard because of the many rumours which have been made against him." Magistrate Banda did not state categorically that he considered the old man to be a witch, nor did he state that he was *not* a witch. He did, however, note that throughout all his trials and ordeals

the old man had denied charges of witchcraft. These denials precluded conviction under Section 6 of the Witchcraft Act. But the ambiguity in the magistrate's judgment seemed to be deliberate. The old man might not be guilty as charged, but he might be a witch nonetheless.

Regarding Annie, Bartret Kasito's daughter, the magistrate noted that when she was accused of witchcraft (after her brother Fabiano died) she was taken to the herbalist, where it was discovered that rather than being a witch, she had been a victim herself, and that "the head of her little child is used as a ball in the night by people who practice witchcraft." To which Magistrate Banda added, showing how seriously he was taking this matter, "The unfortunate part of it is that this court was not told as to [who] are said to be doing that." Anyone attending closely to proceedings would know at this point that Annie, along with her son, had been judged not guilty of witchcraft, as the magistrate subtly endorsed the divinations of the healers. Moreover, he pointed out, another witness confirmed her accounts of consultations with healers, while no one could corroborate the children's stories of being taught witchcraft. In the course of her testimony, it also emerged that Annie had been severely beaten by her nephews, Fabiano's sons, after their father's death. Although this fact had no bearing on the case, given the ruling on the cause of her brother's death, it suggested that the magistrate thought she was prone to being targeted unfairly within the family.

Having signaled his opinions regarding the substantive issue at hand, Magistrate Banda returned to the question of law:

If this court were to believe that the story by the prosecution as per the evidence given by the three children witnesses, that the three accused persons have been teaching them witchcraft practices, and then that the third accused is the person who using a magic hammer hit and killed the late Fabiano Kasito, that would amount to this Court agreeing with the issue that there is witchcraft in our midst out of customary or traditional belief and not covered by the law under which the accused persons have been charged.

That there was in fact "witchcraft in our midst" was doubted neither by the magistrate nor the people in his court witnessing his judgment. But unlike traditional or customary authorities, statutory law and the rules of evidence tied the magistrate's hands. With each judgment in cases such as these, Magistrate Banda delivers a lecture on epistemology, the key lesson of which is that mere rumors or customary "belief" is not proof. While stories might alert people as to the identity of a witch, and thus the need for protection from future harm, they do not satisfy the demands of evidence required for punishment of a crime.

In his judgment of the Kasito case, Magistrate Banda did not elaborate on the legal reasoning he followed in making his decision to proceed with hearing the case, despite the fact that the charges as listed were

inappropriate; he merely stated that “the Prosecution closed their case and then this court made a ruling of a case to answer on the charge leveled against them.” In other instances, however, Magistrate Banda has elaborated on these standards. The standard of proof for a ruling that a case is legitimate is so-called *prima facie* evidence. In the words of “Lord Parker of England,” which the magistrate quoted from *A Guide to the Magistrates in Malawi*, the *prima facie* standard means that “a reasonable tribunal, properly directing its mind to the law and evidence[,] could convict if no explanation is offered by the defence.”¹⁴ Magistrate Banda judged that the stories told by the children about being taught witchcraft were, in principle, credible. This did not require ruling on the substance of their particular claims of flying through the night in witchcraft airplanes to eat human flesh in graveyards under the tutelage of their three relatives. Those would have to be judged according to the evidence. But, like most Malawians who worry about witchcraft, Magistrate Banda was convinced of the possibility of strange happenings of these sorts. The underlying epistemological condition grounding such stories’ plausibility, it seems to me, is a blurring of the ontological boundaries between dreaming and waking states, such that actions taking place in dreams are taken as possibly having real effects in the ordinary waking world.

The key issue at law, however, was whether or not the adults were actually teaching the children, regardless of the content of those teachings, since, if they were, they would have been representing themselves as having the powers of witchcraft. From the point of view of the drafters of the legislation and its antecedent, the English Witchcraft Act of 1736, penalizing such representations was justified in terms of the prevention of fraud. (Indeed, when the 1736 Act was finally repealed in 1945 it was replaced with the Fraudulent Mediums Act.) Magistrate Banda, however, used the possibility of conviction under Section 6 of the Witchcraft Act as a way of addressing a widely feared source of harm justifying severe punishment, the transforming of innocent children into evil witches.

In the course of passing judgment, the magistrate explained that in cases charged under Section 6, guilt can be proven by statements or actions in which the offender represents himself “to be a wizard or a witch,” as “having the power of witchcraft,” or as “having the power of exercising witchcraft.”¹⁵ At no time, he told the court, did any of the accused persons claim to be a witch or represent himself or herself as having the power of witchcraft, either directly to the court or elsewhere. Nor was evidence presented of actions demonstrating the same, other than the stories of the young children—only one of whom was permitted to testify under oath. Here is where the question of Bartret Kasito’s poison ordeal became important. If Bartret Kasito had represented his drinking of *mankhwala* as a cleansing procedure, he might in theory have been found guilty by virtue of actions representing himself as a wizard, albeit a repentant one.¹⁶ But, as the magistrate pointed out, “he has . . . been taken before the Village Headman and to the herbalists to be cleansed of a thing he denies to be

and that has been done on him but he has survived the test.” Under the provisions of the law, then, all three of the accused persons would have to be found innocent since they failed to confess.

