WITCHCRAFT BELIEF AND CRIMINAL RESPONSIBILITY: A CASE STUDY OF SELECTED AREAS IN SOUTH AFRICA AND ZIMBABWE.

BY

Kugara Stewart Lee

Research for the
Thesis submitted in fulfillment of the requirements
For the degree of
DOCTOR OF PHILOSOPHY
in the subject
African Studies
at the
UNIVERSITY OF VENDA

PROMOTER: Professor Vhonani Netshandama (University of Venda)
CO-PROMOTER: Doctor Pfarelo Matshidze (University of Venda)
CO-PROMOTER: Doctor Rendani Tshifhumulo (University of Venda)

SEPTEMBER 2017
I, **Stewart Lee Kugara**, declare that this research proposal is my original work and has not been submitted at any other university or institution. The thesis does not contain other persons’ writing unless specifically acknowledged and referenced accordingly.

Signed (Student): .......................................................... Date: ..................................
Abstract

This interdisciplinary study examined witchcraft beliefs and criminal responsibility in South Africa and Zimbabwe. The unshakeable deep rooted and profound cultural beliefs of African people do not find expression in written law and therefore introduce a mismatch between law as the people live it and law as contained in the statute books. The aim of this interpretive doctrinal (legal) and qualitative research study was two-fold. Firstly, it sought to evaluate and assess the influence of African value systems particularly ethical ideas on the development of criminal responsibility. Secondly, it undertook a comparative examination of the criminal responsibility of actors who commit crimes while labouring under belief in witchcraft. The research, therefore, undertook a comparative examination of the criminal responsibility of actors who commit crimes while labouring under the overpowering fear of belief in witchcraft. In that regard, the study was premised on and informed through theories of criminal punishment, a Human Rights Based Approach, psycho-analytic theory and socio-cultural theory. The primary motivation for the study was the need to address the mismatch of laws and African value systems and to add knowledge to the scholarly legal writing on beliefs in witchcraft. Explorative qualitative research methods of collecting data (case studies, semi-structured interviews and focus groups discussions) and the doctrinal methods of data collection (case law observation, newspaper reports and witchcraft legislations) were employed as the research methodologies for the purposes of this study. For social empirical findings to be useful in integrating with the legal issues, the study adopted an Indigenous Knowledge Systems (IKS) perspective. Although customary practices play a very important role in the lives of the African people, some of the rules can no longer withstand constitutional scrutiny. The research findings confirmed the mismatch that exists between the African value systems and the law. The study unveiled that the African value systems of the two countries have been affected by modernity. Also, the two countries have similar laws governing the aspect of belief in witchcraft that are weak and archaic thus introducing a lacuna in the law.
Key Words:

Belief, witchcraft, customary law, Indigenous Knowledge Systems, Western Knowledge Systems, criminal responsibility
Acknowledgement

I would like to extend my heartfelt gratitude to the Lord, God Almighty, for making this academic dream realisable. My sincere appreciation goes to the African Studies Department at the University of Venda, for giving me the opportunity to be part of the PhD class of 2015. The road has not been an easy one, but the intensiveness of the programme has brought out the best in me. I am also thankful to the entire staff of the School of Law, African Studies (Indigenous Knowledge System) and Indigenous Knowledge System Family (IKSF) - Human Social Sciences, members of the Student Christian Organisation (SCO) and my spiritual father, Prophet Sheunopa Matambo, for their support.

I wish to express my indebtedness and sincere appreciation to many people who made valuable contributions to the completion of this project. While it would be difficult to mention each person by name, I would like to single out the following people:

My Promoter, Professor Netshandama, and co-promoters Doctor (Advocate) Matshidze and Doctor Tshifhumulo for accepting me to join African Studies where Indigenous Knowledge System is housed. In addition to this, I would like to acknowledge my wife Tsetselelani Decide Mdhluli – Lee Kugara for the unwavering support in writing this thesis. I thank them for unlimited patience and support and for accommodating me in their very tight schedule. I thank them for the challenging guidance they provided from conception up to the writing of this thesis. I am grateful for their wisdom and knowledge on the subject matter, as well as for the insight and understanding that they showed me throughout the entire project. I also thank them especially for editing my work and for suggesting and providing useful sources, especially on theories used in the thesis, which on consultation were found relevant.
Let me also pay homage to my father, Mr. General Fletcher Kugara, and my brother Ashwert Lee Kugara for financially anchoring my studies from the beginning till the end. Furthermore, I owe a lot to my family for their continued spiritual, financial and moral support throughout my studies. My siblings; Ashwert Lee Kugara, Edith Kugara, Lindsay Lee Kugara and Presley Lee Kugara thank you for your unwavering support throughout the course of my thesis writing. To my “maiguru” Nyaradzo Tapomwa - Kugara, Charna Kugara, “Chichi” Chikomborero and Giani, thank you. This thesis would not be done without your help in serving me food and helping me put my papers together during my data collection phases. To my close friends; Joseph Zanorashe Mundondo, Liberty Kudzai Masekesa, Michael Sakala, Graduate Makonese, Tinomutenda Shumbanhete and Tariro Musindo, thank you for complementing the support given to me by my parents.

Special thanks go to Professor E. Oseifuah, School of Management Sciences, and Professor Vukor Quarshie for your constant motivation to endeavor on writing this thesis. You have guided me, taught me, shaped me and been friends, fathers and mentors to me. It is not within my power to repay all that you have given me, but I trust the Lord to complete the blessing. Last but not least, to all those in the academic and professional communities that have contributed to my work and shaped my thinking, it has been a privilege to have met and worked with you. I hope my work does justice to all our efforts. May God bless you abundantly!

Special thanks to Mr. Maropene Ramabina, the School of Law librarian, for his special services during the write-up phases of my thesis. He has never been too busy to open his office to assist me with documents and checking plagiarism reports for my work. I am indebted to his services.

To all my participants in this project, I say you are the best, thank you for being there for me throughout and for providing all the information voluntarily.
Dedication

I dedicate this work to my father, Mr. General Fletcher Kugara, my brother (Ashwert Lee Kugara) and sisters (Edith Kugara, Lindsay Lee Kugara and Presley Lee Kugara), my wife (Tsetselelani Decide Mdhluli) and to the memory of my dear and precious mother, Mrs. Nyengeterai Shoko-Kugara. They are all pillars of inspiration and to them I owe my success.

