

**GENDER DISCRIMINATION AGAINST WOMEN IN
THE PUNISHING OF WITCHES AMONG THE
ABAGUSII OF SOUTH-WESTERN KENYA**

BY

MIENCHA KENNEDY ISAAC

**A Thesis Submitted in Fulfillment of the Requirements for the Award of
the Degree of Doctor of Philosophy in Philosophy of the University of
Nairobi**

2014

DECLARATION

This thesis is my original work and has not been submitted for the award of a degree in any other University.

MIENCHA KENNEDY ISAAC

DATE

This thesis has been submitted for examination with our approval as University Supervisors.

PROF. SOLOMON MONYENYE

DATE

PROF. JACK ODHIAMBO

DATE

DEDICATION

In memory of my dear late mother Esther Nyanchama and My father Johnson
Miencha Torori.

ACKNOWLEDGEMENT

It would not be possible to list the names of all the people and agencies that I would like to thank for the assistance they gave me in one way or the other in the course of writing this thesis. This does not mean that am not indebted to them for their support, the contrary is true and to them I say thank you. There are, however, those who merit special mention.

I would like to thank my supervisors, Professor Jack Odhiambo and Professor Solomon Monyenye for their invaluable assistance and guidance during the research period and writing of this thesis. I am indebted to Professor Joseph Nyasani and Professor Stephen Akaranga for their profound encouragement. I cannot forget to thank my entire family members for according me their unwavering material, moral and emotional support.

Lastly, my sincere and whole hearted thanks go to my dear wife Anne Moraa and my two children, Nicholas Maranga and Esther Nyanchama for their emotional support, understanding and perseverance during the whole period that I spent in compiling this work.

ABSTRACT

Although it can be argued that much of the indigenous cultural beliefs and practices have given way to modernity and scientific ways of explaining phenomena, some members in some African communities are slow to embrace modernity and let go some of these beliefs. The Abagusii community of south-western Kenya is one of such communities. This is particularly the case as regards their belief in witchcraft. Some members in this community are so besieged by this belief that they resort to taking the law into their hands and meting out punishments to those suspected of practicing witchcraft. The worst of these punishments is that of the burning and lynching of suspected witches, as often evidenced by both electronic and print media reports.

Though both men and women are believed to practise witchcraft, reports appearing in the media indicate a skewed meting out of punishment against women suspects. This study thus set out to investigate the phenomenon of witch-punishment with the view to try and establish whether or not this witch-punishment is gender discriminatory against women.

The study employs the utilitarian theory of punishment – the view that actions are justified on the basis of their utility. Based on this, witch-punishment among the Abagusii seems to be premised on the fact that witchcraft is an evil that negates the general welfare of society. Witch-punishment would, thus, perform the deterrence function of punishment. The problem is, however, why this punishment is gender discriminatory against women. Discrimination of whatever kind is unethical, whatever its justification, hence, an issue of philosophical investigation. The study proceeds from the assumption that witch-punishment among the Abagusii is gender discriminatory against women. To affirm or annul this assumption, Secondary data was collected from various sources. This data was supplemented by primary data that used a questionnaire, administered to a selected sample of respondents drawn from the population of the Abagusii community. Analysis of the data revealed that punishing of witches among the Abagusii is, indeed, gender discriminatory against women. The assumption of the study was thus, affirmed. But more importantly, the analysis revealed that this kind of discrimination, heinous as it is, is still exists in a country whose constitution and the laws criminalize all forms of discrimination, leave alone gender. The study shows that this is due to lack of will-power among those public agencies, such as the police, the national government through the chiefs to the county commissioners and the judiciary, who are supposed to implement the country's laws.

By way of conclusion, the study recommends, among other things, that these agencies that are charged with the implementation of the already existing laws as enshrined in the constitution concerning discrimination, be called upon to account for their failure to curb this gender based witch-punishment. They should be asked to explain why these marauding murderers are allowed to walk scotch free and not facing the full force of the law. They should be held to account for failure to take their responsibilities seriously so as to eliminate cases of spontaneous witch-punishment among the Abagusii. Meanwhile, the county and national authorities must now fold their sleeves, quickly and embark on a serious cultural revolution to eliminate this gender based witch-punishment in particular and the belief in witchcraft in general among the Abagusii.

TABLE OF CONTENTS

DECLARATION.....	ii
DEDICATION.....	iii
ACKNOWLEDGEMENT.....	iv
ABSTRACT.....	v
CHAPTER ONE.....	1
1.0 DEFINITION OF TERMS.....	1
1.1 GENERAL INTRODUCTION.....	4
BACKGROUND TO THE STUDY.....	4
1.2 GEOGRAPHICAL LOCATION AND ETHNOGRAPHIC BACKGROUND OF THE ABAGUSII.....	5
1.3. STATEMENT OF THE PROBLEM.....	9
1.4. GOAL AND OBJECTIVES OF THE STUDY.....	11
1.5. JUSTIFICATION OF THE STUDY.....	12
1.6. SCOPE AND LIMITATIONS.....	13
1.7. RESEARCH HYPOTHESIS.....	14
1.8. THEORETICAL FRAMEWORK.....	14
1.9. RESEARCH METHODOLOGY.....	21
1.9.1. LIBRARY RESEARCH.....	22
1.9.2. DATA COLLECTION.....	25
1.9.3. ETHICAL CONSIDERATIONS.....	27
1.9.4. THE GENERAL LAYOUT OF THE STUDY.....	27
CHAPTER TWO: LITERATURE REVIEW.....	29
2.0 .THE CONCEPT OF WITCHCRAFT.....	29
2.1. EXPLANATIONS AND FUNCTIONS OF WITCHCRAFT.....	37
2.2. WAYS OF ACQUIRING WITCHCRAFT.....	40
2.3 METHODS OF IDENTIFYING OF WITCHES.....	43
2.4 ACTIVITIES OF WITCHES.....	45
2.5 WITCHCRAFT AMONG THE ABAGUSII.....	47
CHAPTER THREE: WITCH- HUNTS PUNISHMENT.....	58
3.0 HISTORICAL BACKGROUND.....	58
3.1 ARGUMENTS FOR WITCH-PUNISHMENT.....	64
3.2. THEORIES OF THE CAUSES OF WITCH-HUNTS AND EXECUTIONS.....	74

3.3. SOME FORMS AND METHODS OF PUNISHING WITCHES	85
CHAPTER FOUR: WITCH- PUNISHMENT AND GENDER DISCRIMINATION AGAINST WOMEN	99
4.0 INTRODUCTION.....	99
4.1 TYPES OF WITCH-PUNISHMENTS AMONG THE ABAGUSII AND THEIR GENDER	
GENDER ASPECTS	104
4.2 OSTRACISM.....	109
4.3. LYNCHING	109
4.4. INSERTION OF SHARP OBJECTS INTO SUSPECTS' PRIVATE PARTS	114
4.5. ARGUMENTS ADVANCED IN SUPPORT OF GENDER DISCRIMINATION.....	117
AGAINST WOMEN IN WITCH- PUNISHMENT	117
4.6. THE ABAGUSII UNDERSTANDING OF A WOMAN (<i>OMOKUNGU</i>)	126
CHAPTER FIVE: PRESENTATION, ANALYSIS AND DISCUSSION OF RESEARCH FINDINGS	130
5.0 INTRODUCTION.....	130
5.1. ECONOMIC EFFECTS.....	131
5.2. SOCIAL AND PSYCHOLOGICAL EFFECTS	133
5.3. LEGAL EFFECTS	137
CHAPTER SIX: SUMMARY, CONCLUSION AND.....	140
RECOMMENDATIONS	140
6.1. SUMMARY	140
6.2. CONCLUSION.....	144
6.3. RECOMMENDATIONS	146
CITED BIBLIOGRAPHY	150
INTERNET SOURCES	154
OTHER SOURCES	156
Appendix I.....	157
The Questionnaire	157
COHORT 1- NYACHEKI TOWN 18/7/2012.	159
COHORT 2-OGEMBO TOWN 23/7/2013	159
COHORT 3-NYAMARAMBE TOWN 2/8/2013	159
Appendix II.....	159
Appendix III.....	160
LIST OF POLICE RECORDS FROM OGEMBO DIVISIONAL POLICE STATION (GUCHA)JAN-JULY 2012_Key	160
Appendix IV.....	161
Appendix V	162

CHAPTER ONE

1.0 DEFINITION OF TERMS

Below are some of the key concepts used in this study.

Discrimination.

This is the act of treating various categories of people unequally. It may refer to the practice of denying people various rights and practices or otherwise because of their race, ethnicity or sex.

Gender

This is the range of physical, biological, mental and behavioral characteristics pertaining to, and differentiating between masculinity and femininity. Depending on the context, the term may refer to biological sex – the state of being male, female or intersex -.sex based social structures – including gender roles and other social roles – or gender identity (wikipedia.org/wiki/gender. Retrieved on 27/06/2014).

Gender discrimination

This is a prejudice or discrimination based on a person's sex or gender. Sexist attitudes may stem from traditional stereotypes or gender roles and may include the belief that a person of one sex is intrinsically superior to a treatment compared to that of their opposite sex ([http://www/Wikipedia.org/wiki/gender discrimination](http://www/Wikipedia.org/wiki/gender_discrimination). Retrieved on 23/12/2013).

Magic

This involves the manipulation of mystical powers and is sometimes believed to be related to religion. There are two forms of magic, white and black. White magic is usually conducted in

the open and mostly during the day. On the other hand, black magic is practised secretly and is, thus, an aspect of witchcraft.

Night-runners

These are people who are suspected to carry out their activities under the cover of darkness. The Abagusii believe that some people use darkness to perform evil activities. Hence night-runners are lumped together with *Abarogi* (witches) regardless of their activities which could be malevolent or not.

Punishment

This refers to the authoritative imposition of something undesirable or unpleasant upon an individual or group by law enforcement in response to behaviour that an authority deems unacceptable or a violation of some norm. The unpleasant imposition may include a fine, penalty or confinement or the removal of something pleasant or desirable. The authority imposing this punishment may be either a group or a single person and punishment may be carried out formally under a system or law or informally in other kinds of social settings such as within a family. Negative consequences that are not authorized or that are administered without a breach of rules are not considered to be punishment as defined here (Acton 1961, <http://wikipedia,the free encyclopedia.org/wiki/punishment>. Retrieved on 27/06/2014).

Sorcery

Among the Abagusii, the term sorcery carries the same meaning as magic. Sorcerers and sorceresses are people believed to have powers to kill by use of magic. However, unlike witches (*Abarogi*), sorcerers and sorceresses (*Abanyamesira*) are individuals who are well known in society. They can offer their services for hire, either to kill or to forestall the effects

of evil magic. It is only when they use their magic to kill unjustifiably that they fall under the category of witches (*Abarogi*)

Witchcraft

Witchcraft involves the alleged human possession of supernatural powers for anti-social and evil purposes. This is also sometimes referred to as black magic. A female who possess such powers is called a witch or sorceress while the male counterpart is called a wizard or warlock (Encyclopedia Britannica, vol.23, 1968, 64). Among the Abagusii, anyone who employs mystical powers to harm other people or their belongings is a witch (*Omorogi*). Hence, regardless of its definition, the term witch in this study is used to refer to both female and male practitioners of witchcraft.

Witch-Punishment

This refers to the act of meting out punishment to people suspected of practicing witchcraft. There are different kinds of witch-punishments among the Abagusii. Among these are; lynching, banishment, ostracism and

1.1 GENERAL INTRODUCTION

BACKGROUND TO THE STUDY

The belief in witchcraft is a phenomenon that has been shrouded in mystery for a long period of time in history. Though universal, it has ceased to exist in many parts of the world, especially in the Western countries. In many parts of Africa, however, the belief still exists and is used to explain various occurrences in society.

In the African social set up, witchcraft is used to explain those afflictions that could not be explained rationally or scientifically (Mbiti, 1969, Monyenye, 1977, Levine, 1979). This view vindicates that of Carlo (1965), who argues that different people, depending on their cultures, understand the nature and meaning of witchcraft differently at various historical epochs. The persistent belief in witchcraft in contemporary Africa could partly be explained in terms of the continent's level of social and economic development.

The above contention implies that the question of reality is central in studying witchcraft. Among the crucial issues to be addressed here include: the nature of reality in a world where there are thought to be witches and the beliefs of the victims of witchcraft.

To understand the concept of witchcraft and witches, there is need to analyze the mentalities of people who believe in witchcraft as well as the worldview of whole communities gripped by a specific fear and not simply individuals convinced of their own supernatural powers. One important overall aspect of witchcraft is that the practice is mostly believed to be a secretive activity and in the eyes of some people, a relic from the practices of primitive societies which has no place in modern times. This argument could perhaps be true in much of the western world. The situation is, however, different in Africa and other third world countries.

Witchcraft in Africa could be said to be real and alive. The reality of this is for instance captured in the works of a number of writers including, Douglas (1963), Mbiti (1969), Magea, (1998) Shorter (1998), Giblin (2002) and Mesaki (2008) among others.

Witchcraft is one of those beliefs that are strongly entrenched among the Abagusii. The belief is rooted in their whole system of knowledge and morality. This explains why in Gusiiland, witchcraft is held responsible for those calamities and misfortunes that may seem inexplicable (Monyenye *Op.Cit*, Levine *Op.Cit*,₂ and Akama 2006: 115-130). These attributions of witchcraft to occurrences that defy logical explanations have led to witch hunting and spontaneous punishments of suspected witches (Akama 2006, Nyasani 1997, *Daily nation*, 28th February, 1997).

These reported cases of witch-punishment among the Abagusii are partly what prompted this study. This thesis focused on the practice of witch punishment among the Abagusii as it pertains to discrimination against women.

1.2 GEOGRAPHICAL LOCATION AND ETHNOGRAPHIC BACKGROUND OF THE ABAGUSII

The Abagusii is a Bantu speaking community who inhabit the two counties of Kisii and Nyamira (formally Kisii and Nyamira Districts respectively) in Nyanza province, Western Kenya. *Gusii* is the fond reference to the Abagusii homeland/country and *Mogusii* is culturally identified as their founder and patriarch (<http://news.bbc.co.uk/1/hi/7415502.stm>).

The total area covered by the two counties is estimated to be around 2196 sq.km.

Gusiiland borders Kericho district to the east and north, Luo Nyanza to the west and Narok district to the south. Gusiiland is largely over 1500m above sea level except for the highlands and plateaus, rising up to 1800m above sea level at Keroka and Manga. The average rainfall

per annum is 100mm, while the annual maximum temperatures range from 26-28 degrees centigrade. According to the 2009 census, Gusii country had a population of 2.2 million people.

The Abagusii combine farming with animal husbandry. Cattle herding is highly regarded especially due to the socio-cultural significance of livestock, such as the paying of bridewealth. The Abagusii, like the Abaluhya, claim to have come from areas further north (Ogot 1978, 85-86). As these Bantu speakers migrated from the Congo, they split up into different groups with the Abagusii ending up in Nyanza near Lake Victoria. The Kikuyu, Kamba and other groups in Kenya continued the hunt for richer soil for farming and moved on eastwards across the Rift Valley to their current locations.

After this migration, the Abagusii settled in a geographical location unique among the Bantu speaking groups in that they were surrounded on all sides by initially, and later sporadically Nilotic communities of the Luo, Kipsigis and Maasai. Constant sieges resulted in the development of a war-like culture, unlike most Bantu communities, to defend against cattle raiding neighbouring communities. To this day, they have a reputation of being tough, emotionally labile, resilient and very industrious.

There is strong evidence, however, to suggest that periods of peace with neighbouring communities must have led to intermarriages. This is evident in the greatly varied complexion and physique between the Abagusii from different sub- regions of Gusiiland.

Traditionally, the clan constituted the largest political unit with the family (husband, wife or wives and Children) being the smallest. In the event that the father is dead, the socio-political responsibilities of the family resorted to the eldest son. Although married sons were seen as independent, this did not remove them from the political surveillance of the father.

In the family unit, the father's work was to settle any arising disputes between his sons and wives. If, the family head failed in his responsibilities and duties, then the clan elders who form a larger political unit could step in to assist (Levine *Op. Cit*, 67). Even though the clan elders were solely concerned with handling of inter-family disputes, they could intervene in the homestead affairs as Levine *Op.Cit*) asserts:

The traditional Gusii homestead was an internally self-governing unit. All disputes and rule violations arising within it were handled by the homestead head, backed by ancestral spirits, unless he called in an outside authority.

This outside authority that the homestead head could resort to was the institution of the clan elders. Prior to colonization, the Gusii society was largely segmented with no central authority. However, the clan elders could be said to constitute what can be regarded as recognizable central authority. The clan elders - *Abagaka b'egesaku* - did not refer to a council with a definite membership, but to a group of homestead heads and other elders - men with grey hair - whose membership would depend on the nature of the case being heard (Levine *Ibid*).

The fact that the pre-colonial Abagusii as a whole did not have one known political leader to whom they owed their allegiance, did not mean that they lived as a disparate entity. This notion is dispelled by Ochieng (Ogot *Op.Cit*: 100-101) when he asserts that:

The Gusii society should not be looked at as having been composed of a conglomeration of independent feuding or warring clans which conducted external relations with their neighbours and persistently promoted their separate and distinct unities. Rather, the Gusii people constituted one vast society which was characterised by a number of common features. [They] spoke a common language, shared a common continuous territory and had common customs and traditions-including beliefs in the common descent of their clans and sub- tribes from one remote tribal ancestor, *Mogusii*.

From the foregoing discussion, two important observations that are critical to this study can be inferred. Firstly, the institution of clan elders being a political unit played a pivotal role in the identification and punishment of deviants, including suspected witchcraft practitioners.

Abagaka b'egesaku is a grouping that was solely constituted of males, indicating that the Abagusii was a patriarchal community. This implies that women did not participate in major decision making, like witch punishment. One could then conclude that the absence of women from this important decision making organ impacted negatively against them. This would imply that discrimination against women was likely to be practised in this area.

The second observation pertains to the methodology employed in this study. This arises from the contention that the Abagusii shared a common continuous territory and had common customs and traditions. This implies that in terms of cultural practices and superstitious beliefs, there is considerable homogeneity. The study areas and sample selection of respondents was partly informed by this fact (see appendix v, map of Kisii county showing study areas).

The Abagusii world-view recognizes the existence of two competing forces in the universe - good and evil. The community equally recognizes the fact that for peace, unity and harmonious existence among members in society, good must prevail over evil. There are certain codes of community expectations, including taboos that govern and regulate people's behaviour. It is expected that individuals and the whole community must observe these forms of behaviour to preserve order and assure the continuation of life in its fullness. Any conduct which threatens or breaks any of the community codes of behaviour, which are essentially its moral codes, endangers life and is seen as bad, wrong or sinful.

Most of these codes of conduct may not be written, but they are well known to the adult members of the community and are usually passed on from one generation to another through the normal daily processes of socialization. These codes are impressed on the minds of individuals in specially and practically unforgettable ways during initiation, for instance. For this reason, all moral customs, known or unwritten are supposed to be observed. Any

violation of the community's moral codes constitutes wrong-doing and any one found culpable would be held responsible.

It is on the above background that all negative forms of behaviour that destabilize the existing social harmony are subjected to sanctions. And since witchcraft is believed to constitute negative behaviour, its practice falls under those that attract sanction, thus, the phenomenon of witch-punishment among Abagusii.

1.3. STATEMENT OF THE PROBLEM

In many contemporary African communities, belief in witchcraft affects almost every aspect of people's daily lives. This is so despite the fact that the effects of modernity have a significant presence in many parts of these communities. Evans-Pritchard (1962) for instance, avers that in many parts of Africa the belief provides an explanation for every day events, and usually provides a theory of causality where a number of occurrences are attributed to it.

Witchcraft constitutes various activities that are deliberately planned to cause harm to its victims (Mesaki *Op.Cit*). Some of the acts that witches are accused of indulging in, according to Omoyajowo (1983, 317) include:

The eating of people and drinking of their blood; making people lose their money and property; turn people into drunkards; help thieves steal; cause infant mortality, epidemics, lightning and thunder, flying and holding nightly meetings; haunt homes and causing others queer happenings.

Witchcraft in Africa or in those communities where it is still practiced is, thus, seen as being inherently negative. Its practice causes misfortunes and often leaves people gripped with fear of the ever present reality that their enemies would at any time unleash its harmful effect on them. The view that witchcraft is essentially evil has made many people in Africa consider it

an offense that calls for sanction. The phenomenon of witch-punishment, which in most cases is informal, is premised on this assumption.

Among the Abagusii, witchcraft is not only an evil practice as observed by Levine (*Op.Cit*), Akama(*Op.Cit*) and Mayer (1949), but, as Monyenye (*Op.Cit*, 77) also observes, ‘it affects people psychologically and has been blamed for a host of misfortunes including death’’. It is for this reason that witch punishment is often meted out on people who practise witchcraft.

The punishing of suspected witches among the Abagusii is not a new phenomenon. It is a practice that existed even during the pre-colonial period. During this period, cases of witchcraft were usually referred to clan elders (*Abagaka b’egesaku*), who could sentence a witch to death if the evidence that they were actually involved in the act was conclusive (*Akama Op.Cit*, 65).

A gender analysis of punishments meted out on the alleged practitioners of witchcraft among Abagusii shows that more women than men get punished. There are no exact numbers to demonstrate this contention. However, recorded cases of witch- punishment seem to point to this conclusion (See appendix iii).

It should also be noted that the figures that are usually given in the press are hardly exhaustive since they represent only those cases that are often brought to the attention of the authorities. There are many other suspects who are killed each year in remote villages and whose cases may not find their way into the press. And despite the government’s attempt to contain this practice, the problem of witch associated murders through the so-called witch punishments in Gusiiland is still prevalent. The question then that arises here is, since witchcraft among the Abagusii is practiced by both men and women (*Akama Op.Cit*, Levine *Op.Cit* and Monyenye *Op.Cit*), how could this apparent gender disparity in witch-

punishment be explained? This then is the problem that this work set out to study.

This study was occasioned among other things by the fact that the media and other sources that have documented the phenomenon of witch punishment among the Abagusii have not attempted a gender analysis of the same. It is, therefore, important to inquire into this phenomenon so as to try and arrive at rational and empirical explanation of this scenario. This study thus contended that witch punishment among the Abagusii is, indeed, gender discriminatory against women.

The earlier studies in this area have often focused on the general aspects of witchcraft and witch punishment. Thus, the aspect of witch punishment and gender relations among the Abagusii has not been dealt with before. This is the lacuna, therefore, this study set out to fill. Hence, this aspect needed exploration and this was one of the rationales of this study.

1.4. GOAL AND OBJECTIVES OF THE STUDY

The goal of this study was to establish whether witch punishment among the Abagusii is gender discriminatory against women. The specific objectives of the study were to:

1. Explore the meaning and concept of witchcraft in general and among the Abagusii in particular.
2. Discuss the various forms of witch punishment among the Abagusii.
3. Examine the phenomenon of witch punishment and gender relations among the Abagusii.
4. Examine the consequences of witch punishment and gender discrimination against women among Abagusii.
5. Recommend ways that could be used in the elimination of gender discrimination against women in witch- punishment among the Abagusii.

1.5. JUSTIFICATION OF THE STUDY

The social, economic, political and moral consequences of the practice of witch-punishment among the Abagusii are very enormous. For instance, several cases have often been reported in the media where people who are suspected of being witches are purportedly subjected to punishment. Some of these forms of punishment include; banishment, the killing of suspects and the destruction of suspects' property, among others.

It is worthwhile to note that the killings that are carried out under the pretext of punishment are mostly spontaneous. The processes used in the identification and trial of the suspects are usually questionable. Therefore, there is likelihood that due to flawed and unscientific methods of establishing 'guilt', many innocent people lose their lives and property during such incidents. Thus, this makes the whole issue of witch punishment a moral problem and it, thus, falls under the realm of Philosophical investigation.

The other issues that need to be addressed here include the entities that mete out punishment as well as the types and severity of such punishments. These issues are pertinent because it is possible that due to various rivalries among members of the community, there are people who could use the phenomenon of witchcraft to settle personal scores against their perceived enemies. Such an eventuality would constitute an abuse of the institution of punishment.

There is also the unresolved question of whether witchcraft actually constitutes a punishable offense. There are those who view it as a mere psychological compulsion that should be soberly approached rather than being criminalized. This is the view held, for instance, by Nyasani, (*Op.Cit*) and Oruka (1990). According to them, witchcraft and punishment for its practice raises moral issues that can no longer be ignored by scholars, including those of philosophy. Thus, an objective and critical study of witchcraft by scholars is required so as to arrive at a rational understanding of it, and suggest possible ways of averting the

consequences associated with the phenomenon of witch punishment.

Witch punishment that discriminates against women is indeed, unethical since it constitutes an act of violence against women. Violence against women is itself a form of discrimination and a violation of human rights. It causes untold misery to them by cutting short their lives and leaving a countless number of them in pain worldwide. Among the Abagusii then, witch punishment that targets women harms families across the generations and impoverishes the community since women constitute the core labour force.

Violence against women, in whatever form, hinders them from fulfilling their potential, restricts economic growth and undermines development. The scope and extent of violence against women are a reflection of the degree and persistence of discrimination that women continue to face all over the world. This study was therefore, undertaken from the ethical perspective of philosophy.

This study, thus, contributes both to academia as well as providing information and recommendations that could help policy-makers and administrators who are often directly called upon to deal with the phenomenon of gender discrimination against women. Among the Abagusii, the aspect of gender discrimination in punishing witches is one that had not been addressed before, a gap that is filled by this study.

1.6. SCOPE AND LIMITATIONS

The phenomenon of witchcraft spreads across the entire Abagusii community. The study areas picked for this work are, therefore a true representative of what happens in the other parts of the community that were left out of this study. The selection of the study areas and the sample were, therefore, influenced by the constraints of; accessibility, time and resources.

There was also special focus on those areas where incidents of witch punishment were reported in the media.

The phenomenon of witchcraft in itself is very wide and constitutes various aspects. It would therefore, be unrealistic to expect a study of this nature to have covered all these aspects. This research was confined to the aspect of gender discrimination against women in punishing witches among the Abagusii. The other various aspects of witchcraft left out of this study are equally important and could constitute critical areas for future study.

.

1.7. RESEARCH HYPOTHESIS

This study was guided by the following research premise:

1. Punishment meted out to suspected witches among the Abagusii is gender discriminatory against women.

1.8. THEORETICAL FRAMEWORK

This study was guided by the utilitarian theory of ethics. This is a philosophical theory that justifies moral actions based on their utility. The main proponents of this theory, among others include David Hume (1711-1776), Jeremy Bentham (1748-1832), John Stuart Mill (1806-1873) and Henry Sidgwick (1830-1900). This theory contends that the right thing to do in any occasion is that which aims to give maximum happiness for all concerned - the greatest good for the greatest number or the greatest happiness for the greatest number (Beauchamp 1982). According to Bentham, the rightness and wrongness of actions and practices are determined solely by the consequences produced for the general well-being of all parties affected by the actions or practices. What then makes an action morally right or

wrong is the total good or evil produced by the act, and not the mere act in itself. Bentham went on to apply the theory of utilitarianism in explaining the justification of punishment. He suggested that crimes should be classified according to the levels of seriousness of offense and that the levels of seriousness should be determined by the unhappiness and misery a crime causes to its victims and to society. Thus, an act should be classified as criminal only if it causes harmful consequences to others. In this study, therefore, utilitarianism is used to explain the justification of witch-punishment by examining the theory and meaning of punishment.

In the discussion of witch-punishment, there are two issues that require examination; its justification and administration. It is imperative to examine the questions of whether witchcraft constitutes an offence that necessitate punishment and if so, who is mandated to mete out such punishment? Before these questions are answered it is important first to examine the meaning of the term punishment and its application in moral philosophy. In the Oxford English Dictionary (1961, 1603) the verb to punish is defined as “to cause an offender to suffer; to subject to judicial chastisement a retributive or requital, or else caution against further transgression; to inflict a penalty on; to require or visit on etc., with a penalty inflicted on for something”.

Implied in the above is that punishment must be meted out for a crime that has been committed and identified such that it plays either the deterrence, retribution, reformation or restitution functions.

The problem of punishment, according to Balogun (2009), is not centred on whom to punish, (for it is definitely the violators of law), but revolves around the justification of punishment. Central to both legal and political philosophy, are the fundamental questions of whether and how punishment can be morally and legally justified? More precisely, it could be asked what

moral justification does a state have in using the apparatus of the law to inflict burdensome sanctions or pains on its citizens? In other words, under what conditions can we justify formal and legal punishment imposed by the state on criminals? That is why punishing the violators of law? Essentially the main question that needs to be addressed here is; what is the Philosophical justification of such an act? The answers to these questions have traditionally divided scholars into either the utilitarian camp or the retributivist camp.

The justification of witch-punishment would then be premised on the fact that an offender (witch) has violated a known rule or norm and he or she has to be made to pay for his or her acts of transgression. The function of that punishment is to appease both the offended individual or individuals and society who would feel relieved and as such derive satisfaction from the knowledge that offenders do not remain unpunished.

In criminal justice, one of the things that have to be taken into account is the severity of punishment in relation to the offense committed. Punishment is held to be justified only if it is commensurate to the crime or offense committed. Any punishment which does not meet the above criterion should be deemed unjustified and immoral. Punishment, according to Benn (1959, 173-175), can only be justified if there is a connection between it and the guilty of the crime or offense already committed. He identifies certain conditions commonly considered necessary properly to describe an action as punishment. These are:

1. It must be imposed by authority conferred by the system of rules against which the offense has been committed.
2. It must involve some loss or unpleasantness to the supposed offender.
3. It must be in response to an offense.
4. The person to whom the loss is imposed should be deemed at least somewhat responsible for the offense and not merely the natural consequences of an action.

Punishment meted out arbitrarily and in disregard of the above conditions must be viewed as not only unjustified and immoral, but also as one that should be condemned, and generally abolished. A similar view is held by a school of utilitarians represented by Burrows (1969, 61) who states that:

The view that punishment is justified by the value of its consequences is compatible with any ethical theory, which allows meaning to be attached to moral judgement. It holds merely that the infliction of suffering is of no value or of negative value and that it must, therefore, be justified by further considerations. These will be such things as prevention and deterrence from wrong doing, compensation of victims and reformation of offenders and satisfaction of vindictive impulses.