In principle, evidence that a person had been involved in teaching witchcraft to children could satisfy the evidentiary requirements of Section 6, since who but a self-proclaimed witch could teach witchcraft? For this reason, Magistrate Banda ruled that the prosecution had proved a *prima facie* case for the defense to answer. The problem for the prosecution, however, was that two of their three witnesses were ruled ineligible to give testimony under oath by virtue of their young ages, and the testimony of the single sworn witness had not been corroborated by independent witnesses. In explaining his reasoning for excluding the younger children Magistrate Banda cited a recent ruling in an appeal against a witchcraft conviction by Judge Chipeta of the High Court, who wrote that even if children testify under oath “the evidence of such witnesses would require corroboration.”¹⁷ Therefore, what the court was left with were allegations and rumors, which would not suffice to convict someone: “A belief alone [, regardless of] how strong it may be[,] is not evidence that an individual is guilty of an offence; there must be proof to whatever is alleged to be done or having been done.” For justice to be done in a court of law, therefore, either the witch must confess or proof must be presented.

One possible source of what the magistrate termed “independent evidence” could have been the testimony of a *sing’anga*. In another witchcraft case tried in the same court three months later the central witnesses were two teenaged girls, one of whom claimed to be currently practicing witchcraft with the accused “teacher,” having been taught the trade as a baby. Magistrate Banda noted that the accusers had consulted a *sing’anga* but “unfortunately the state did not bring forth the *sing’anga* in question.” He ruled, therefore, that the case could not proceed, and also warned the witnesses that they were liable of an offense under Section 4 of the Witchcraft Act, which outlaws accusing a person of witchcraft.¹⁸

It is likely that Magistrate Banda, like the police, the Kasito family, and most of the other Balaka residents who heard about the case, found the testimony of the children credible. The magistrate was clearly of the opinion that while Annie and Shybu were not witches, the old man probably was, noting at one point that Bartret Kasito had “boasted that he has never been caught at anybody’s house practicing witchcraft”—a choice of words that itself suggests that the magistrate believed the accused was lying. But convicting people under the Witchcraft Act imposes strict requirements for evidence: “People believe that he is a wizard,” he said, “but to prove the point is a problem since he denies to be such.” Before pronouncing the final verdict he addressed the Kasito family, passing what might be called an informal sentence on the father. Clearly speaking for himself rather than as the spokesman for “this Court,” he said, “It is my view that his own children should make arrangements to have him settled at his home district in Zomba other than here in Balaka where there have been too many stories

against him.” (In the 2013 interview at his office in the court, the magistrate described his intention in speaking to the Kasito family in this way as giving “advice”) In much the same way a chief might impose a sentence of banishment on a witch spared the death penalty.

Finally, the magistrate pronounced judgment:

This Court has found as a fact that the prima case the Prosecution had established against the accused in the dock has been outweighed by the evidence in defence, and this is also per the law now in place which ironically does not recognize the existence of witchcraft.

The Case of Mrs. K.

On the June, 5, 2009, Malawi’s premier newspaper, *The Nation*, published a front-page story under a banner headline:

Witchcraft Terrorises Balaka Hospital
by Nation Reporter

Witchcraft has terrorised Balaka District Hospital, forcing medical staff to petition the Ministry of Health to transfer a nurse suspected of teaching the art to children at the campus and trying to kill some members of staff.

One nurse, who was a victim in the latest ordeal last Sunday, was rushed to her home in Chikwawa by hospital management fearing for her life and her sister’s children who were staying with her at the hospital.

The two children revealed that . . . [another] nurse had taught them witchcraft and ordered them to kill their aunt.

Balaka Hospital administrator Symon Nkhoma confirmed on Wednesday the district health management team wrote the Ministry of Health on June 2, 2009, giving it a 48-hour ultimatum to solve the situation or risk a strike or exodus of the staff.

Nkhoma said one nurse is alleged to be teaching children witchcraft and trying to kill a nurse, medical assistant and lab technician. He said the children revealed the nurse for the first time in April and management advised staff to love one another and pray.

“We fear we may lose staff, hence writing the ministry” said Nkhoma, who added that the ministry told them that the South East Zone of the ministry would look into the matter.

The nurse . . . also confirmed . . . that another nurse at the hospital taught her sister’s children witchcraft and that she wanted to kill her. (*The Nation Reporter* 2009)

Rumors about witchcraft at Balaka Hospital were also broadcast on the popular national radio call-in program *Nkhani Zam’maboma* (News from the Districts).¹⁹

So began the ordeal of Mrs. K., who sought for many months for a place to find justice, to clear her name, and to find what she called, when I interviewed her after the proceedings, “a fair forum where the issue could

be settled.” Among other actions she sued her colleagues Rennie Chikaonka and Promise Kachale for defamation of character: “Kundiypitsira mbiri ponena kuti ndine mfiti” (Defaming my character by saying that I am a witch). Magistrate First Grade Damson Banda heard this case as well, on July 1, about a month after the Kasito case.

Although Mrs. K.’s case was technically a civil suit for defamation, everyone in Balaka referred to it as a “witch trial” in which Mrs. K. was the defendant. In her conduct throughout the trial, Mrs. K. made it clear that she saw it that way, too. Mrs. K. knew that she was innocent. Like everyone else, as she made clear in the trial, she had no doubt that these children had been taught the infernal trade of witchcraft, but she knew who had perpetrated it: not herself, but rather the mother of one of her accusers. Her defense, in other words, was to accuse another.