To suspected witches and/or the bewitched still trapped and struggling to survive, there is still hope for emancipation.
## List of Abbreviations and Acronyms

1) **CC** : Constitutional Court  
2) **CHREAA** : Centre for Human Rights Education Advice and Assistance  
3) **FGDs** : Focus Groups Discussions  
4) **IKSs** : Indigenous Knowledge Systems  
5) **RPC** : Research Publications Committee  
6) **SA** : South Africa  
7) **UNIVEN** : University of Venda  
8) **CONTRALESa** : Council for Traditional Leaders of South Africa  
9) **HRBA** : Human-based approach  
10) **RCMA** : Recognition of Customary Marriages Act 200 of 1998  
11) **SAPRA** : South Africa Pagan Alliance  
12) **UN** : United Nations  
13) **SAPRA** : South Africa Pagan Alliance  
14) **WKSs** : Western Knowledge Systems  
15) **ZINATHA** : Zimbabwe National Traditional Healers Association
# Table of Contents

Declaration................................................................................................................................. I

Abstract........................................................................................................................................ II

Acknowledgement........................................................................................................................ IV

Dedication........................................................................................................................................ VI

List of abbreviations and acronyms................................................................................................. VII

CHAPTER ONE: STUDY OVERVIEW.......................................................................................... 1

1.0 Introduction............................................................................................................................. 1

1.1 Background................................................................................................................................ 1

1.2 Problem Statement .................................................................................................................... 7

1.3 Rationale of the Study................................................................................................................ 7

1.4 Objectives of the Study ............................................................................................................. 10
   1.4.1 Broad Aim of the Study ......................................................................................................... 10
   1.4.2 Specific Objectives ................................................................................................................ 10
   1.4.3 Research Questions .............................................................................................................. 10

1.5 Definition of key/Technical Concepts....................................................................................... 11
   1.5.1 Witchcraft ......................................................................................................................... 11
   1.5.2 Witch ............................................................................................................................... 11
   1.5.3 Wizard .............................................................................................................................. 12
   1.5.4 Witch-hunt ...................................................................................................................... 12
   1.5.5 Witch-doctor ................................................................................................................... 12
   1.5.6 Suspected witch .............................................................................................................. 13
   1.5.7 Muti-murder ................................................................................................................. 13
   1.5.6 Indigenous Knowledge Systems ...................................................................................... 13
1.5.7 Western Knowledge Systems .................................................................14

1.6 Limitations of the Study ........................................................................14

1.7 Outline of chapters ..................................................................................15

Chapter 2: Literature Review and Theoretical Framework ..........................15
Chapter 4: Research Design and Methodology .........................................15
Chapter 5: Data Presentation, Analysis and Interpretation ..........................15
Chapter 6: Conclusion and Recommendations ........................................15

CHAPTER TWO ..............................................................................................16

LITERATURE REVIEW AND THEORETICAL FRAMEWORK .......................16

2. Introduction ................................................................................................16

2.1 Theoretical framework ..........................................................................19

2.1.1 Theories of Criminal Punishment ......................................................21
2.1.2 Analysis .............................................................................................25
2.1.2 Human Based Approach ....................................................................26
2.1.3 Psychoanalytic theory .........................................................................29
2.1.4 Socio-cultural theory ..........................................................................30

2.2 Literature Review ....................................................................................32

2.2.1 The witchcraft phenomenon .................................................................32
2.2.2 Witch-hunting ......................................................................................35
2.2.3 Witchcraft beliefs and accusations ......................................................40
2.2.4 Witchcraft and social aspects in communities ....................................45
2.2.5 Witchcraft and the Gender issue .........................................................46
2.2.6 Witchcraft and the law ..........................................................................51
2.2.7 Witchcraft and politics ..........................................................................56
2.2.8 African healing Ways Versus Witchcraft ..........................................57

2.3 Chapter Conclusion ................................................................................59
CHAPTER THREE ..................................................................................................................60

AN EXQUISITION OF THE INDIGINOUS KNOWLEDGE SYSTEMS: WITCHCRAFT BELIEFS AND CRIMINAL RESPONSIBILITY ...........................................................................60

3.0 Introduction ....................................................................................................................60
3.1 Witchcraft ......................................................................................................................61
3.2 Witchcraft Belief and Practices ....................................................................................64
3.3 Reasons why witchcraft beliefs and practices thrive .....................................................67
  3.3.1 Socio-economic factors .........................................................................................68
  3.3.1.1 Witchcraft Accusations in Business .................................................................68
  3.3.1.2 Politics ...............................................................................................................69
  3.3.1.3 Polygamous marriages .....................................................................................71
  3.3.1.4 Religious reasons .............................................................................................72
3.4 Ways employed to identify ‘witches’ ............................................................................74
3.5 Disciplining and/or punishing witches .......................................................................78
  3.5.1 Ostracism/ Banishment .........................................................................................79
  3.5.2 Enslavement ..........................................................................................................79
  3.5.3 Compensation ........................................................................................................79
  3.5.4 Execution ................................................................................................................80
  3.5.5 Analysis of the punishments or forms of discipline ................................................80
3.6 Belief and practices of Witchcraft Versus the Law .......................................................81
3.7 Belief in Witchcraft as Indigenous Metaphysical Epistemology ..................................86
3.8 Should belief in witchcraft be a ground of exculpation from criminal responsibility? ....95
3.9 Cultural Defence .........................................................................................................100
3.10 Do the Witchcraft Suppression Acts Undermine the African culture and tradition? ....104
3.11 The role of witchcraft or witchcraft accusations ........................................................105
3.12 Colonialism: Undermining customary laws ................................................................. 106
3.13 Anti-witchcraft legislation .......................................................................................... 107
3.14 Chapter Conclusion .................................................................................................... 109

CHAPTER FOUR ................................................................................................................. 111

RESEARCH METHODOLOGY ............................................................................................ 111

4.0 Introduction .................................................................................................................. 111
4.1 Research Paradigm ........................................................................................................ 112
4.2 Research design ........................................................................................................... 114
  4.2.1 Qualitative research approach .................................................................................. 115
  4.2.2 Doctrinal approach or black letter law ................................................................. 116
4.3 Study Area ................................................................................................................... 118
  4.3.1 South Africa ............................................................................................................ 119
  4.3.2 Zimbabwe ............................................................................................................... 121
4.4 Population of the Study .............................................................................................. 123
4.5 Sampling ...................................................................................................................... 123
  4.5.1 Sampling techniques ............................................................................................... 123
4.6 The pilot study ............................................................................................................ 125
4.7 Data collection methods ............................................................................................. 127
  4.7.1 Legal (Doctrinal) data collection methods .............................................................. 127
  4.7.1.1 Case law Observation ......................................................................................... 127
  4.7.1.2 Newspaper reports ......................................................................................... 129
  4.7.1.3 Assessing Witchcraft Legislations ................................................................. 130
  4.7.2 Qualitative data collection methods ......................................................................... 130
  4.7.2.1 Focus Group Discussions (FGDs) ................................................................. 131
  4.7.2.2 Semi-structured one-on-one interviews ....................................................... 134
  4.7.2.3 The case study ............................................................................................... 138
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.8</td>
<td>Data analysis method</td>
</tr>
<tr>
<td></td>
<td>4.8.1 Thematic Analysis</td>
</tr>
<tr>
<td>4.9</td>
<td>Reliability, validity and generalisability of data</td>
</tr>
<tr>
<td></td>
<td>4.9.1 Bias</td>
</tr>
<tr>
<td></td>
<td>4.9.2 Credibility</td>
</tr>
<tr>
<td></td>
<td>4.9.3 Confirmability</td>
</tr>
<tr>
<td></td>
<td>4.9.4 Transferability</td>
</tr>
<tr>
<td></td>
<td>4.9.5 Neutrality</td>
</tr>
<tr>
<td></td>
<td>4.9.6 Truth Value</td>
</tr>
<tr>
<td></td>
<td>4.9.7 Triangulation of Data</td>
</tr>
<tr>
<td></td>
<td>4.9.8 Training of field assistants</td>
</tr>
<tr>
<td>4.10</td>
<td>Research Ethics</td>
</tr>
<tr>
<td></td>
<td>4.10.1 The UNIVEN policy research ethics</td>
</tr>
<tr>
<td></td>
<td>4.10.2 Informed Consent, Confidentiality and Anonymity</td>
</tr>
<tr>
<td></td>
<td>4.10.3 Interview ethics</td>
</tr>
<tr>
<td></td>
<td>4.10.4 Referencing</td>
</tr>
<tr>
<td>4.11</td>
<td>Limitations Encountered</td>
</tr>
<tr>
<td>4.12</td>
<td>Chapter Conclusion</td>
</tr>
</tbody>
</table>