It can then be argued that fundamental justifications or alternatives to punishment include; retribution, deterrence, rehabilitation, and incapacitations. The last could include such measures as isolation, in order to prevent the wrongdoer's having contact with potential victims, or the removal of a hand in order to make theft more difficult. Of the four justifications, only retribution is part of the definition of punishment and none of the other justifications is a guaranteed outcome, aside from obvious exceptions such as an executed man being incapacitated with regard to further crimes.

If only some of the conditions included in the definition of punishment are present, descriptions other than "punishment" may be considered more accurate. Inflicting something negative, or unpleasant, on a person or animal, without authority is considered as either spite or revenge rather than punishment. In addition, the word "punishment" is used as a metaphor, as when a boxer experiences "punishment" during a fight. In other situations, breaking a rule may be rewarded, and so receiving such a reward naturally does not constitute punishment. Finally the condition of breaking (or breaching) the rules must be satisfied for consequences to be considered punishment.

Punishments differ in their degree of severity, and may include sanctions such as reprimands, deprivations of privileges or liberty, fines, incarcerations, ostracism, the infliction of pain, amputation and the death penalty. Corporal punishment refers to punishments in which physical pain is intended to be inflicted upon the transgressor. Punishments may be judged as fair or unfair in terms of their degree of reciprocity and proportionality. Punishment can be an integral part of socialisation, and punishing unwanted behaviour is often part of a system of pedagogy or behavioral modification which also includes rewards.

From the above observations, it could be inferred that witch-punishment can be explained by a number of factors. First, is that it is meted out merely for penal reasons. This applies in those cases where an individual has been found 'guilty of practising' witchcraft. The offender (witch) is made to suffer the pain of punishment for engaging in an act that is considered injurious to other people and society in general. Second, is that witch- punishment is meted out for the deterrent purpose. Deterrence has the functions of; stopping actual offenders from repeating their offenses and acting as a warning to potential offenders of what awaits them in case they go ahead and commit similar offenses.

The logic behind deterrence theory of punishment has best been explained by Benn (*Op.Cit*, 178-180). For Benn, deterrence theory is based on the assumption that, as rational creatures, human beings would assume that any crimes or offenses they commit are an outcome of their rational calculations, having taken into consideration the costs and benefits of such law violations. Implied here is that the higher the cost of crime, the lower the benefits of crime. Punishment, according to this model, is seen as a significant cost of crime, implying that the higher the level of punishment, the lower the level of crime. The deterrence theory of punishment, therefore, operates on two levels; the general and the specific.

The general view of deterrence

This is the assertion that punishing some law breakers provides some information about the costs of crime to those punished and to the general public, by reducing the latter's law violations. In other words, general deterrence refers to the belief that perceived punishment will serve as a warning not only to an individual criminal, but also to others. This is, for instance, the argument normally used by Judges in the courts of law when passing judgments on offenders of such serious crimes as rape, murder or robbery with violence. They do not sentence them for simply being a threat to society, but also on the assumption that the stiffer sentences would deter those who might be harbouring similar criminal intentions. Witch punishment among the Abagusii could then be said to be based on the above model. The painful consequences of punishment are expected to deter witches from repeating their acts in the future. Potential witches who witness these punishments, it is hoped, would learn lessons from them and abstain from practising witchcraft for fear of being subjected to similar punishment in the event that they are apprehended.

The specific view of deterrence

This is the argument that punishment reduces the law violations of those punished. The assumption here is that the offenders would rue the reality of undergoing similar painful experiences of punishment over and over again. For instance, incapacitation, the prevention of crime by keeping criminals behind bars for longer periods, is an example of specific deterrence. The efficacy of this theory has, however, been rendered doubtful due to the fact that in crime, there are recidivists or repeat offenders in jails, unless of course we are talking about absolute incapacitation in the form of capital punishment (This is what proponents of the death penalty refer to as 'ultimate specific deterrence'). Whether effective or not, the actual aim of punishment (cost of crime) meted out to law violators makes potential offenders

to be aware that it could happen to them. The reason why deterrence appears weak, according to Benn (1959) is because it rarely takes into consideration three very important dimensions of punishment namely; severity, certainty and celerity.

Severity

This refers to the harshness or degree of punishment, its length of incarceration or amount of fine. The higher all these are, the lower the level of law violations.

Certainty

It refers to the probability of experiencing punishment. It assumes that the more certain the punishment, the lower the levels of law violations.

Celerity

This refers to the swiftness of punishment - the interval of the time between committing a crime and that of experiencing punishment. It is averred that the more immediate the punishment, the lower the level of violations.

The deterrence theory of punishment, therefore, predicts that law violations are highest when severity, certainty and celerity are lowest.

Deterrence, as a utilitarian theory of punishment, could be used to explain witch punishment among the Abagusii. Generally the utilitarian principle holds that the right thing to do on any occasion is that which aims to give maximum happiness for all concerned - the greatest good for the greatest number. In punishing witches, this principle would hold that, the only way of ensuring this is through total deterrence - eliminating all witches from society, through either banishment or capital punishment.

This theory is based on the expected results of an action rather than on any inherent sense of right or wrong. In as far as witch punishment is concerned, those who mete out witch punishment among the Abagusii seem not to be concerned with the morality of punishing of suspected witches, whose offenses may not be proved beyond reasonable doubt, but rather with the need for eradicating witchcraft from their midst. This logic gets support from Frankena (1989, 134), who argues that a society could be justified in punishing an innocent person to prevent panic

1.9. RESEARCH METHODOLOGY

The claim that philosophy has a distinctive method has been disputed repeatedly (Farber 1967, 62). It has been argued that the subject has no method of its own apart from the procedures of the natural sciences or the special sciences. It is imperative, however, to note that there is no exclusive method in the sciences. While a method may be used extensively in one field, it may not be restricted thereby in its use. It is, therefore, true to assert that philosophy shares with the sciences the use of descriptive analysis, especially in the theory of knowledge. It is equally important to point out that although much of the content of philosophical discussion is derived from the sciences, this dependence does not mean slavish adherence or the surrender of autonomy. The very generality of philosophical questions and the peculiar nature of inquiry in the field of values, for instance, prompt the philosopher to have his peculiar methods. It is in this context that the methodology of the present study should be understood.

This study was, thus, aimed at being a rigorous philosophical work. The topic under discussion, however, overlaps with other disciplines such as sociology and anthropology. Apart from the interpretation and analysis of written works (Library research), data collected from the field using restricted schedule questions was also employed. In its quest to

investigate and establish the phenomenon of witch punishment among the Abagusii, therefore, this study used the above two approaches. The study now turns to the examination and analysis of these two methods.

1.9.1. LIBRARY RESEARCH

The consideration of empirical data gathered by social scientists and other scholars is indispensable in getting an insight into social problems and phenomena. It's for this reason that this study was largely undertaken through library research. Through this method, books, journals articles, internet resources, unpublished dissertations and newspaper articles were used. The first step in this exercise involves description followed by philosophical reflection.

The first step in this study focused on the need to adequately address and understand the phenomenon of witchcraft from its historical perspective in generally and among the Abagusii in particular. The second step involved an in depth investigation of the phenomenon of punishment to try and establish whether there is gender discrimination against women in the punishing of witches. Such an understanding can only be achieved through a rigorous empirical study of these phenomena, as is carried out by the social scientists. This justifies the contention that the use of empirical data gathered by social scientists and other scholars is an indispensable first step in the effort to understand the phenomenon of gender discrimination against women in punishing witches among the Abagusii. This is what has been referred to as the descriptive procedure of phenomenology, which involves “the reflective description of essential structures and connections found in experience” (Farber 1967, 50).

Social sciences according to Oduor (2010, 87-144), are by virtue of their empirical approach, keen to state the manifestations and nature of social phenomena. The present work consulted

empirical studies done by social scientists and other scholars on witchcraft(Bever 2002, Behringer 2004, Rosanna 2006), witch punishment (Carlo 1955, Levack 1995) and gender discrimination (Crorcker 1967, Stamp 1989, Mabururu 1992), with the view of obtaining information upon which to undertake philosophical analysis.

After empirical description the other method used is philosophical reflection. This entails the critical analysis of raw data with the aim of transcending ordinary understanding and reporting of phenomena. It explores those puzzling questions which science, by virtue of its strictly empirical approach cannot answer (Njoroge and Bennars 1986, 23-27). This study employed the analytical, speculative, critical and rational or logical methods or techniques of philosophical reflection as explained below.

The Analytical Technique

The analytical technique emphasizes on definition and focuses on the clarification of basic terms used in any discourse to eliminate ambiguity and vagueness. To this end, this study endeavored to clarify the key concepts employed by scholars who have studied this topic.

The Speculative Technique

In this study the speculative technique was employed to postulate that there is gender discrimination against women among the Abagusii. Speculation occurs where a particular kind of knowledge being sort is not available. This is where there is recognition that the mere compilation of observable data does not establish general principles. This then entails the addition of hypotheses or speculations to the description of facts with the aim of suggesting new directions for inquiry, and possible solutions or conclusions. While the natural or special sciences largely exclude speculation from their methodology, philosophy includes it. This is because philosophy endeavours to transcend the empirical method of the sciences. It ambitiously employs this method to try to answer such metaphysical questions of ultimate

reality such as the nature of the universe, existence of God, evil, death etc.

In this work it was postulated that witch punishment among the Abagusii is discriminatory against women, a hypothesis that had hitherto not been assumed and tested by previous studies.

The Critical Technique

The critical technique is important in the theory of knowledge because it acts as a safeguard against accepting as truth ideas that are not based on concrete evidence. This method enables man to evaluate ideas with an open mind and objectively, hence cushioning humanity from different shades of parochialism. This enables scholars to make a clear distinction between reality and appearance.

Punishment for witchcraft is presumably made on the premise that it is an evil or crime in society. This is one of the issues that this research wanted to understand critically. The questions that the practice of witchcraft raises are: What is a crime? Is the practice of witchcraft really a crime? Who should mete out punishment in society and under what conditions? The issue of gender discrimination against women is also addressed here. Since both males and females practice witchcraft among the Abagusii, how can the apparent gender discrimination in witch punishment be justified? The critical technique is largely used in trying to answer among others, the above questions with regard to witch punishment and gender discrimination among the Abagusii.

The Rational Technique

The word rational is derived from the word to reason. Reasoning according to Copi (1972, 51), entails providing grounds for an assertion. This technique involves evaluating the adequacy on which certain assertions are made. This is basically the method of logic-establishing the connection or lack of it between the assertion made (conclusion) and the

grounds on which this assertion rests (the premises). The rational technique is essentially intended to differentiate between correct or good from incorrect or bad reasoning.

Apart from assessing the truth claims of various reported cases of witchcraft, this method was employed in this study inductively. The inductive method is primarily one of experience and constitutes the starting point for all other methods by furnishing them with a basis of facts. The method yields perceptual truth and is limited to what is actually observed. However, this needs adequate explanation. In trying to establish the existence of gender discrimination against women in the punishing of witches among the Abagusii, induction was used in looking at the number of reported cases of witch punishment and their gender to arrive at conclusions. This technique was, thus, useful in evaluating information gathered from both library and field based research for this work.

1.9.2. DATA COLLECTION

This is a philosophical study that would have been primarily conducted through library research alone. However, some of the information needed required an input from field work. It is for this reason that we undertook field work. Information collected from field work was employed to corroborate and complement data derived from the library and other related sources. In gathering information from the field, the interview schedule method was employed (appendix i). The interview schedule was specifically chosen because the focus was to ask respondents those questions we felt would enable us to corroborate library information without wandering into other irrelevant areas. In order to achieve this, a set of both structured and unstructured questions were formulated and administered to a group of select respondents (appendix ii, list of respondents).

There were several factors that informed the choice of the study areas and sample of respondents. First was the terrain of the study area and communication network. This study

was conducted during the rainy season and due to the topography of Gusiiland, most parts are normally rendered inaccessible during this period. It was, therefore, imperative that we selected those areas that are on the tarmac.

Secondly, the homogeneity of cultural beliefs among the Abagusii dictated the selection of the sample of respondents. The selected respondents of 15 individuals aged 60 years and above picked from three areas of Kisii namely: Bobasi, Bomachoge and South Mugirango (appendix v), exhibited a good knowledge of the subject of gender discrimination against women in the punishing of witches. For this reason the sample represented the entire Abagusii community. These were also areas from where cases of witch-punishment were frequently reported in the press and from available police records (appendix iii).

The age brackets of the respondents- males and females of over 60 years old - was partly informed by the fact that some forms of witch punishments as traditionally practiced, are no longer in existence in present day Gusiiland. These cadres of individuals, therefore, have repository knowledge of both the past and present events in as far as witch activities among the Abagusii are concerned.

The provincial administration, through the District Officers and the Chiefs, was very helpful in the identification of respondents. District Officers in charge of selected areas were useful in introducing this researcher to local Chiefs in charge of those locations where witch punishment cases were reported. With the help of these chiefs, various respondents were identified. The Police were also helpful by providing information on witch punishment from cases reported in their occurrence books (appendix iii).

Simple and clear questions were formulated that ensured the picking of relevant information only. Since this was a group exercise, minimal and controlled interjections, from both the

interviewer and other respondents were allowed mainly for clarification and correction purposes.

1.9.3. ETHICAL CONSIDERATIONS

It would have been important to interview those directly or indirectly affected by the phenomenon of witch punishment. But this was deliberately avoided due to ethical considerations. First, it would have been, indeed, inconsiderate and insensitive to approach individuals and ask them whether they or their late relatives practised witchcraft. Secondly, witch-punishment has both social and psychological trauma to the victims and their relatives. For instance, these individuals are always stigmatized, discriminated against and feel unwanted in society. Surviving relatives of those accused of practising witchcraft are also in constant fear of attack. It is also important to note that either the victims of witch punishment or their relatives would always insist on their innocence. To inquire about their culpability would, therefore, be tantamount to legitimizing accusations against them and, hence, taking the side of their accusers. This would have led to hostile reception.

Lastly, the major focus of this study was not whether individuals were guilty of what they were accused or not *per se*, since this is not easy to establish in most cases, but with the gender discrimination aspect of witch punishment. This information could be accessed without necessarily interviewing either the accused or their relatives.

All in all, the information collected from the field was invaluable in assisting to validate the contention of this study that witch punishment among the Abagusii discriminates against women.

1.9.4. THE GENERAL LAYOUT OF THE STUDY

This thesis comprises six chapters. Chapter one is the reorganized research proposal. It constitutes a brief ethnographic background of the Abagusii as well as the description of the

study area.

Chapter two is a discussion of the concept of witchcraft. It undertakes a panoramic description of witchcraft from an historical background. It also deals with the explanations and functions of witchcraft, as well as its modes of acquisition. This chapter also examines the ways through which witches are identified and their alleged activities. Lastly the chapter explores the concept and practice of witchcraft among the Abagusii.

Chapter three constitutes the discussion of the phenomena of witch-hunts and punishment. It also examines the various arguments that have historically been advanced in support of witch-punishment as well as the theories of the causes of witch-hunts and executions. Finally the chapter examines a number of various forms of witch-punishments.

Chapter four explores the phenomenon of gender discrimination against women in punishing witches. It examines the historical background to this practice. This is followed by an analysis of methods of punishing witches among the Abagusii and their gender implications. The chapter also explores the various arguments that have been advanced in favour of gender discrimination against women in general and in the punishing of witches in particular. Lastly, this chapter examines the Abagusii understanding of a woman and its bearing on gender discrimination in general and in witch-punishment in particular.

Chapter five is a discussion of the research findings. It examines the economic, social, psychological and legal implications of gender discrimination against women among the Abagusii.

Lastly, is chapter six which constitutes the summary, general conclusion and suggested recommendations arising from this study. This is followed by the bibliography and the appendices.

CHAPTER TWO: LITERATURE REVIEW

2.0 .THE CONCEPT OF WITCHCRAFT

The nature and meaning of witchcraft is a phenomenon that has been addressed by scholars from various fields of academic study. Witchcraft, according to the Oxford English Dictionary for Advanced Learners (1980, 1082) is defined as ‘all sorts of evil employment of mystical powers by the witches and wizards in secret fashion for the destruction of things and people’. On its part the Encyclopedia Britannica (1968, 604) defines witchcraft as “‘the human exercise of alleged supernatural powers for anti-social evil purposes. A female held to have such powers might be called a witch or sorceress, the male counterpart being named sorcerer or warlock’”.

Witchcraft generally involves the manipulation of supernatural powers to cause evil. In communities where the belief in witchcraft prevalent, it is used to explain all occurrences that seem to defy logical or empirical explanations. Westerslund(Magesa *Op.Cit*, 112-132), alludes to this fact by observing that “‘explaining afflictions in terms of witchcraft is known as social or human causality that refers to relations between living human beings which frequently entail a supranormal component’”.

This definition resonates with a view held by such other scholars as, Mbiti (1973), Magesa (1998) and Shorter (1998) that witchcraft is inherently evil. In various historical, anthropological, religious and mythological contexts, witchcraft is understood to be the use of certain kinds of supernatural or magical powers mainly for malevolent purposes. As old as human society, witchcraft is viewed by many as the embodiment of all manner of evil.

The history of witchcraft can be traced back to many centuries. The earliest records of the

practice can be traced to the early days of humankind. Prior to the 19th century according to Stevens (2000), there was a widespread belief of the existence of evil witches who were primarily women and who devoted their lives to harming and killing others through black magic and sorcery. It was popularly believed that witches kidnapped babies, killed and ate their victims, sold their souls to Satan, were in league with the demons, flew through the air, met in the middle of the night, caused male impotence and infertility, caused male genitals to disappear etc.

At around 1000 AD, the practice of witchcraft and witches invoked the wrath of priests, Christianity and members of the ancient and traditional pagan religion which worshiped the feminine, earthly and masculine aspects of God. From this period henceforth, witchcraft was considered as anti-Christian and a heresy (Carlo *Op.Cit*, Hester 1992, Gaskil 1998, De Blecort 2000, <http://www.witchcraft.com>.)

In 1227 according to Walters (*Op.Cit*), Pope Gregory IX is said to have established the Inquisitional courts that were mandated to arrest, try, convict and execute heretics who included witches. In 1498 Pope Innocent VIII issued a declaration officially confirming the existence of witches in society. This period shows the increase of inquisitions in the whole of Europe.

A juxtaposition of good as well as evil views, the history of Witchcraft is replete with incidents of humankind and their crusade against its practice, from the ancient to the contemporary period. In the contemporary Western world, witchcraft has largely ceased to exist. This could be attributed to among other things “the collapse of the satanic ritual abuse hoax of the 1980s to 1995, the broadcast of many accurate TV documentaries about Wicca and other Neopagan religions and many wiccans going public with their religious faith”. (<http://www.cog.org/witchhunt.html>. Retrieved on 27/06/2014).

In many African communities, however, the belief is still strongly entrenched and constitutes the cosmology of the people. The African belief in witchcraft is such that not even the influence of western education and other forms of civilizations have managed to eradicate it. The strong cultural milieu and practices of the African people, is one of the reasons that could explain the persistence of this belief. Granted that modernity has had various effects on the African continent, many African people, unlike their western counterparts, still find themselves captives of their traditional beliefs. This is what one could describe as the iron of the dual identity of an African - modernity and traditionalism. The belief in witchcraft in contemporary Africa could also be explained in this context, an assertion reinforced by Carlo (*Op.Cit*) when he observes thus:

Witches are people who are thought to exist in a variety of historical circumstances, in countries with different cultural background and changing patterns in society. The nature and activities they perform cannot be determined without taking into account the concept of reality of the times and circles in which they move. And this is very difficult to determine. For modern man with his scientific education, words like 'reality' and 'realism' have a significance that several hundred years of investigating and thought have given him.

At this point an in-depth examination and analysis of the concept of witchcraft in Africa is imperative. Many people may view witchcraft as a secretive affair which is a relic from the past with little or no place at all in modern society. This is, however, according to Mbiti (*Op.Cit*, 201), a mistaken view who observes that:

Although there is plenty of literature on magic and witchcraft in Africa, there is also a lot of ignorance and prejudice that keeps coming out in modern books and other publications on this same subject. Consequently, the discussion on witchcraft is made up of two opposing camps. The larger camp on one hand has those who expose their ignorance, false ideas, exaggerated prejudice and a derogatory attitude that belittles and despises the whole concept of mystical power. A few scholars who seriously consider African views, fears, uses and manipulation of this power represent the other half on the other hand

Mbiti apportion blame on the European and American writers as well as the colonial administrators for the distortion of views on the reality of the mystical powers of Africans. He argues that every African who has grown up in the traditional environment has had an

experience of these mystical powers which manifest themselves in form of magic, witchcraft, divination and other mysterious phenomena that seem to defy even the immediate explanation.

One of the reasons why witchcraft in Africa is so much misunderstood is due to lack of knowledge as to its exact nature and meaning since it is ubiquitous and permeates all areas of life. Indeed, it could be argued that the belief in witchcraft in Africa is an ever-present reality in people's political, social and economic organizations. Moreover, witchcraft encompasses many practices that are not included in the English understanding of the word. In many African communities, witchcraft is a generic term that includes a wide range of practical realities. The word witch may be applied to a sorcerer, a witchdoctor, an herbalist or anyone else considered to be having more power than that of the average person. Witchcraft is, thus, thought to be a pervasive power in an active witch that is compulsive and that cannot be resisted. Middleton (1967, 65), illustrates this by saying that:

A witch is irresistibly driven to cause misfortune. Such power is so strong that it often palpably affects the psychical appearance of the individual. Witches may be unusually old, beautiful or ugly. Often they are described as having red eyes. Extreme physical deformities may also be a sign of witchcraft, as are excessive social successes or failures. Consequently a very rich or a very poor person, or a very popular or unpopular individual, may all be characterized as witches.

The conclusion that can be inferred from the above observation is that the real or alleged practitioners of witchcraft are usually stereotyped. There has never been any proven scientific evidence so far to suggest that the physical outlook of any individual has any direct on his or her moral disposition or character.

In many occasions the sociological and sometimes theological explanations have often been used as explanations of witchcraft in many African communities. It is a normative truth that in human society, the primary task of every individual is the promotion of the good life. This is why people who behave in a manner contrary to popularly approved ways could be

branded witches. Magesa (*Op.Cit*, 174) illustrates this fact when he observes that:

A proud man who treats his neighbours with disdain; a retiring man who always keeps silent in public, a man who neither invites others to neither eat with him nor accepts invitations from neighbours to share their food and drink is not merely unsociable. Such a person is deeply immoral. With that kind of behaviour, he or she denies all that is essential in maintaining the connection between humanity and the ancestors and God. Such a person denies life and embraces death, the utmost affliction.

Magesa's sentiments conform to those of Middleton cited earlier. They both indicate that any person who is viewed as behaving contrary to expectations of society is thought to be a witch. This branding as witches individuals who have peculiar behaviour, at least in the eyes of society, is likely to lead to arbitrary punishing of individuals on accusations of witchcraft. It should be acknowledged that human society comprises different people with varied characters. Some of them may be extroverts while others could be introverts who like keeping to themselves. This, however, does not mean that one group is better than the other. To use this behavioral disposition, therefore, to pass judgments on the moral character of one is not only wrong but immoral. The appearance or behaviour of an individual, therefore, does not make one a witch. Regrettably, however, this is one of the characteristics that have been used to identify witches in many parts of Africa. If it has to be accepted that witchcraft is a wrong that deserves punishment, then the processes of identifying witches have to be foolproof to ensure that no innocent people are victimized due to other extraneous reasons.

Generally, witchcraft from the African perspective is part of the mystery of the human person. It is primarily viewed as an art or craft. It constitutes, according to Haule (1969, 32), 'a mysterious power that resides in and with human beings'.

Another scholar, Evans-Pritchard (1937, 12) is of the view that witchcraft among African communities is thought to be latent in many people thereby suggesting that everyone is a potential witch. He further distinguishes between a potential and an active witch by asserting

that “in an active witch, this power operates psychically. A witch performs no rite, utters no spell and possesses no medicine. An act of witchcraft is a psychic act”.

Similar sentiments on the nature of witchcraft are expressed by Margaret Fields (1958, 135) who writing on witchcraft among the Ga people of Ghana asserts that:

The power of witchcraft to cause harm does not have any palpable apparatus connected with it, no rites, ceremonies, incantations, or invocations that the witch has to perform. It is simply projected at will from the mind of the witch... Witches are people mentally afflicted with the obsession that they have the power to harm others by thinking them harm.

This view that witchcraft is a harmless act is also supported by other scholars who on this basis have decried the so-called frequent punishment on suspected witches. Writing on witchcraft and the suspected practitioners of the act among the Abagusii Nyasani (*Op.cit*, 123) argues that:

These individuals(witches) are victims of a psychological maladjustment or...a psychological aberration which in psycho-analytical terms, would be interpreted as a psychopathic condition which drives the individual to indulge in acts that he may know to be inherently wrong but which he must nonetheless undertake(often uncontrollably) for the sake of his or her own personal gratification.

The implication of the arguments of both Field and Nyasani is that since witches are mentally afflicted and maladjusted, they are not responsible for their acts. It would, therefore, be irresponsible or immoral to punish them for acts for which they have no control over. The gist of his argument is based on the principle of freewill and responsibility. This is the assertion that an individual should only be held responsible for those actions that they freely choose to commit knowing what the consequences would be. If one knows this and goes ahead to act in a certain way, then one should be held responsible. But this principle would not apply to certain categories of people, such as the very young the senile and the mentally sick. Hence, the gist of the arguments of Field and Nyasani who view witches as belonging to the category of the mentally sick and who, on this basis should be exempted from punishment.

The nature and phenomenology of witchcraft is one that cannot be explained easily. This is because explanations for this phenomenon would largely depend on the culture of one who is looking at it. Tempels (1959, 120), discusses the basic nature of witchcraft by focusing on what basic principles determine African worldview in general. His argument is that in the African concept of reality, the concept of *vital force* plays a pivotal role. He asserts that Africans as a whole believed that in the universe, there is a power that witches use to appropriately cause witchcraft. This is what he calls the *vital force*.

It has been argued that one of the ways by which witchcraft can be understood is by analyzing the mentalities of people who belief in witchcraft; the mentalities of the whole community gripped by a specific fear, not just individuals convinced by their unnatural powers.

The activities of foreign missionaries and colonial masters have been blamed for the way witchcraft has been misunderstood in Africa. These two groups often dismissed the reality of witchcraft and other mystical powers without trying to understand the ontological and epistemological experiences of those who believe in them. It is important to note that in Africa witchcraft is not a mere abstract practice, but rather an ever-present reality in peoples' political, social and economic organizations. It plays a role in agriculture, fishing, hunting, in domestic life of homesteads as well as in communal life of people. This scenario is summarized by Evans-Pritchard (1963, 63) who asserts that: "there is no aspect of life where the power and influence of witchcraft is absent".

In the African mentality, everything wrong or bad in society and in the world and most particularly various afflictions, originate from witchcraft as demonstrated by Magesa (*Op.Cit*, 167) who states that:

There is no kind of illness or hardship at all that may not ultimately be attributed to witchcraft. When natural or religious explanations fail to satisfy, the social explanation-witchcraft-is invoked.

It is, therefore, important to note that in those societies where the belief in witchcraft is strong, people do have a world-view that is governed by such beliefs. The reality of witchcraft and how it affects their daily lives must, therefore, be understood in this context. These beliefs in witchcraft and other magical powers are not merely abstract. Their existence has identifiable practical consequences for philosophy as well as for religion.

At times it may appear that the belief in witchcraft is a matter of public opinion. However, what a person is said to do sometimes carries more significance than what that person actually does. The mindset of the society plays a significant role in entrenching the belief in witchcraft as is vividly illustrated by Baroja (*Op.Cit*, 13) who asserts that:

...the reality of acts of magic is a consequence of the belief that illness, a storm, or some other person or persons with malevolent design, misfortune or set-back on one hand, or success on the other hand are directly attributable to some.

Whether it is true or not, witchcraft has historically been blamed for various evils. The activities of witches are viewed to be anti-social due to their perceived effects on the general welfare of society. But it's important to note that witchcraft is a wide term that constitutes other practices, among them sorcery, which is briefly examined below.

Sorcery, according to the Encyclopaedia Britannica (Vol. 23 1968, 64) is defined as the use of supernatural powers to produce unnatural and negative events. This is not, however, always the case since sorcery can be used in a positive sense, hence, the difference between good and bad magic or white and black magic.

Sorcery is usually believed to be effected through the use of magic. Magic is a term used for

secular instrumental ritual or power ritual that ignores external reality. Magic is basically a ritual formulae or technique that can be acquired, bequeathed bought or sold. In many African communities, magic is included in the term for medicine. Hence, in so far as social approval or disapproval is concerned, subjective factors enter into the definition of good or bad magic. The latter then is understood to be a form of witchcraft. Herein then lies the linkage between magic and sorcery.

Sorcery is pejoratively used to refer to bad magic, (really it is another name for bad magic or 'black magic'). The difference between good and bad magic lies in the fact that good magic cures, protects or profits people and things while bad magic hinders or destroys them (Magesa *Op.Cit*). Subjectively, therefore, good magic is socially approved even when it is retaliatory magic. Bad magic is on the contrary socially disapproved

Another reason why bad magic is viewed to be synonymous to sorcery is due it is mode of operation. Bad magic operates mostly through contact with the victims or with objects belonging to the victim. These may include; ash from the victim's hearth, grass from his roof, pieces of clothing, footprints etc. It is because of this that sorcery is seen as a form of witchcraft (Levine 1973). On the contrary, positive or good magic is used to ensure success in various areas including love, business, health, exams and so on. Again, in this context, sorcery resembles witchcraft, for it is both malevolent and benevolent. In this work, therefore, the words witchcraft and sorcery are used synonymously.