After her hearing, however—in which she presented a long, convoluted story that painted her not as the practitioner of witchcraft but as its victim—it was clear that she had signally failed to vindicate herself. Part of the reason for this was sociological: Mrs. K. did not make a very good victim figure. She was powerful in the workplace and comparatively wealthy in her community. She was also disliked; her colleagues found her proud, and she was even described as “cruel” in the local gossip at the time. But a more fundamental problem faced Mrs. K., as it faces everyone suspected or accused of being a witch. If it is difficult to prove the guilt of a suspected witch, it is virtually impossible for an accused witch to prove her innocence, since the general presumption is that such a proclamation is always a lie. Indeed, the more she protests, the more her guilt is assumed. Ironically, the only sure way to escape the burden of suspicion of witchcraft is to confess to being a witch and to submit to a cleansing process in the hope of forgiveness. Sometimes, a witch whose work has been detected before it has been completed—such as when the victim is seriously sick but not yet dead—will be put on a kind of probation, charged with removing the curse and allowing the victim to recover on pain of further punishment if the victim dies. The ultimate punishment for a witch is death or banishment from the community, though the more usual fate is social death.

In the case of Mrs. K., nobody disputed the fact that the two defendants had been the source of the allegations of witchcraft that had been brought to the hospital authorities, their workmates, and the wider public and that had tarnished Mrs. K.’s reputation. On the witness stand, the two young nurses made no secret of the fact that they believed Mrs. K. was a witch. Promise Kachale told the court that she believed Mrs. K. was responsible for afflicting her with body pains and that she was lurking around her house in the form of a black cat. The testimony placed Magistrate Banda in a difficult position. If he were to rule in Mrs. K.’s favor and find the defendants guilty of defamation, virtually everyone in Balaka—not to mention the wider readership of the *Nation* and the audience of *Nkhani Zam’maboma*—would have seen him as the protector of a dangerous witch. His court would lose credibility. However, as an officer of the law in a country where the law

does not recognize the reality of witchcraft, he had to be careful in framing his judgment.

Magistrate Banda gave two brief lectures on the laws of Malawi while passing judgment in Mrs. K.'s trial. The first was an excursus on the laws pertaining to libel and slander; the second, as in the Kasito case, was an explanation of the criminal provisions of the Witchcraft Act. Despite protesting at several points in his judgment that the substantive issue before the court was not witchcraft, the magistrate again quoted Section 6 stipulating that a witch, under the law, is any person who represents himself or herself as such. He then explained that for a person to be found guilty under Section 6, "it must be proved that the person has confessed." But this was not the case here, and, besides, this was a civil case of defamation, not a criminal trial under the Witchcraft Act. Even if Mrs. K. might turn out to be a witch, she was not the accused party in this trial.

As in the Kasito case, Magistrate Banda, had he wished to, could have shut this whole case down at the start. He could have drawn on the precedent of Civil Cause No. 547 of 2006 in the High Court of Malawi, a similar case in which Assistant Registrar T. R. Ligwe overturned a lower court's ruling of defamation. The judge in that case argued that for slander to be actionable it must impute a criminal offense or "general charge of criminality." Since, under the Witchcraft Act, being a witch (as opposed to claiming to be a witch) is not a crime, calling someone a witch (as opposed to claiming evidence of witchcraft practices, as in the Kasito case) cannot be defamatory. But the magistrate knew that the case before him was, at least *de facto*, a witch trial and that the community was expecting him to rule on whether or not Mrs. K. was a witch. Since the trials of Mrs. K. had become the focus of national media attention, he was perhaps also speaking to a larger audience than that of his courtroom, particularly since at the time of the case the Witchcraft Act was under review by the Malawi Law Commission. He also couldn't have failed to notice my white face in the back of the room, perhaps thinking I was a foreign journalist. Following his explanation of the necessity of confession, Magistrate Banda launched into the following disquisition on witchcraft.

In this case I am of the view that owing to the many issues which are being talked about and allegedly experienced out there, certain things have got to be done if we are to forge ahead as a country and in particular to issues about witchcraft. We should not pretend that the practice does not exist; rather Malawi as a country should come up with an enabling law to sort out the problem. I think that there are things we can do as a country:

- (1) Acknowledge the existence and wide spread use of witchcraft and traditional medicine;
- (2) Be open about it and not be ashamed of it; and . . .
- (3) Try to bring modernity in the use of this traditional medicine . . . [rather than] using it to kill or bewitch others . . . [We should] engage the witchcraft experts and asing'anga and let them know that they can be useful to the country if they did their stuff in a way to help the country.

After his long, and in the case of this particular trial legally irrelevant, discussion of the law on witchcraft in Malawi, he finally stated, “This Court would like to put it on record that the issue whether the plaintiff is a witch or does practice witchcraft is not what is before this Court and as such I am not going to decide on an issue which has not been complained of.” He then proceeded to express his judgment in a manner that was legally flawless—in terms of the issues in the case—but also suggestive enough to leave open the conclusion that Mrs. K. was indeed a witch.