**CHAPTER FIVE**

**DATA PRESENTATION, ANALYSIS AND INTERPRETATION**

5.1 Introduction

5.2 A comparative analysis and findings of the fieldwork done in the Mashonaland Central province in Zimbabwe, and the Limpopo Province in South Africa.

5.2.1 Historical background on African Values and norms: the witchcraft phenomenon in Zimbabwe and South Africa

<table>
<thead>
<tr>
<th>Sub-section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.1.1</td>
<td>The Limpopo Province</td>
</tr>
<tr>
<td>5.2.1.2</td>
<td>Mashonaland Central Province</td>
</tr>
</tbody>
</table>
5.2.2 African Value Systems as Reflected in day-to-day news reports ........................................... 157

5.2.3 Belief in Witchcraft .................................................................................................................. 166

5.2.3.4 The Role played by charismatic Churches in exacerbating witchcraft belief ................. 173

5.2.3.5 Movies and Dramas (Muvhango and Generations) ......................................................... 176

5.5.6 Gender Aspect of the witchcraft phenomenon ..................................................................... 179

5.2.4 Forms of violence against alleged witches in Zimbabwe and South Africa ....................... 181
   5.2.4.1 Physical violence ............................................................................................................. 182
   5.2.4.2 Economic violence .......................................................................................................... 183
   5.2.4.3 Social violence ................................................................................................................ 184
   5.2.4.4 Psychological violence ................................................................................................... 186

5.3 The extent to which legislation addresses the challenges of witchcraft-based violence faced in the two countries. ........................................................................................................ 188

5.3.1 Legislation and Policy governing witchcraft ....................................................................... 188

5.3.1.1 Awareness of Witchcraft Suppression Legislation .......................................................... 198
   (i) Position in Zimbabwe ............................................................................................................... 199
   (ii) Position in South Africa ........................................................................................................... 201

5.3.2 Limitations of the witchcraft legislation(s) ......................................................................... 202

5.3.3 Followed Court Cases ........................................................................................................... 204

5.3.3.1 Zimbabwe: Chigwedere Case .......................................................................................... 204
   (i) Analysis and Comments ......................................................................................................... 207

5.3.3.2 South Africa: Mrs Killer Case .......................................................................................... 209
   (i) Analysis and Comments: ......................................................................................................... 210

5.3.4 Traditional healers acting as expert witnesses in witchcraft trials ....................................... 211

5.3.5 Traditional ways of bringing accused witches to justice: African values ......................... 213
5.3.5.1 Witch-hunters ................................................................. 215
5.3.5.2 Trial by Ordeal .............................................................. 216
5.3.5.3 Smelling out a witch ...................................................... 216
5.3.5.4 Grudge ........................................................................ 217

5.3.6 Eradication of witchcraft beliefs and witchcraft-based violence ................................................................. 223
5.3.6.1 Poverty and riches ......................................................... 223
5.3.6.2 Punishing witches .......................................................... 223
5.3.6.3 Civic education .............................................................. 224
5.3.6.4 Cleansing witches ......................................................... 226
5.3.6.5 Mediation .................................................................... 227

5.3.7 Protection of and Support for Suspected Witches ......................................................................................... 230
5.3.7.1 Position in South Africa .................................................. 231
5.3.7.2 Position in Zimbabwe ..................................................... 235

5.3.8 Proposed Victims Charter for Alleged Witches ......................................................................................... 239

5.4 Chapter Conclusion ................................................................................................................................. 240

CHAPTER SIX .............................................................................................................................................. 241

FINDINGS, RECOMMENDATIONS AND CONCLUSION .................................................................................. 241

6.1 Introduction .............................................................................................................................................. 241

6.2 Findings .................................................................................................................................................. 242
6.2.1 African Values and Criminal Responsibility ...................................................................................... 242
6.2.2 Comparative law on criminal responsibility ...................................................................................... 243
6.2.2.1 Existence of strong legal framework and policies ....................................................................... 244
6.2.2.2 Enforceability .............................................................................................................................. 245
6.2.2.3 Belief in witchcraft as a ground of exculpation ......................................................................... 246
6.2.2.4 Resource efficiency ..................................................................................................................... 246

6.3 Recommendations .................................................................................................................................. 247
6.3.1 Scarce resources and infrastructure .................................................................................................. 248
6.3.2 Awareness Campaigns and Education ............................................................................................... 248
6.3.3 State Institutions and NGOs .................................................................249
6.3.4 The Role of Legislation ........................................................................250
6.3.5 The use of human rights norms to tackle witchcraft-based violence........252
6.3.6 More research in the field ....................................................................253

6.4 Proposed Victims Charter for Alleged Witches ........................................253

Who is a victim of crime? ..............................................................................254

6.5 Knowledge gap ........................................................................................258

6.6 Conclusion ..............................................................................................260

APPENDIX A: RESEARCH SAFETY PROTOCOL ........................................262
APPENDIX B: CONSENT FORM ...................................................................264
APPENDIX C: TRANSCRIBER’S CONFIDENTIALITY AGREEMENT FORM ........267
APPENDIX D: SEMI-STRUCTURED INTERVIEW QUESTIONS ......................268

7. References ..............................................................................................269

7.1 Cases ......................................................................................................301

7.2 Acts of Parliament ..................................................................................302

7.3 Websites ..................................................................................................303
CHAPTER ONE: STUDY OVERVIEW

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

(Ashforth, 1998)

1.0 Introduction
This chapter outlines the background, significance of the study, problem statement, objectives, methodology and definition of concepts. Thus, the chapter introduces the research study as a whole by giving an overview of the witchcraft belief in South Africa and Zimbabwe.