2.1. EXPLANATIONS AND FUNCTIONS OF WITCHRAFT

Besides philosophy, the art and practice of witchcraft has received attention from scholars of such other disciplines as Sociology, Anthropology and psychology. There are those among these view witchcraft as not only enigmatic, but also as a mystical subject that does not

require the kind of academic attention it has been given in this era of scientific and technological advancement.

This is a position that is held by scholars who argue that anything or rather any practice that is not amenable to scientific and logical explanations should be left outside of academism and intellectualism. There are those who also argue that witchcraft is a myth-religious practice akin to popular magic that should not be discussed by any serious and organized discipline.

The above notwithstanding, various scholars have delved into reasons that try to explain why people believe in witchcraft. Magesa (*Op.Cit*, 120-140), for instance, asserts that among different peoples of the world, there are a number of hypotheses that explain the existence of beliefs in witchcraft and sorcery. One of these is that beliefs in witchcraft and sorcery provide an outlet for repressed hostility, frustration and anxiety.

The second reason is that accusations of witchcraft and sorcery are indices of the tense social relationships between the accuser, on the one hand, and the presumed sorcerer or witch on the other. Accounts that people give of attacks by sorcerers and witches reflect their insights into the incidences of social tension in their society.

Thirdly, beliefs in sorcery and witchcraft serve as a medium through which real or imagined episodes dramatize and reinforce social norms, in that anti-social and socially inadequate conduct are attributed sometimes retrospectively, either to the accused sorcerer or witch, or to his believed victim.

These explanations may generally serve to put to rest people's anxieties. However, the belief in witchcraft has been criticized due to a number of salient reasons. One of the most fundamental and perhaps unanswered questions to date is that of whether witchcraft really

exists.

From the metaphysical and theological point of view, all beings are God's creation. One of the reasons that can be advanced for the existence of witchcraft is the fact that it enforces morality in society. This is because it is believed that it puts checks and balances on individuals who may be tempted to unwarrantedly harm innocent people. Such an action would supernaturally be sanctioned by the spirits. This would then explain the existence and role of witchcraft in society.

The same metaphysical theory would, however, aver that one of the attributes of God is that He is self-sufficient. If this is the case, then it implies that God does not need the services of witches to coerce people succumb to His will. Furthermore, God is understood to be all good while witchcraft is in the most part evil. The idea of Him, therefore, using witches as a tool of punishment would contradict his attribute of goodness.

The existence of witches and their alleged practices also raises a moral problem. Since they are God's creation (Ogungbemi 1992, 1-14), then their powers to cause harm have been granted to them by their creator. This would logically imply that they are not morally responsible for their actions and should, therefore, not be punished for actions that are beyond their control. In other words, their actions are predetermined by forces beyond their control.

It is also believed that in performing their activities, the souls of witches occasionally leave their bodies for a certain period. After the accomplishment of these activities, the souls would then return back to the individual owners. In as much as this may be a metaphysical possibility, it is, however, a scientific impossibility. From a theological point of view, for instance, a human being constitutes two elements i.e. the body and soul both of which can be separated from each upon death. It would, therefore, practically be inconceivable to fathom

the idea of the soul leaving the body of a witch, fly several kilometres, carry out witch activities and eventually return to the same body.

Available literature (Mbula, 1982, Mbiti, 1969, Levine, 1966) indicates that in the course of their activities, witches change into such various animals as hyenas, owls and cats. This would also constitute a practical impossibility, for science has not demonstrated how a human being can change from his or herself physiological self to some other animal of a different species. Biologically, every living being produces its own likeness that is, its own species, unless through some accident, a possibility which is not contemplated in this case. Again, it should be pointed out that witchcraft lies outside the realm of science and any attempt to explain it scientifically would always face some difficulties.

Philosophically then, the belief in witchcraft in much of Africa could be described as superstitious. It, however, has a psychic influence on people's lives and conducts. Reasons for its existence have been attributed to among others, poverty, ignorance and the unscientific and non-philosophical way of perceiving phenomena by some people.

2.2. WAYS OF ACQUIRING WITCHCRAFT

The question of how witchcraft is acquired is as controversial as is the one of what it is. This is because it is essentially a clandestine activity that is socially abhorred. Nobody would publicly and willingly pronounce that they are witches. Basically, witches are those people who are thought to possess some extraordinary powers as compared to other members of society.

Witches, though not always, use their powers for malevolent purposes. This fact is demonstrated by Ogungbemi (*Op.Cit*, 1-14) who asserts that witchcraft among the Yoruba is not entirely malevolent because some witches are believed to be benevolent. Some of these

witches, for instance, use their art to protect their children, husbands and bring general prosperity and success to their families.

The Yoruba also believe that witches are mostly old women and to a small extent some men. However, even children have been known to practise witchcraft which they may inherit either from their parents or grandparents. Even those who were not born witches or never inherited this art could become witches for instance, through marriage or simply by purchasing it.

Among the Akamba of Eastern Kenya witchcraft is referred to as *uoi*. The Supreme Being (*Mulungu*) created witches according to Bahemuka (Ogungbemi, *Ibid*). This is because all living beings or things are creations of the Supreme Being. Witchcraft is, thus, a mystical power that is granted to some individuals by the evil spirits who are incidentally *mulungu*'s creation. However, unlike among the Yoruba where there are benevolent witches; Bahemuka depicts Akamba witches as generally malevolent who cause diseases, deaths, poverty, barrenness and inability to find a husband or wife. In general, all occurrences that defy logical explanations are thought to be the work of witches.

Bahemuka further asserts that among the Akamba, witches are basically women. They may also pass on the practice to their siblings, especially daughters and any close female relations. Among the Akamba, therefore, witchcraft seems to be the preserve of women, at least according to Bahemuka. The Akamba also believe that witches are born. This is according to Charles Muasya (*The People Daily*, Wednesday, September 24, 2008, 3), who asserts that:

The witch's birth it is said was unusual. Some would either be born holding bird's feathers, or any other paraphernalia witchdoctors associate themselves with. Such a person would be taken to a village witchdoctor to appease the demons and convert him to a full witchdoctor

This then validates an early assertion made in this work that witches in a number of African communities are not ordinary individuals but people with supernatural powers who may,

however, have no control over such powers.

Witchcraft belief is so strong among the Akamba that some of those who believe in it have devised an expensive method of preventing one from being bewitched or doing harm to other people. This is according to Charles Muasya (*Ibid*), through a method known as *Ngata*. This involves drinking a mixture of goat's blood and its intestinal wastes while at the same time administering an oath-like omen on both the complainant and the victim.

Among the Zulu of South Africa a witch is referred to as *abathaki*, someone who has the ability to manipulate mysterious powers for destructive purposes (Ogungbemi *Op.Cit*, 1-14). The Supreme Being, (*Inkosi ye Zulu*) is the cause of evil things. Thus, the existence of witchcraft can be attributed to him. Although witches cause evil, they do not bewitch their children or close relatives because this may break the family unit and destroy group loyalty. The Zulu also believe that witches conduct their activities at night. They are also thought to change into different types of animals in the cause of their missions.

There are, therefore, different modes of acquiring witchcraft among various African communities. The first and, perhaps, the most common one is through inheritance. This is where children inherit the art from either their parents or grandparents.

Witchcraft could also be purchased. This could be done for various reasons, envy being one of them. This is where, for instance, witchcraft beliefs typically flourish in small enclosed communities with clearly defined external boundaries who favour competition for internal leadership (Shorter 1998, 64). It may be imperative, therefore, for the weak members in the community to purchase witchcraft so as to enhance their survival and competitive chances in such societies.

There are, however, instances where even the strong and most powerful members of society

may resort to purchasing witchcraft to maintain and reinforce their status quo. As Rwenji (*The People Daily* Wednesday May 23, 2007) observes “in modern times, even the least expected members of society are believed to engage in witchcraft to enable them achieve their goals and among these group of people are politicians”. This perceived power of witchcraft to make things happen could perhaps be the reason why the practice is still strong even among the modern and well educated African populace.

The third mode by which witchcraft can be acquired is through marriage. A spouse who comes from a family that did not practise witchcraft may marry into the family of witches and get inducted into the practice.

2.3 METHODS OF IDENTIFYING OF WITCHES

Given that witches conduct their activities in secrecy and that this mostly takes place at night (this is at least applies among the Yoruba, Akamba and Abagusii), the question that arises then is, how are witches known or identified? This question becomes pertinent especially in the critical analysis of the phenomenon of witch-punishment which is briefly explored below.

One of the justifications of any punishment is founded on the fact that proof of crime is a prerequisite though not a sufficient one as is asserted by Benn (*Op.Cit*, 173-175). This would then imply that where punishment is meted out in the absence of proof of crime, an injustice would have been committed. The question then is, does society have foolproof methods of identifying witches before subjecting them to punishment?

It has been asserted that in a number of African communities, witchcraft accusations are sometimes outlets for repressed hostility. Ultimately, an accusation of witchcraft makes it easy to account for secret crimes without the need for evidence. In matters of witchcraft all that is sometimes needed is an enemy, an inexplicable misfortune and often the verdict of a

diviner oracle or ordeal. Accusation follows the ordinary pattern of social or a death in the community. In the event of seeking for an answer society resorts to mystical powers and witchcraft sometimes provides an easy answer.

The ways of identifying witches are many and varied. The sociological point of view is one of these. A person who is an introvert, rarely mixing with other members of society and thus behaving in a manner that is seen to be inconsistent with societal expectations is thought to be a witch Magesa (*Op.Cit*, 174). The problem with this 'proof', however, is that it is based on a wrong premise. This is simply because there are people who incidentally like keeping to themselves due to various reasons that may have nothing to do with witchcraft. It would be unfair, therefore, to brand them as witches on account of this trait.

It has also been argued that witches can be known from their looks. For instance, it is popularly believed that witches among other things have red eyes, very black skin and are ugly (Shorter *Op.Cit*, 68). Again this view can be challenged using empirical evidence. Scientifically, it has not been shown that there is any form of correlation between the physiology of a person and his or her social behaviour. This attribution could, therefore, unfairly lead to punishing innocent people. Furthermore, ugliness is subjective and hence, a matter of perception that cannot realistically be used as a determination of witchcraft.

It is important to note, therefore, that that witches may be empirically and objectively hard to identify. Sometimes differences between neighbours for various reasons may lead to accusations and counter-accusations of witchcraft. There are thus, many stereotypes associated with the phenomenon of witchcraft. One of this is that witchcraft thrives mostly among the poor. This is, however, a myth that has been dispelled by various studies. Even the rich and beautiful in society are believed to practise witchcraft. This fact is demonstrated by Middleton (*Op.Cit*, 65) who asserts that:

...witches may be unusually old, strong, beautiful or ugly. Often they are described as having red eyes. Extreme physical deformities may also be a sign of witchcraft, as are excessive social successes or failures. Consequently a very rich or a very poor person, or a very popular individual, may all be characterized as witches.

It, therefore, means that in some cases, the issue of who is a witch is a matter of perception entrenched in the subjective psyches of individuals. To challenge such a belief from a logical and purely scientific point of view would not yield any meaningful results.

The belief in witchcraft in African is one of those that have defied scientific explanation. Not even the impacts of civilisation and modern religion have been able to explain the reasons for its persistence. In some cases, not even the practising Christians are exempted from the phenomenon of witchcraft. This can be illustrated by a case in which a church elder from Nyamira was among witches reported to have been apprehended practicing witchcraft (*The Standard*, Monday, February 4, 2008). This implies that the whole issue as to who is a witch in Africa is a complex one.

2.4 ACTIVITIES OF WITCHES

Many graphic descriptions are often given of the kinds of activities that witches are believed to perform. Some of these activities border on the bizarre and would defy the simple principles of metaphysics. For instance, as Magesa (*Op.Cit*, 170-171) asserts:

Witches can change themselves into animal shapes such as hyenas, owls, or other nocturnal creatures when secretly active at night they prefer to be naked performing their dances while holding or actually spurring fire. They handle excrement, urine and vomit for purposes of harming people through the life-force that these materials present. They also enjoy soiling their neighbours' yards and other property with these materials.

As previously stated, Magesa's observation seems to be a metaphysical and even a scientific impossibility. It is unfathomable how a human being can change his form into that of another creature, for instance, into a hyena, and then back into his original form. A human being and a hyena belong to different species; hence this possibility of him taking over the body of a

hyena is farfetched. One can also ask the question as to what happens to the spirits of these other creatures during the period that their bodies are taken over by witches. This would appear like an exercise in creation. But again, witchcraft belongs to the realm of mysticism and not science.

The assertion that witches walk naked and do perform weird activities in their neighbours' yards is, however, vindicated by evidence. Various incidences have been reported in the local press media where suspected nude witches have been apprehended. In *The Standard*, February, 4, 2005, it was reported that:

On Monday last week residents of a village in Kisii woke up to a strange sight. At Ikobe village in the newly created Manga District, police found six suspected sorcerers who were stark naked. An elder with the New Life church is among the suspected sorcerers who were found performing a mysterious ritual. According to two administration Police officers who were on patrol, a resident telephoned them to report that a group of six people were seated in a circle in the nude outside his house at 2am.

It emerges, therefore, that some of the acts that suspected witches are said to do are actually true, since they can be corroborated by empirical evidence as can be attested above. There are, however, some other episodes attributed to them that are out rightly unimaginable. For instance, it would be difficult to visualize how witches "can make themselves invincible or fly through the air on the backs of night birds" (Shorter *Op.Cit*, 68). But again such is the mystery of the nature of witchcraft and perhaps that is what makes it difficult to comprehend.

Witches are also believed to devour human flesh. They are often found assembled in graveyards where they purportedly exhume the remains of the dead. This craving for human flesh explains why witches have the urge to kill. The ritual of eating human flesh is usually done in an assembly whereby individual witches do provide the bodies for feasting in turns. This claim is vividly captured by Parrinder (In Magesa *Op.Cit*, 138) who states that:

A witch goes out at night and meets in an assembly with other witches. She leaves her body in her hut

and flies to the assembly, often as an owl, other bird or animal. She preys on other people and procures a victim for consumption in the assembly.

From the foregoing then, it can be inferred that the meaning and nature of witchcraft is indeed a very complex phenomenon to understand. This is mostly because of fact that the nature of its activities may not easily be explained either scientifically or even metaphysically.

Witchcraft activities do fall within the realms of philosophy and religion among other disciplines. Hence, in order to get a picture of what witchcraft is, there is need to apply the descriptive and critical analysis methods, by looking into the phenomenon while taking into consideration the cultures and world- views of the societies in which the belief is found. Of importance to this study is the realization that in much of Africa, this belief is strongly entrenched in many peoples' minds. And in most cases peoples' daily lives are affected in one way or the other by this belief. This argument is emphasized by Evans-Pritchard (1937, 63) who asserts that in those communities where the belief exists, there is no aspect of life where its force and those of its related practices are absent. Indeed, in such communities, many bad things, and most particularly various afflictions, originate in witchcraft.

The following section attempts an in depth analysis of the practice of witchcraft among the Abagusii since the community is the major focus of this study.

2.5 WITCHCRAFT AMONG THE ABAGUSII

Among the Abagusii of Western Kenya, witchcraft is known as *oborogi* (Monyenye *Op.Cit*, 77-78). A witch (*Omorogi*) is any person who engages in any real or perceived evil or anti-social behaviour. These include women, men and to some extent children. Witchcraft can be acquired either through inheritance or it could also be purchased. Among Abagusii, witchcraft is not only seen as a threat to social harmony but one that affects people

psychologically too. It has thus, been blamed for a host of misfortunes including death. Indeed, there have been several instances reported in the press where suspected witches have been injured, at times fatally or lynched and their property and that of their relatives destroyed.

There is a predominant belief among the Abagusii that there are hardly any bad occurrences that can be explained in natural terms. Thus, any occurrences that defy logical explanations are understood in terms of mystical powers, either good or bad. According to Levine (1979, 96), for instance, the belief in witchcraft is highly entrenched. Apart from other activities witches are actually murderers who can kill. According to him, they actualize their killing by:

Planting a poisonous substance in the roof of the victim's house which is thought to act at a distance to cause disease and eventually the demise of the victim. The articles planted may be or feces of the victim, dead birds, bones of exhumed corpses or actually poisonous powder to mention but a few possibilities.

This essentially implies that among the Abagusii witchcraft is largely viewed as a malevolent practice that interferes with the ontological harmony of the community. The most pertinent question to be addressed in this section is: What is the basic understanding of witchcraft among the Abagusii?

According to Rosanna (in Akama *Op.Cit*, 135-145), the belief in witchcraft (*oborogi*) in Gusiiland is not just a mere abstract idea but is one that constitutes a living reality for the people and is essentially a way of locating the origin of inexplicable misfortune in society. It is seen as an image of implacable, unrepentant human wickedness, which is used to harm others secretly and unjustifiably. Witchcraft encourages gratuitous exculpation and mutual enmity.

In the eyes of the people, witchcraft is said to strengthen the sense of helplessness in front of

evil and the acceptance of moral dualism. Hence, more often than not, retaliation remains as the only defense; further compounding enmity, fear and despondency in society.

According to Magesa (*Op.Cit*, 149-170), witchcraft beliefs basically form an intellectual fabric or theory, which require verification through accusation and conviction. The power of this theory lies in the strong beliefs of the people themselves and from the witch-finding institutions, which confer social approval in the process of applying the theory. This theory presupposes a strong metaphysical dualism, in which good and evil are mutually elusive categories. This is premised on the belief that there is an organized cosmic conspiracy of evil and a secret presence of enemies in the midst of the community.

The works of the enemies-and hence witches- are the cause of disharmony and good functioning of social institutions. Consequently, there exists a strong view that witchcraft cannot be placated. Rather, it is like a tumor, whose only remedy is total extermination. It is on this background that one can understand the frustrations that the community goes through in trying to deal with this problem, hence, the reason for the several reported cases of lynching of suspect witches.

The belief in witchcraft among Abagusii is a social nightmare and it contradicts all the positive values of society. Hence, to be labeled a witch (*Omorogi*) is the most demeaning and lowest level to which one's standing and reputation in society can be reduced. Witches (*Abarogi*) are people who are so perverted that they act in the reverse way that human beings act. Outwardly witches are ordinary people; however, inwardly they are believed to have a secret allegiance to evil. This would explain why the term *Omorogi* might loosely be used to refer to anyone who behaves in any manner contrary to societal expectations.

Generally, witchcraft beliefs feed on popular rumours and fears and not necessary on any

empirical proof. Indeed, the belief constitutes ontological, epistemological as well as moral consequences to the entire community. These consequences mostly have a negative effect on the general well being of individuals in society. Economically, for instance, the belief in witchcraft is known to lead to the destruction of property. The lynching of suspects under the pretext of punishment is also a violation of people's personal rights as they are not subjected to the due process of law.

Abagusii are known to have practised witchcraft for a long period of time. This is one of the many superstitious practices that have defied both modernity and Christianity. As frequent reports in the media indicate, many people lose their lives through what has come to be known as witch-punishment since witches are believed to use their supernatural powers mostly for evil intentions.

Among the many issues that surround the mystery and practice of witchcraft are its mode of acquisition and execution. The Abagusii generally believe that the art of witchcraft is a phenomenon that runs in the family lineage (Monyenye *Op.Cit*, 77-78). Hence, if one's forefathers were witches then their off springs are most likely to practice witchcraft.

What is called the label effect plays a very important role (albeit unfairly) in determining who a witch is. The possibility of one being labeled a witch if one is a descendant of the family of witches (*Enyomba ya Abarogi*) is a perennial reality. This is a tag some people are forced to carry throughout their lives.

Witchcraft could also be purchased. This could be for various reasons such as protection, success or for malevolent purposes. Success in business, farming, examinations are known to have been influenced by the use of witchcraft.

Witchcraft could also be acquired through marriage. A spouse could marry into the family of witches and get introduced to the art of witchcraft from the practising partner. Indeed, among the Abagusii, one may use this assertion to explain why in an

extended family some members may be accused of practising witchcraft while others are not.

There could be instances, however, where the above scenario may not always be the case. Indeed, a spouse who is approached to be introduced to witchcraft could decline. In such cases, threats and coercion could be used. But this could also fail leading to a strained relationship between the couple. This may eventually lead to the dissolution of the marriage as is demonstrated by Monyenye (*Op.Cit*, 73) who assert that “the easiest way for a girl to succeed in divorcing her husband is to run to her parents and accuse either her husband or his parents of trying to teach her witchcraft”.

Thus, the accusation of witchcraft has been one of the grounds for the dissolution of marriages among the Abagusii. Accusations of witchcraft are, however, not easy to prove. They may begin as mere accusations that regrettably are taken very serious. Indeed, according to Magesa (*Op.Cit*, 156), at times, people who are presumed guilty by society may plead their ignorance. In such cases ways of proving one’s innocence or guilt are employed. This could be legal, for instance appearing before the chief or religious rituals. They may also include divination or trial by ordeal and the verdict is believed to establish beyond all reasonable doubt, innocence or guilt.

Accusations between neighbours were also one way through which witches could be identified. This could be, for instance, in a case where a misfortune would befall one who incidentally could be harbouring long standing differences with their neighbour. The only evidence one needed to prove their case was to show that they are not on good terms with that

neighbour.

It would not be too hard to understand why there would always be some form of friction and differences between neighbours. As in any relationship between two individuals who are close to one another, neighbourliness has its positives and negatives. Though as one would expect, neighbours are supposed to be friendly and can easily draw on one another's support in times of problems, their closeness is more often than not the source of their differences. For instance, one's livestock wandering into a neighbour's farm and destroying the latter's crop could be one source of friction.

Another source of friction may involve the occasional squabbles between the siblings of such neighbours that may lead to fights and serious physical injuries. Indeed, even differences in terms of prosperity between neighbours may be a source of tension too. Although the credibility of such accusations is questionable, they have, however, often been used to label people as witches leading to the so-called witch punishment.

Among the Abagusii, witches have allegedly been apprehended while performing their witch activities. Hence, incidences have been narrated of nude witches being arrested at graveyards, especially at night (*The Daily Standard*, February 4, 2008). The question is, however, whether being found naked in the night means that one is necessarily engaged in evil activities aimed at harming members of the society, either individually or collectively.

Nyasani (*Op.Cit*, 123) argues that witches among the Abagusii may actually be harmless people who are involved in the exercise of night running. According to him this running in the night could be for amusement purposes and does not, therefore, mean that people have bad intentions. He further contends that there could be psychological reasons as to why these night-runners (*Abarogi*) venture out into the night to engage in their mischievous activities when everybody else is asleep. Unlike a cattle thief who can kill his interceptors, a night-

runner can hardly harm anyone. Nyasani's argument accrues from the frequently reported punishments meted on suspected witches among the Abagusii. His view is that it is wrong to criminalise such a mundane phenomenon, which has no harmful effect on the general welfare of society.

While witch- punishments may not be morally justifiable, it is important perhaps to try and explain the view of the general population towards it. What makes the activities of witches suspicious is the mere fact that they perform them at night. The question would be: why would they prefer to perform their activities at night when everybody else is asleep while keeping away from similar activities during the day? Furthermore, the alleged activities associated to such people are usually nefarious. It is on this basis that these individuals are viewed as enemies of society.

It is also believed that witches can be identified by using witch-smellers (*abaragori*). As the name suggests, these are people who smell and locate witchcraft paraphernalia with the aim of disabling its harmful effects. Their activities are usually conducted in public with the aim of saving lives. Though they also allegedly apply supernatural powers, their activities unlike those of witches, are essentially positive.

The work of witch-smellers is usually, though not always, followed by that of the diviners. A person who may be experiencing inexplicable misfortunes may suspect that this is due to witchcraft. One would then seek the services of a diviner to confirm his or her suspicions.

Diviners are believed to have special powers which enable them to perceive what the ordinary person cannot. Through their ability, they are able to tell that a certain misfortune has been caused by witchcraft. The diviner may diagnose that his client is being affected by witchcraft paraphernalia planted either in his compound or elsewhere. The diviner would then

recommend for the services of the witch-smeller who has the ability to locate and destroy such paraphernalia. Once the witch-smeller is contacted, he would smell and locate the exact whereabouts of these paraphernalia and unearth them. A special rite (*ogosiarera amanyansi*) is performed to deactivate them. This involves the sprinkling of a specially prepared concoction of herbs mixed with water on this witchcraft paraphernalia. This concoction is believed to have the potency of making inactive the said witchcraft paraphernalia from causing harm to its intended target. After the performance of this rite the victim's life, those of his off springs and property are deemed to be out of danger.

The diviners may alternatively reveal to the victim more who the suspected witch is and, thus, call upon the culprit to voluntarily deactivate his or her witchcraft. Non-cooperating suspects may for, instance, have their identity revealed to the general public. Fearing the various consequences that may follow, including lynching in most cases, the accused may confess and comply with the demands of the diviner, depending on his or her culpability.

A situation could arise where a person using witchcraft against his or her neighbour may not be culpable. This is for instance the case where one could be using it either for protection or revenge purposes. Hence, one may be justified to use witchcraft against a neighbour who has been tormenting his family. Where this is the case, one may refuse to deactivate his witchcraft insisting that the other party owns up to their evil machinations against him. Fearing any further consequences, the two protagonists may reach a compromise and strike a truce. Thus, witchcraft though seen largely as negative, it at times plays a positive role as a tool of social control in society.

The question that arises is whether these methods of identifying witches are reasonable. How would one, for instance actually tell that an ailing person is a victim of witchcraft in the absence of scientific diagnostic skills? Is it not possible that such a person if taken to hospital

could be diagnosed with a curable disease? It is important, however, to note that people who follow this theory of witchcraft are those who are always suspicious of their neighbours. This suspicion may be steeped in rivalry, competition of one kind or the other or on mere jealousy. Such people would therefore, understand their tribulations in terms of witchcraft. They would always suspect their neighbours to be the cause of their problems and seek 'confirmation' from the diviners.

It is important to clarify the usage of the word confirmation as used above. Although they claim to work for the social good, diviners and witch-smellers are actually first and foremost business people. Apart from being inspired and gifted with these alleged special powers, they do not offer their services free of charge; there is always some fee attached to it. They are unlikely, therefore, to turn away any client who seeks their services since this may lead to loss of both revenue and fame. They will, therefore, do their best to convince and satisfy their clients.

Indeed, diviners would even recommend to their clients a suitable and reputable witch-smeller with whom they may, however, be working in cahoots. People, therefore, usually get carried away with this kind of 'expert' opinion and avoid the temptation of seeking for alternative explanations. It may be argued that these manipulators of mystical powers do exploit the ignorance of their clients. It is, however, the beliefs that people have in witchcraft and the efficacy of their divination which keep clients thronging to them to seek for their services.

Witches are also known through the work of witchdoctors or medicine-men. These are known to prepare some concoctions or use magical powers to make witches confess. Those who fail to confess are forced to take this concoction. If he or she does not die, she is presumed innocent, if she dies, then people will conclude that he or she was a witch.

It is important to note that the mixture of herbs that are used to make this concoction (*amanyansi*), are many. It is, therefore, possible that some people could be allergic to such concoction and drinking it could lead to certain health complications that may be fatal. Hence, one need not be a witch to die from drinking such concoction. Indeed, one may drink such a concoction in an attempt to prove one's innocence but succumb to death due to its poisonous nature. Alternatively, a practising witch may drink such a concoction and miraculously survive. Whatever the case this method of identifying witches is weak.

Among Abagusii, the activities of *Abanyamesira* (sorcerers) are double-edged in that they do play positive and negative roles. To the extent that they play a benevolent role, they remain friends of society. However, when they engage in malevolent activities, they are enemies of society. It is, therefore, imperative to dedicate a section to the analysis of their activities.

2.6. THE ACTIVITIES OF SORCERERS

Among Abagusii sorcerers are known as *Abanyamesira* who practise their art using *omosira*. Although witchcraft and sorcery are almost identical (since both use the magic spell and manipulation of occult forces to produce desired results), they nevertheless differ in some ways. Unlike witchcraft which, in some instances is thought to be inherent and compulsive, sorcery is mostly thought to be voluntary and can be learnt besides being hereditary.

Witchcraft usually starts from a point of suspicion before verification is carried out to determine whether a suspect is actually a witch or not. On the contrary, sorcerers are well known individuals in society whose activities are not inherently evil. What makes them look bad in the eyes of society is the manner in which they apply their art. In relation to witchcraft, *Abanyamesira* do perform tasks that are often similar to those of witch-smellers. They can, for instance, be hired to locate and deactivate witchcraft paraphernalia. One may also hire

them to direct malevolent magic at one's enemy.

Caution, however, must be exercised when using *omosira* against one's perceived enemy. It is believed that unless it is purely for retaliatory purposes, *omosira* may not have the desired effect against a culprit. It may actually end up affecting the very person who intends to use it against his or her neighbour if that neighbour is innocent of any wrongdoing. This acts as a deterrent measure against the misuse of sorcery for selfish and unwarranted means. Hence, sorcery, like witchcraft could at times be said to play a positive role in the promotion of justice and fairness among the Abagusii community.

Another negative aspect of sorcerers is that they are at times believed to use their art purely for business purposes. They have the tendency of blackmailing their clients. Once one has engaged them, one can hardly do away with them. They will look for all manner of excuses to make sure that one retains their services as long as it may be possible. Chances of the client terminating their services are very minimal, mostly due to the fear that they may turn against one if they are made unhappy. They may also sell one's secrets to one's enemy since they do not operate within any known and strictly adhered to code of ethics.

Some unscrupulous sorcerers could even handle two rival clients at the same time hence, reaping maximum benefits from them. This again is another reason why sorcerers are likened to witches. But, in as far as they dealt with people's enemies and assisted in maintaining harmony in society, sorcery was useful in social control.

Since time immemorial, witchcraft has been viewed as an anti-social activity. It is with this in mind that the practice has been subjected to social sanction. Hence, the next section of this work focuses on the history of witch-hunts and punishment.