In case of defamation it must be proved that the statement made by the defendant(s) against or about the plaintiff is false and that the defendants[,] despite being aware that there is no truth in it[,] went ahead in publicizing such kind of information to other people or the world at large. In the same vein the issue as to whether the plaintiff is not a witch is not what is before this court of law, because there is no evidence which has been tendered . . . to show that the plaintiff is or is not a witch. Only if it had been proved that the plaintiff is not a witch or does not practice witchcraft . . . [would] the two defendants have been found liable to the claim as lodged by the plaintiff.

The judgment continued:

For this issue [of whether or not Mrs. K. was a witch who was teaching the witchcraft to children] to be put to rest[,] I do believe . . . that the children . . . should have been the people to explain it all for they know something about the issues. It is therefore the considered view of this Court that the matter here has lost direction because the two defendants [i.e., Rennie Chikaoneka and Promise Kachale] are people who heard [about the witchcraft] from other people . . . complaining about what is alleged to [have been] done by them in the company of some people[,] *probably including the plaintiff in this case.* [Emphasis added]

In other words, Mrs. K probably was indeed a witch, but she was not charged as such and no evidence was presented. The magistrate then proceeded to dismiss Mrs. K.’s defense that she couldn’t be the witch since she had lived in Balaka a long time and no one had ever accused her of this. “That is not evidence,” he stated.

Magistrate Banda thus used his position on the bench to issue an informal judgment on the issue that was not, in point of law, the case before the court, but the one that was certainly the case in everyone’s mind: that Mrs. K. probably was a witch, and probably was teaching the children, but the case was not proved. His formal verdict on the legal case under consideration was that the defamation case failed because the plaintiff had not proved that she was not a witch. Therefore, she could not seek damages for defamation or protection from the hostile gossip of the town. For good measure he added: “This Court having considered this case in its entirety has found as a fact that the plaintiff sued the wrong people.” She should have sued the children.

The outcome of the trial was that the witch, though not officially convicted as such, was in effect banished. Mrs. K. never returned to work at the hospital. She sought, and was granted, a transfer to a clinic in her home village where her husband owned a shop. She had wanted her day in court, in a “fair forum where the issue could be settled,” and this was not accomplished. When she was interviewed by my assistant (Oct. 30, 2009), she attributed her failure in court to corruption, claiming that an officer of the court had offered to swing the case her way for a fee of MK10,000 (about U.S.\$100). “My heart pains me every day,” she told my assistant when he met with her some months later. “A day does not pass without me thinking of this story. God will be my magistrate.”

Truth and Justice in a World of Witches: The Problem of Proof

At the heart of Magistrate Banda’s judgments is a distinction between being and acting, between the witch as a particular kind of being and “practicing witchcraft” as a distinct form of action. Both Mrs. K. and the elder Mr. Kasito were found by the magistrate to probably be witches. In neither case, however, was there sufficient proof that they were guilty of practicing witchcraft in the specific form of teaching children. The distinction Magistrate Banda deployed in his judgments resonates with common usage in discourse pertaining to witchcraft in Malawi as in most other places where people live in a world with witches. In the Malawi vernacular of Chichewa, for example, *mfiti* refers to a particular kind of person—human, superhuman, and sub-human at the same time—inhabiting a particular mode of being. This is the witch, or sometimes “wizard” (when the speaker takes pains to establish gender), distinguished by virtue of belonging to a different category of being from otherwise ordinary humans. The key to this mode of being is the ability to operate within a space ordinary persons experience as the domain of dreams. *Matsenga*, on the other hand, refers to witchcraft as a mode of action perpetrated by an ordinary kind of person who does not necessarily possess the forms of personhood indicative of the *mfiti*. Anthropology knows this as the distinction between the witch and the sorcerer (see Evans-Pritchard 1937), though this is misleading as it emphasizes a distinction between two different modes of action rather than between acting and being.

As a form of action, *matsenga* witchcraft is typically said to derive from specialized knowledge of the powers inherent in material substances. In principle, anyone—at least, any adult—can practice this form of witchcraft; children are generally not said to be involved. All one needs is the knowledge and the material, variously known as *mankhwala*, charms, herbs, medicines, or *muti*, which are presumed to be purchasable from specialists. Herbalists ply their wares openly in markets and on the side of the road outside hospitals. For the most part they are presumed to be in the business of healing, though there is always suspicion about whether the knowledge involved in healing may also be deployed for more nefarious purposes.

Nobody publicly proclaims any involvement in the trade of witchcraft substances, although no one doubts that the trade is widespread. The putative knowledge underlying *matsenga* (as well as cognate forms of sorcery across the continent) is often referred to as “African science,” which is presumed to be the inverse of the healing “science” practiced by traditional healers. Without getting too involved in an exposition of systems of belief, however, we should note that it is equally plausible to suppose that Satan imparts witchcraft knowledge to his followers, or that “traditional” practices are really demonic manifestations, as many African Christians readily assert.

Stories about *matsenga* typically revolve around a perpetrator motivated by jealousy and hatred to harm a victim known to him or her personally. They are stories of murder and attempted murder, of violence perpetrated on victims by their enemies. Perpetrators are typically in relatively close proximity to, if not intimacy with, the victims—typically relatives, neighbors, coworkers, and schoolmates. Victims of this kind of mystical violence get sick, die, suffer accidents, lose jobs, or experience one of the other misfortunes that we humans wish upon each other in the daily course of living together. A perpetrator of this kind of witchcraft has not necessarily gone completely over to the dark side, so to speak. He or she might use charms to kill a neighbor who has provoked feelings of jealousy while remaining a valued coworker, a loving father, and an otherwise upstanding citizen.