1.1 Background
Indigenous Knowledge Systems (IKSs) in Africa were an important tool to govern peace, tranquility, harmony and order in the midst of people and their physical and spiritual realm. Sillitoe Dixon and Barr (2005:3) defined Indigenous Knowledge (IK) as ‘traditional, cultural, local and community knowledge’. Nevertheless, with the dawn of colonial rule, IKSs were demonised leaving their potentials unexploited. The colonisers deemed Africa a ‘dark continent’ and undermined its norms, traditions, customs and belief systems. Since those colonial times and even in this present age, IKSs have been undermined and seemingly persist to be under threat of being lost in many parts of the world, and little has been done to bridge the gap and link them to the standards of the modern dynamic world (Carter, 2008). Masoga (2005) postulates that many African indigenous communities faced and/or are facing challenges after colonisation, resulting in transformations that impact individual and community identity, leading to a loss related to belief, language, traditional management and knowledge structures.
Significantly, in spite of the cultural onslaught on African thought, particularly their knowledge and belief systems, South Africans and Zimbabweans by no means absolutely negated their traditional beliefs and values. The colonial governments of these countries recognised customary law and the authority of traditional leaders. Ludsin (2003:66) notes that these colonial governments recognised and allowed customary law for pragmatic purposes. In addition, they preserved customary laws only if they were not repugnant to the conception of natural justice, equity and norms of morality (Merry, 1991). Without prior knowledge of African value systems, the colonial authorities cloaked witchcraft in legal obscurity. These governments replaced and substituted the African value systems with alien concepts of rule of law and justice. Under these governments, the traditional leaders were given some power to try limited customary law cases in their native way in some regions; marriage, succession and delict. The colonial governments considered recognition of African value systems through customary law as a privilege awarded to natives, a privilege that could be taken away or awarded (Conflicts of Law, South African Legal Communication Discussion Paper 76 June 30, 1998:1-2). With regards to witchcraft matters, Fields (1982) contends that the Euro-centric approach was that witchcraft was a non-existent phenomenon that is ‘barbarous and injurious’ thus, suppressed.

In the new constitutional dispensation, Ludsin (2003) submits that many African countries formally accept and recognise customary law as a legal system that should run together with and in equivalence with the common law legal system. In South Africa, for instance, the Constitution (Act 108 of 1996) formally recognises customary law in Chapter 12 on ‘Traditional Leaders.’ Section 211(3) of this chapter states:

"The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law."
It can therefore be argued that the use the words ‘must apply customary law’, in the above section of the Constitution carries the power to equalise customary law and common law. The main challenge has been how African governments and the common law courts deal with African value systems reflected in customary law that conflict with the Western Knowledge Systems (WKSs), culture or norms that predominate the common law system. In addition, the thorny issue here is whether these conflicting beliefs will be recognised and respected? To answer this question, it is necessary to determine whether customary law will in fact be equal to common law. One prominent area where such conflict exists in the African value systems is in the belief of witchcraft and criminal responsibility.

A general inspection of most South African and Zimbabwean case law dealing with the indigenous beliefs and customs discloses that the perpetrator(s) in such cases have on numerous occasions submitted evidence of their indigenous beliefs or customs to influence the criminal courts so that they escape criminal liability for a crime in question. For instance, an accused will attempt to raise what is called a ‘cultural defense’ by putting forth evidence of his cultural background or values to justify his unlawful conduct and ultimately escape criminal liability or, at the very least, receive a lighter sentence.

Nevertheless, the criminal courts of both countries to date are unwilling to recognise arguments of indigenous beliefs and customs to serve as a defense for the commission of a common law or statutory crime or at least incorporate some of the beliefs in the statutory law. To add, Matthee (2014:16) notes that the extent to which an accused's cultural background will serve as a mitigating factor will, of course, depend on the facts and circumstances of each case. Consequently, an accused who is charged with the commission of a culturally motivated crime has no assurance that his cultural background and values will in fact be considered as a mitigating factor. Despite the voluminous work on the subject of witchcraft, it remains shrouded in mystery as a bridge still exists between witchcraft beliefs as practised and witchcraft as reflected in law books. This study does not seek to engage into legal gymnastics about the phenomenon as this has been extensively done with little success.
Cohan (2001:17-24) submits that the law acts in response to the needs of a society or serves societal needs. In that vein, Regan (2003) believes that laws must be directed to the common good, the society happiness. In summation, the two authors seem to posit that society should surrender all powers to a body that will make just laws that will safeguard societal rights equitably. On the other hand, if the law does not respond to the needs of the society, people tend to take the law into their own hands and engage in private revenge. In that regard, a significant segment of Zimbabwean and South African societies want witches to be punished because they believe witches injure and kill their relatives and also destroy crops and animals. From such a foundation, it can be noted that the society’s value systems are not incorporated in the law and no wonder why a legal basis is used.

In African countries, the belief in witchcraft is cemented in popular mentality and informs and underscores social, political and cultural practices. In addition, this belief throughout sub-Saharan Africa cuts across all social lines (Cimpric, 2010). In other words, it is a belief held by traditional and religious groups (noting that in these communities, individuals look to both traditional healers and religious pastors to heal ‘witchcraft-related illnesses’) as well as by urban and rural populations (Ludsin, 2003). From time immemorial, witch-hunts have been seen as gender specific, with a large percentage of victims being elderly and solitary women. For instance, the word ‘witch’ itself has a feminine connotation, and its masculine equivalent is wizard, a term which does not seem to conjure any evil connotation. Levack (1995:52), however, shows that victims of witch-hunts include both women and men of all ages.

Regardless of the social strata and urban or rural settings these beliefs are held by both the educated and uneducated, the wealthy and the poor, the old and the young in many societies (Aguilar, 2006). It is contended that witchcraft may be used for good or bad ends. However, belief in witchcraft, used to harm other people for selfish purposes, is the
most problematic aspect of this belief. Some groups of people are of the belief that any form of achievement (for example, political achievement, successful business, scholastic attainments) is attributed to the supernatural and not to the individual’s own efforts. In a bid to outdo others, some people who believe in witchcraft kill other human beings. A school of thought is of the view that these ruthless killings of fellow human beings are at times done to harvest body parts that are used for muti (traditional African medicine or magical charms) purposes.

Regrettably, with the issue of witchcraft and muti-murder, ‘scientists’ tend to shun engagement when confronted by mysticism and metaphysical tendencies as they maintain that such practices contradict systematic, scientific and technological developments. The failure of scientists to engage in such practices has seen millions of people around the globe being negatively affected by these supernatural phenomena. I strongly argue that the system of shunning metaphysical epistemology of witchcraft beliefs has debilitating effects on the population. Furthermore, it is tantamount to denial that exacerbates the problem of witchcraft victims falling prey to the negative application of the practice.