CHAPTER THREE: WITCH-HUNTS AND PUNISHMENT

3.0 HISTORICAL BACKGROUND

Punishment for witchcraft and its associated activities is by no means a new phenomenon. There are several historical accounts that have attempted to trace its origin. Some of these accounts are even rooted in the Bible. The first books of the Bible for, instance, mention the punishing of witches (<http://www.law.umkc.edu/faculty/witchhistory.html>). The book of Exodus 22:18 asserts that 'thou shall not suffer a witch to live'. On its part the book of Leviticus, 20: 27 says that 'a man or woman that hath a familiar spirit, or that is a wizard, shall surely be put to death: they shall stone them with stones: their blood shall be upon them'.

It is important to note that Exodus and Leviticus are two Old Testament books that make up the part of the Law of Moses. These are laws that handed down by God to be passed on to the Israelites. These two books, therefore, acknowledge the existence of witches and recommend for their punishment implying that it had Divine sanction. Since witches were believed to be capable of whispering a spell on people, something that was thought to go against the teachings of the Jewish tradition, they were subjected to punishment.

To keep witches at bay and to avoid their evil practices from influencing the lives of people, the Jewish priests not only warned their followers from keeping a distance but also advocated for their punishment through stoning. It is, therefore, imperative to note that even in the ancient times, the activities of witches were not perceived as innocent acts of socially maladjusted individuals of society but as intentional practices of such individuals that were liable to accountability and hence, the justification of witch- punishment.

St Augustine of Hippo an influential theologian in the early Christian Church too delved into the phenomenon of witch punishment. According to Linder (2005, 35), St Augustine spoke

against the punishing of witches by arguing that they were incapable of performing the various acts they were accused of on their own volition. He argued that only God could suspend the normal laws of the universe. Neither Satan nor witches had the supernatural powers or were capable of effectively invoking magic of any sort.

St. Augustine viewed the powers that were attributed to witches as a result of the errors of pagans. Consequently, he sees witches as being powerless and advises the church not to be overly concerned with their spells or other attempts at mischief. Although the Medieval church heeded St Augustine's view and abstained from tracking down and investigating witches, the punishing of witches nevertheless continued during this period.

The trials of witches in Europe are believed to have erupted in the beginning of the 15th century, according to Gaskil (1998, 130). In the mid 1400, for instance, many adherents of Catharism fleeing a papal inquisition launched against their alleged heresies had migrated into Germany and the Savoy. Torture inflicted on heretics suspected of engaging in magical pacts or demon-driven sexual misconduct, led to alarming incidences of confessions from suspected witchcraft practitioners. During these confessions, suspects admitted to flying on poles and on the back of animals to attend assemblies presided over by Satan as well as causing spells on neighbours or causing storms. It is believed that from this moment henceforth, the distinctive crime of witchcraft began to take shape.

In 1484, according to Linder (*Op.Cit*), Pope Innocent announced that Satanists in Germany were meeting with demons casting spells that destroyed crops and aborting infants. The pope then asked two friars, Heinrich Kramer- a papal inquisitor of sorcerers from Innsbruck-and Jacob Springer, to publish a full report on the alleged witchcraft. Two years later the friars published the *malleus maleficarum* ("Hammer of Witches") which put to rest the old orthodoxy that witches were powerless in the face of God, to a new orthodoxy that held that

Christians had an obligation to hunt down and kill them. The *Malleus maleficarum* documented tales of bizarre activities of the witches such as women having sex with any convenient demon, killing babies and even stealing the penises. Over the next forty years, henceforth, the *Malleus maleficarum* was reprinted thirteen times and it was used as an authority in the definition of the crime of witchcraft.

In the early to the mid 1500s there was an outbreak of witchcraft hysteria, with mass executions in much of Europe. As Blecort (2000, 40-50) indicates, during this period, 500 witches were executed in Geneva Switzerland and 1000 in Como Italy. Not even the onset of reformation in Europe did much to eradicate this crazy for witch persecutions. It is also observed that the Protestants took the crime of witchcraft more seriously than the Catholics.

Germany, which is said to have had more sectarian strife, witnessed Europe's greatest execution rates of witches than the rest of continental Europe combined. It is estimated that between 1500 and 1660 Europe saw between 50,000 and 80,000 witches executed. Interestingly the same statistics indicate that about 80% of those who were killed were women (Blecort *Op.Cit*). The high numbers recorded in Germany during this period of sectarian strife seems to be consistent with the theory that cases of witch-hunts are more during periods of social upheavals. In such situations society tends to look for explanations for societal problems and witchcraft happens to be one of these.

One interesting case about this phenomenon of witch punishment involves the story of King James VI of Scotland, later to become King James I of England (Gould, 1964). According to this tale, Princess Anne of Denmark was supposed to travel to Scotland to marry King James. However, her voyage was met with a bad storm and she ended up taking refuge in Norway. This forced King James to travel to Scandinavia where the two lovers wedded and then went to Denmark for a long period of honeymoon. On their return voyage to Scotland, the

newlyweds encountered rough seas that the ship's Captain blamed on witches. Six Danish women confessed to having caused the storm. It is said that from this incident, King James started taking witchcraft seriously because from this incident, he believed it to be real.

Back in Scotland, the paranoid King James authorized a mass torture of suspected witches in which dozens of condemned witches in the North Berwick area were burned at the stake in what would be the largest witch-hunt in British history. By 1597, however, King James started showing the softening of stance and he began to address some of the worst prosecutorial abuses and somehow, witch-hunting in Scotland abated. Indeed, no less a person than Shakespeare was concerned with the attention witch-hunting had begun to attract in England during the era of king James that he wrote a play Macbeth, in which strange bearded, hag-like witches play prominent roles, giving credence to the stereotyped view that an individuals' physical outlooks were at times used to identify witches.

In 1640s, witch-hunting, though still live in many European countries, started to decrease in others (<http://E:\Witch-hunt-Wikipedia.html>). In France, for instance, the period between 1643 and 1645 saw the largest witch-hunt in French history. During those two years, there were at least 650 arrests in Languedoc area alone. The same time was one of intense witch-hunting in England as the English civil war created an atmosphere of unrest that fueled the hunting.

Likewise the Thirty Years, a conflict that raged in several European states from 1618-1648 following an attempted rebellion by Protestants in Bohemia from the Roman Catholic Hapsburg rulers, produced slaughter and suffering that sparked additional witch-hunts

The number of witch trials, however, began to drop sharply in the late 1640s, with Holland, for example, a fairly tolerant society, having done away with punishments for witchcraft by

1648. In England the last witch execution was recorded in 1682 which involved the case of Temperance Lloyd, a blind woman from Biddeford. Lord Justice Sir Francis North, a passionate critic of witchcraft, investigated her case. He used it to make a landmark ruling against all similar cases, terming them deeply flawed. Sir Francis North's Ruling, according to Linder (*Op.Cit*, 11), was that:

The evidence against [suspected witches] was very full and fanciful, but their own confessions exceeded it. They appeared not only weary of their own lives but to have a great skill to convict themselves.

This landmark ruling by North helped discourage additional prosecutions and witch-hunting in Europe.

After Europe, the witch-hunting phenomenon moved to America with the outbreak of hysteria in Salem (<http://www.salem/witchhistory.html>). Salem witchcraft trials are the most known in the history of witch prosecutions. The trials of witches in Salem started in New England in the winter of 1692, a year of political uncertainty throughout the Massachusetts Bay colony.

It was in Massachusetts that a West Indian slave named Tituba was accused of practising witchcraft alongside one Sarah Good, a despised pipe-smoking beggar and Sarah Osborne, who had scandalized the village by living openly with a man before marriage. From early march of that year several trials were carried out in which almost all the accused persons confessed of being witches. In seven months, seven men and thirteen women were executed for practising witchcraft. Those who would not confess were still killed. When these accusations reached the apex, public opinion turned against them. And within 18 months, the Governor of that colony, William Philips had pardoned all suspected witches who had not been executed while even the executed were exonerated. However, the name Salem endures as symbol of social madness in as far which prosecutions in the Western world is concerned

(*Ibid*).

The period of enlightenment that began in the late 1680s according to Linder (*Op.Cit*) contributed to the end of witch-hunts throughout Europe. This period brought with it empirical reason, skepticism, and humanitarianism, each of which helped discourage the superstitions of the early age. The enlightenment suggested that there was no empirical evidence that alleged witches caused real harm, and taught that the use of torture to force confessions was inhumane.

The phenomenon of witch punishment was not only confined to ancient and early modern Europe, it was also practised in various other parts of the world namely Asia and Africa. A few examples from these two continents would suffice to illustrate this assertion. In recent times, cases of suspected witches being executed in India have been reported in the media (*The Asia Times*, 23rd February, 2000).

On 16th February, 2008 a Saudi woman by the name Fawzi Falih was arrested and convicted of witchcraft and sentenced to death (<http://www.timesonline.co.uk/news/world/middleeast/article3378460.ece>) .In Indonesia, a dominant Muslim country, there have been alleged witch persecutions and public trials in the 2000s (Inside indonesia62-Aceh's pain-The Banyuwangi murders).

In Africa, several cases could be cited where witch hunts and punishments are meted out to suspected witchcraft practitioners. The *BBC News* (1999-12-22) carried reports of child victims being hunted down and killed in the Congo. The same report points out that in Tanzania, old age women with red eyes are frequently persecuted for being witches.

Among the Abagusii of western Kenya, several cases could also be cited where the punishment of suspected witches is carried out. Such incidents of witch punishment have

been recorded by among others, Akama (*Op.Cit*, 115-130), Nyasani (*Op.Cit*), Monyenye (*Op.Cit*) and in the media i.e., *The People Daily* (February 23, 207) and *The Daily Nation* (February 26, 1990).

From the above discussion, a number of facts emerge as pertains to witchcraft and witch punishment. One is that witchcraft thrives even in an atmosphere of religion. This is attested by the witch punishments that were sanctioned and carried out in the early Christian tradition. Two is that there is a commonly held stereotype that witchcraft is an activity that is practised by members of the lower class in society, since it is seen as something that is primitive. However, William Shakespeare shatters this myth in *Macbeth* when he indicates that indeed, witchcraft was practised even by the elites in the western society.

Lastly, it can also be deduced that any atmosphere of unrest, though not always fuels cases of witch-hunting in society. This seems to explain why in Western Europe; accelerated incidences of witch-hunting were witnessed during the periods of social strife in Germany and the British civil wars of 1643-1645. In America, witch-hunts became rampant in 1692 in what is described as a year of political uncertainty throughout the Massachusetts Bay colony in what gained notoriety as the Salem witch hunts.

Apart from the above, there are also various other factors or reasons that have historically and presently used to justify witch punishment in different societies. The next section constitutes a discussion of some of these arguments.

3.1 ARGUMENTS FOR WITCH-PUNISHMENT

Historically, witchcraft was seen in many cultures and especially in the early church, as a form of heresy because it involved a pact with the devil and thus it had to be ruthlessly exterminated. Punishment for witchcraft related activities dates back to the Code of

Hammurabi at around the 18th century BC where it was asserted that if a person puts a spell on another who was innocent of any wrong doing, then the one who put the spell should be put to death. During this period, acts of sorcery were classified as unlawful and those who used sorcery to maliciously harm others had to face punishment. One incident that stands out in this case is the fact that there was what one could call clear mechanisms of determining and punishing of sorcerers. This is demonstrated in the Catholic Encyclopedia (<file:///E:/witchhunts 31 March, 2006>) where it is stated that:

If a man has put a spell upon another man and it is not justified, he upon whom the spell is laid shall go to the holy river; into the river shall he plunge. If the holy river overcome him and he drowned; the man who put the spell upon him shall take possession of his house. If the holly river declares him innocent and he remains unharmed the man who laid a spell shall be put to death. He that plunged into the river shall take possession of the house of him who laid the spell upon him.

This illustration makes very fundamental issues. The first of this is that just like in many African communities; sorcery in ancient Babylonia was not perceived as evil *per se*. Indeed, in many African communities as it has been shown elsewhere, there are times when sorcery is put into positive use, especially in cushioning the innocent members of society from the malevolent machinations of evil-minded members of society.

Consequently, when sorcery is put into wrong use, it is usually believed to turn against its users. One then has to reflect very carefully before approaching a sorcerer to procure for some harm for his or her perceived enemy. Just like in Babylonia where the holy river would not drown an innocent person just because of a spell from his perceived enemy, in a number of Africa communities, sorcery could not affect the innocent since the ancestral spirits, it is believed, would not stand by and watch an envious or wayward member of society cause havoc on the innocent.

The second issue is that sorcery when misused becomes a form of witchcraft. In such cases, its practice is subjected to punishment. The church in ancient Babylon followed this trend of

punishing sorcerers and witches on the same reasoning.

Hence, during the middle Ages, the church did not actually conduct witch trials. They were rather punished on the basis of the old canon law that classified witch activities as heretic. However, it was not until the 13th century that the trial of witches in Europe was to be formally conducted with the coming into place of the institution of the Inquisition. The Inquisition was a permanent institution under the Catholic Church which was charged with exposing, punishing and eradicating religious heretics who held views and beliefs that were against the mainstream Catholic Church. And because witchcraft came to be viewed as a form of heresy, it too fell in the purview of the Inquisition.

It can be argued that by classifying the practice of witchcraft under heresy, whether the church did give the accused persons a fair chance of properly defending themselves. Although the phrase witch trials is used during this period, it is also noteworthy to indicate that there were lots of witch hunts such that some people confessed to being witches so as to get less severe punishment, since total denial often led to capital punishment. What mattered was one's own willingness to offer oneself for conviction and not the reality as to whether one was a witch or not.

Inquisitors were said to be so zealous in their work that witchcraft alleged or real, was treated as any act of heresy that had to be punished. During this period, there were still secular laws against witchcraft such as that promulgated by King Athelstan, 924-999 AD (Medieval Sourcebook: The Anglo- Saxon, Dooms 560-975) which in part stated that:

And we have ordained respecting witchcrafts...if anyone should be thereby killed, and he could not deny it, that he be liable in his life. But if he will deny it, and at threefold ordeal shall be guilty; that he be 120 days in prison: and after that let kindred take him out, and give to the king 120 shillings...and enter into (an agreement) that he evermore desist from the like.

This demonstrates that during the middle Ages, there were, at least in some places, some forms of formally recognized ways of identifying and punishing witches. Secular ways of witch-punishment were different from the religious ones because the former involved some form of ordeals that gave the accused a chance of defending themselves and perhaps, even escaping punishment in the process. But still, one cannot rule out the fact that even in these kinds of witch trials, the innocent could easily fall victim.

The practice of witch trials and punishment continued into the early modern period in various parts of Europe. This is in spite of this period being characterized by a great deal of civilization and one would, therefore, expect that beliefs in such practices would have ceased to exist.

Unlike in the Middle Ages, however, the modern era witch trials came in waves. Behringer (2000) indicates that the 15th and early 16th centuries were, for instance, characterized by high incidences of witch trials. These were followed by an interval of calm before becoming a big issue again and peaking in the 17th century.

The fear of witchcraft in modern Europe, according to Levack (1995), started among intellectuals who believed in *maleficium*; that is, bad deeds. What had previously been a belief that some people possessed supernatural abilities (which of course sometimes resulted in protecting people as indicated elsewhere in this work), now became a sign of a pact between these people with supernatural abilities and the devil. Consequently, witchcraft became associated with the so-called satanic ritual parties in which there was much dancing, orgy sex and cannibalistic infanticide. Indeed, this view reinforces the argument that witchcraft has traditionally not been perceived as evil *per se* - what makes it evil is the way in which it is used.

While witch-hunts were witnessed across early modern Europe, much of its practice was concentrated in Southwestern Germany (Midelfort 1972, 31-50). It is believed that in Germany, the number of trials compared to other regions of Europe shows it to have been a late starter. While, for instance, witch-hunts first appeared in large numbers in Southern France and Switzerland during the 14th and 15th centuries, in Germany, the peak years of witch-hunts were from 1561 to 1670. Indeed, the first major persecution in Germany where witches were caught, tried, convicted, and burned was in the imperial lordship of Wiesensteig in Southwestern Germany in 1563.

Witch-hunts and trials in much of Europe according to Behringer (*Op.cit*) subsided during the early 18th century. The last execution in England, for instance, is reported to have taken place in 1716. The Witchcraft Act of 1734 saw the end of the traditional form of witchcraft as a legal offence in Britain. Accusations under the new act were restricted to people who falsely pretended to be able to procure spirits. Generally being the most dubious professional fortune tellers and mediums, punishment for them was light.

In the modern period, witch-hunts still occur in various parts of the world and specifically in Africa as is illustrated by the following examples from Congo, (“Congo witch-hunt’s child victims, *BBC News* 1999-12-22),” and Tanzania where older women were said to be killed if they had red eyes (“Tanzania arrests witch killers”, *BBC News* 2003-10-23). For the case of Tanzania the report goes on to say that it is believed that any aged woman with red eyes is a witch. However, the authenticity of this claim is contentious because the possession of red eyes by aged women could be rationally explained (and this has been done in the section on identification of witches), thus pointing to the fact that such witch punishment is an unjust against women and it constitutes gender discrimination against them. This scenario is replicated in India where women are usually branded as witches to settle scores, (*The Asia*

Times, 23 February 2000).

Indeed, not even most developed countries could be said to be absolutely free of modern day belief in witchcraft. This can be demonstrated by an incident from Oklahoma USA, where in December 1999, a student was suspended from school for 15 days for allegedly casting spells on a teacher (ACLU of Oklahoma Files Federal Lawsuit on Behalf of Student Accused of “Hexing” a Teacher, 1999). But it should be noted here that this kind of witchcraft is different in form from that found in many third world countries.

The belief in witchcraft also cuts across different religious faiths. For instance, on February 16, 2008, a Saudi woman, Fawzi Falih was arrested and convicted of witchcraft and was sentenced to death.

http://www.timesonline.co.uk/tol/news/world/middle_east/article3378460.ece.

Likewise, in Indonesia another dominant Muslim country, there have been alleged witch persecutions and public trials, even in the 2000s where hundreds of people have reportedly died due to witch related persecutions.

In Europe, and specifically in Britain, there were sporadic witch trials and persecutions under the Witchcraft Act in the 19th and the early 20th centuries. According to Westermann (1935, 56), one such case took place in 1944 involving Helen Duncan who was the last person to be imprisoned under the Act. Supposedly, the authorities feared that by her clairvoyant powers, Duncan could betray details of the D-Day preparations. She was accused of defrauding the public using her powers and convicted and spent nine months in Prison. The Act was repealed in 1951.

Witch-punishment in various parts of the world as can be inferred from the foregoing, has been justified by a multiplicity of reasons, legislation being one of these. But whatever the

reasons, and in whichever part of the world, there are still questions as to the authenticity of such reasons, the process of the so-called witch trials and the integrity of the trial bodies or authorities that conduct such witch trials. We briefly turn to the analysis and evaluation of these justifications of witch punishment.

Generally, justification for the persecution of witchcraft practitioners is based on the argument that it is an abomination, implying that it is evil and ungodly. This is basically a religious argument. It is, however, important to acknowledge the fact that religion is multifaceted. And to begin with, religion, has to do with matters of faith, and is first and foremost, an individual enterprise. An individual must first of all find meaning in his or her belief in religion before they can join the communal enterprise of the same. Furthermore, religion should not be viewed as something that is abstract, but rather as something that should satisfy the aspirations and goals of an individual. Likewise, it is universally understood that religion is normally associated with, among other things, miracles coupled with some form of pragmatism. Hence, in as far individuals are able to accomplish all these through their movement (whether religious or otherwise), then there is nothing that can disqualify their movement from being religious. The arguments against individuals with alternative beliefs, therefore, can only be summarized as religious intolerance.

To many observers, Africa seems to be the epicentre of the practice and belief in witchcraft. Indeed, numerous cases of the capture and executions of individuals suspected to be witches in various parts of the continent are commonly and frequently reported both in the media. Historically, various reasons to justify these executions have and are still being advanced. Foremost among these is perhaps the fact that witches are agents of evil, including death. An overview of documented evidence from some parts of the continent would reveal some of the reasons for witch-hunts and punishments.

Generally, in a number of African societies, the fear of witches is known to drive periodic witch-hunts during which the so-called 'specialists witch finders' identify suspects, who are, more often than not, subjected to 'punishment'. Richards (Westermann *Op.Cit*, Vol VIII, 1-100)) narrates an instance, where a new wave of witch finders known as the *Bamucapi*, appeared in the villages of the Bemba people thus:

They dressed in European clothing, and would summon the headman to prepare a ritual meal for the village. When the villagers arrived they would view them all in a mirror, and claimed they could identify witches with this method. These witches would then have to "yield up his horns", i.e. give over the horn containers for curses and evil potions to the witch-finders. The Bamucapi then made all drink a potion called *kucapa* which would cause a witch to die and swell up if he ever tried such things again.

An outside observer can question the authenticity of this process of identifying witches, and justifiably so. For instance, as is indicated elsewhere in this work, the potion being administered may contain some poisonous contents, which may cause the death of its consumers. But it should also be understood that although these suspects could be presumed to be 'guilty' prior to being 'positively identified' through the use of the mirror, actually some of them do survive this ordeal, implying that they are 'innocent'. Therefore, to those who engage in this practice the 'efficacy' of this method of witch identification cannot be challenged.

The Bemba people of Tanzania would not doubt the authenticity of the above method of identifying witches. For them, therefore, one would not argue that suspects have been falsely accused. Indeed Richards asserts that the witch-finders were always right because the witches they found were "always the people whom the village had feared all along" (*Op.Cit*, 203).

Another important aspect of witch-hunts that reveals itself here is that of perception. This is the fact that, because of their unique characteristics, there are certain members in society who are always branded as witches even when they have not been 'proved' to be so. Some

suspected could actually confess to being witches even when they are not. This is with the knowledge that whichever ways they plead their fates have long been sealed by society with a preconceived mentality. Notwithstanding this, the witch finders (Bamucapi) among the Bempa people were believed to work in cohorts with divine powers. Richards (Westermann *Op.Cit.* 210) demonstrates this when he states that “the Bamucapi utilized a mixture of Christian and native religious traditions to account for their powers and said that God helped them prepare their medicine”.

Implied in the above is the assertion that these witch-finders were actually not working on their own behalf, but rather they were actually intermediaries carrying out Divine orders. And just like prophets, they were unlikely do that which they had not been sent to do. However, this argument may not be devoid of abuse given that methods of counter checking these claims are largely absent.

Another argument that could be used to illustrate the fact that the so-called witch trials among the Bempa could be ways of only endorsing or confirming the reality of suspected witches is again demonstrated by Richards’s (Westermann *Op.Cit.*213) when he says that:

All witches who did not attend the meal to be *identified* would be called to account later on by their master, who had risen from the dead, and who would force the witches by means of drums to go to the graveyard, where they would die.

The idea of identifying witches who have not gone through the ordeal of drinking *Kucapa* potion indicates that there are people in society who are known *a priori* to be witches and this renders the whole process of witch identification superfluous.

Witch finders in African societies were dreaded people, not only because they could seal the fate of an individual, but also because of the ontological impact of their activities in society.

Their procedures of identifying witches had far reaching consequences to a large cross section of society. At least this is the picture that we are presented with from the Bempa people once more. It is noted that the “*Bamucapi* created a sense of danger in the villages by rounding up *all* the horns in the villages, whether they were used for anti-witchcraft charms, potions, snuff or were, indeed, receptacles of black magic” (*Op.Cit*, 215). This implies that in African ontology, it is difficult to differentiate between those supernatural and mystical practices that are thought to belong to witchcraft and those that do not. Like many other African societies, the Bempa also believed that with their enormous powers which were hard to detect, witches were agents of unjust harm.

Documented evidence from a number of African communities indicates the presence of witch-hunts and punishment (Adegbola 1983). Among the Bantu tribes of Southern Africa, for instance, witch smellers are responsible for detecting witches. The same could be said to exist in both the western And Eastern African countries.

The beliefs in witchcraft and sorcery have continued to persist in many African countries, despite a great deal of Westernization. Some of the factors cited for this phenomenon include; social strain caused by new ideas, customs and laws and the inability of the courts of law to adequately recognize witchcraft as a crime that can be tried in their jurisdictions. There are, however, some African countries i.e., Cameroon and Togo, where suspected witches can be tried in the courts of law and even jailed once found ‘guilty’.

Much has been written to explain why society turns against some of its members, accusing them of being witches and then punishing them. Hence, the next section examines some of the theories that have been advanced to explain witch hunts and executions.

3.2. THEORIES OF THE CAUSES OF WITCH-HUNTS AND EXECUTIONS

There are a number of theories that have been advanced to explain the phenomenon of witchcraft trials. These theories can broadly be classified into three: Micro level psychological interpretations, Macroeconomic explanations and Sociological theories.

One micro level theory contends that early modern witchcraft trials can be connected to the period of counter-reformation. The period between 1561 and 1670, according to Midelfort (*Op.cit*, 31-50), saw a huge number of witch trials and executions in various European countries. Available figures indicate that during this period, in South-Western Germany, there were 480 witch trials of which, 317 occurred in Catholic areas, while Protestant territories accounted for 163 of them. During this same period, 3,229 persons were executed for witchcraft in the German Southwest. And of this number, 702 were tried and executed in Protestant territories, while 2,527 were tried and executed in Catholic territories. These figures show that in comparative terms Catholic territories had more witch hunting than protestant territories

Although historians have disputed this comparison, some reasons have nevertheless been given to explain this scenario. Protestants blamed the witch trials on the methods of the Catholic Inquisition and the theology of Catholic scholasticism, while Catholic scholars indignantly retorted that Lutheran preachers drew more witchcraft theory from Luther and the Bible than from medieval Catholic thinkers (*Op.Cit*, 31).

During this early modern period religion played a central role in trials and execution of suspected witches. This was largely due to religious intolerance from those who regarded themselves as puritans and who looked down upon any practice that did not conform to their teachings. It is also said that the massive changes in law allowed for the outbreak in witch

trials. According to this view such laws brought in the idea of heresy and punished all aspects that did not fall within accepted practice terming them heretical.

Another theory that attempt to explain increased incidences of witch trials and executions during this period was the increasing availability of devil literature. Cited as an example for this is the German market that saw nearly 100,000 devil books during the 1560's (*Op.Cit*, 69-70). This may have alarmed the authorities who felt obligated to put in place measures to avert the spread and influence of devil worship in society, hence witch hunts and executions of suspected witches was deemed the ideal solution to this problem.

Another theory is that climate induced crop failure and harsh weather conditions had a direct link to witch-hunts. This theory follows from the belief that witchcraft in Europe was traditionally associated with weather making (Wolfgang, 2004, 88). Indeed, this contention could be vindicated by a case drawn from Gusiiland where it is reported that according to Kisii Central OCPD, SSP Augustine Nthiga (*The Daily Nation*, Wednesday July 9, 2008, 3), all cases of people murdered for being witches investigated so far, have a common trend. The killings occur between the months of May and August every year.

In Gusiiland, this is a period that is generally characterized by harsh weather conditions in that they are the coldest months of the year. It is also during this periods when much of Gusiiland is affected by famine and diseases, such as malaria outbreaks that sometimes lead to several deaths. Although these deaths could rationally be explained, there are those who would blame them on witchcraft. This period is thus characterized by mass hysteria of rounding up of suspects who are occasionally summarily condemned and spontaneously punished. Calamities, both natural and man-made as such contribute to an increase of witch-hunts as well as executions of suspected witches in many societies.

Another example that may serve to illustrate the connection between social unrest and increased witch-hunting incidences is the assertion that there was a connection between witchcraft trials and the Thirty Year's War in Europe (Midelfort *Op.Cit*, 5). According to this view, this period also show a remarkable increase of cases of witch hunts and executions. This was perhaps a way of shifting the focus away from the failures of the government as well as containing discontent among the populace.

Apart from the micro level psychological theories, the macroeconomic theory is another one that tries to explain witch trials and executions. this theory asserts that witches who often had highly developed midwifery skills, were prosecuted in order to extinguish the knowledge of birth control that they possessed, in an effort to repopulate Europe after the population catastrophe triggered by the plague pandemic of the 14th century. This theory contends that both the Church and prominent secular thinkers in Europe, in an effort to help repopulate the continent, promoted the witch-hunts. This was done in an effort to eliminate female midwifery skills.

Scholars aligned to this view, have coincidentally used this theory as an historical explanation as to why modern gynecology came to be practised almost exclusively by males in state run hospitals. According to this view, the witch hunts began a process of criminalization of birth control that eventually led to an enormous increase in birth rates that are described as the population explosion of early modern Europe. This population explosion is the one that produced an enormous youth bulge which supplied the extra manpower that would enable Europe's nations' during the period of colonization and imperialism, to conquer and colonize 90% of the world (Heinsohn 2005). While historians specializing in the history of witch-hunts have generally remained critical of this theory, prominent historians of birth control (i.e., Riddle 1990) have expressed agreement with it.

Sociologists have also come up with a theory that explains witch-hunts and executions. They hold that the occurrence of witch-hunts can be attributed to human tendency to blame unexplainable occurrences on someone or something familiar. Europe relied heavily on agriculture during the period of witch-hunts, if there were large-scale crop failures, the consequences would very likely be disastrous. Hence, crop failures often correlated with the occurrences of witch hunts, leading sociologists to suggest that communities often took out their anger about a lack of food on members who were unpopular (i.e., witches).

This explanation conforms with the observation made earlier that an increase of cases of witch-hunts and lynching among Abagusii of Western Kenya have been found to be concentrated between the months of April and August when there is bad weather and by extension poor harvests. Hence, hunger, poverty, diseases and even unemployment are quickly attributed to witchcraft, leading to game blames among neighbours and eventual executions of suspects.

Other factors that may lead to witch-hunts include; personal jealousies, prevalence of unexplained epidemics, natural disasters, low levels of education, economic instability etc. It is a historical fact for instance that in Germany, the Nazi regime used anti-Semitism to apportion blame for the economic problems befalling the country during that time, leading to the extermination of millions of Jews. A perception of moral righteousness by the community is, therefore, a necessary element that enables rationalization of its actions.

The above are some of the theories that were used to explain the reasons for witch-hunts and executions in early modern Europe. Although witch-hunts and executions have long ceased to exist in Europe, the same cannot be said of much of the African continent. Indeed, some of these theories could be used to justify the practices of witch hunts and executions in much of

Africa.