The *mfiti* witch, on the other hand, is addicted to evil and abominable practices. To be an *mfiti* is to be a particular kind of man or woman. The *mfiti* kills for the love of killing, or to sate a lust for feasting on human flesh. He or she kills to repay commensal gifts of the flesh of other witches’ kin. These witches want to bring misery and death to others simply because they can. The *mfiti* has extraordinary powers, capable of amazing feats like flying through the night on a witchcraft airplane while leaving a physical body asleep in bed at home. These witches enjoy the company of fellow witches and seek to convert others to their vile practices, including their abominable sexual predilections, picking on children since they are least able to resist. The *mfiti*, in this way, occupies a distinct status and represents a particular mode of being: at once human and not human, both superhuman and sub-human. Yet—and this point is crucial for the attribution of criminality—a person might be a witch and yet not be practicing witchcraft, or even know she is such a creature. The *mfiti*, then, is not the sort of being to which the notion of “human rights” applies without a considerable degree of ambiguity.

If establishing that a person is—or at least is generally considered to be—a witch is relatively straightforward, proving that a particular misfortune is the result of such nefarious actions is another matter. So, how might the truth of accusations regarding the practice of witchcraft be proved? From observations of Magistrate Banda’s court, as well as others, proof of the practice of witchcraft would seem to have some of the following elements.

First, since witchcraft is not a victimless crime, proof of witchcraft requires testimony or a complaint by, or on behalf of, a victim or victims. In the first case above, for example, Masautso Kasito, who lodged the complaint with the police about witchcraft in his family, was suffering pains the herbalist had told him were caused by witchcraft. His brother, the same healer told him, had been killed by witchcraft. Young children in his family were telling of being taught witchcraft. There were plenty of victims, past, present, and future. Witchcraft is generally detected retrospectively. Once misfortune strikes, the questions, classically framed by Evans-Pritchard, arise: Why me? Why now? When these are posed in a context in which witchcraft is a viable hypothesis, the possibility of occult assault must be considered.

The existence of a victim who has suffered harm, while a necessary condition for a witchcraft narrative to be framed, does not, in and of itself, constitute proof. When the witchcraft hypothesis is presented, the next question is: who is the likely perpetrator? Since witchcraft is rarely the work of strangers, the usual suspects readily emerge: enter the elderly Mr. Kasito. But even the suffering of the victim and the existence of a likely suspect are not sufficient for the matter to rise above the level of mere quarrel to enter the domain of crime. Whether or not the suspicion of witchcraft is confirmed by the actions of a witch will depend on the evidence.

Although witchcraft is practiced in secret, there can, in theory, be direct evidence of its use. Suspicious substances may be found in places where they don't belong. Unusual behavior, such as tiredness in the morning (which could be interpreted as resulting from flying at night), or loss of appetite (from eating human flesh), or being caught naked after dark in a neighbor's yard (which could be taken as resulting from the crash of a witchcraft airplane) are all, in principle, open to verification, though the interpretations might be contestable. From time to time people engaged in a quarrel have been known to utter threats of occult violence, the standard wording of which is "you shall see." Such a threat, publically witnessed, followed by untoward events among those subject to it, would be an obvious clue. Since jealousy, anger, and hatred are considered the primary motives for perpetrating harm by means of witchcraft, a history of enmity and quarrel between individuals or families could be quarried for traces of malicious motives. In close-knit communities where people live with witches, moreover, everybody comes to know who they are. Over time, gossip, rumors, suspicions, and accusations accumulate so that when misfortune strikes, there is rarely any difficulty in identifying the suspects (Ashforth 2005; Elias 1956; Stewart & Strathern 2004). Proving that the person suspected of witchcraft actually performed the deed, however, is tricky. As Magistrate Banda insists time and again in his court, mere testimony, or "belief," is not sufficient proof in court. And the testimony of children, though necessary in cases such as those discussed above, is inherently problematic and never sufficient.

Although the means by which witches act are invisible to ordinary mortals, healers are generally considered to have special abilities to perceive the actions of witchcraft. Healers' claims, however, are eminently contestable. While almost everyone accepts the general possibility of healers being able to see the unseen, every particular claim is open to question. Testimony by one healer, moreover, can be undermined by that of another. Since suspicions and accusations of witchcraft typically arise within intimate social networks (Geschiere 2013), most people agree that "objectivity" in the evidence of ritual specialists is secured by recruiting a healer from far outside the circle of familiarity with any particular case. Greater confidence in the testimony of healers also arises from concordance among the readings of several unrelated healers. In the case of the Kasito family, while no healers testified in court, several witnesses gave reports of the results of divination. These reports were given considerable weight by Magistrate Banda in exonerating the second defendant, Annie. In his jurisprudence, however, the testimony of a healer alone would be insufficient to convict a person accused of witchcraft unless the evidence was independently corroborated.