In most African jurisdictions, belief in witchcraft is legally considered unreasonable. In turn, many Africans who subscribe to the existence of witches and wizards are said to be archaic and their appetite of seeing witches punished is not met. Because this group passionately believes that witches and wizards should be eradicated, they resort to jungle justice as they seem to see the law protecting and encouraging witchcraft. On the other hand, the accused witches, the victims, are left helpless by the legal system and the very people that are empowered to shield them – the police. Those violently targeted in the course of these guesswork accusations mostly belong to the most vulnerable groups in society; children and women, and almost always elderly or widowed women with no personal income and who are dependent on others for their well-being. They are mostly subjected to cruel, inhuman and degrading treatment in the name of exorcism or to elicit
confessions. In addition, accused witches suffer stigmatisation from the society and this may also lead to major emotional distress and mental anguish.

Due to colonial influences, most African governments’ statutory laws are adamant or rather ashamed to fully recognise witchcraft as a form of IKS. It is humbly submitted that this attitude of the law is wrong given the fact that in one way or another most Africans believe in witchcraft. This unavoidably raises the thorny issue of criminal responsibility: is a person who kills a ‘witch’ while labouring under overpowering fear that the victim possesses harmful witchcraft powers, a fit subject of criminal punishment? If the answer to this question is in the affirmative, under what possible theory of criminal punishment would the punishment of the witch-killer be justified? This therefore provides the theoretical basis of this study, theories of criminal punishment.

Numerous African academic institutions and their respective governments are now coming to the realisation of the importance of IKSs in the development of their countries. In that respect, some African countries are now discovering and taking into cognisance the function and significance of traditional leaders and traditional healers in the social, economic and political development of communities. For example, the South African (SA) government with its National Department of Traditional Affairs (a legally recognised Council for Traditional Leaders of South Africa (CONTRALESA)) and parliamentary representations play a pivotal job in ensuring the reinstatement of traditional values and knowledge that is in consonant with democratic principles (Ray and Reddy, 2003: 257-266). In that regard, to formulate and develop profound traditional values, norms and knowledge in the contemporary global context, the plain and hidden aspects involving its guardians and respective community members need to be unveiled. MaCauly (2009: 14-25) sagaciously warns of the dangers of restricting researches about law topics to legal documents and principles only which he noted have high chances of creating a gap or mismatch between theory and practice. Following this warning by MaCauly, Van Eeden (2011:314) encourages the route of following a multidisciplinary approach when
approaching such subjects as it carries an all-inclusive nature and had high probabilities of providing diverse views on the area under study.

1.2 Problem Statement
The constant clash of African culture and traditions with human rights and legislations continues to militate against the adequate protection and prosecution of alleged witches and witch-killers. The clash is alive because the unshakeable deep rooted and profound cultural beliefs of African people do not find expression in written law and therefore introduce a mismatch between law as the people live it and law as it is contained in the statute books. Furthermore, the notion of restoring a true and genuine ‘Indigenous Knowledge Systems’ (IKSs) to independent Africa also creates a legal enigma with respect to the role customary beliefs should play in law (Banda, 2015). One such customary belief is the notion of perceptions and legal implications of one being an accused witch and one who kills a witch while labouring under overpowering fear that the victim possesses harmful witchcraft powers. This, undeniably, creates a conflict between state legal norms and norms underlying popular beliefs. Due to this conflict, most African states have unclear legislations that deal with the victims and perpetrators of witchcraft. This study investigates the belief in witchcraft and criminal responsibility in Africa and explores the frontiers of African value systems in the 21st century. In other words, the focus is to determine whether an indigenous belief in witchcraft held by an accused can cause him to act involuntarily resulting in harm or death of the accused witch. Furthermore, can this involuntary conduct of the accused person who acts on the belief of witchcraft be viewed as unlawful in the eyes of the law and calls for punished for such an accused?

1.3 Rationale of the Study
The study of the phenomena of witchcraft beliefs in Africa still holds the ‘medallion’ of those unique problems that have been widely researched. The subject of witchcraft is still misunderstood as some people believe traditional healers are witches while some people
prefer to consult them on the understanding of the traditional health system. Many anthropological and sociological studies about witchcraft beliefs diversely focused on issues related to ancestral or traditional beliefs, exorcism and rituals of purifications of witches, witch-hunting and witchcraft-related violence and implications of witch-hunting (Zahradníček, 2006). However, little from these studies may be said to have given the practical knowledge that is warmly accepted to really address the clashes and challenges that exists in the area. Of interest is how some writings on the phenomenon are shrouded in ignorance, chauvinism and distortion. It is my submission that little has been done to safeguard belittling and despising African value systems regarding indigenous metaphysical epistemology. Mbiti (1969:194) alludes that some of the literature is full of offensive attitudes on the sensitive concept of supernatural power. Efforts to ignore the epistemologies of this phenomenon and painting it as primitive have been the foundation of some writings by some authors and writers thus, leaving the believers of witchcraft unsatisfied hence turning a blind eye on life’s pertinent challenges (Banda, 2015).

To add, the unshakeable deep rooted and profound cultural beliefs in witchcraft by African people are still exposed to marginalisation, discrimination, exclusion and stigmatisation. Even though customary practices play a very important role in the lives of the African people, some African governments have been reluctant to acknowledge the existence of indigenous groups within their territories. Even though some of the African value systems are argued not to withstand constitutional scrutiny, this cannot be a license to throw all the African value systems into the dust bin. Against this background, the African value systems versus the law bring into question the development of customary law to be consistent with democratic principles (Pieterse, 2000). This would be able to clarify the criminal responsibility of actors who commit crimes while labouring under belief in witchcraft.

The impetus to research the topic arose from the above factors. To add, for this interdisplinary research to be significant and actual, it should be of educational value.
This entails that the portrayal of the problem and proposed palliatives should contribute to the theory and practice of African value systems in the present and future as argued by (Venter, 1999:13). Moreover, the actuality and relevance of this present research should be stated in both general and specific terms. Some of these reasons being that:

The present research is meant to persuade and assist the legal system to amend the witchcraft laws (Witchcraft Suppression Acts), church leaders, politicians, peace officers, traditional leaders, traditional healers and Non-Governmental Organisations (NGOs) to consider taking proactive steps in protecting the people accused of witchcraft and also those who are alleged of being bewitched. Secondly, the present research will serve as a pioneer academic research in shedding light on the mismatch of the witchcraft law as is written and as is practiced vis-à-vis the African value systems. Finally, the research will help respond to the thorny issue of criminal responsibility incorporating all diverse views of the involved stakeholders listed above.