The absence of an unequivocal law on the practice of witchcraft which would spell out formal punishment has been blamed for the frequency of spontaneous witch punishments such as lynching in many Kenyan communities, including the Abagusii. Usually whenever suspects are apprehended and handed over to government authorities, they are rarely taken to the courts of law. And even when they are arraigned in court, they are often set free on the understanding that witchcraft does not constitute any specific offence under common positive law. Left with no recourse, therefore, people tend to take it upon themselves to punish the culprits in the best possible way they know as a way of filling this legal vacuum.

This is the scenario that is witnessed in many Kenyan communities despite the existence of a law on witchcraft. The Kenyan Constitution (1963) recognizes witchcraft as an offence. This law known as the *Kenya Witchcraft Ordinance* was enacted in 1909. It dealt with the discovery and arrest of witches as well as their convictions. But the law was controversial because it raised the question of how to deal with either that it unfairly punished or failed to protect. Equally controversial was the application of the penal provisions against murder to those who killed witches. Hence, punishing witches and those who killed them raised important issues of law, ethics and policy, problems that still face not only present Kenya but also all other contemporary societies where the belief in witchcraft still exists.

After independence, instead of the new government trying to understand social dynamics that inform the beliefs surrounding the practice of witchcraft and devise ways of dealing with, it went ahead and inherited this piece of legislation wholesale and inserted it into its statutes.

Thus, the Kenyan law recognizes the existence of witchcraft and its effects on society. It has put in place legislation to check its practice. Cap 67 of the laws of Kenya has various sections

that prohibit witchcraft and the possession and use of charms. Consequently, anyone found guilty of the offence that is said to cause fear, annoyance or injury to others can be sentenced to a jail term of up to 10 years. The Kenyan Constitution of 1963, Section 2 of Cap 67 states that:

Any person who holds himself out as a witchdoctor able to cause fear, annoyance or lynching to another in mind, person or property, or who pretends to exercise any kind of supernatural power, witchcraft, sorcery or enchantment calculated to cause such fear, annoyance or injury, shall be found guilty of an offence and liable to imprisonment for a term of not exceeding five years.

This section of the constitution, therefore, gives the courts very wide powers that it is expected they could use to rein in the activities of suspected witches that cause anxiety and despondence in the community. Moreover, if this law were to be properly utilized in reigning in the activities of witches to the satisfaction of society, acts of spontaneous punishments against them could possibly be minimized. This is because aggrieved individuals would appreciate the fact that their grievances are adequately addressed within the framework of formal law and, thus, desist from taking the law unto their own hands.

The law on witchcraft further goes to prohibit not only the actual practice of witchcraft, but also the claim of both the knowledge of witchcraft as well the passive involvement in terms of either procuring advice to another person or supplying articles of witchcraft to another .On this, section 3 of Cap 67 states that:

Any person, professing a knowledge of so-called witchcraft or the use of charms, who advises any person to bewitch or injure persons or animals or other property, or who supplies any person with any article purporting to be a means of witchcraft, shall be guilty of an offence and liable to imprisonment for a term not exceeding 10 years.

This implies that the law recognizes the fact that in the minds of the people, there are indeed, a host of superstitious practices that fall under the category of witchcraft activities. The use of traditional concoctions with the intent to cause injury is one of these. This also explains why sorcery and black magic are at times referred to as witchcraft if they are used malevolently.

This demonstrates that witchcraft is not always a nondescript activity carried out under strict secrecy and mostly at night as is popularly believed. Witchcraft could, for instance, be actualized by poisoning a person's food or drink.

Post-colonial legislation against the practice of witchcraft in Kenya has its roots in the colonial period. The criminalization of witchcraft by the colonial administration was aimed at fulfilling two functions namely; to appease those who felt aggrieved by the activities of witches and to curb the incidences of killings and wanton destruction of peoples' property. This reasoning could have been based on the fact that informal administration of punishment by agents other than the recognized instruments of government was not only immoral but also actually criminal. There is a higher probability that innocent people could easily fall victim to the malicious machinations of their enemies who could have scores to settle due to various reasons.

Their noble intentions in enacting this piece of legislation notwithstanding, the colonialists overlooked important issues, which incidentally are still as relevant today as they were then. One is the fact that witchcraft is both a spiritual and a physical phenomenon. Hence, legislation, which addresses the physical aspect alone, is unlikely to eliminate witchcraft unless and until the spiritual aspect of it is also addressed.

The second aspect that the colonialists should have considered is the relation between law and behavior. The issue here is whether good laws make good people or whether popular behaviour could be reformed by an enlightened standard, underpinned by legal action. Studies have shown that good laws may not have the intended effect of reforming people's behaviours that have been established through a long process of socialization.

The 1909 Witchcraft Ordinance Act of Kenya was a piece of Metropolitan legislation drafted

under the British legal system, with little regard to the cultural and social realities of the people it was being made for. Consequently, this law was merely punitive rather than being either deterrent or reformative. Giblin (2002, 42) demonstrates this when he asserts that:

It did nothing to address the “causes” of witchcraft, ignored or penalized local attempts to deal with the problem and would end not by eradicating witchcraft beliefs but by driving them underground and strengthening their practitioners.

This argument could be used to explain why the practice of witchcraft is still widespread in many parts of the African continent, despite the fact that it is prohibited under the constitutions of many of these countries. Again this boils down to the idea that the spiritual aspect of witchcraft needs to be looked into alongside empirical legislation.

Sources for witchcraft law in Kenya are, however, unfortunately scattered, scanty and problematic, especially as compared with what is available in studies of witchcraft elsewhere and at different periods. This could be explained by the fact that very few cases on witchcraft do find their way into Kenyan courts, implying that no complete crime statistics relevant to witchcraft are available, either in individual districts or for the country as a whole. Moreover, very few trial transcripts of cases involving witchcraft survive whereas witches themselves are almost silent and the social context of individual cases is obscure, or entirely lacking. Much of what is available is deduced from Law reports, from correspondence regarding the revision of cases as well as the difficulties of the law and from what is occasionally reported in the press. Others include police records as well individual accounts of witnesses.

The above scenario can be contrasted with the cases of people accused of killing suspected witches that often find their way into Kenyan courts, presenting the courts with the dilemma of whether to charge the accused with murder or manslaughter. This has to do with the question of whether the belief in witchcraft should avail an accused person the defense of provocation. The following examples from the Kenyan courts, where the Judges of the Court

of Appeal were called upon to determine on appeal, cases of witchcraft brought before them from the lower courts, illustrate this dilemma.

In July 2007, the Court of Appeal (*Patrick Tuva Mwanengu versus Republic of Kenya* [2007] (*eKLR*, www.Kenyalaw.org), held that a threat shows a threat to kill by witchcraft. This threat, when taken together with existing circumstances of death, could amount to legal provocation. In passing their judgment, the Judges made reference to the 1932 case of *Republic of Kenya versus one Kumwaka Wa Mulumbi*. In this case, a group of Akamba natives facing murder charges urged the court to acknowledge the fact that they genuinely believed the fact that a deceased woman was a witch and that she had bewitched the wife of one of them and made her ill and unable to speak.

The question the courts had to address here was that of an aggrieved party taking advantage of this legal loophole to perpetuate witch-hunts against their enemies. To avoid this scenario, the court put in a rider ruling that the defense of grave and sudden provocation could only be available to an accused person who allegedly believed in witchcraft, where the accused had been put in fear of immediate danger to his own life. The implication of this ruling was that instances of spontaneously meting out punishment against suspected witches were not to be tolerated. Each would be evaluated on its own merit to determine whether it could conform to this clause.

Subsequently, however, uneasiness began to emerge in the courts about the general applicability of this 'established principle'. One of the issues raised, for instance, was that it was rather difficult to establish what standard of fear was required to establish a defense of provocation based on a belief in witchcraft.

The question continued to face Kenyan courts as exhibited by post-independence cases of

witchcraft brought before the courts. In one such case, *Yohan versus Republic* (*The Daily Nation*, Monday February 4, 2008, 14), the court ruled that cases of witchcraft previously decided did not lay down a general rule and that they ought to be interpreted with reference to the facts of each case and that a threat to kill taken together with the existing circumstances, could amount to legal provocation.

It should be noted here that there are communities in Kenya where the killing of those suspected to have caused the death of another through witchcraft could not be deemed as murder. For such communities, belief in witchcraft is so widespread; a fact that even the law should take cognizance of. Indeed, it can be argued that taken together with the existing circumstances, i.e., the death of close relatives of those accused of killing in the guise of revenge, amounts to provocation. Legally, therefore, this would be viewed as manslaughter rather than murder.

The above principle was, for instance, used in a case where a man (Katana Karisa) and his three sons were accused of killing one Charo Kadenge whom they accused of bewitching the former's son (*eKLR*, www.kenyalaw.org). The accused were initially sentenced to death by the High court for the offence of murder, a sentence which they appealed against. During the hearing of the appeal, the defendants argued that their offence did not constitute murder. The reason given was that in sentencing them the High Court had not taken into consideration very pertinent issues pertaining to the circumstances surrounding their action.

One of the most important material facts of the above case that the High court is accused to have overlooked was that the accused persons acted out of provocation. Before the said murder had taken place, through a traditional oath, the Giriama elders found that the deceased, Charo, had bewitched Katana's 10-year-old son, upon which the elders ordered compensation in conformity with Giriama customary practices. But instead of settling the

claim, Charo made further threats to the effect that he would wipe out Karisa's whole family. And this is what prompted Karisa and his sons to kill Charo. The court of appeal was thus compelled to take into account the extenuating circumstances of the accused.

The court of Appeal, therefore, found sufficient evidence to show that Charo's death was not a mere cold-blooded murder but was one that was followed by a chronology of logical events. It was a fact that Katana's son had died some time back. Also true, was the fact that Karisa and Charo were closely related (accounting for the popularly held belief that witchcraft is often suspected among closely related individuals). Also of material importance was the fact that Giriama elders had supposedly found Charo guilty of causing the death of Katana's son. In their opinion, therefore, the Judges held that all these circumstances showed that Karisa at least suspected that Charo caused the death of his son through witchcraft and this should have put the trial Judge on inquiry, necessitating full inquiry of the circumstances under which the deceased was killed. Because the trial Judge of the High Court failed to consider all these important facts of the case, the appeal was allowed and the Court of Appeal set aside the conviction for the offence of murder and substituted it with that of manslaughter.

What emerges from the foregoing is the fact that the Law in Kenya is very explicit in the way in which it deals with issues of witchcraft, which would imply that the kind of spontaneous punishments that are frequently reported in the media need not happen. The law accords those aggrieved by the activities of witchcraft an avenue through which their grievances could be handled. In as far as they are able to show that their killing of suspects is motivated by revenge, caused by provocation, those who carry out lynching always have a grey area in the law that they could use to defend themselves. Like any other good law, however, this piece of legislation is open to abuse due to its inherent weakness and it should not be relied on wholesomely by the courts.

This law does not, however, apply in the same version to suspected witchcraft practitioners. If falsely accused, their chances of proving their innocence in a court of law may not be that easy. Indeed, during the course of this research no records were found of suspects who have gone to court to challenge their being labelled witches. If this is a true scenario then it would imply that suspects are often left at the mercy of the masses and to a law that hardly distinguishes between acts of witchcraft and those of other forms of traditional practices.

It has, indeed, always been incumbent upon those found with paraphernalia akin to those used for witchcraft, to explain them out and try to convince the suspicious public that they are not intended for witchcraft purposes. The same applies to those who indulge in practices, for whatever reasons, that resemble those of witches. In terms of cushioning suspects and 'actual' witches from informal punishments, the law seems to be ineffective. Hence, proper mechanisms are required to ensure fairness and equality in the administration of justice for this cadre of people who have often been at the receiving end of the wrath of society for their perceived evil activities.

3.3. SOME FORMS AND METHODS OF PUNISHING WITCHES

The issue of punishment for witchcraft offences is one that raises various questions both in academic study and in moral discourse. Before embarking on the analysis of the forms and methods of punishing suspected witchcraft practitioner, it is important to clarify the word punishment as it is used in moral philosophy and in law. For an action to be described as constituting punishment, according to Benn (*Op.cit*, 173-196), there are certain general conditions it must fulfill both in terms of its nature and in its mode of administration.

Firstly, punishment should be meted out for an actual offence, which has been investigated and verified. Hence, the establishment of guilt is a central pillar in the institution of

punishment. Secondly, authority conferred by the system of rules against which an offence has been committed must administer this punishment. Hence, the issue that needs consideration here is whether what has traditionally been described as punishment for witchcraft activities actually constitutes punishment according to the above criteria.

It can be argued that since the ancient times to the present what has often passed as witch punishment may not be termed as punishment when measured using the above parameters. This notwithstanding, however, historical accounts indicate that since time immemorial, witches have undergone various forms of punishment. As early as 1022 AD witches were burnt to death, incidentally by orders of the church (<File:///:\witch-hunt-wikipedia,the free encyclopedia.html> (27/7/2008)). This is despite the fact that one would expect the church to be in the forefront of preaching against superstitious beliefs such as witchcraft.

However, it was not until 1500 that punishment of witches became widespread. During this and subsequent periods, people suspected of practising witchcraft were usually burned at stakes while those pleading their innocence were stoned to death or even sometimes thrown into rivers in an effort of proving their innocence. Witches usually faced severe and painful deaths or punishments. Death either by stoning, or burning, was by far the most preferred form of punishment during this period. Early Modern Europe or the period between 1450 and 1700 was also characterized by executions of tens of thousands of witches (<http://www.law.umkc.edu/witchhistory.html> (1/8/2008))

The arguments for or against witch punishment notwithstanding, death is still the most common form of punishment meted out to suspected witches today as it was in the past. Punishment by death especially with regard to acts of witchcraft, however, raises a number of issues. The first and foremost of these is the fact that death or capital punishment is the ultimate form of punishment. Thus, in meting out this punishment it should be noted that

whatever crime one is accused of, guilt must be established beyond any reasonable doubt. Secondly, all available forms of punishments must have been explored to ensure that none was found to be appropriate or commensurate to the gravity of the crime committed.

The above argument is based on the reasoning that there are petty crimes that should not lead to capital punishment. This is, for instance, why in common law, one of the offences that are subjected to capital punishment is murder. And even then it must be proved beyond reasonable doubt that the said murder was premedated and not just an act of spontaneity or manslaughter. Unless this fact is established, chances are that an innocent person's life might be wrongly taken away, which from a moral point of view is a worse crime than that of acquitting the guilty.

The above position is reinforced by the argument held by some opponents of capital punishment that punishment is supposed to be reformatory rather than punitive. Indeed, reformists argue that no one is born a criminal and that most people commit crimes due to economic and social factors i.e., poverty, unemployment etc. Their contention is that if these factors are properly addressed, then perhaps, these criminals could reform and become law abiding individuals.

Another issue of concern in the phenomenon of witch punishment has to do with the procedures of identifying witches in various jurisdictions. In many African communities, for instance, identification of witches starts with suspicion, leading to accusations (Shorter *Op.Cit*). However, the fact of the matter is that, once one has been branded as a witch, it does not matter how much efforts one puts into trying to prove one's innocence, the tag of 'witch' on one will always remain. One reason for this is that society believes that witches hardly reform. The guilty verdict is, thus, arrived at long even before individuals have been given a chance to defend themselves against accusations that they are witches. It is for this reason

that capital punishment for witchcraft must be seen as immoral.

Even in cases where suspected witches are accorded some form of defense, more often than not they are compelled to plead guilty if only as a way of avoiding the humiliating ordeals they would be subjected to in the event they plead not guilty. Usually, it is also not lost on the suspects that no amount of pleading innocence would convince their accusers that they are, indeed, not guilty. This scenario can be evidenced by accounts from the notorious Salem witch trials where those who pleaded

not guilty were eventually found to be guilty by their accusers.
(<http://www.salem/witchhistory.html> (1/8/2008)).

This would then lead to the assertion that the legal maxim of being 'proved beyond reasonable doubt' that is used in jurisprudence hardly applies here. Hence, there is a higher probability that many innocent people lose their lives and property for the simple reason that someone has merely suspected and accused them of practicing witchcraft.

In many African communities, reasons as to why people are branded as witches by their neighbours are many and varied. Some of these include; poverty and jealousy (Magesa *Op.Cit*, Shorter *Op.Cit* etc). Indeed, mere accusations may lead to the killing of individuals in the guise of punishment. Capital punishment being the ultimate and severest of the punishments means that caution should be exercised in its application. In any case most societies are now advocating for the abolition of this form of punishment and meting it out, especially for accusations that are not fully established would be wrong.

Indeed, condemning the accused persons without giving them a chance to adequately defend themselves against such accusations is against the rules of natural justice. Equally against this

general principle is the way in which this purported capital punishment is sometimes carried out in many contemporary African communities. According to press reports (i.e., *The Daily Nation*, 28th February, 1997, 8), and responses from individuals, interviewed, suspect's houses are often set ablaze at night when they are deep a sleep. Even when they are awake, their houses are often barricaded to prevent them from escaping. There is likelihood that some innocent

party or parties (i.e. one spouse or the children of the accused who not be suspects) may fall victim to this punishment in the process.

In jurisprudence, capital punishment falls within the deterrence theory of punishment (Benn, *Op.Cit*, 173-196, Frankena, *Op.Cit*, 74-79). The lynching, burning and stoning to death of actual or suspected witches could be said to conform to the severity dimension of punishment and it plays two roles. On the one hand, the harshness of this punishment is intended to deter potential witches who might be contemplating to carry out their witch activities. On the other hand, capital punishment leads to what may be termed as total deterrence by getting rid of actual witches from the midst of society. This is what, in the theory of punishment, is also known as incapacitation. Since witchcraft practitioners are thought to be possessed with an incorrigible urge to commit evil (Nyasani, *Op.Cit*, 30), incapacitating them through capital punishment would reduce the phenomenon of witchcraft substantially, it is assumed.

Deterrence or incapacitation would only apply to those who have actually been punished for practising witchcraft, but not to potential witches. The reason for this being that if deterrence ever worked, even for latter, then society would have long rid itself of witches and, indeed, all other potentials offenders. However, the fact that witchcraft activities are still being practiced in contemporary society is testimony that deterrence punishment may not be as

effective, at least when used as an example to potential witches.

It has been argued, for instance, by Nyasani (*Op. Cit*), that witches among the Abagusii are people who are psychologically conditioned to indulge in their activities. This implies that regardless of the nature of the punishment, these individuals would always resort to their activities. Hence, recidivism-the fact that some offenders would always go back to committing offenses after a period of time - would explain the prevalence of witchcraft among Abagusii in particular and Africa in general.

Another form of punishment that is usually meted out to witches is banishment. This is the expulsion of suspected witches from their ancestral homes. Banishment may also be said to play a deterrent role of punishment, to some extent. Essentially, banishing suspected witches would imply that the community gets rid of them from its midst, and hence, witchcraft activities. Indeed, this could be likened to life imprisonment in positive common law. By casting them away from its environs, that community insures itself against the activities of such individuals within its territory. However, this is like postponing a problem instead of solving it. Due to their nature- the argument that witches are compelled to perform their activities by forces beyond their control- such expellees would most likely continue practising witchcraft in their new areas of residence. Again this implies that unless deterrence is in the form of incapacitation, it would rarely deter active witches.

Banishment of suspected witches is also likely to perform the retributive function of punishment. This is where an offender, or convict (a witch) is made to suffer for having behaved in a manner that is contrary to established norms of society. In banishing witches from its midst, society aims at restoring the pre-existing harmony that had been disrupted by the supposed wicked activities of the witches. In this case, the offended party or parties feel appeased because justice is seen to have been done to them while the offenders have been

penalized for their acts of transgression. Indeed, according to our respondents (Appendix ii, Ogenche Mabiria and group, cohort 1), banishment of suspected witches is one of the factors that explain the presence of members of external clans within different Gusii clans. Some of these people, known as *Abamenyi* (settlers) are individuals who were banished from their ancestral homes and found refuge in different clans.

Another type of punishment meted out to the practitioners of witchcraft is the levying of fines. For instance, in traditional Africa and among the Abagusii in particular, those who confessed to practicing witchcraft would usually pay compensation to their victims as may be directed by clan elders (Akama *Op.Cit*, 115-130). Mostly, such punishment is meted out on the strength that the accused have admitted their wrongdoing and want forgiveness. They must also undertake not to repeat their witch activities. These are people who may want a second chance and get reintegrated into their clans rather be banished to foreign territory. Moreover, these could be individuals who could be first offenders with certain mitigating factors that may strengthen their defense.

According to our respondents (Appendix.ii, Joseph Nyagaka and group, cohort 2), another method of punishing suspected witches among the Abagusii involves the sticking of sharp objects, especially forked sticks either into the suspect's vagina or anus. This method is not only painful but it is also very inhuman. Its goal is largely deterrence. Owing to its forked nature, it would be difficult to remove it without causing the suspect fatal injuries once it has been inserted into those organs. If they do not die on the spot, suspects would gradually die painfully. An equally painful and humiliating method of punishment involves the driving of nails into the suspect's head. Like in the former method, in the latter, if a suspect doesn't die instantly, one would eventually die as the probability of surviving with such nails in one's body is low.

Given the severity and shame associated with the methods of punishing witches among the Abagusii as described above, the questions that confounds scholars and others who are concerned with witchcraft is why this practice is still existent in this community. A brief look at the theories of punishment by a number of Scholars of punishment gives a glimpse as to why this could be the case.

Punishment *per se*, contends Skinner (Burrows *Op.Cit*, 217), does not actually eradicate people's criminal behavior in the long run. If anything, it is known to have the opposite effect- that of hardening criminals. For this reason, society should have tolerance towards criminals, he avers. Since punishment is a product of conditioned behaviour, allowing time to pass would weaken this predisposition. Juveniles, for instance, are known to behave deviantly on account of their age. But as they grow up, they are likely to outgrow this wayward behaviour.

Skinner's theory is, however, contestable. For one, it fails to account for criminals who are already adults. Secondly, by using the phrase 'likely to outgrow wayward behaviour', he appears to be unsure of the efficacy of time in eradicating this deviant behaviour. Actually, logically speaking, the contrary of Skinner's argument could be inferred. This is the fact that as children grow up, there is likelihood that their criminal behaviour could be reinforced. This could lead to the emergence of grown up hardcore criminals in society. Skinner's "time theory" is, thus, an insufficient alternative to the institution of punishment.

Punishment could also be opposed on the basis of the principles of freedom and responsibility, according to Oruka (1990, 11). His observation is that punishment has for long been justified on the ground that people are held responsible for their actions. Being held responsible for their crimes implies that criminals are free to choose what to do and actually

proceed to do exactly that, knowing the consequences arising from that action. Oruka sees this as a misnomer. His argument is that some people are hardly responsible for their actions at all. People's actions, whether good or bad, are at times involuntary. This implies that even the actions of criminals may also be unintentional.

From the above argument then, Oruka's position is that criminals should not be held responsible for their criminal activities. This would then imply that punishment is in itself evil; for, to blame someone for doing something he or she did not intend to and could not avoid is wrong. Moreover, what makes punishment even worse is the fact that more often than not innocent people end up being punished.

Oruka's argument seems to make sense when applied to the case of witch punishment among the Abagusii. Indeed, as Nyasani (*Op.Cit*, 124) puts it, witches among the Abagusii are people who in the course of their activities are responding to 'compulsive and uncontrollable impulses to behave in the manner they do'. Therefore, their activities are unintentional and unavoidable and, thus, fall outside the realm of free will and responsibility.

It's on the above account then that Nyasani argues that instead of punishing criminals, authorities in particular and society in general, should dig deep and unearth the real reasons why people engage in witchcraft. And, if these reasons are discovered and controlled, then, perhaps, witchcraft could appropriately be dealt with. Nyasani feels strongly that the issue of witch punishment among the Abagusii is wrong because of the misunderstanding Abagusii people have had all along about witchcraft and its practitioners. He sees witches as socially maladjusted individuals who are crying out for recognition and compassion from society. Thus, "it would be a case of profound ignorance to agitate for the summary arrest and execution of witches since what they do is a mere consequence of the society's inability to

extend to them compassion and understanding for their ungratified emotions” (*Ibid*).

In as much as the above argument is cogent, it must be understood that Abagusii believe that there are witches who are malevolent to whom they attribute all forms of misfortunes. These are the ones who use their powers to do all sorts of evil in society. Consequently, *Omorogi* (witch) is not simply a sick person responding to his or her impulses to venture out at night for the sole purpose of amusing him or herself. It may be true that night-runners (a category of witches) may not pose any specific threat to the general welfare of society as Nyasani (*Op.Cit*) contends. It is, thus, imperative at this point to briefly explain the usage of the term *Omorogi* among the Abagusii.

3.4. MEANING OF A WITCH (*OMOROGI*) AMONG THE ABAGUSII

The usage of the term *Omorogi* among the Abagusii is, indeed wide, and its understanding should not be limited to night-running alone (although it is also debatable as to whether or not night-runners do not engage in socially harmful activities). *Abarogi* (plural of *Omorogi*), are people who are severally and singularly known to use their powers for evil purposes, and all known negative things, including natural disasters, death, poverty and infertility, among other things (<http://www.shvoong.com.acc. on 15/11/2010>). Witchcraft is, therefore, viewed as a wicked activity that can hardly be controlled. Concrete measures are thus required to check its practice. Consequently, Nyasani’s appeal for society to employ a sympathetic approach to this cadre of people may get very little support from those who are directly or indirectly affected by witchcraft. Indeed, this is the case among the Abagusii whose habit of spontaneously punishing witches through such act as lynching among others, led to Nyasani’s lamentation (*Op.Cit*).

The belief in witchcraft among the Abagusii is not just a simple one as such. Rather, this is something real constituting recognizable ontological consequences that have far reaching

effects on the socio-economic and political lives of the people. Witchcraft is, therefore, a practice that undermines the social fabric and it must be severely dealt with and if possible be eradicated. This is a fact that every member of the Gusii community understands and perhaps agrees with. At variance, however, are the ways and methods of doing this because the so-called witch punishment has been found to be so far ineffective.

Punishment as a tool of social control, indeed, has had its share of negative comments from various scholars in different periods. Jean Paul Sartre (Acton 1969, 70), for instance, views punishment as a tool that is used by those in authority to maintain their status quo. According to this view, punishment ensures that the deprived do not liberate themselves from their state of exploitation. It, actually, deprives man of his humanity. He, thus, suggests that man should be left to do what he pleases because to him, good and evil have no meaning in society.

Sartre's view of punishment can be contextualized under existentialism. Existentialism according to Cooper (1999) emphasizes the importance of the existence of man and his worth in society, above everything else. To put social obstacles that would hinder individuals to freely enjoy their freedoms is seen as wrong. The application of punishment is also seen as a means of either subjugating a certain section of society for selfish means or as a tool of settling some perceived or real differences between members of society.

Sartre's argument resonates with the findings of Magesa (*Op.Cit*) in his study on witch punishment in Tanzania which established that, among the individuals who bore the brunt of witch punishment included people of low status in society; elderly widows without children to protect them, those with various deformities, such as hunch-backs and albinos. Similarly, among the Abagusii some cases of witch punishment are usually reported among elderly widows where greed for land has been one of the reasons for this (Appendix ii, Atoni Moseti and group, cohort 3). That aside, Sartre's argument against punishment could be a recipe for

chaos in society. This is because to allow everyone to behave the way they want without drawing boundaries of engagement would lead to a state of anarchy.

From the foregoing, then, it emerges that the issue of whether to punish witches or not, is a very controversial one. This is not a new phenomenon as can be seen from the above literature. Various reasons have been advanced to explain why punishment for witchcraft is thought to be necessary. For instance, among the Abagusii, witchcraft apart from being viewed as evil, is also believed to be responsible for various misfortunes (Akama *Op.Cit.*115-130).

Of particular relevance here are the questions of the mechanisms of administering these punishments and the efficacy of such punishments in controlling the practice of witchcraft in contemporary society.

In the administration of punishment, the most popular theory that has been postulated is that punishment should be meted out by recognized authority, conferred by the system of rules against which an offence has been committed (Benn *Op.cit*, 183). However, more often than not, witch punishment in much of contemporary society is carried out informally and spontaneously. Despite the existence of positive laws that purport to outlaw the practice of witchcraft, the mechanisms of administering this punishment to the satisfaction of the aggrieved, and due justice to the accused are either lacking or weak in the eyes either of these parties.

This means that the aggrieved always resort to what they consider to be the only available and effective way of avenging any perceived wrong committed against them by witches. These means are usually outside any recognized judicial system. Regrettably, while the victims may walk away feeling satisfied that they have achieved justice; the same may not be

said of the culprits. This is because, for justice to be done, the accused must be accorded a fair trial by critically evaluating all the available evidence. And a fair trial can only be accomplished with the establishment of crime or offence and ensuring that commensurate punishment is meted out.

The establishment of crimes of witchcraft, thus, constitutes a significant component of punishment. The identification of witches, however, is as contentious as the punishing of witches itself. The establishment of guilt in relation to witchcraft accusations is very suspect. Usually, victims are presumed to be guilty just because either, they have been suspected, or because they have been compelled to confess. Such suspects are, therefore, not accorded ample and fair opportunity to defend themselves fairly. Indeed, there is a likelihood that such accusations may be as a result of personal vendettas which may lead to condemnation and punishing of innocent individuals.

What could be inferred from the above discussion is that, as it is presently the case, there are some actions which are carried out under the guise of witch punishment that do not constitute punishment in the philosophical sense of the word. Examples of these include lynching and burning of suspected witches which are commonly reported in many parts of Africa. The killing of alleged witches among the Abagusii, for instance, is a phenomenon that is frequently reported in the media, a situation that occasionally prompts the government authorities to issue out warnings to perpetrators of such the so-called punishments (*Daily Nation* Tuesday, February 26 1990).

The phenomenon of witch punishments in contemporary society could be said to be complex, perplexing and intriguing. This is something that has baffled the government of Kenya for decades. Despite its spirited efforts, to try and bring it to an end through the provincial administration, witch-associated murders of people, particularly elderly women in Gusiiland

still continue relentlessly.