Ensuring the truth of testimony is a challenge in all jurisdictions, and courts frequently resort to supernatural sanctions for support. In many parts of Africa "ritual" oaths, in which individuals attest to their honesty at the risk of punishment from supernatural beings, either upon their own persons or those of their families and clans, have often been used as a proof of honesty and have been accorded centrality in judicial practice (Kirk-Greene 1955). I have not encountered such oaths in accounts of hearings in Malawian Chiefs' Courts, however, and Gluckman (1955), in his classic study of Barotse law in the 1940s in neighboring Zambia, remarked on the absence of oaths or other supernatural sanctions underpinning claims to the veracity of testimony in courts. Nor is oath-taking a major feature of truth-speaking in the South African context, although early Zulu ethnographies do point to forms of invoking the ancestors as a way of authorizing the veracity of speech (Bryant 1949). In the Magistrate's Court, however, oaths are administered on the Bible, and in Africa as elsewhere such a pledge engages a person in a potentially dangerous relationship with a supernatural being who will dispense punishment if the truth is not told. In the case of the Kasito family, two of the children were ruled incapable of taking oaths because they were too young to "know God," although even if they had been judged capable of testifying under oath, their testimony would have required corroboration by others before the magistrate would have considered it proof.

Perhaps the most effective proof of innocence or guilt in matters of witchcraft is the suspected witch's response to a trial by ordeal of the sort that Bartret Kasito claimed he had undergone. Ordeals were widespread in this part of the world before being banned by colonial law (Chanock 1985), though evidently the ban, still in effect, is less than comprehensive, if the elder Kasito is to be believed. In medieval Europe ordeals involved the grasping of a red-hot iron or the dunking of the suspect in a pool of water;

burning or drowning was taken as a sign from God of the suspect's guilt (Pollock & Maitland 1911). In African ordeals, similarly, ritual experts administer a special substance to the accused, whose consequent death or survival signifies the unquestionable judgment of relevant spiritual beings (Douglas, 1963; Marwick & Middleton 1967).

The beauty of the ordeal in relation to witchcraft is that it both decides the truth and executes punishment in one move. Suspects who survive, moreover, are restored from the social death that often befalls suspected witches and they can be reintegrated into the community. Colonial authorities worked hard to outlaw such ordeals, succeeding in reducing their prevalence and public scale by subjecting those responsible for them to charges of manslaughter (Chanock 1985). While the experience of Bartret Kasito suggests that ordeals are not quite things of the past, the fact that they are illegal under the terms of the Witchcraft Act, along with the fear of resulting murder charges in the event of the suspect's death, must surely restrain healers who would administer them. Nonetheless, the ordeal, along with confession, remains a touchstone of objective proof of witchcraft, from the point of view of those who live in the world with witches. Yet even ordeals are open to doubt. As the experience of Bartret Kasito shows, what seemed to him to be a clear-cut ordeal was portrayed in the testimony of one of his sons as a form of cleansing ritual, a way of removing and neutralizing witchcraft, and Magistrate Banda made it clear that the evidence of ordeals had no place in his court. The fact that the old man survived an ordeal was noted, but it was not considered relevant.

Finally, and most important, proof of witchcraft, as we have seen, is obtained legally only with the confession of the accused witch to having practiced witchcraft. Because of the secrecy enshrouding witchcraft, in the absence of confession, doubt as to a suspect's guilt can always be raised. Even the great fifteenth-century manual of the Inquisition, *Malleus Maleficarum*, noted that a witch should not be put to death before she confesses (Institoris, Sprenger, & Summers, 1928 [1489]), even if that confession had to be obtained through torture. Confession thus remains the ultimate proof of witchcraft, although few witches willingly confess unless they can be confident of forgiveness. For this reason, most witchcraft confessions in contemporary Africa take place in the relative safety of Christian church congregations, where they thrive because renunciation of a former evil life can add credence to claims of deliverance and salvation. In the cases described above, the imperative of confession for the proof of the witch's identity is underlined by the fact that Section 6 of the Witchcraft Act outlaws "pretending" to the powers of witchcraft, thus requiring confession in order to secure conviction. To repeat Magistrate Banda's argument: to say "I am a witch" is a crime, not because being a witch is a crime, but because saying so is.

Yet even though confession serves as the ultimate touchstone for truth in relation to witchcraft, confessions in witchcraft cases—as in others, for that matter—are notoriously unreliable (Kassin 2008; Kassin & Wrightsman 1985). Even when not extracted under torture, seemingly voluntary confessions

can be false; in initiatives undertaken by the U.S. Innocence Project, for example, false confessions were shown to play a role in some 25 percent of cases in which individuals eventually were exonerated with the use of DNA evidence (Innocence Project 2013). In addition to the reasons that suspects in ordinary criminal cases might confess to crimes they did not commit, witchcraft confessions have two other dimensions of complexity. First, given that witchcraft activities take place in a domain not accessible to ordinary consciousness, a person might, in principle, possess occult powers unknowingly and commit acts of witchcraft without being aware of such activities. Second, as the sad case of Mrs. K. demonstrates, it is impossible to prove that one is not a witch. A timely confession, in the hopes of leniency, is thus the optimal strategy for an accused witch, regardless of the truth of the accusation.