The scope of this research is a wake-up call to individuals, communities, researchers and policy makers in both countries under study and elsewhere to document and incorporate indigenous local knowledge particularly traditional spiritual beliefs as a valuable knowledge base. It can be noted from the foregoing analysis that this is a critical exploration framework of African value systems which are being submitted for an emerging and indispensable theme in the development of law. Moreover, the research calls for legislation and policy formulation and implementation that promote sustainable cultural practices and knowledge systems. All in all, the key learning point will be to justify the point that this research can equally serve the future of our societies when it makes a commitment to learn from knowledge especially traditional belief systems otherwise usually dismissed as antiquated.
1.4 Objectives of the Study

1.4.1 Broad Aim of the Study
This research has two main aims. These are:

a) To evaluate and assess the impact and influence of African value systems, particularly ethical ideas on the development of criminal responsibility.
b) To undertake a comparative examination of the criminal responsibility of actors who commit crimes while labouring under belief in witchcraft.

1.4.2 Specific Objectives
To achieve the above broad aims, the following objectives were examined:

- To assess the influence and the role of African value systems, particularly with regards to witchcraft on the development of the law on criminal responsibility in South Africa and Zimbabwe.
- To undertake a comparative examination of the law on criminal responsibility in cases relating to belief in witchcraft in South Africa and Zimbabwe.
- To examine and assess legislation and policy relating to the belief in witchcraft in the countries under study.
- To determine whether belief in witchcraft is a ground for exculpation from criminal responsibility in the jurisdictions chosen for this study.

1.4.3 Research Questions
To achieve the above broad aims, the following questions were examined for each country:

- What are the African value systems with regards to witchcraft on the development of the law on criminal responsibility?
- What laws do other jurisdictions have on criminal responsibility in cases relating to belief in witchcraft?
- Is there any legislation and/or policy that deal with belief in witchcraft?
- Should belief in witchcraft be a ground of exculpation from criminal responsibility in the jurisdictions chosen for this study?

1.5 Definition of key/Technical Concepts
It is sensible having a comprehensive understanding of the key expressions that are employed significantly in this research. Bless and Higson-Smith (1995:35) opine that for terms and concepts to be helpful they ought to be defined in clear, precise and non-ambiguous ways. For that reason, it is from this standpoint that I have clearly defined the following selected terms and concepts in order to give meaning to this study.

1.5.1 Witchcraft
Tebbe (2007:184) defined witchcraft as the practice of secretly using supernatural power for evil in order to harm others or to help oneself at the expense of others. In addition, witchcraft is the use of magic powers, especially evil ones (Chavunduka, 1990). Mutungi (1977: xviii) argues that witchcraft includes ‘a wide range of practices and norms but in their various forms they usually share the idea that the power to inflict injury and benefit could be exercised through unobservable, supernatural means.’ For the purposes of this research, witchcraft shall be defined as a practice that involves the secretive use of potentially harmful medicines, charms, magic and any other supernatural means or devices to cause some effects such as wealth amassing, social power, psychological or physical harm, illness and death of other people, animals or property.

1.5.2 Witch
“Although witchcraft is a complex and subjective term, ‘a witch’ may be broadly defined as: “...a human being who secretly uses supernatural power for nefarious purposes” Tebbe (2007: 183). A witch is “a woman who is believed to have magic powers, especially to do evil things. In western mythology, she usually wears a black pointed hat and flies on a broom-stick” Chavunduka (1990).
The Oxford dictionary definition categorises witches as women only. Reports, however, show that witches include both women and men. In the Ralushai Report (1995:4), a ‘witch’ is a word ‘attributed to those who through sheer malignancy, either consciously or subconsciously, employ magical means to inflict all manner of evil on their fellow human beings. For purposes of this work, I accept Tebbe’s (2007) definition that a witch is a human being who secretly uses supernatural power for nefarious purposes.

1.5.3 Wizard
Wizard is defined as a ‘male witch or magician.’ (Cameron, 1939)

1.5.4 Witch-hunt
Kugara (2015:58-59) defined witch-hunting as the unlawful and intentional hunting or searching for a human being who is believed or suspected to secretly use supernatural powers for nefarious purposes. Witch-hunting is the recurrence of punitive expeditions by vigilantes or self-appointed witch-finders, often leading to the murder of the accused and the confiscation of their properties (Miles, 2014).

1.5.5 Witch-doctor
Chireshe (2002) defined a witch-doctor as person who is believed to have special magic powers that can be used to heal people. According to Chireshe, they are also referred to as traditional doctors.

Chilimampunga (2011:7) defines a witch-doctor as a person who is believed to have magic powers that can be used to heal people, cleanse or exorcise witches, use charms to protect people and their property from witchcraft. Some of them are also witch-hunters
However, other scholars are of the view that the term witch-doctor has a pejorative meaning – it is a colonial term. Over the past years the ‘medicine man’ and his work has been grossly misrepresented and misunderstood. Swantz (1990) and other Western sensationalism has attached to him the name ‘witch-doctor’, which calls up visions of bizarre stereotypes of Africans which are both inaccurate and offensive. In this work, I shall prefer using the word traditional healer. However, wherein the term witch-doctor is used, I do not refer to the negative meaning or its colonial connotation.

1.5.6 Suspected witch
A suspected witch is defined by Chilimampunga (2011:7) as a person who is suspected to have magic powers, especially to do evil things

1.5.7 Muti-murder
According to Minnaar (1998:20), muti-murder is the murder for medicine or the killing of people so that their body parts can be used as ingredients in magic potions (Zulu: muti, Venda: mushonga), an act often erroneously labelled as a ‘ritual murder’.

1.5.8 Criminal responsibility
Criminal responsibility is defined as ‘a person’s ability to understand his or her conduct at the time a crime is committed’ (Cohen, 2011). This, therefore, means the persons’ thoughts or state of mind by the time the role actor commits the crime. In other words, it denotes to what is anticipated or expected of one when a crime is committed.

1.5.6 Indigenous Knowledge Systems
This term is used by Ajibade and Shokemi (2003:7-44) to explain the knowledge systems that are developed by a community as opposed to the scientific knowledge that is generally referred to as ‘modern’ knowledge.
1.5.7 Western Knowledge Systems
Hammersmith (2007) notes that the WSKs is a term which comprises of the social norms, ethical values, traditional customs (such as beliefs) and specific artifacts and technologies as shared within the Western sphere of influence. In other words, WKSs refers to the content and context of knowledge systems driven by the values and cultures of Western civilisations.

1.6 Limitations of the Study
The primary limitation encountered during the investigation phase was the barrier of language. An interpreter was used during the semi-structured interviews and informal discussions with informants. The interpreter's grasp of the language could have been compromised due to dialect problems. However, to overcome this linguistic challenge, the researcher posed additional questions for clarification during the interviews and this was one of the reasons why the interviews were semi-structured, to permit the investigator to ask follow-up questions as a way of attempting to avoid linguistic misunderstandings in the translation process.