These murders continue to threaten social stability and harmony throughout Gusiiland, creating an endless atmosphere of fear and uncertainty. Even in cases where suspects somehow manage to escape death, they are forced to run away from their homes to save their lives. The problem has become so rampant that old women in Gusiiland are becoming what one could call an “endangered species” because from available statistics (Appendix iii), this cadre seems to constitute the majority of victims. The next chapter embarks on an in depth discussion of witch punishment and gender relations among the Abagusii, specifically with regard to discrimination against women.

CHAPTER FOUR: WITCH- PUNISHMENT AND GENDER DISCRIMINATION AGAINST WOMEN

4.0 INTRODUCTION

From the ancient times cases of punishment against suspected witches has exhibited a higher number of women culprits as compared to men. The question that arises here is whether this is another area in the societal realm where gender discrimination against women is practised. This question is important in view of the fact that the phenomenon of gender discrimination is an old age problem in human society.

The form and course of the early modern witchcraft prosecutions, according to Mierrow (1967, 24) show that gender relations were turbulent and gender power very one sided. According to him, society's gender attitudes were very misogynistic and witchcraft trials were, in fact, merely a method of re-enforcing male supremacy in a time of sociological change. It is inferred that the trials were mainly gender motivated, and were also used by the patriarchy as a method of social control. Hence, one could argue that witch punishment bordered on the phenomenon of '*Gendercide*'.

While the above contention may be debatable, available evidence seems to vindicate this contention. Analyses of various cases indicate that witch punishments appear to have been highly skewed against women. In most cases no overt explanations along gender have been advanced, while in others, the contrary is true.

A general panoramic view will illustrate this. In the First century Jewish history, Rabbi Simeon ben Shetach, a Pharisee scholar is reported to have, on a single day, sentenced to death eighty women charged with witchcraft in a place called Ashkelon. Likewise, the 6th century *Getica* of Jordanes records a mythical persecution and expulsion of witches among the Goths by the ancient fabled King Filimer. He is said to have done this because he found

among his people certain witches, whom he called in his native language *Haliurunnae*.
([file:///E:/Witch-hunt-Wikipedia,the free encyclopedia,\(9/13/2008\)](file:///E:/Witch-hunt-Wikipedia,the free encyclopedia,(9/13/2008).)).

The above illustration indicates that during these early periods, women constituted the highest number of victims of witch executions. This trend is replicated in the subsequent periods where a high number of women victims of witch punishment was witnessed in various parts of the world.

The middle ages are replete with examples where women bore the blunt of punishment for alleged witchcraft activities. In the Inquisition of Milan, for instance, the Madonna of Oriente was at a loss as to what to do with two women who in 1384 and in 1390 confessed to have participated in a type of white magic (Behringer *Op.cit*, 124).

During the early 18th century, several women were executed in Europe with the last known execution in England being that of Mary Hicks and her daughter Elizabeth, who were hanged in 1716. In Germany, Helena Curtens and Agnes Olmanns were the last women to be executed in 1738. In Switzerland, Anna Goldi was executed in 1782, while Poland saw the burning of two women in 1793 and a third as late as 1811(<file:///E:/Witch-hunt-Wikipedia,the free encyclopedia, 9/13/2008>). .

In the modern and contemporary periods, cases of women being the majority of those executed have also been reported. According to an article aired on the *BBC News* (2003-10-230), in Tanzania older women are killed as witches if they have red eyes, the belief being that any aged old woman with red eyes is a witch. In Ghana, a lawsuit was launched in 2001 by a woman who felt that she had been falsely accused of being a witch (*BBC News* 2003-10-230).It has been argued that in much of Africa, witch-hunts are often led by relatives seeking the property of the accused victims. This could explain why widows are mainly targeted

because women are not allowed to own property, land inclusive.

In India women are said to constitute the majority of those punished for cases of witchcraft. Reports indicate that these women are branded witches mostly to settle scores (*The Asia times* 23 February 2000).

In Britain, Helen Duncan was imprisoned in 1944 for defrauding the public, although the really reason was that the authorities feared that by her alleged clairvoyant powers, she could betray details of the D-Day preparations. The last conviction under the act was that of yet another woman called Jane Rebecca Yorke ([file:///E:/Witch-hunt-Wikipedia,the_free_encyclopedia,\(9/13/2008\)](file:///E:/Witch-hunt-Wikipedia,the_free_encyclopedia,(9/13/2008))).

Available statistics from across Africa indicate that there was and still is witch punishment for both men and women. However, there are more reported cases of women victims than that of men. In most of these cases no clear reasons are given for this scenario. An analysis of some of these statistics is imperative here.

According to Bahemuka (Ogungbemi *Op.Cit*, 1-14), the Akamba people of Eastern Kenya believe that majority of witches are women. Reports from Tanzania broadcast on the BBC indicate that thousands of elderly people especially women, were being accused of witchcraft and then murdered or maimed by vigilante groups (*BBC NEWS*, Monday, 28 November 2008).

In Malawi, several cases are reported of women being punished for practising witchcraft in 2008 (*The Women's International Perspective*, May 21 2008). For instance, one Malita Khoviwa, a 54 year old teacher, was sentenced to a three month jail term for causing the disappearance of a 14 year old girl in her neighbourhood. Likewise, one Alesi Yosefe, 60

years old, was sentenced to 18 months imprisonment after people in her area complained that she was flying around the market place using a witchcraft plane and disturbing their peace.

The above are just but a few examples from across Africa that shows that women are subjected to the so-called witch punishment. Likewise, these examples indicate that those targeted are fairly elderly. The issue of the demographic profile of victims of witch punishment, therefore, warrants mention.

One of the arguments that have been advanced to explain this phenomenon, according to Magesa (*Op.cit*) and Mesaki (*Op.Cit*), is the idea that most of these elderly women are those with no family members to protect them. The same factor has been used to explain some cases of witch punishments among the Abagusii (*The standard*, Monday February 4, 2008).

Another profile which has exhibited itself with regard to the victims of witch punishment is their physiology. Some of these women are said to be either ugly, having red eyes or with certain other physical deformities. For instance in Malawi, Kasito a 63 years old woman who was accused of practising witchcraft had a heavily scarred face, walked with a limp and had no teeth (*The Women's international Perspective*, May 21 2008).

It would then appear that women who are old and no longer pretty are seen as a liability in some societies and all efforts would be made to eliminate them. And, yet, to any sane mind some of these physical features of old women could rationally be explained by various factors. Firstly, the ravages of old age in themselves could aptly explain the wrinkled faces of old women. Likewise, the majority of these women live in a rural set up, devoid of modern social amenities such as electricity and running water. The many hours spent in smoky grass thatched houses, would inevitably and naturally make their eyes turn red. These features should, therefore, not be ascribed to any superstitions.

The absence of a welfare system in many African countries, as is the case in the Western world where the elderly are catered for in foster homes, aggravates the plight of the elderly people. Given their advanced ages, these people are often seen as being unproductive (in material terms) and a strain on the available meagre resources. Moreover, contemporary Africa is fast coming up with a class of people who are increasingly becoming materialistic. For this class, doing away with the elderly could be a preferred option and witchcraft accusation presents them with an excuse, albeit an immoral one.

Among the Abagusii, both men and women are known to practise witchcraft. This is what Monyenye (*Op.Cit*, 73) alludes to when he states that:

The easiest way for a girl to succeed in divorcing her husband is to run home to her parents and accuse either her husband or his parents of trying to teach her witchcraft (Emphasis mine)

The underlined words imply that both males and females practice witchcraft. This, therefore, indicates that witchcraft among the Abagusii is an activity carried out by both men and women, and yet, some available statistics on witch punishment indicates a higher incidence of women being punished for practising witchcraft. Notable examples of reported cases of witch punishment are derived from the press as enumerated below.

In January 2002, an elderly woman was stoned to death by a mob in Nyansabakwa area of Kisii for practising sorcery (*The People Daily*, Wednesday may 23, 2007). On June 20, 2008, a bare-chested and masked gang (*Sungu Sungu*), attacked Enock Obiero's family and killed his wife Hepsiba, for allegedly bewitching her daughter-in-law (*Daily Nation Newspaper*, June, 22, 2008).

On the same day, the same group of people visited the family of one Richard Aroyo, looking for his wife whom they suspected of practising witchcraft. Unfortunately, or rather

fortunately for her, she was said to be away in Nairobi undergoing treatment. However, the group vented its anger on the husband whom they accused of hiding her and killed him. It is worth noting here that Aroyo's killing was not because he allegedly practised witchcraft. His purported crime was that of hiding a witch-his wife. The likelihood is that had they found the wife, the gang might have spared him (*Ibid*).

These are some of the examples that indicate that in the so-called witch-punishment among Abagusii, women would seem to constitute the majority of those who are targeted. It may not be true, however, to say that there are no cases of male victims reported. But as we have indicated early on, from the numbers of victims of witch-punishment reported, the majority of them appear to be women. Consequently, in the next section we examine the various ways of punishing witches among the Abagusii and their gender implications.

4.1 TYPES OF WITCH-PUNISHMENTS AMONG THE ABAGUSII AND THEIR GENDER ASPECTS

The Abagusii have various ways of punishing those amongst them who are either suspected of or actually apprehended practising witchcraft. Save for what is witnessed and mostly reported in the press in the contemporary period (spontaneous lynching of suspects), historically, suspects underwent some forms of ordeals aimed at verifying any accusations against them before they could be punished (appendix ii, Ogenche Mabiria and group, cohort 1). It was only after these ordeals that those who found to be guilty were subjected to various forms of punishments. Though not infallible, the methods used in the identification of witches gave these so-called punishments some form of legitimacy, since the culprits were said, at least, to be accorded some form of hearing before being condemned, which is a cardinal requirement of natural justice. This is as opposed to the contemporary period where suspects, at the slightest suspicion, are reportedly descended upon by mobs and summarily killed.

Indeed, as indicated earlier, Cap 67 of the laws of Kenya (Constitution of Kenya 1963) has several sections aimed at checking and containing the practice of witchcraft. However, like many other penal codes, this law has failed to not only control the practice of witchcraft, but also to eliminate it altogether. This gives room to discontented members of society to take the law into their own hands and mete out what they believe is justifiable punishment to suspected witches. Following then are examples of some of the ways of punishing witches among the Abagusii.

4.2. OSTRACISM

Ostracism refers to the deliberate exclusion of a person or persons from a certain group of people or society. This could arise from the fact that a person or persons have violated the rules of that group or society. Ostracism is then a form of social sanction against deviant behaviour. In the context of witchcraft then, ostracism refers to the expulsion or banishing of suspected witches from their community. Among the Abagusii, suspected witches are at times forced out of their clans or from the community in general (appendix ii). Once ostracized these suspects become like the biblical lepers in the sense that no member of the clan would want to be seen interacting with them.

Since it is very difficult to associate with the other members of their clan or community, they become outcasts. If they are not forcibly ejected out, then they may, on their own volition, opt to move out due to the feeling of rejection. They end up settling in foreign villages or clans where their activities are not known. Indeed, these people may even cross and reside outside their ethnic communities. Indeed, this has been used as one of the explanations why one would find within one village people who have no similar lineages. These are the people who are commonly referred to as *Abamenyi* (strangers or settlers). If, subsequently, there is enough evidence that they have reformed, they may be allowed back to their ancestral homes.

This would mostly apply in situations where whole families are involved.

The scenario may, however, be different where the banished suspect happens to be a woman (appendix ii). An ostracized woman, once banished, would more often than not go back to her parents' home. Being a child of that community chances are that she would be accepted back. The probability that she may later be reaccepted to her marital home is, however, minimal. She may then opt to get married elsewhere, if she is still eligible. Otherwise, those who are too old to get married are often allocated pieces of land in their father's homestead from which they eke a living for the remainder of their lives.

The belief in witchcraft among the Abagusii, though not always, is one of the reasons that are used to explain why the Abagusii are married to the neighboring communities such as the Luo, Maasai and Kipsigis. This is where individuals opt to marry from outside their community where their witch activities are not known.

The point to be demonstrated here then is how ostracism as a form of witch-punishment is gender discriminatory against women. The Abagusii have a saying that *kebe nkia banyene*, (the English equivalent of 'blood is thicker than water'). This arises from the understanding that members of one clan or lineage are related by blood. Therefore, regardless of the circumstances members may find themselves in, the fact of blood relation can never be discarded. Thus, brothers may differ sharply, but when faced with an external enemy, any differences between them would quickly be put aside, albeit temporary, for the common good of the family or the clan.

Hence, brothers would assist and defend each other if and when attacked by an external enemy or in time of need. In essence, therefore, the bond that ties together brothers or members of one lineage is stronger than the differences that may temporarily separate them.

Indeed, one can summarize this relationship between clan members by saying that the Abagusii believe in the saying that it is improper for friends or relatives to wash their dirty linen in public or the saying that one does not broadcast to the public that his or her mother is naked, even when the case is true. Thus, attempts would be made to grant amnesty to males suspected of practising witchcraft by applying the principle that one does not kill or disown family in times of need.

It is important to note that the Abagusii, like many other African communities is patriarchal, where importance is attached to male off springs. Hence, banishing a male member from the clan would imply creating in the long term, a deficit in population in that clan and, indeed, in the whole village, especially if such males are still virile and likely to sire more children. The community would, therefore, exercise restraint and leniency when dealing with suspected male witchcraft practitioners. If they show remorse and ask for forgiveness, they may be given a light fine and be pardoned, with a warning never again to engage in their heinous activities.

Occasionally, suspected male witches may point an accusing finger at their wives whom they blame for 'teaching' or 'giving' them witchcraft (*kobaa rirogio*) in which case the wife would have to bear the ire of the villagers (appendix ii, Joseph Nyagaka and group, cohort 2). Indeed, men would likely get amnesty if they publicly proclaim that their wives influenced them to practice witchcraft. In all these the principle that blood is thicker than water applies.

The same treatment is hardly accorded to suspected women witchcraft practitioners due to several reasons. For one, women have no immediate blood relation or ties to their matrimonial homes. The Abagusii like many other African communities, do not approve of marriages between clan members who have familial ties. This implies that a girl was unlikely to marry into a clan in which she could have blood relatives. Thus, the sense of strong

belongingness that exists among male siblings in clans is absent in the case of women.

In the event of a woman being banished from her matrimonial home on accusations of witchcraft, no strong sense of loss is felt as compared to male expellees. Unlike males who are seen as an asset to the clan, females are actually seen as liabilities. And if they don't have any children due to barrenness, for example, the anger and frustration of not being able to bear children would even exacerbate their resolve to do more harm to society, whom they may blame for their barrenness. Their urge for them to pass on witchcraft to other members of the clan may even be more unrestrained since they have no direct blood off springs who would suffer from witch-punishment.

On the contrary, however, women who have a large number of male off springs may escape from the fate that befalls their barren counterparts. This is because the sons may stand out and defend their mother against forceful eviction from her home.

The view that women are weak and submissive makes it easier for them to be targets of expulsion. Being regarded as strangers implies that they can hardly expect to find anyone who can stand up for them. This could also explain why widowed women, especially those with no male off springs may constitute the bulky of expellees. This is because according to society, they are of no value, since they have no male offspring who would lead to the perpetuation of the family tree.

Ostracism which leads to banishment among the Abagusii is, thus, gender discriminatory against women. This is primarily based on the assumption that since they come from outside the clan, there is little the clan would lose by banishing them. This amounts to treating unequally two individuals who have committed a similar offence, which is against the principle of natural justice.

Ostracism as a form of punishment for witchcraft among the Abagusii is supposedly meted out after what could be described as ‘fair and free trial’ has taken place. However, it should be noted that in contemporary Gusiiland, society does not wait to accord suspected witches such fair trial. This is because there is no legitimate authority within the community recognizable under the laws of Kenya mandated to ‘try’ suspected witches. Hence, in most cases, suspects actually opt to flee long before they are banished. Suspects who may learn of an impending raid against them may just run away in order to save their lives before the executioners could get to them.

4.3. LYNCHING

The term lynching refers to the infliction of summary punishment on an offender by a self-constituted court with no legal authority. In legal parlance this is akin to ‘mob justice’. In the institution of punishment, lynching fails to meet one of the most important criteria or justifications of punishment- the fact that authority conferred by the system of rules against which the offense has been committed, must impose the punishment. Lynching then is an act of spontaneity, where the victims are not given an opportunity to defend themselves against the accusations of witchcraft before being subjected to punishment.

The lynching of suspected witches among the Abagusii is a very common phenomenon, some of which is often reported in the media. Numerous efforts by the government through the provincial administration to curb these summary executions of suspects have not been successful so far. While lynching of suspected witches is an act of bestiality that should be condemned by society, no tangible solution has so far been found to end it. This is even more tragic considering that the methods of ‘identifying’ witches among the Abagusii have their own weaknesses, implying that many ‘innocent people’ may end up being killed.

The process of witch-hunting usually follows the occurrence of any misfortune in society, which cannot be rationally explained. But it is important to note that no rational explanation in the eyes of people who are captives of superstition is likely to make sense. According to Rosanna (In Akama *Op.Cit*, 115-130) most, if not all, misfortunes among the Abagusii are ascribed to witchcraft. Indeed, witchcraft provides the Abagusii with a ready answer to all misfortunes and plagues. This may appear simply as a stereotyped way of reacting to reality. But it has to be understood that witchcraft is so strongly and deeply intertwined with every day happenings among the Abagusii. Thus, unless there is evidence to the contrary, most, if not all, misfortunes would be attributed to witchcraft.

Death in the society would, for instance, need explanation so as to appease the relatives of the deceased and the spirit of the dead. Thus, the past life of the deceased has to be examined to find out if he or she had any differences with anyone in the clan or immediate community. And, indeed, quarrels and differences among people who live close to one another are not uncommon. Such petty things as differences between neighbours' children may be the cause of such quarrels. Alternatively, one's livestock destroying a neighbour's crop may also strain the good relationship between them.

Quarrels between neighbours may at times involve the use of harsh and threatening language. If, by some misfortune one of these neighbours is involved in some calamity, an accusing finger is readily pointed at the other neighbour with whom he or she had an altercation. This misfortune need not be the direct result of the said quarrel, but it would be interpreted as a remote cause, hence, the Gusii saying that '*Eyanya gokwa etaberegeti egetondo* - which literally translates to, there is no death which has no cause or explanation - (appendix ii). This explanation is, however, not ordinary such as the cause of death through some known disease or accident. But rather, it is in terms of the supernatural, and thus, witchcraft here is

the explanation. Thus, a person may die after a long illness, but a neighbour with whom he or she had quarreled may take advantage of this illness to hasten his or her death.

Thus, one could explain why in most cases witchcraft suspicions amongst the Abagusii are mostly among close relatives. Whenever members of society think that they 'know' who 'caused' the death of another, and where no proper means of restitution are available, a mission of revenge or retribution is resorted to. The guilt of an individual may also be 'established' if he or she fails to visit the deceased's family to offer condolences. But it may be plainly clear why one would find it unpalatable to visit the deceased's family to offer condolences. Although they may not be responsible for the death, individuals may feel remotely responsible for it due to the recent quarrel they may have had with the deceased.

There may be no causal relationship between the quarrel of two neighbours and the death of one of them. However, in the eyes of the community, the contrary is true. In some instances suspects would read the hostile mood of the clan and flee to save their lives before they get ambushed and lynched. However, those who prefer to stay around in the unmistaken belief that they can prove their innocence against accusations of witchcraft have often not been that lucky and have fallen victims of lynching.

It is important to note here that lynching of suspected witches among the Abagusii has not always been an act of spontaneity. Indeed, according to Rosanna (in Akama *Op.Cit*), in pre-colonial Gusiiland, communal killing (*ogoitwa ekiyioyo*), was an accepted and legitimate way of coping with witchcraft. However, the process that culminated to this communal killing then is different from the lynching commonly witnessed in the contemporary period.

Communal killing of witches among Abagusii during post-independence according to Rosanna (*Ibid*), was preceded by an elaborate process of identifying suspects. This involved

the clan elders detailing young men to spy on suspected witches by hiding in strategic positions in the latter's compounds. The young men would wait to see if suspects would come out of their houses at night (*koigora egesieri kabere*), to conduct witchcraft activities using a blazing torch (*rimore*). If this happened, then this was enough proof that such person or persons were, indeed, witches. What followed then was authorization from the clan elders for communal killing. This kind of punishment, thus, involved some modicum of establishing that the suspects were 'guilty'.

There have been various arguments in scholarly circles as to whether people who venture out at night (the so-called night-runners) do actually pose any danger to society. Some have argued that, indeed, these individuals pose no real danger to society and should, therefore, not be subjected to any punishment. Nyasani (*Op.Cit*, 124), for instance, prescribes to this argument by pointing out that these are socially maladjusted people who could be out to gratify themselves with no intention whatsoever to inflict harm on any member of society. But it is important to observe here that the Abagusii do not distinguish between witches and night-runners as both of their activities are driven by malevolence.

Communal killing as a way of punishing witches in the contemporary Abagusii community has been rendered ineffective through the combined effects of Christianity and formal positive laws. This is one of the reasons that have led to skyrocketing increase of witchcraft related killings in Gusiiland in the contemporary period. This is because those who feel aggrieved by witchcraft see this as the only effective way of dealing with witches.

Although both men and women often get lynched whenever operations against witches are carried out, reported cases in the media indicate a higher percentage of women victims to men. One may argue that one of the reasons for this scenario is due to the practice of polygamy prevalent among the Abagusii, implying that there are a comparatively higher

number of women to men. In so far as this could be true, one cannot hesitate to state that just like in banishment, lynching exhibits an existence of gender discrimination against women.

There are a number of reasons that could be used to explain the above claim. It has been said that shedding the blood of a kinsman is a taboo. The Abagusii clan system is basically patriarchal, implying that all members of one clan are related in one-way or the other. Men, unlike women, are permanent members of the clan. Although women may be seen to belong to the clan by virtue of begetting children for that clan, they are basically regarded as outsiders. Strictly speaking, therefore, they are not bound to their matrimonial clans by blood.

While the clan may be restrained from killing a male suspected witch by the constraints of blood ties, the same case would not apply to women suspects. The fear of spilling the blood of a kinsman, however, may be circumvented by the clan hiring outsiders to kill an incorrigible suspected male witch. However, before this extreme measure is undertaken, the family history of the male suspects is first analyzed to find out whether it belongs to witchcraft practitioners (*enyomba ya Abarogi*).

If it is found out, for instance, that there are male siblings of a suspected male witch who do not practice witchcraft, then it is assumed that the culprit has learnt the art of witchcraft from somewhere else. If he is a married man, the first person who is suspected to have conferred witchcraft upon him would be his wife. This may be so regardless of the fact that the person may have acquired witchcraft by purchasing it for some reasons. Due to the stigma associated with witchcraft, however, and the long-term consequences that will befall a family for being labeled witches (*enyomba ya Abarogi*), all efforts are made to shield a family from this eventuality. In essence, therefore, passing the blame to someone else whose label may not affect the family lineage seems the logical thing to do. Since women (*Abakungu*) do not belong to a clan by blood, they become easy targets who are made to shoulder this blame. By

so doing, the man's family lineage gets shielded against witchcraft accusations.

One may also argue that due to their physique, male suspects mostly manage to escape by running faster than women during these operations. Whereas this may be true, an analysis of the demographical profiles of the victims exhibits an imbalance between male and female leading to the conclusion that in the lynching of witchcraft practitioners among the Abagusii, there is gender discrimination against women.

4.4. INSERTION OF SHARP OBJECTS INTO SUSPECTS' PRIVATE PARTS

Perhaps one of the harshest forms of punishment for witchcraft is an ordeal which involves the sticking of sharp objects into the suspects' private parts (appendix ii). Besides its severity, this form of punishment may be said to be a very humiliating one. Its execution usually involves the insertion of a sharp object, especially an arrow shaped stick into a victim's private parts. Its removal can only be removed through a surgical operation. Due to the manner in which it is meted out, victims of such a punishment rarely survive but rather endure a slow and painful.

Male suspects could also be subjected to this form of punishment whereby such sharp objects are inserted into their anuses. But it is more humiliating and, perhaps, emphatic when it involves a woman's reproductive organ. This could be because of the way in which the Abagusii men in general view this organ. In spite of its importance in the derivation of sexual pleasure, and in ensuring the continuity of the family and clan lineage through procreation (and this is why couples who are not able to beget children for the clan through infertility or any other reasons are highly shunned), in any other circumstances, a vagina is viewed with some form of apathy.

Among the Abagusii it is, indeed, anathema to utter the word vagina (*embere*) casually and

especially in public. This is as opposed to what one witnesses in western movies and conversations where the four letter word 'fuck' is commonly used with abandon. Among the Abagusii, and, many African communities, such an activity is a private affair and any reference to it in public is an abomination. Actually, the use of the word *embere* in public constitutes not just an abuse but perhaps the worst that one can endure. Hence, the *Ekegusii* phrase *nyoko embere* (you resemble your mother's vagina) is viewed as a very serious abuse (appendix ii).

Given that a man's reproductive organ is not regarded in the same manner, this could be said to constitute gender discrimination against women. Hence, the humiliating ordeal that is subjected to the vagina in the course of witch punishment is an indication of how lowly the Abagusii men regard their women folk. Like the other forms of punishments discussed earlier, the manner and mode of meting out this punishment constitutes an aspect of gender discrimination against women.

Apart from analyzing the gender aspect of the various forms of punishments for witchcraft, it is important perhaps to also examine their roles in the context of the traditional functions of punishment. Indeed, from its nature one would expect that the sole purpose of punishing witches is to stop the practice of witchcraft which has far reaching social-political and economic consequences for the Abagusii people— thus deterrence theory of punishment. It has been argued that witchcraft is not just any supernatural belief that can easily be done away with. It is, instead, a way of life and those who practice it are supposedly compelled to do so by forces beyond their control (Nyasani *Op.Cit*). This, then, raises the question of as to whether by merely warning the culprits or imposing a fine on them would have the effect of stopping them from repeating their witch activities. Definitely, this has not proven to be successful.

However, there are those who would use this deterrence theory to try and explain the function of witch punishment. And this is not just simple deterrence, but the extreme one-decapitation. Hence, according to this theory, by killing witches once they are discovered, society will slowly but surely embark on the path of cleansing and ridding itself of these individuals. Moreover, those inclined to practice witchcraft would learn that there are dire consequences awaiting them once they are apprehended. Hence, this would either make them reform or move out of the community altogether. This is the role that is ostensibly played by both lynching and banishment.

Unlike lynching, however, where the culprits are permanently removed from the midst of the community, banishment as a form of deterrent punishment may not be that effective in the long run. This is because there is no guarantee that those banished from one community would not practice their activities in their adopted communities. All in all, witchcraft is a social-cultural phenomenon that has defied the passage of time and spontaneous witch-punishment is likely to be a reality for a long time to come.

In Africa in general and among the Abagusii in particular, witchcraft accusations could be said to be a culturally sanctioned form of gender violence. Committed predominantly against women many of whom may be seen to be challenging dominant gender norms, or are disempowered by age and economic status, these allegations frequently lead to the punishment of the accused persons. This fundamental denial of human and citizenship rights is both an alarming and markedly complex problem that faces modern societies where the belief in witchcraft is common. This has several implications in the context of community development and socialization process.

The next section analyses some of the reasons that have been advanced to explain the

phenomenon of gender discrimination against women in witch-punishment in general and among the Abagusii in particular.

4.5. ARGUMENTS ADVANCED IN SUPPORT OF GENDER DISCRIMINATION AGAINST WOMEN IN WITCH- PUNISHMENT

It has often been argued that the form and course of witchcraft prosecutions show that gender relations are turbulent and gender power very one sided. Indeed, it can be argued that gender attitudes are very misogynistic and that the witchcraft trials are in fact merely a method of re-enforcing male supremacy. One can infer that witch trials are mainly gender motivated and are also used by the patriarchy as a method of social control.

A number of academics, i.e., Bever (2002), Hester (1992), Larner (2000) and Magesa (*Op.Cit*) have argued that the witch trials during the early modern period and even in the present period, are used as a method to rid society of old poor women, about whom suspicion has build up in their communities regarding them causing harm to others via occult means.

One can ask the question as to whether the witch is a particular construct who could be identified within the female community or just a useful label that could be used to remove undesirable female figures. This view about witches in society is, for instance, demonstrated by Larner (*Op.Cit*, 294), who says that “witch-hunting is woman–hunting or at least it is the hunting of women who do not fulfill the male view of how women ought to conduct themselves.” A similar view is held by Hester (*Op.Cit*, 114) who states that “belief in witchcraft constitutes a gendered ideology serving the material interests of male supremacy”.

Similar sentiments are also expressed by Bever (*Op.Cit*, 972), who asserts that:

The witchcraft trials (in early modern Europe) were in fact a wide-ranging and multifaceted repression on individuals exhibiting certain behaviours and attitudes, basically women who exhibited strong sexual, physical, or psychological aggressiveness.

The above observations could be used as explanations used to justify witch- punishment in

Early Modern Europe where charges of witchcraft are said to have been part of a large push against unacceptable moral behaviour. It just happened that due to the power construct of society, and the fact that it was controlled by a patriarchy, women's moral digressions were picked up more often than that of men's, and the punishment for women, could be considered to be more severe. Witch punishment then appears not to be an attempt to remove female deviants from society in order to protect the rest of the community, but instead a means of social control over the female gender as a whole. This is a scenario depicted by Lerner (*Op.Cit*, 291), who asserts that:

All women are potential witches and as it is, it was possible for the male dominated authorities to level an accusation of witchcraft at any woman and make it sound viable and the fear of being accused of witchcraft and the usually fatal consequences of being found guilty assured the vast majority of women did not step out of the role that society had set for them.

This observation indicates that no matter how much effort one may employ in exonerating oneself, once one has been labeled a witch that tag would always remain. This then implies that women are occasionally subjected to punishment on mere accusations of practicing witchcraft, when in the real sense men want to settle scores with them for one reason or the other.