Conclusion: The Witch Trial as Restorative Justice

The human rights approach to witchcraft accusations denies their validity and forecloses the possibility of a trial, fair or otherwise. While there is much to be said for a bracing rationalism in all aspects of life, evidence from Africa over the past couple of centuries shows no sign that witchcraft narratives lose their plausibility as a result of people being told that witches do not exist. Rather than insisting that such accusations are, by definition, baseless, a better approach is the one exemplified by Magistrate Banda: hearing the evidence and deciding the case on its merits. By making the distinction between the person of the witch and the action of witchcraft, moreover, the magistrate was able to identify possible sources of perceived danger for the community while insisting on a high standard of proof in relation to judgments of crime.²⁰

In this, the magistrate is not alone, for there is a widespread commitment in Africa to the need for evidence in relation to witchcraft accusations, both among authorities and the public more generally. And while it is relatively easy to identify a perceived witch simply by adjudicating the plausibility of narratives relating to a person's identity, it is much more difficult to use evidence to prove the actuality and efficacy of purported occult actions. Indeed, the growing literature in forensic psychology relating to the testimony of children and the phenomenon of false confession increases our understanding of the difficulty of arriving at definitive proof in such cases.

In practice, when a magistrate hears a witchcraft case with a view to judging the evidence, he is allowing all concerned to tell their stories in ways that facilitate the airing of grievances and dissipation of anger without causing serious harm to the accused, bringing about, in the process, a version of the restorative justice for which African jurisprudence is celebrated. Contrary to the blanket application of the universal principle of "human rights"—under which any accusation of witchcraft must always be presumed false—Magistrate Banda applied a form of casuistry in which each case is

considered on its merits, evidence is weighed, and precedents are considered (Jonsen & Toulmin 1988). If witches were accorded the right to a fair trial of the sort Magistrate Banda conducts—in which the evidence is presented in open court and the verdict is based on reasoning from law and precedent—the accused would have a measure of protection from violent mob justice, as would the community from the fear of witchcraft. Like chiefs adjudicating witchcraft cases in customary justice forums, Magistrate Banda was less concerned with imposing punishment than with achieving a sense of security and justice, if not harmony, in the community. As he told me in our 2013 interview, he has a duty as a magistrate to “advise” or to “give advice” from his position on the bench, not merely to impose the “technicalities” of the law.

The concept of advice generally has a much greater weight in African contexts than it has in contemporary Western usage, more akin to the obligatory “advise and consent” clauses of various national constitutions than the optional take-it-or-leave-it character of the “advice columnist.” Parents, relatives, siblings, and friends, among others, all have obligations to give advice in particular contexts, often with quite formal rules establishing who can speak on what, how, and when. For example, in the Malawian context, marriage counselors known as *Ankhoswe*—in this region, usually maternal uncles of the husband and wife—after advising on the suitability of the union prior to marriage, are charged with giving advice in the event of marital discord. Failure to heed advice, similarly, is classed as a much more weighty infraction of societal norms than the mere choosing of a different option. It is usually construed not only as the deliberate choosing of the wrong path, the road to immorality, but also a souring, if not rejection, of the proper relationship that ought to subsist between the advisor and advisee, and thus their larger community. By patiently listening to the details of complex conflicts and then weighing the evidence of culpability and blame, Magistrate Banda gave advice that brought about justice.

Magistrate Banda’s court provides a good example of a situation that I suspect is quite common across Africa when courts are confronted with witchcraft cases.²¹ African courts since independence have been dealing with issues of concern to local people that are inadequately dealt with in legislation, notably in relation to marriage and inheritance but also in cases pertaining to witchcraft (Van Gijsegem 2008; Veitch 1971). Since refusing to hear such cases would be impolitic, and since principles of legal evidence make conviction difficult, Magistrate Banda in effect conducts two trials simultaneously. The formal trial adheres to the letter of the law; the verdict is recorded accordingly with the possibility of appeal explained to all parties. The informal trial does not contravene the law, but enshrines somewhat different principles of truth and justice, such as those outlined above.

Drawing on his legal status as magistrate, Damson Banda uses his authority to resolve witchcraft cases by carefully considering the evidence

and assigning guilt, albeit not in a formal appealable verdict but rather in a personal opinion delivered from the bench with all the weight of the magistrate's voice. In this way he uses his authority to resolve the real case, and he uses the case to bolster his authority, his ability to speak the truth from the bench. From the perspective of the new anti-anti-witchcraft activists, these informal witch trials are perpetrating an injustice on people such as Mrs. K. or Masautso Kasito. From the perspective of the community, however, justice is served. Just as important, perhaps, the need for violence is averted.