A second limitation was the difficulty in acquiring data from informants because of the sensitive nature of the topic under investigation. I was sensitive to the phobias of the informants by informing them that they were not obliged to answer questions that they were uncomfortable with.
1.7 Outline of chapters

The rest of the chapters are as follows:

**Chapter 2:** Literature Review and Theoretical Framework

**Chapter 3:** An exposition of the Indigenous Knowledge Systems: Witchcraft Beliefs and Criminal Responsibility

**Chapter 4:** Research Design and Methodology

**Chapter 5:** Data Presentation, Analysis and Interpretation

**Chapter 6:** Conclusion and Recommendations
CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

“It takes more than a horrifying transatlantic voyage chained in the filthy hold of a slave ship to erase someone's culture” – (Maya, 2008)

2. Introduction
This chapter builds on from the previous chapter and outlines literature on the subject of witchcraft. It presents a broad reassessment of the literature in this area of study and the underlying theoretical framework. It is important to note that the scholarly research interest and output in the area of IKS has increasingly been put in the spotlight recently in agricultural, legal, social, anthropological and environmental studies. The phenomenon of witchcraft beliefs has been written about by many scholars in the past. Many of these authors are from the background of anthropology, history and folktales. Due to this, the review of the literature focuses on tracing the necessary lines for establishing African value systems and IKSs when discussing witchcraft beliefs. This chapter critically reviews past and present literature in order to define the research topic and expand on research questions. It was through reviewing a vast amount of literature in this subject that this study made new and unique contributions to the progressive movement in the study. The literature review also unveiled gaps that this study aims to explore and reinforce.

The first subsection of the chapter critically elaborates that the belief in witchcraft is a system of cultural meaning and social action, woven into the fabric of life. Secondly, it gives a review and justification of the theoretical frameworks used in this study. The third subsection centers on the literature review of the primary and secondary sources in the field thereby exploring the past, current and futuristic paradigm of this study.

(a) Belief in witchcraft
This chapter starts by introducing the origins, historical developments and the current status of beliefs and practices of witchcraft and related phenomenon in South Africa and
Zimbabwe. The key argument is that witchcraft is a socially constructed reality which baffles many of the ruling elites in these two countries. In that vein, witchcraft presents paradoxes and dilemmas in the two jurisdictions. By paradox here I mean the contradictions arising from the ‘reality of witchcraft and its consequences’. For instance, South Africa and Zimbabwe are faced with the widespread killing of suspected witches and the perpetrators go unpunished while the two countries claim to be bound by the principles of the ‘rule of law’. The dilemmas arise from the limited and sometimes difficult choices available in dealing with the witchcraft phenomenon. A principal dilemma is that, by denying and/or pretending witchcraft does not exist, ruling elites lose their ability to control witchcraft-related cases or indeed help citizens in effectively dealing with the problem. Nevertheless, by confronting it directly they admit that it exists thereby reinforcing popular beliefs about it, and challenge their definition of being modern.

Today, the witchcraft phenomenon holds a prominent feature of society. It is generally debated in the mass media, politicians and the elite condemn it, it manifests in courts of law and forms a consistent segment of public discourse. In certain instances witchcraft cases may be taken lightly, but in most cases, witchcraft accusation is feared as its consequences are ugly. A careful scrutiny of the witchcraft phenomenon unveils that the treatment of the subject of witchcraft in these two countries has been a diverse one, comprised of occasional references and piecemeal studies. One of the dilemmas of social and cultural development in Southern Africa (especially South Africa and Zimbabwe) is the extent to which people have been made to look upon witchcraft and witch-beliefs as an indication of primitiveness. This is in spite of the overwhelming evidence of the continuing tenacity of the beliefs among the people.
McCain and Segal (1969:52) note the following;

"Why don't you believe in witches? That question may seem ridiculous but our ancestors, who were probably as bright as we are, did believe in them, and acted accordingly. Why are we so different and superior? The evidence for or against witches is no better than it was 400 years ago. For us, it is almost impossible to believe in witches; for our ancestors, it was equally difficult to deny their existence. Our new beliefs exist, in part, due to the development of 'scientific attitudes'."

The main issue at hand seems to be the matter of questioning the supernatural which people do not have a coherent understanding over. Belief in Christ and ancestral worship are also topics of great concern which numerous people do not believe in. However, those who are Christians believe in Christ and the Holy Spirit and others who are not Christians seem to understand their belief and tolerate it. This is the same with other religious groups that many subscribe to. Nevertheless, this is not the case when it comes to belief in witchcraft.

The question of whether witches exist or not is a question of fact; and as such it can only be settled by appeal to authority or sensory evidence. According to Glanvill (1976:3),

"There are thousands of eye- and ear-witnesses who have attested to 'things done by persons of despicable power and knowledge, beyond the reach of art and ordinary nature', and these include not only "vulgar" persons, but 'wise and grave disciners...when no interest could oblige them to agree together in a common lie'. Unfortunately, no amount of empirical evidence could convince those who do not believe in witches, 'since those that deny the being of witches, do it not out of ignorance of these heads of argument...but from an apprehension that such a belief is
As pointed above, witchcraft is a culturally constructed belief. In other words, it is a cultural question. Culture is a fundamental concept in any society. It is the ideas and behaviour learnt by individuals and groups in adapting to their environment. Culture of a society entails the formation of designs for adapting, living together and interpreting events. In that regard, it is worthwhile to analyse culture from the point of view of anthropology. Furthermore, culture comprises of both the material and subjective elements of a society. Witchcraft operates across these aspects. In that vein, it is shown that witchcraft is woven into the fabric of societal life to the extent that it is not easy to say whether the phenomenon is a form of religion, social control mechanism, mere belief or calculated malevolence. So when it comes to spirituality or belief in the supernatural, it speaks more on different ways of expressing oneself. It is so because believing gives grounding and meaning to one’s life. In that regard, Christians believe in God and the Holy Spirit thus, giving them grounding and identity. Just like Christians, those who belief in witchcraft also draw their grounding and identity from their belief system.

2.1 Theoretical framework
In this chapter, I discussed the theoretical and conceptual framework of the study, which focuses on the socio-cultural construction of witchcraft belief among the indigenous people of South Africa and Zimbabwe. These, among others, unravel the different concepts that are relevant to this study; for example, gender, culture, African values and criminal responsibility.

African cultural practices like witchcraft and witch-hunting are socially constructed and socially represented; some view it as evil and oppressive against women who are usually
victims while some find solace in it. Thus, what is important is that the theories employed in this study recognises the influences of social constructions, power relations and subjectivity on gender and gender relations, as well as how people identify and function within their various role frameworks. These have implications for how the subjects under study perceive themselves as well as their roles in their respective communities.

Tamale (2011:25) states that;

“Though it is extremely important to develop our homegrown theories ... and to always be keenly aware of the dangers of uncritically using theories that are constructed from the global North to explain African societies, the latter cannot be completely ignored.”

Tamale corroborates her claims based on three reasons. Firstly, she argues that Western theoretical perspectives define the underlying rationale and practice of the legal regime governing the witchcraft belief phenomenon in Africa. Secondly, she claims if we were to totally discard the Western concepts and theoretical frameworks, we would spend considerable resources reinventing the wheel, which she views as an unnecessary enterprise. Lastly, Tamale (2011) further argues that there is a lot of sense in using existing theoretical bases as a starting-point and then correcting or revising them, in light of the contextual evidence collected in current studies.