In Early Modern Europe, according to Daly (1992, 107), accusations of witchcraft were also used to remove from society those women who were directly in opposition to the patriarchal system and in particular women who had rejected marriage (Spinsters), as well as those who had survived it (Widows). These witch hunts were an attempt at purifying society of these indigestible female elements; that is women not fully assimilated into the patriarchal family.

Occasionally, the manner in which individual conduct themselves determines how society views them and, hence, their being labeled as practitioners of witchcraft may be as a result of this. Thus, a female who lives in the fringes of society, or one who is radical in her views

and who does not conform to the expected norms of society, would more likely be seen as a witch.

The period in which witchcraft trials took place in Early Modern Europe, was according to Gaskil (*Op.Cit*, 157-160), a time of great political, religious, economic and sociological changes. This implies that the whole structure of society was being altered and this included the assignment of gender roles, which before this period had been clearly defined and had remained pretty unchanged for hundreds of years. Thus, the witch trials were seen not only as a natural reaction of the patriarchy to try and maintain their power in these times of uncertainty, but also a means of halting the currents of change by trying to maintain the status quo, sometimes resorting to the use of severely violent means in order to achieve this.

Among the sociological changes taking place during this period, according to Gaskil (*Op.Cit*, 160), were women discovering themselves, and the realization that they could also have a certain amount of influence over society if they wished. This new social behaviour is then said to have unnerved the patriarchy and is attributed to the frequently observed obsession with female sexual purity in the general literature on witchcraft and also to some extent in the witch trial materials.

From the point of view of the patriarchy this behaviour by women constituted not a natural sociological evolution process but rather the beginning of the corruption and deviance of society that needed to be dealt with decisively. Gaskil (*Op.Cit*, 161), further goes on to indicate that a manifestation of this sexual deviance can be seen in what may be one of the first recordings of lesbianism in some of the materials surrounding witchcraft and witch trials. This explains why in descriptions of possession of witchcraft, there is often an implicitly erotic notion of the witch seducing another woman. And this focus on deviant sexuality is

also at the heart of most writings on witchcraft.

It should be pointed out that at this period, the history of witchcraft prosecutions does not just exhibit the nature of male-female dichotomy only, but also reveals the gender relations within the female sphere, too. Women, either in Early Modern Europe or even in the contemporary communities where the belief in witchcraft exists, accuse or blame other women. If this is the case then, the question is, what was it about the gender relationships within the female sphere that allowed women to put another member of their own gender in such a perilous and dangerous position?

One possible answer to this question is suggested by Hester (*Op.Cit* 120-125), who believes that there was a possible link between these accusations and the concept of male control and supremacy. Her argument is that women were accusing other women not because of disagreements and differences within the sphere of gender relations, but because of fear of they had of the male patriarchy, as well as their fear of being associated with these radical females and, hence, be themselves branded witches. Thus, those women who did share the same sentiments with their radical counterparts often found witchcraft accusation as one of the ways through which they could keep their distance.

The foregoing, notwithstanding, there is also a view held by some historians of witchcraft, which does not entirely agree that witch trials were gender specific. For instance, Lerner (*Op.Cit*, 165) asserts that the witchcraft trials in Early Modern Europe were not a male vendetta against women purely on account of their gender, neither were they a clash of beliefs and attitudes within the sphere of female gender relations. Instead, these witch trials were a cultural incident that had more female victims than male because, due to the position of females in society during this period

and attitudes towards them, they tended to fit into the witch construct better than their male counterparts.

This argument, however, leads to the logical conclusion that witch trials during this period were, indeed, gender discriminatory, a contention that is the gist of this study. According to Larner (*Ibid*), witchcraft in Early Modern Europe was not sex-specific but rather sex related. Her reason for this is that there was room even within the Early Modern mindset to comprehend the fact that it was possible for witches to be men. Indeed, this is a point that has been highlighted several times in this thesis. And this is in fact the central question of this work. Given that men do practice witchcraft even in the contemporary period, then there must be reasons as to why there is discrimination against women when it comes to the meting out of punishment for the perceived offence of witchcraft.

Indeed, according to Levack (*Op.Cit*, 298), there was nothing in the definition of a witch that excluded the males, as the legal system in Early Modern Europe was gender neutral. Despite this however, it has been argued that the mechanisms and instruments of administering the law on witchcraft are the ones that entrenched the phenomenon of gender discrimination.

Society in Early Modern Europe was a patriarchal, thus all judges, jurors, and judicial officials were men as were those who drew up the law in the first place. It was, therefore, likely that the law would favour the defense of male suspects as opposed to that of women. Indeed, this is a scenario that is replicated among the traditional Abagusii where members of the council of elders were men - hence the phrase *Abagaka b'egesaku* (See Rosanna in *Akama Op.Cit*).

Generally, the structure of the social organization of the society would normally determine

the nature of gender relations within it. Hence, there is this strong argument that having a gender-neutral approach to witchcraft in a male dominated society where the accepted construct of a witch was female is impossible. Gaskil (*Op.Cit*, 300), emphasizes this point when he observes that:

Within a gendered society the idea of ungendered witch was unimaginable. A witch was either male or female. It can also be argued that it was possible for a witch to be male or female but even within that admission there is clear evidence of male supremacy within gender relations. A gender divide...can be noticed among those few men, or women who had entered into a pact with the devil. Men did so as equal partners to the devil and expected monetary gain, whereas women were regarded as having been sexually subjected by him.

It could, thus, be said that during this period, every imaginable reason was sought to depict women as the ones responsible for the acts of witchcraft.

One of the reasons that could be used to explain this phenomenon is that during this period, gender relations were changing vastly and they were unstable. The traditional patriarchy that ruled society was facing many new challenges especially with women discovering their importance in society, culminating in a desire for more independence. Naturally, the patriarchy were frightened by this attempt to disrupt the status quo and had to fight it. They saw the origins of these forces of social disruption in supernatural or occult rather than the natural process of sociological evolution. The patriarch, therefore, had to look for ways and means that would restore the old order. Severe and violent punishments passed during witchcraft trials happened to be some of them.

The applicability of some of these arguments in explaining the justification of witch trials in contemporary society are used in the analysis of witch punishment and gender discrimination against women among the Abagusii community. In other words, the question being addressed here is as follows: What are the reasons that could be used to explain the phenomenon of gender discrimination against women in the punishing of witches among the Abagusii?

A number of parallels could be drawn from the reasons given for gender discrimination in witchcraft prosecutions in Early Modern Europe and witch punishment among the Abagusii of south-Western Kenya. One explanation for this is the fact that just like in Early Modern Europe, the Abagusii are also patriarchal and men make most, if not all decisions in society. Women among the Abagusii have a minimal say in the running of the affairs of the community. This view is aptly captured by Mabururu (1992), who observes that the Abagusii men see themselves as being superior to women in all aspects of life. Women are believed to be submissive, dependent, inadequate and weak. Furthermore, women are deemed to be physically weak and incapable of making any meaningful decisions. They are often likened to children who are dependent, emotional, softheaded and unreliable.

The above reasoning explains why women among the Abagusii are rarely entrusted with sensitive positions of responsibilities in society, nor are they let in on important secrets. Indeed, the term woman (*Omokungu*) carries a negative connotation in its usage. Women are believed to be conniving and evil and naturally, they are believed to be the cause of anything that is negative and injurious to society. Hence, Like the Biblical Eve, the Abagusii women are believed to be the epitome of evil symbolizing the devil himself. This outright prejudice against women is one of the reasons that explain why witch punishment among the Abagusii is discriminatory against women. Hence, even when men are believed to practice witchcraft, punishment for them may be waived on the argument that they were influenced by their womenfolk.

It has been indicated that in Early Modern Europe accusations of witchcraft were made against women who by their actions had stepped outside the acceptable gender boundaries (Larner *Op.Cit*, 294). Thus, women who showed a strong character as compared to men were seen as witches. This same view could be used to analyze the phenomenon of gender

discrimination against women in the punishing of witches among the Abagusii.

Among the Abagusii, Women are not only believed to be meek and submissive but are actually supposed to be so and show it in their deeds. Women who tend to overshadow men in society would be branded witches in an effort to turn the societal tide against them. This would make people to fear associating with such women lest they also be branded witches. In this case, therefore, witch punishment becomes a tool of social control. This indeed, can even apply at the family level where men who may feel overwhelmed by their wives could accuse them of practising witchcraft in order to get rid of them. And as Monyenye (*Op.Cit*, 73), indicates this is one of the grounds that could be used to grant spouses divorce among the Abagusii

Women who are childless and hence, of less value to society, may also bear the blunt of witch punishment. Their being childless may not be due to their fault (for it may be that of their husbands). Childlessness may be attributed to the fact that she comes from the house of witches (*Enyomba ya Abarogi*) and that her failure to have children could be a punishment from the Supreme Being (and one can be punished for the mistakes of his or her ancestors). One would then be sent back to one's parents. In essence, the really reason may be to save the husband from shame and enable him remarry where, if he is the one with a problem, arrangements would be made for her new wife to beget children through an appointed clan member - hence the belief among the Abagusii that men are never infertile.

Historically, women have been known to accuse their fellow women of practising witchcraft, which has also contributed to skewed gender relations in witch- punishment (Hester *Op.Cit*, 120-125). Among the Abagusii these accusations could be explained by the practice of polygamy (appendix ii, Atoni Moseti and group, cohort 3).

Reported incidences of witch punishment among the Abagusii indicate that apart from mere suspicion, some victims have often been found to possess what is normally suspected to be witchcraft paraphernalia(*The People Daily*, Wednesday May 23rd, 2007:14). Once again, it can be inferred why women would most likely constitute the majority of these victims. One of the primary responsibilities of women is the duty of taking care of and bringing up children. In their early ages children are prone to various types of diseases due to their underdeveloped immune systems.

The responsibility of child care, among others, includes the identification and treatment of any diseases, whenever they occur. This is a responsibility that is traditionally bestowed upon women. The Abagusii believe that some diseases than are common among young children cannot be treated effectively using modern medicine. In combating such diseases, therefore, traditional medicine is used. While herbs constitute the major component of the ingredients of traditional medicine, witchdoctors may prescribe some other objects, such as parts of either animals or insects that may be required to be mixed with certain herbs. Thus, in the process of transporting such items, one may be discovered and, hence, be branded a witch, which may in turn lead to their summary execution. In such a scenario then, one would understand why women suspects would inevitably constitute the majority.

From the foregoing discussion, it can be concluded that witch punishment has often been gender discriminatory against women due to various social- cultural values and practices. Due to their privileged position in society, men have often found ways of either evading punishment or cushioning themselves from the same. Concerted efforts are, therefore, needed to cushion women from this form of persecution, for; it is not only unethical but also an outright violence of women's fundamental basic rights.

To understand and contextualize the rationale behind gender discrimination against women in witch-punishment among the Abagusii, one needs to understand the meaning and place of woman (*Omokungu*).

4.6. THE ABAGUSII UNDERSTANDING OF A WOMAN (*OMOKUNGU*)

According to our respondents (appendix ii), the traditional Abagusii regarded women as people on transit (*abaeti*). This implied that whether in their parents' or matrimonial homes, they have no fixed abode. In their maidenhood, they are considered to be staying there temporarily since they are expected to get married and leave for their matrimonial homes. Yet in their matrimonial homes, they carry a tag of strangers (*abarwa isiko*). This stranger or new comer tag is used to indicate the transitory or non belonging status of a woman in her matrimonial home. As outsiders, therefore, these women are not accorded the same rights as their male counterparts.

Being aware of their status *vis-a-vis* that of their male counterparts, women carry themselves around with an inferior demeanour in their matrimonial homes. In the event of any dispute between them and either their husbands or their husband's clansmen, women rarely get support because as outsiders, they are accorded secondary recognition. Indeed, this view of women among the Abagusii affects the way in which they are valued. This view is demonstrated by Mabururu (*Op.Cit*, 39) when he asserts that:

Unlike men who are seen as confident, assertive, independent, competent and strong, Gusii women are thought to be submissive, dependent, inadequate and weak. In fact, women are deemed to be physically weak and incapable of making any meaningful and serious decisions. They are often likened to children (*Abana*) who are dependent, emotional, soft headed and unreliable.

A similar picture is portrayed by Levine (*Op.Cit*, 9) who says that "Gusii women are referred to as children who can neither be entrusted with any important responsibilities nor be involved in any serious decision making". These views indicate that women's position in society is greatly prejudiced and their discrimination arises from such like stereotypes.

The use of the word *Omokungu* (woman), among the Abagusii is somehow equivocal and sometimes controversial. Generally, *Omokungu* (woman) is the opposite of *Omosacha* (Man). However, in some contexts the word *Omokungu* has a negative connotation. Women would then prefer to be addressed by other variations of the word woman in place of *Omokungu*, which are thought to be gentle and dignifying. These variation of the word woman are; *Baba* (Grandmother or mother), *Mama* (mother), *Omosubati* (Lady or Sister), *Omorugi* (wife) or *Omongina* (Old Lady).

Although all these phrases refer to woman albeit at different statuses, they carry with them an aura of respectability compared to *Omokungu* which is generally viewed as being crude. And although they may not complain loudly, women generally resent it when they are addressed by the word *Omokungu*, a term they consider to be derogatory and which depicts them as weak in many aspects.

Their overall importance in society notwithstanding, the Abagusii women are held in low esteem, which to say the least, is immoral and unjustifiable. The constant reminder to them that they are not equal to men has traditionally made the Abagusii women meek. Consequently, whenever various injustices are perpetrated against them, they hardly raise their voices to complain. These injustices and discriminations have incidentally long been seen as socially accepted forms of behaviour, since they are entrenched by culture and socialization processes.

The phenomenon of gender discrimination against women among the Abagusii is also extended into the area of property ownership (Mabururu *Op.Cit*). Women are known to normally work for long hours in the farms more than their male counterparts and, yet, they are less likely to control the product of their labour. In addition to their prominence in

agricultural production, women also perform such other chores as; processing of food crops, providing water, taking care of children, the elderly and the sick. In performing these tasks, they use basic and rudimentary technology. For instance, they use simple hoes to till land as well walk several kilometers in search of water and firewood.

Although they play a primary and central role in creating this wealth, women have little say in the management and use of family resources. This responsibility is solely bestowed upon men who are the heads of family households. Men are expected to make all decisions, assign duties and manage all the family finances. A man would decide where the family can live as well as how children are to be brought up. Female off springs cannot inherit or share their father's wealth, despite the fact that they participate in the creation of the same. Thus, women are neglected in terms of property ownership. Indeed, as Mayer (1950, 63), observes:

[Gusii] women are normally at the mercy of men. A Gusii woman who feels aggrieved by her husband may seek divorce. However, she cannot lay claim to part of the family property. Anything that is acquired during her marriage rightly belongs to the husband who has paid bride price for her acquisition and thus everything she may produce.

From the above, it can be inferred that wives only use their husbands' property in trust. Everything that women produce in the cause of their marriage belongs to the husband who is the head of the household and owner of the means of production. The man has the final say on the disposal of that property. One of the justifications for this view is that women are strangers in their matrimonial homes and they cannot, therefore, lay claim to property therein (Mabururu *Op.Cit*, 38). Indeed, the phenomenon of gender discrimination against women among the Abagusii can at times be taken to extreme levels. According to Monyenye (*Op.Cit*, 38), for instance, married women are as much part of a man's property just like his other properties. This basically implies that women have no equal rights with men since they are part of men's possessions.

Gender discrimination against women in Africa in general and among the Abagusii in

particular, could also be said to permeate various aspects of life including; inheritance, marriage, citizenship and employment, among others. Hence, the attainment of equality by women in Africa in general and among the Abagusii in particular has greatly been hampered by these discriminations.

Demystifying the cultural beliefs that enhance gender discrimination is, therefore, necessary. This, complimented with the stringent application of Kenya's new Constitution, could play a significant role in eliminating the various forms of gender discrimination against women among the Abagusii in particular and Kenya in general, including that involving witch punishment. .

CHAPTER FIVE: PRESENTATION, ANALYSIS AND DISCUSSION OF RESEARCH FINDINGS

5.0 INTRODUCTION

Arising from the library study and data collected from the field (See appendices i-iii), this study has established a number of things. One of these is that the belief in witchcraft is one that many people in rural Gusiland hold regardless of whether they are educated or not, rich or poor, young or old, members of a modern religion or not. In the ontological realm of the Abagusii lives, therefore, the efficacy of the effects of witchcraft activities is not just a matter of psychic acts, but real acts. This involves the performances of rites, casting of spells and possession of medicine or magic. Whatever means they may employ, of significance is the end results of the witches' actions that concern people.

This study has shown that the Abagusii recognize witchcraft as an opposition to good moral values. Hence, to a large extent, witchcraft is seen, though not always, as having or playing a negative role in society. Since it is seen as real, witchcraft provides the Abagusii with natural philosophy through which humans and unfortunate events are explained as well as a ready, though stereotyped means of reacting to such events (See Rosanna in Akama 2006). Indeed, the belief in witchcraft embraces a system of values that regulate human life and interactions. For instance, a misfortune or failure to achieve a particular goal is attributed to witchcraft unless there is strong and irrefutable evidence to suggest the contrary.

According to our respondents (appendix i), witchcraft (or the so-called white magic) among the Abagusii could be used to explain the following phenomena: winning a football match, winning over the affection or love of someone who is unwilling, succeeding in business, improving or enhancing ones health, passing in exams, winning an electoral position or generally protecting oneself and family from malevolent machinations of any kind. This may

not be real but it gives confidence to those concerned, hence, from the psychological point of view, magic which is a form of witchcraft in the African context, plays a positive role. It is linked to mere confidence offering a level of explanation that is not susceptible to empirical proof. Consequently, for most people it provides an easy avenue of explaining out their situations. This may at times be injurious to the general welfare of society.

This study has established that generally, the effects of witch punishment and gender discrimination against women among the Abagusii, both positive and negative, can be analyzed from the economic, socio-psychological and political aspects.

5.1. ECONOMIC EFFECTS

From this study, it can be inferred that the belief in witchcraft and the subsequent effects of the so-called witch punishment has a host of economic consequences, both to the individuals directly affected by this, and to the general society. Indeed, the study points to the assertion that the level of poverty in most parts of Gusiiland can be attributed to the belief in witchcraft. For instance, one of the most glaring economic effects of witchcraft, as has been shown in this study is the loss of property. During the so-called witch-hunts, property belonging to the suspects is usually destroyed. Houses belonging to suspected witchcraft practitioners are usually set ablaze, while other forms of properties such as crops in farms and businesses in trading centers are also destroyed. This does not only affect the income of the suspects and their families, but, it also reduces the per capita income of the whole community. Equally, among the Abagusii the belief in witchcraft may be used to explain the somehow low level of investment in the rural areas. This is because the affluent members of society in the diaspora often fear to invest back at home lest they be bewitched.

The study has also established that both the peasants and the educated Abagusii elite believe

in the existence of witchcraft, although they may not agree as to its *modus operandi*. Because of this, the educated and wealthy individuals living in towns would hardly invest in the rural areas for fear of being bewitched. They will mostly invest in urban areas and even employ people from outside their community to manage their businesses.

The reasoning here is that employing people from one's rural home would expose one to witches. This is because it is assumed that such employees would leak out an employer's prosperity to witches back at home who would end up bewitching the latter. This aggravates the problem of unemployment in the rural areas, leading to idleness among the youth and an increase in crime. This, indeed, is one of the explanations of the presence of high incidences of witch-hunting and executions among the Abagusii. This again affects the general welfare of the community due to the prevailing insecurity brought about by criminals, a further hindrance to investment.

The overall productivity both in farming and livestock keeping is manifestly affected by the belief in witchcraft. For instance, laziness and mediocrity usually find a scapegoat in witchcraft. People who are lazy would attribute witchcraft to their inability to be economically productive. This again implies that production of food and wealth in society is greatly affected, since some people in society would depend on others for their livelihoods. Likewise, farmers whose crops fail or whose cattle may not produce a good amount of milk, would usually blame this on witchcraft and, thus, save themselves the embarrassment of admitting that their farming and animal husbandry techniques might be antiquated and faulty.

The study has also shown that among the Abagusii, women play a pivotal role in economic production. Indeed, women are the ones who, more than their male counterparts engage in production for subsistence. Thus, depriving the community of women through witch-punishment, robs the community of its pillar of economic production. Among the Abagusii,

therefore, the systematic elimination of women linked to the practice of witchcraft means a significant loss of family labour.

Moreover, the study has also shown that the ownership of wealth among the Abagusii has been shown to be a male enterprise. Men are the ones who own both the means of production and any property created there from. Whatever role they play in the creation of this property, women cannot claim ownership. As was highlighted earlier, Women only have what is called 'user rights'.

Thus, women who show aggressiveness in accumulating property and then claiming ownership would be looked down upon and even be censored by society. They are seen as being weird and, thus, branded witches. Aware of this, and aware of the consequences that may follow if one is labeled a witch, most women among the Abagusii sulk away, leaving their men folk to take all the limelight, even when the latter have contributed very little in the creation of family property. This basically kills the spirit of entrepreneurship among the women.

In general then, witchcraft has a negative impact on the general welfare among the Abagusii. In terms of gender, it is important to note that among the Abagusii, women constitute the bulky of the labour force. It, therefore, logically follows that depriving the community of this labour through witch punishment slows down the pace of economic growth and development.

5.2. SOCIAL AND PSYCHOLOGICAL EFFECTS

This is one aspect where the effects of the belief in witchcraft and its attendants such as witch-punishment and gender discrimination are perhaps more pronounced. One of these effects is that in Gusiiland, the belief in witchcraft has continued to lead to the loss of human lives. This study has established that due to the lack of proper mechanisms and clear positive

laws to deal with the suspected practitioners of witchcraft, people usually bestow upon themselves the roles of both the courts and executioners. This has often led to numerous spontaneous forms of punishment such as lynching of suspects as is often reported in the media. This method of punishing suspected witches often has various implications to the social and psychological welfare of the community and its members. It causes permanent vendettas among different families and clans, making social cohesion and collaboration difficult to achieve.

The net negative effect of the above is that the traditional communal system where people used to pull together their energies and resources to perform various chores is greatly undermined, leading to lone-ranger approach of doing things. Hence, the belief and effects of witchcraft has partly contributed to the death of African Socialism (read *Harambee* spirit or *Ebisangio* and *Amasaga*) among the Abagusii, which was hitherto, central to their socio-economic development.

The study has also established that the methods of establishing guilty or culpability with regard to witches among the Abagusii is often wanting. Witchcraft in most cases is practiced in secrecy. Hence, neither the accused nor their relatives would readily confess that they are involved in witchcraft. Relatives of suspected witches are often discriminated against for belonging to *enyomba ya abarogi* (a family of witches). This coupled with the fact that the bereaved often grow up missing parental love, (for those who are young), interferes with their socialization and this ends up disrupting the social fabric of the community.

There is also the psychological trauma and social stigmatization that the bereaved usually bear, both in their personal lives and in their relationship with other members of society, such as in the school or work environment. To avoid such ignominy, families accused of practicing witchcraft have been forced to emigrate from their ancestral homes to areas where their

practice is not known. This in itself disrupts the family life. This also interferes with individual liberty and peace of mind for such individuals.

The belief in witchcraft has often been known to lead to the dissolution of families. Married couples may rightly or wrongly use excuses of witchcraft to seek for separation or divorce from one another. Pertaining to this, the study has established that women are discriminated against since they are often accused of teaching their spouses witchcraft. While husbands may, thus, be forgiven, women would usually be sent back to their parents (Monyenye 1977). Indeed, according to our respondents, this would explain the presence a number of single or rather divorced women living with their husbands.

The foregoing notwithstanding, the study has also established that from a sociological point of view, the belief in witchcraft cannot be said to be entirely negative. Among the Abagusii and, indeed, among many African communities the belief in witchcraft also supports the indigenous value systems, thus, sustaining the social structure of the community. The fear of being branded a witch is in itself a sanction against bad or undesirable social behaviour. This compels people to be amiable and co-operative with their neighbours, thus, contributing to social harmony and peaceful co-existence. The belief in witchcraft can also be said to have the effect of helping in affirming group solidarity by largely defining what is bad and by attributing to witches all the stigma of evils and any other kinds of forbidden acts. However, unlike men who could show their assertiveness, women were supposed to be meek lest they are branded witches and face the consequences of punishment.

The belief in witchcraft helped the indigenous Abagusii to maintain their picture of a moral universe. For instance, it is by blaming witches that they escaped the need for the temptation to blame their ancestral spirits for any misfortunes. In their eyes, therefore, ancestral spirits remained good, caring and protective. It is these spirits that they would always turn to

whenever they felt that witches threatened their welfare. By frequently blaming women who hailed from outside the clan, men were able to maintain the strong filial bonds amongst themselves.

Witchcraft among the Abagusii has been used to explain virtually any illness that is sudden whose cause is mysterious or cannot be cured by modern technology, thus, easing anxiety among the people. While this may seem to have a therapeutic effect on society, it may also have negative and at times devastating consequences on people and society in general. In the modern period when are a number of infectious and incurable diseases such as HIV/AIDS, such explanations have often led to careless behaviour in society, since many people would link such diseases to witchcraft. For instance, the refusal by people to accept the reality of HIV/AIDS and its causes, and thereby take the necessary preventive measures, has contributed to high rates of infections and deaths in society arising from people engaging in unprotected with the infected. Thus situation is sometimes aggravated by the practice of widow inheritance which is prevalent among the rural Abagusii.

There is a tendency of the infected to refuse conventional medical treatment by attributing their condition to witchcraft. They, therefore, prefer to seek the services of witchdoctors and traditional medicine men to enable them find out those responsible for their illness so as to seek for what they may think are appropriate remedies. In the process, they end up dying due to various complications associated with the disease.

Again among the Abagusii, women constitute the majority of the victims in this scenario. Due to their cultural practice that allows polygamy most Gusii men keep multiple sexual partners, either as wives or as mistresses. This makes the possibilities of male spouses contracting HIV /AIDS higher than those of their female counterparts. However, due to their disadvantaged position in society, women would be victimized in the event that a death arises

in the family from the disease. If it is the man who dies first, then the wife would often be accused of having bewitched him. And if she is lucky to escape punishment, then she is often discriminated against and treated as an outcast making the remaining days of her life perpetually miserable. Indeed, occasionally, such a woman may find it reasonable to escape to her parents' home. This again depicts an aspect of gender discrimination against women in the practice of witchcraft among the Abagusii.

5.3. LEGAL EFFECTS

In the practice of punishment, the rules of natural justice dictate that an accused person should be accorded fair trial. It is only when the due process of law or any other established mechanisms have been followed and the accused has been proved guilty beyond reasonable doubt that any punishment can be justified. This can only be achieved if those bestowed with the responsibility of dispensing justice are impartial.

Arising from answers to questions posed to respondent (appendix i), it has been demonstrated in this study that among the indigenous Abagusii, the task of meting out witch-punishment was given to clan elders (*Abagaka b'egesaku*). Women were, however, not represented in this important institution of making vital decisions which directly affected them. Given the patriarchal nature of the community and the stereotypes men had about them, women accused of practising witchcraft could rarely expect to get fair judgment from this institution. One of the reasons why women were not included in this important institution of decision making is that apart from being seen as weak, they were also regarded as strangers. They were only accepted in the clan for the purposes of procreation and provision of labour. Any deviant behaviour from them that was deemed to compromise the unity, stability and well-being of the clan could not be tolerated. Little or no sympathy was shown to those who engaged themselves in such acts as witchcraft.

Given women's unprivileged position in society, the punishment meted out to them is largely discriminatory. In legal terms, therefore, this constitutes a gross violation of women's rights. Even in the present times when the Abagusii community could be said to have undergone tremendous social change and development, the situation cannot be said to have improved substantially. Some of the available statistics indicate that there are more women than men who get punished for practicing witchcraft (appendix iii). This statistics may not depict an absolute scenario but it could be explained by the fact that women among the Abagusii are not accorded equal rights with their male counterparts – hence, the presence of gender discrimination against women in the punishing of witches.

In modern Kenyan positive laws, witchcraft and its associated practices fall under the Witchcraft Act of 1925. This section spells out various punishments for witchcraft acts. However, the act fails to clearly define what witchcraft is. It relies on the accused being coerced to plead guilty. The consequence of this is, and has often been, that people found with what is considered to be witchcraft paraphernalia may argue that they are using them for medical purposes. And, since, traditional medicine is legitimate it becomes difficult to challenge this argument.

Strictly speaking, therefore, witchcraft activities are not recognized as criminal acts in modern positive laws. Suspected practitioners of witchcraft once apprehended are often accused of behaving in a manner likely to cause a breach of peace. In the penal code, this crime is seen as a misdemeanour, which carries light punishment.

The import of this is that the law does very little to help society to deal with the practice of witchcraft as would be expected of it by society. One could argue here that the nature of witchcraft practices makes it difficult for the law to decisively deal with them. Positive law

emphasizes on the principle of guilt. An accused person is presumed innocent until proven guilty in a court of law. Witchcraft is practised in secrecy, meaning that adducing evidence in a court of law is very difficult. This makes the conviction of witches difficult. This results in people taking the law into their own hands, and this explains the numerous reported cases of lynching of suspected witches in Gusiiland. Hence, one can partly blame the weaknesses and inadequacy of contemporary positive law for these spontaneous punishments.

The absence of clear laws that explicitly spell out how witchcraft is dealt with gives society leeway to take the law into their own hands in punishing suspected witches. This loophole is generally exploited to perpetuate discrimination against women in the punishing of witches among Abagusii. Since it is the men who arrogate themselves the responsibility of witch-hunts, the probability that they would sympathize with their male kinsmen suspected of practicing witchcraft because of blood ties is very high.

CHAPTER SIX: SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.1. SUMMARY

This research focused on gender discrimination in witch-punishment among the Abagusii of South-Western Kenya. The study has shown that the Abagusii are heavily immersed in the belief of the existence of mystical powers such as witchcraft, magic and sorcery. Even after converting to Christianity, they still continue to embrace this belief. Although life in present day Africa is changing due to civilization, the problem of traditional beliefs and practices is a very important issue of investigation. It is in this light that the belief in witchcraft among the Abagusii should not only be of concern to social activists but also to administrators and scholars alike.