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Notes

1. For example, the Stop Child Witch Accusations committee. See <http://stop-cwa.org>.
2. For example, the South African Pagan Rights Alliance's "30 Days of Advocacy Against Witch-Hunts in Africa" campaigns.
3. In 2013, for example, the Norwegian government granted the Association of Secular Humanists of Malawi a sum of about U.S.\$500,000 to educate people on the provisions of the colonial era Witchcraft Act (Massina 2013).
4. In 2004 the United Nations High Commission on Refugees issued guidelines on international protection for religion-based claims that included witchcraft, specifically relating to women: "Women are still identified as 'witches' in some communities and burned or stoned to death. These practices may be culturally condoned in the claimant's community of origin but still amount to persecution" (UNHCR 2004).
5. This is a key claim of the South African Pagan Rights Alliance (SAPRA), which advocates on behalf of practitioners of "pagan" religions such as Wicca. SAPRA has succeeded in pressuring the South Africa Law Reform Commission to take up the issue of reforming the Suppression of Witchcraft Act on the grounds that it contravenes their rights to freedom of religion. In Malawi, a long-delayed case before the High Court has been brought on similar grounds.
6. For a good survey of the global history and anthropology of witchcraft and witch-hunting, see Ellis (2007); Behringer (2004).
7. For a critique of the use of the concept of "belief" in the social sciences, see *Witchcraft Accusation and Persecution* that is advocated by the Ashforth (2011); Good (1994); Needham (1972); W. C. Smith (1977).
8. The new acronym, WAP, which is advocated by the Witchcraft and Human Rights Information Network (WHIRN 2013), represents an attempt to overcome this terminological confusion.
9. In a valuable paper seeking to dial back some of the hysteria his earlier work on child witches in Kinshasa had aroused, Flip de Boek (2009) makes the point that even children are capable on occasion of manipulating to their own advantage the idea that they should be feared as witches.
10. Compare this with the number of homicides, which, if the WHO rate of 36 per 100,000 is to be believed (which is doubtful, given the state of the records), would equal 5,760 per year.
11. Using local rainfall variation, Miguel's paper identifies the impact of income shocks on witch killings in rural Tanzania and shows how such killings occur at twice the rate in years of extreme rainfall and famine. While the results are persuasive, Miguel's explanations are suspect, largely because he neglected to examine the impact of famine on mortality. Rather than witches being killed to free up scarce resources, as Miguel hypothesizes, it is more likely that food scarcity increased mortality, particularly among infants, nursing mothers, pregnant women, and AIDS patients in ways that would be considered untimely and therefore highly suggestive of witchcraft. Witch killings, then, would be expected to rise during times of famine because more people would be motivated to impose punishment or exact revenge on suspected witches during a time of heightened insecurity. The increase in mortality would also mean that restraining factors, such as arguments in favor of alternative methods of protecting against witchcraft (e.g., prayer or traditional healing),

- would also seem to be losing efficacy, thereby making death of the witch, the last resort, more likely.
12. The discussion of these cases is drawn from my forthcoming book, *The Trials of Mrs. K. and Other Stories of Witchcraft, Justice, And Human Rights in Africa* (University of Chicago Press). The analysis is based on direct observation in the courtroom, interviews with participants, and a close reading of the texts of Magistrate Banda's judgments, which my assistant obtained from the office of the court. These documents are the texts that were read to the court by the magistrate when passing judgment in the cases. They are public documents, from public trials. Such documents are not easily obtained, however, as they are usually handwritten by the magistrates and only rarely typed, mostly when a case is appealed to the High Court. We were able to obtain these by paying for the typing to be done. At least, that is what we were told we were paying for.
 13. For a discussion of the poison ordeal among people of Bartret Kasito's ethnic group, the Yao, see Dicks (2013). For more on ordeals in this part of the world (which were banned under the Witchcraft Act, and which the anthropological literature of mid-century reported as things of the past), see Douglas (1963) and Marwick (1965). In his 1923 book about the Kaonde people of northwestern Zambia, where he worked as a district commissioner for twenty-one years, Frank Melland (1923) includes a photograph of a sad character sitting on a bench being given a pot of "mwabfi" to drink.
 14. I have been unable to locate this *Guide*, but assume it is a local version of the "Practice Direction" issued by the Chief Justice of England, Lord Parker, in 1962 regarding procedures for courts to follow when deciding whether there is a case to be answered. See Practice Direction (Submission of no case) [1962] 1 WLR 227; [1962] 1 All ER 448, DC; 9/2/62 (United Kingdom, 2013).
 15. The difference between "having the power of witchcraft," and "having the power of exercising witchcraft" is not apparent to me—unless *exercising* is a typographical error and the word should have been *exorcising*.
 16. Although, when I interviewed Magistrate Banda in 2013 about this case and asked whether such a "confession" in the context of cleansing would suffice as evidence under S.6, he said it would not, since it would indicate the accused had repented and put witchcraft behind him.
 17. The magistrate's case for circumspection in hearing the testimony of children could be bolstered by consideration of the recent psychological literature in a field that has developed greatly since the infamous McMartin preschool Satanic child-abuse case in Los Angeles and the moral panic it spawned in the U.S. and elsewhere throughout the 1980s. For a review of this literature see Ceci and Bruck (2006); Mart (2010); Principe et al. (2010).
 18. This part of the Act is rarely enforced. The Association of Secular Humanists, funded by the Norwegian government, has been campaigning to raise awareness among police officers, court officials, and traditional leaders of the prohibitions on making witchcraft accusations. When diagnosing cases of witchcraft, traditional healers typically do not name specific perpetrators but rather promise to deal with them using their spiritual and medicinal powers. This is less to avoid legal liability than to avoid being held responsible for conflict that might occur were the witchcraft victim to take action against the witch.

19. For insight into the editorial politics of this program and the ways witchcraft stories feature in these broadcasts, see Englund (2007, 2011).
20. It should be noted here that the history of the law of evidence in the Common Law tradition derives in large part from the experience of witch trials in seventeenth century England. See Darr (2011).
21. A 2009 study of “witchcraft crime” in the Mpondoland region of South Africa, for example, found that traditional leaders were deeply committed to considering evidence when cases of purported witchcraft were brought to them. Moreover, the same study found that most such cases were brought by the person accused of being a witch and were resolved in favor of the accused, usually because of problems of proof. See Petrus (2009).