This study has shown that witchcraft beliefs among the Abagusii are prevalent, constituting a living reality rather than an abstract idea. Witchcraft is, indeed, a belief which many people in the rural areas of Gusiiland hold whether they are educated or not, whether they are rich or poor, young or old, and whether they are members of a modern religion or not. This work was able to establish various factors that have contributed to the prevalence of witchcraft beliefs among Abagusii. Among these factors include; scarcity of land, jealousy, inheritance disputes, malicious gossip, unexplained diseases and deaths, hunger due to crop failure, illiteracy and to some extent the breakdown of the traditional judicial systems.

The question of land is an emotive one, not only among the Abagusii but in many other African communities as well. More often than not, whenever there is a dispute on land especially with regard to boundaries, the issue of witchcraft would easily creep in.

Jealousy among neighbours is also another cause for the belief in witchcraft. Jealous can be explained in terms of success in the areas of education or wealth. This work has established

that people who persistently fail to excel in education or in the creation of wealth compared to their successful neighbour may resort to use of witchcraft either to improve their lot or harm their neighbours.

Malicious gossip among close siblings or neighbours has also been known to contribute to the belief in witchcraft among the Abagusii. This again would more often arise out of envy between these parties. Once rumours go round that one is a witch, it is the responsibility of one to try and clear one's name. But as it is often the case, perception of the members of society rather than reality backed with concrete facts tends to weigh more. The sudden death of a healthy person has also often been explained in terms of witchcraft.

The study has also shown how witchcraft activities are carried out. The most known ways include, the use of charms and the planting of paraphernalia containing items such as pieces of cloth, hair or finger nail cuttings belonging to the intended victims. There are also beliefs of the existence of people with evil eyes whose gazes could cause the death of animals, make crops dry or even make people sick from incurable diseases. Women with wicked hands could cause pregnant women to miscarry or give birth to unhealthy or deformed babies as well.

Then there is the category of those people who are believed to possess bad mouths whose utterances could cause harm to those to whom they direct their words. Last but not least, witchcraft could be effected through poison.

In summary then, the Abagusii believe that witches can cause harm to their victims through either direct contact or by indirect means or through remote means. Indeed, this is one of the metaphysical difficulties that philosophers encounter in their endeavour to explain witchcraft to the scientifically inclined. The central question here being that of how an immaterial agent

could have effect on a material agent. But as we have repeatedly pointed out in this work those communities who belief in witchcraft would not look at its reality by using the lenses of logic or science. Rather, what matters to them is the ontological reality of the consequences of the belief in witchcraft and its role in explaining the inexplicable in their cosmological existence (Mbiti *Op.Cit*, Monyenye *Op.Cit* and Magesa *Op.cit*).

The study also indicates the belief that witches transform themselves into various animals such as hyenas, owls, dogs, bats, goats and cats that enable them to sometimes carry out their activities at night while they themselves remain indoors. Thus, although they at times perform their heinous activities during the day, most of these activities are confined to the night.

The issue of the history of witch-hunts was also examined. It was established that the phenomenon of witch-hunts can be traced back to 15th century Europe. This was followed by a number of executions of the so-called witches in much of Europe as well in America leading to the famous Salem witch-hunts and executions in the latter. The justification given in many of these jurisdictions where witch punishments were carried out was that the practice was evil and that it disrupted the social order and harmony existing in those societies. Incidentally, as was found out, this is one of the reasons given to justify the punishing of witches among the Abagusii.

Another issue examined in this work is the forms or methods of punishing witches. Among the Abagusii witch punishment is not a formal enterprise. Since witchcraft is a clandestine practice, its punishment is usually not formal but informal in most cases. But it has also been established that traditionally, Abagusii had what they believed were formal methods of identifying witches after which they subjected them to what they believed was appropriate

punishment.

In the analysis of witch punishment among the Abagusii, this work has established that women are discriminated against. This is despite the fact that among the Abagusii witchcraft is practised by both men and women. This then verifies the core research premise of this study that witch punishment among Abagusii is gender discriminatory against women. One of the explanations for this is the fact that the Abagusii community is largely patriarchal where the role of a woman is secondary to that of a man. The feeling of inferiority among women is inculcated in them through various cultural practices and the process of socialization. Several other factors have been used to explain the phenomenon of gender discrimination in witch- punishment against women.

Firstly, there is the cultural practice of polygamy. Co-wives could be accused of bewitching each other due to the competition that may exist between them for their husband's attention in terms of love or/and resources.

This work has also shown that that in majority of cases, old women are the ones who bear the blunt of witch-punishment. Notwithstanding the veracity of the argument as whether they practise witchcraft or not, attempts have been made to offer explanations as to why this category is usually targeted. On the one hand is the fact that old women more often than not act as herbalists in Gusiiland and sometimes the line between herbal medicine and witchcraft is very thin. An herbalist's paraphernalia may be mistaken for that one used for witchcraft. On the other hand, apart from the fact that they have shriveled skins due to their advanced ages, some old women may also have red eyes. Possession of red eyes-one of the supposed features of a witch-could be as a result of the many years these women have toiled in smoky grass thatched kitchens cooking meals for their families, given that most of these women live in rural areas devoid of such amenities as electricity.

Widowhood is another aspect that has been shown to be used to profile witches among the Abagusii. Widows may be accused of having killed their husbands and be branded witches. This is more so where such a widow is childless-and society is quick to establish a motive for this. Generally, the Abagusii culture allows a married man without children to marry another wife to bear him children who would perpetuate the family tree. Hence, regardless of the cause of death, the envy of having a co-wife could be cited as a motive for a wife killing her husband. Women among the Abagusii can then be said to have various disadvantages that make them to be seen as the embodiment of all evil.

Finally, this research has shown that the consequences of the belief in witchcraft and gender discrimination in the punishing of witches among the Abagusii, are many and varied. But the most and, perhaps, conspicuous one is the frequently reported cases of lynching and burning of property of those suspected of practising witchcraft, hence, what has been referred to in this work as witch-punishment. Indeed, once these practitioners of witchcraft have been identified they are usually subjected to punishment. One of the findings of this work was that the so-called witch-punishments are usually not formal because the process of identifying witches has also been found to be wanting. Some suspects are coerced into accepting that they practise witchcraft, while others are actually punished on mere suspicion. The contention we are making here is, therefore, that punishment without proper and fool proof mechanisms of identification of a crime and establishment of guilt is not punishment in the real meaning of the term. The end result then is that the chances of innocent people being punished are very high.

6.2. CONCLUSION

From the foregoing discussion, a number of conclusions can be made. First and foremost is that, though not always, witchcraft among the Abagusii is seen as an anti-social practice that

is the causes of all manner of calamities. This attribution of witchcraft to every misfortune has seen people being punished and even killed for supposedly practising it. These killings have euphemistically been referred to as witch-punishment. However, since no full proof methods of identifying witches are applied, no proper punishment can be said to take place.

Furthermore, these killings together with the destruction of the suspects' property are in most cases spontaneously carried out informally by groups of people. This makes such punishment immoral because the suspects are neither given the chance to prove their innocence nor do the accusers prove their accusations beyond reasonable doubt as provided for by the rules of natural justice. These acts of group punishment do not perform any useful role of punishment such as reformation or restitution. Rather, what this kind of punishment performs is what could be called total deterrence through decapitation. Worse still is the fact that witch punishment among the Abagusii has been shown to be discriminatory against women-another instance of immorality.

From the moral point of view, punishment is only justifiable when meted out equitably. This means that it must be applied impartially to two or more offenders who have committed the same offense, unless there are other justifiable considerations to warrant any inequality.

However, the argument advanced in this study is that when it comes to witch punishment among the Abagusii, gender is the overriding consideration, which is unjustifiable. Hence, apart from the loss of lives and property, which punishment has a negative psychological effect on the Abagusii women. They feel stigmatized for they always perform their daily chores knowing that they are not supposed to outshine or in any upset their men folk lest they be branded witches. One can deductively infer that among the Abagusii, the belief in

witchcraft is one of the reasons that have hindered women from achieving their full potentials in various aspects of life.

This state of affairs cannot be allowed to continue in the contemporary era. Thus, ways and means of remedying this situation must be sought by all and sundry for the benefits of rapid social, economic and political development of the Abagusii community to the next level. This can be done by implementing the following suggested recommendations among other things.

6.3. RECOMMENDATIONS

Arising from the above conclusions, the following recommendations are suggested:

First and foremost is that there should be a concerted and multi-disciplinary approach to the study of the practice of witchcraft among the Abagusii so as to establish a proper understanding of its meaning and functions. The findings from these studies should be disseminated to the community through various fora and agencies such as; religious organizations, nongovernmental organizations, seminars, public awareness and education through the provincial administration and clan elders.

As it is now, most scholars shy away from addressing this topic with the argument that witchcraft is a superstitious belief that falls outside serious academic work. This is a flawed argument because academic work, whatever its realm, is supposed to generate solutions to problems affecting society. As it has been shown in this work, the belief in witchcraft among the Abagusii leads to loss of life and property and this should be a source of concern to all and sundry, academicians included. Furthermore, gender discrimination against women in witch-punishment, a practice entrenched among the Abagusii, is an ethical issue that calls for philosophical discourse.

Using the above named fora and agencies, people should also be educated on the importance

of following the due process of law when dealing with suspected witchcraft practitioners. It should strongly be pointed out to all the concerned that it is wrong and unlawful for those who feel they have fallen victims of witchcraft to take the law into their hands and mete out spontaneous punishment on such suspects.

However, in order for the above to succeed, proper mechanisms, including proper legislation to clearly define the offense of witchcraft in positive law and how this offense should be punished in the courts of law is required. Ambiguity as to the proper meaning of witchcraft in the Kenyan laws and lack of deterrent punishment is what often frustrates victims of witchcraft, driving them to seeking justice through the meting out of spontaneous punishment.

The second recommendation we would like to suggest here is that deterrent measures should be taken against those who lynch suspected witches. These people should be vigorously sought and arrested and taken to courts of law where they should be prosecuted for breaking the laws of the land. This is because spontaneous punishment that does not follow due process of law is illegal. This is one area where the police and the provincial administration have not done enough. Although it is sometimes difficult to identify those who take part due to the fact that the so called punishment against witches among the Abagusii is commonly carried out by mobs and mostly at night, reports that appear in the mass media point to the fact that some of these people operate as organized gangs, such as *Sungu Sungu*, whose members are well known.

Third, is that the law on gender equality should vigorously be reinforced and strongly implemented to eliminate gender discrimination among the Abagusii. This could be done by using various interventions as outlined below:

1. The government should take appropriate action and effective measures to identify the causes of gender discrimination against women among the Abagusii.

2. Legislation and strict implementation of laws to enable women to have rights to own property. One of the causes of gender discrimination against women among the Abagusii in witch- punishment involves disputes arising from inheritance once a husband of a homestead dies leaving behind the wife. His kinsmen would want to inherit not only his land but the property of the deceased as well. Although this right to own property by either gender is now enshrined in Kenya's new constitution, proper enforcement mechanisms have not been put in place. Indeed, if those responsible were to firmly implement this law, cases of gender discrimination in Gusiiland could most likely decline. Again the provincial administration, the police and the judiciary should be more vigorous in the implementation of this law.

3. Empowering of rural poor women through cheaper loans to enable them start businesses and other income generating activities. This would make them self reliant and offer them some form of independence. Self confidence would make women assertive and thus, able to resist various forms of discrimination. Indeed, one hopes that with proper structures, the government's new initiatives through Women Enterprise Fund and Uwezo Fund would go a long way in achieving this objective.

4. Provision of training, advocacy and capacity building on the negative consequences of gender discrimination and the importance of gender equality and women's rights to wider society through NGOs, Women Organizations and other stakeholders.

5. To ensure that all human rights and fundamental freedoms are respected and protected. This could be done through the review, revision amendment or abolition of

all laws, policies and customs that discriminate against women.

6. Integrate a gender perspective into the national plan of action on the elimination of gender discrimination against women. This should be followed by the allocation of adequate resources to enable those concerned to carry out adequate workshops and come up with well researched findings and recommendations that are easy to implement.
7. The undertaking of civic education by the government, civil society and human rights activist to impress upon and enlighten the Abagusii on the immorality of witch-punishment in general and its discriminatory nature

against women. This is because this phenomenon could partly be attributed to ignorance.

The above recommendations, though not a panacea to this phenomenon, they could serve as starting measures to try and address this menace of witchcraft and gender discrimination in the punishing of witches among the Abagusii.

Finally, it is important to point here that the topic on witchcraft is one that permeates various disciplines of academic study. It also raises various issues, however, this study focused on the punishment aspect of it, and more specifically as it pertains to gender discrimination against women among the Abagusii of South-Western Kenya. Therefore, there are several aspects of witchcraft that could constitute important areas of study by other interested scholars and stakeholders, an aspect that is highly recommended.

CITED BIBLIOGRAPHY

BOOKS AND ARTICLES

- Acton, H. B. ed., 1961. *The Philosophy of Punishment*. London: Macmillan.
- Adegbola, A.A.E.ed., 1983. *Traditional Religion in West Africa*. Ibadan: Daystar Press.
- Akama, J.S and Robert M. eds., 2006. *Ethnography of the Gusii of Western Kenya. A vanished Cultural Heritage*. Lewiston: The Edwin Mellen Press.
- Akonga, J. "Kenya Socio-Cultural Profiles-Kitui District." *IAS, UON*. 233.
- Aristotle.1953. *The Generation of Animals*. Vol. 1 & 4, Transl. by A.L.Peck.Havard: Harvard University Press.
- . 1969. *The Nichomachean Ethics, 2nd ed*. New York: Van Nostard Reinhold Co.
- Awolalu, O.J.1979. *Yoruba Beliefs and sacrificial Rites*. London: Longman Group Ltd.
- Balogun, O.A. 2009. A Philosophical Defense of Punishment I Traditional African Legal Culture: The Yoruba. *South African Journal of Philosophy*.
- Beauchamp, T. 1982. *Philosophical Ethics: An introduction to Moral Philosophy*. New York: Mc Craw-Hill Publishing Co.
- Behringer, W.2004. *Witches and witch-Hunts.A Global History*. Malden Massachusetts: Polity Press.
- Benn, S.I. 1959. *Social Principles and the Democratic State*. London: George Allen and Unwin Ltd.
- Bever, E (2002). "Witchcraft, Female Aggression and Power in the Early Modern Community". In *Journal of Social History*.
- Blackston, W.T. 1978. *Equality and Human Rights*. London: Routledge and Kegan Paul.
- Bohama, P. 1964. *Africa and Africans*. Garden City: American Museum of Science Books.
- Bradley, H.F. 1964. *Ethical Studies, 2nd ed*. Oxford: Oxford University Press.
- Brooke, E. 1993. *Women Healers through History*. London: Women's Press Ltd.
- Carlo, J.B. 1965. *The World of witches*.Glendinging: The University of Chicago Press.
- Cole, D.H. 1955. *On the Origin of Equality*. Chicago: the Great Books Foundations.
- Cooper, D .1999. *Existentialism*. Oxford: Blackwell.

- Coote, A .1987. *Sweet Freedom: The Struggle for Women's Liberation*. Oxford: Basil Blackwell.
- Copi I.M and Carl Cohen. 2005. *Introduction to Logic, 11th edition*. New Delhi: prentice-Hall of India.
- Crocker, L.G. 1967. *The Social Contract and Discourse on the Origin and Foundation of Inequality among Mankind*. Washington: Sanare Press.
- De Blecort, W. 2000. "The Making of the Female Witch: Reflections on Witchcraft and Gender. In the Early modern Period'. 'In *Gender and History*.
- Douglas .1963. "Techniques in Sorcery Control". In J.M Middleton and E.H. Winter.eds., pp. 120-150. London: Routledge and Kegan.
- Durkheim. 1964. *The Division of Labour in Society*. New York: The Free Press.
- Eades, J.S. 1980. *The Yoruba Today*. Cambridge: Cambridge University Press.
- Eisenstein, Z.1979.*Capitalist Patriarchy and the case for Socialist Feminism*. NewYork: Longman.
- Farber, M. 1968. *Basic Issues of Philosophy: Experience Reality and Human Values*. New York: Harper Torch Books.
- Fortenbaugh, W. 1975. *Aristotle on Emotion. A contribution to Philosophical Psychology, Politics and Ethics*. London: Duckworth.
- Frankena, K.W. 1989. *Ethics*. New Delhi: Prentice Hall of India Private Ltd.
- Gaskil, M. 1998. "The Devil in the Shape of a Man: Witchcraft, Conflict and Belief in Jacobean England".*In Historical Research*.
- Gehman, J.R. 1989. *African Traditional Religion in Biblical Perspective*. Nairobi: Kesho Publications.
- Gibblin, J. 2002. "The Criminalization of Witchcraft and the Politics of Chieftainship: A history of Unyambuda in Uwanji, Southern Tanzania". *In Crime in EastAfrica: Past and Present perspectives*. Naivasha: The British Institute of Eastern Africa.
- Gluckman, M. 1970. *Customs and Conflict in Africa*. Oxford: Blackwell.
- Gould, J and William, L.K. 1964. *The Dictionary of Social Sciences*. New York: The Free Press.
- Hester, M. 1992. *Lewd Women and Wicked Witches: A study of the Dynamics of male Domination*. New York: Routledge and Kegan.
- Hobbes, T. 1963. *Man and Society* .In Plamentz, J. ed., 1963.pp.122-155. London: Longman.

- Hume, D. 1963. *Man and Society* .In Plamentz, J. ed., 1963.pp.303-312. London: Longman, (303-312).
- Julia, A. 1976. *Plato's Republic and Feminism*. New York: Viking.
- Keeling, M. 1970. *Morals in a Free Society*. London: SCM Press Ltd.
- Ketchum, S and Pierce, C. 1980. *Female Culture and Conceptual Change: Towards a Philosophy of Women' Studies, Social Theory and Practice*. New York: Harper & Row Publishers.
- Lanson, E. T. 1984. *Religions of Africa*. New York: Harper and Row.
- Levack, B.P. 1995. *The Witch hunt in early modern Europe, 2nd ed*. London: Longman.
- Levine, A.R and S. B. Levine. 1966. *Nyansongo. A Gusii Community in Kenya*. New York: John Wiley and Sons Inc.
- Levine, A.R. 1959. "An attempt to change Gusii initiation Cycle". *Man*. Vol. 59.pp.117-120.
- Levine S. B. 1973. *Culture Behaviour and Personality*. London: Hutchinson Co.
- .1977. *Mothers and Wives: Gusii Women in Africa*. Chicago: Chicago University Press.
- Mabururu, N. M. 1992. "Rights and Gender Issues". The Philosophical Investigation of Inequality of Opportunity to ownership of Wealth: 'The case study of Women in Kisii'. Unpublished M.A. Thesis at the University of Nairobi.
- Magesa, L. 1998. *African Religion and Abundant Life*. Nairobi: Paulines Publications.
- Malinowski. B. 1958. *Magic, Science and Religion*. New York: Doubleday Anchor Books.
- Mayer, P. 1926. *Crime and Punishment in Savage Society*. London: Routledge and Kegan Ltd.
- . 1949. *The Lineage Principle in Gusii community*. London: Oxford University Press
- . 1950. *Gusii Bride wealth Law and Custom*. London: Oxford University Press.
- . 1965. *The Nature of kinship Relations: the Significance of use of Kinship terms among the Gusii*. Manchester: Manchester University Press.
- . 1965, "From Kinship to common Descent. Four generation genealogies among the Gusii". *Africa*. Vol. 35.pp. 366-384.
- Mbiti, S. J. 1969. *African Religions and Philosophy*. Nairobi: Heinemann Kenya Ltd.

- . 1973. *African religions and Philosophy*. London: SCM Press.
- . 1991. *Introduction to African Religion 2nd ed.* Nairobi: East African Educational Publishers.
- Mbula, B.J. 1982. *Our Religious Heritage*. Edinburgh: Thomas Nelson.
- Middleton, J.W. 1967. *Magic, Witchcraft and Curing*. New York: The Natural History Press.
- . 1973. *Witchcraft and Sorcery in East Africa*. London: SCM Press.
- Miencha, K.I. 1993. "A Philosophical Analysis of Deterrent Punishment with special reference to curses among the indigenous Abagusii community of Western Kenya." Unpublished M.A Thesis at the University of Nairobi.
- Mierow, C.C. n.p, n.p. transl. *The Origin and Deeds of the Goths*.
- Monyenye, S. 1977. "The Indigenous Education of the Abagusii People". Unpublished M.A Thesis at the University of Nairobi.
- Nyasani, J.M. 1997. *The African Psyche*. Nairobi: Theological Printing Press.
- Njoroge, R.J and G.A.Bennaars. 1986. *Philosophy and Education in Africa*. Nairobi: Transafrica press.
- Oduor. J. R. 2010. Research Methodology in Philosophy within an Interdisciplinary and Commercialized African context: Guarding against undue influence from the Social Sciences. *Thought and Practice*. A Journal of the Philosophical Association of Kenya. Vol.2 No 1.pp. 87-118.
- Okeyo, A.P. 1980. "Daughters of the Lakes and Rivers: Colonization and the Land Rights of Luo Women". In Etenne, M and Leacock, E. eds. *Women and Colonization: Anthropological Perspectives*. New York: Praeger Publishers.
- Okin, S.M. 1979. *Women in Western Political Thought*. Princeton: Princeton University Press.
- Omosade, A.J. 1974. *West African Traditional Religion*. London: Sheldon Press.
- . 1979. *Yoruba Beliefs and Sacrificial Rites*. London: Longman.
- Omoyajowo, J.A. 1983. "What is Witchcraft?" In E.A.A. Adegbola, ed. *Traditional Religion in East Africa*. Nairobi: Uzima Press. Pp. 317-336.
- Oruka, H.O. 1980. *Ethics. A basic Course for Undergraduate Studies*. Nairobi: Nairobi University Press.
- Parrinder, E.G. 1958. *Witchcraft*. London: Penguin Books.
- . 1974. *African Traditional Religion*. London: Sheldon Press.

- P' Bitek, O. 1986. *Artist the Ruler*. Nairobi: Heinemann.
- Plato. 1970. *The Republic*. Harmondsworth: Penguin
- Pritchard, E. 1962. *Nuer Religion*. Oxford: The Clarendon Press.
- , 1937. *Witchcraft, Oracles and Magic among the Azande*. London: Oxford University Press.
- Ray, B.C. 1976. *African Religion*. Englewood Cliff: Prentice Hall.
- Rosen. 1991. *Witchcraft in England 1558-1618*. Massachusetts: University of Massachusetts Press.
- Seligman, K. 1997. *The History of Magic*. London: Pantheon Books.
- Shorter, A. 1998. *African Culture. An Overview*. Nairobi: Paulines Publications Africa.
- Stamp, P. 1989. *Technology, Gender and Power in Africa*. Ontario: IDRC Ottawa.
- Stevens, W. 2000. *Demon Lovers: Witchcraft Sex and Belief*. Chicago: University of Chicago.
- Tempels, P. 1959. *Bantu Philosophy*. Paris: Presence Africaine.
- Thomson, J.J. 1994. "Goodness and Utilitarianism". *Proceedings and Addresses of the American Philosophical Association*, 67 (4):7-21
- Wagner, G. 1970. *The Bantu of Western Kenya*. London: Oxford University Press.
- Walker, R. 1978 *Kant: The Argument of Philosophers*. London: Routledge and Kegan Paul.

INTERNET SOURCES

- <http://www.salem/witchhistory.html> (1/18/2008).
- <http://www.law.umkc.edu/faculty/projects/trials/salem/witchhistory.html> (1/18/2008).
- <http://www.witchcraft.com.au/witchcraft-history.html> (2/27/2008)
- <File://A:\Witchcraft and sorcery.htm> (3/14/2008).
- <File://:\witch-hunt-wikipedia,the free encyclopedia.html> (27/7/2008).
- <File://E:\Witch-hunt-wikipedia,the free encyclopedia.htm> (9/13/2008).
- <http://www.pantheon.org/areas/featured/witchcraft-html> (11/11/2008).

File:///:/witchcraftgender.html (12/19/2008).

<http://science.jrank.org/pages/>

File:///E:/Witchcraftpopculture.htm (3/18/2009).

<http://en.wikipedia.org/w/index.php>.(19/8/2009).

<http://www.ippmedia.com/ipp/observer/2008/02/03/107606.html>(12/2/2009).

<http://www.library.usyd.edu.au/libraries/rare/witchcraft/w-early.html>.(30/5/2010).

<http://kurayangu.com/ipp/observer/2007/12/02/103459.html> (3/10/2011)

<http://www.amazoncatle.com/feminism/shtmi>.(2012).

<http://news.bbc.co.uk/1/hi/7415502.stm>(2012).

11639//witchcraft-african studies (2/27/2009).

File:///:/witchtext (3/18/2009).

http://www.religioustolerance.org/witch_burns.html.

http://www.wikipedia.org/wiki/gender_discrimination.

<http://Wikipedia.org/wiki/Punishment>.

OTHER SOURCES

Constitution of Kenya. Nairobi: Government Press, 1963.

The Daily Nation Newspaper. Nairobi: Nation Media Group Ltd.

The Standard Daily Newspaper Nairobi: The Standard Ltd.

The People Daily Newspaper. Nairobi: The People Media Group Ltd.

Appendix I

The Questionnaire

Name

Age

Sex

Residential Area

Answers to be ticked as appropriate.

1. Do you believe in witchcraft? Yes () No (). Explain.
2. Are you aware of the ways through which witches were identified? Yes () No ().
3. Do you believe that there are misfortunes in the community that can be attributed to witchcraft? Yes () No (). Name some of these, if any.
4. What makes you conclude that the said misfortunes are as a result of witchcraft?
5. Are you able to relate any incidences that you have witnessed in your lifetime that were attributed to witchcraft?
6. Can you remember any cases where individuals have been apprehended for supposedly practising witchcraft? Yes () No ().
7. If yes, can you explain how they were discovered and apprehended and by who?
8. Were these individuals punished? Yes () No ().
9. If yes, can you tell what kind of punishment it was, who and how it was meted out?
10. Can you list any other forms of witch-punishment that you are aware of?
11. Of the punishments for witchcraft that you have witnessed, are you able to describe them in terms of gender? Yes () No ().
12. If yes, are you able to give a breakdown?
13. In your opinion, do you think women were discriminated against in the punishing of witches? Yes () No ().

14. If yes, what are some the reasons that could be used to explain this discrimination against women if any?

15. What effects, if any, has gender discrimination against women had to the welfare of women and society in general?

16. Can you suggest any ways through which gender discrimination in general and in witch-punishment in particular in the community could be eliminated?

Appendix II

LIST OF RESPONDENTS

This list constitutes three cohorts. Cohort 1 is a list of respondents from Bobasi constituency of Nyamache who were interviewed at Nyachekei town. Cohort 2 constitutes a list of respondents from Bomachoge Constituency interviewed at Ogembo town. Cohort 3 is that of respondents from South Mugirango Constituency who were interviewed at Nyamarambe town.

COHORT 1- NYACHEKEI TOWN 18/7/2012.

	NAME	GENDER	AGE (YRS)
1	Ogenche Mabiria	Male	92
2	Onyancha Nyachio	Male	68
3	Nyaboke Onchweri	Female	70
4	Kerubo Kambaga	Female	69
5	Milkah Oonge	Female	70

COHORT 2-OGEMBO TOWN 23/7/2013

	NAME	GENDER	AGE (YRS)
1	Joseph Nyagaka	Male	73
2	Moriasi Ombongi	Male	69
3	Moraa nyanchoka	Female	68
4	Mokeira Nyaundi	Female	68
5	Kemunto Matwetwe	Female	74

COHORT 3-NYAMARAMBE TOWN 2/8/2013

	NAME	GENDER	AGE (YRS)
1	Atoni Moseti	Male	72
2	Ayienda Marube	Male	70
3	Jerusha Kemunto	Female	71
4	Bosibori Masese	Female	70
5	Jane Omingo	Female	69

Appendix III
LIST OF POLICE RECORDS FROM Ogembo Divisional Police Station (GUCHA)

JAN-JULY 2012

S/No	NAME OF DECEASED	AGE and Gender	PLACE	NATURE OF INCIDENT	POSITION OF CASE	REMARKS
1	Jeremiah Okioga obuya	50yrs/m	Bosoti location	The deceased was lynched by villagers on suspicion that he was a witch	PBC	None
2	Norah Nyamusi Anyona	52yrs/f	Nyansakia location	Stoned to death on suspicion that she was a witch	PUI	None
3	Simion Nyakaba	73yr/m	Kenyenya s/location	Lynched on witchcraft claims	PAKA	Suspects escaped and yet to be arrested
4	Olipha Kerubo	54yrs/f	Boochi s/location	Attacked by mob on witchcraft claims	PAKA	Suspects yet to be arrested
5	Clemensia Nyaosi	65yrs/f	Getenga s/location	Attacked on witchcraft claims	PUI	Investigations still on progress
6	Truphena Kemunto Onyango	70yrs/f	Gesure s/location	Attacked by mob on witchcraft claims	PUI	None
7	Teresa Bosibori Okengo	80yrs/f	Nyakore s/location	Attacked by mob on witchcraft claims	PBC	None
8	Kerubo Nyangweso	80yrs/	Nyakorere s/location	Attacked by mob on witchcraft claims	PBC	None
9	Osebe Ondara	65yrs/f	Ikoba s/location	Attacked by mob on witchcraft claims	PBC	None
10	Peris Onditi	65yrs/f	Borangi s/location	Lynched on by villagers on suspicion that she was a witch	PUI	None
11	Nyachiro Momanyi	60yrs/m	Igare s/location	Attacked by mob on witchcraft claims	PAKA	

NB: It may be noted that the figures might be a little less, but some of these cases may have been misreported as, assault, family disputes or affray. In reality, the major causes may, however, have been suspicion of one being a witch.

Key

PBC- Pending before Court

PAKA- Pending arrest of known suspects

PUI- Pending under investigations

Appendix IV

MAP OF KENYA SHOWING KISII COUNTY



Appendix V

MAP OF KISII COUNTY SHOWING THE STUDY AREAS