The foregoing analysis alludes that African scholars cannot completely reject Western theoretical foundations because they provide some expedient tools for researchers to reflect upon and to develop insights concerning African belief systems and the thorny issue of criminal responsibility. What follows, is the theoretical basis employed by this study;
2.1.1 Theories of Criminal Punishment

In dealing with this topic of witchcraft beliefs and criminal responsibility, one of the fundamental aspects dealt with in this whole research was a case wherein a person kills a ‘witch’ while labouring under overpowering fear that the victim possesses harmful witchcraft powers. The first question asked and dealt with is; is such a person a fit subject of criminal punishment? If the answer to this question is in the affirmative, then the second question would be under what possible theory of criminal punishment would the punishment of the witch-killer be justified?

To establish whether people who injure or kill suspected witches while labouring under overpowering fear that the victim possesses harmful witchcraft powers should be subjected to the criminal law’s regime, the possible penal theories under which the punishment of such people could be justified.

To establish whether people who kill ‘witches’ while labouring under over-powering fear because of their belief in witchcraft should be subjected to the criminal law’s regime, we need to examine the possible penal theories under which the punishment of such people could be justified. Consequently, for justice to be done in establishing such a thorny issue, a discussion of the theories of criminal punishment which have been propounded over the years by various authors will be discussed. These theories of criminal punishment include the so called absolute theory (retributive theory) and the relative theories (utilitarian theories). To try to exhaust all the aspects that will shed light to our answer, these two broad theories shall be discussed. The prominent English writers, Clarkson and Keating (1958), indicate that discussions of the retributive theory tend to be confused because the term ‘retribution’ is used in various senses. These senses include revenge, denunciation, expiation and just deserts. Beneath is an outline of these various senses of the retributive theory.
2.1.1.1 Retributive theory

The retributive theories of punishment underscores the past wrong deeds of the accused so as to afford justice to his or her wrong doing. According to Hudson (1996), the future of such a perpetrator is not regarded as he or she has broken the law and deserve the punishment. The researcher shall now discuss the various senses.

(a) Denunciation

The retributive theory used in the sense of denunciation signifies that punishment must be enforced to cater for the society’s outrage at the perpetrator’s wrongdoing. Incidentally, punishing a criminal signifies an expression of the community’s revulsion.¹

Nonetheless, it is clear that denunciation as a form of punishment promotes what can be argued to as dehumanising. In addition, the punishment imposed in such a case does not fit the crime. As a form of punishment, denunciation loses much of its lustre as a justification for criminal punishment (Lawrence, 2002).

(b) Revenge or Vengeance

The retributive theory of punishment can as well be used as revenge or vengeance. This form of punishment dates back to the Mosaic laws of the Old Testament that stress the idea of “an eye for an eye” (Exodus 21:24). On the other hand, Barton points out that for an act to be an act of vengeance the force used must be exercised by the victim or a close family member to punish another for his actions against the victim (Barton, 1999). In contrast, it is regrettable to note that revenge as a form of punishment demonstrates the ugliest face of human nature. More so, it represents the breakdown of human intelligence and goodwill (Cohen, 1940). Largely, revenge ignores the circumstances of the perpetrator.

¹ (http://ahmadiyyatimes.blogspot.com/2013/09/perspective-outrage-is-wrong-reaction.html; accessed 06/12/2016).
(c) Expiation

Expiation is explained to entail that just as a sinner must do penance for his sins at church, a criminal must be punished so as to cleanse of him or her of the crime. Jones submits that the core of the expiation view is that by suffering his or her punishment for the crime, the criminal purges his or her guilt (Howard, 1965:54). Expiation is questionable since the criminal in our case kills or injures under the over-powering belief of witchcraft and in his or her view of his belief does not need expiation.

(d) Just deserts

The retributive sub-theory of just deserts requires that the quantum of their punishment should be in proportion to the seriousness of their crime. Under this sub-theory of just deserts, the main basis of this type of punishment should be contrived to fit the moral gravity of the crime. In addition, Morris (1981:257) acknowledged the fundamental difficulties in determining with precision a prisoner’s just deserts. Instead, retributivism would often lead to a range of possible penalties.

Now that I have assessed the literature on retributive theory with regards to punishment of one who injures or kills a ‘witch’ while labouring under over-powering belief in witchcraft, focus will now be on the relative theories of punishment on the same aspect.

2.1.1.2 Relative theories

Relative theories consist of deterrence and rehabilitation. Mainly, the relative theories are founded on the view that punishment of criminals is only a means to achieving a secondary purpose. These theories are usually referred to as utilitarian merely because they are drawn from the utilitarian philosophy Bentham. Utilitarians understand punishment only as a means to an end, and not as an end in itself. They perceive punishment in terms of its ability to reduce crime and do not focus on the punishment that “ought” to be imposed on offenders. To utilitarian philosophers like Bentham, punishment...
can be justified only if the harm that it prevents is greater than the harm inflicted on the offender through punishing him or her. These theories are rehabilitation and deterrence.

(a) Rehabilitation
The rehabilitation theory focuses on the criminal’s education; aims to train and educate criminals to become law abiding citizens. In that vein, it focuses on the offender’s social background and regards crime as the outcome of negative social factors that should be cured through treatment. To add, rehabilitation imposes that it is because of the negative social and psychological factors in the background of the criminal that they commit crime (Feeley and Simon, 1992). However, a critical eye observes that rehabilitation as a form of punishment violates people’s human rights. Firstly, to punish a ‘witch-killer’ for rehabilitation reasons is to treat that individual like a dog (Mabbott, 1956).

(b) Deterrence
The classical philosophers such as Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794), and Jeremy Bentham (1748-1832) are generally labelled the brain-child of the popular deterrence theory that we now have (Ashworth, 1992). The main aim of deterrence is to prevent or stop crime. It should however be noted that the theory of deterrence is usually viewed from two perspectives: individual and general deterrence. I shall now discuss these separately.

(i) General deterrence
According to classical theorists, general deterrence is intended to put a stop to crime in the general population. In other words, general deterrence entails the imposition of punishment on a criminal to serve as a warning to other citizens that they would suffer similar punishment if they breached the law. Thus in punishing the role actor, the punishment serves as an example for others in the general population who have not yet participated in criminal activities.
(ii) Specific/Individual deterrence

Proponents of individual deterrence are of the view that punishing offenders harshly will deter them from committing crime in the future. In other words, individual deterrence advocates that society must punish a criminal who has injured another to the extent that he or she will be terrorised and deterred from committing future crimes. For instance, suspended sentence acts as a guard to remind the offender not to commit further crimes.

It can be noted from the foregoing analysis that the various punishment theories of punishment that have been discussed above have their inherent strengthens and deficiencies. With all these theories’ strengths and deficiencies in mind, the burning question that needs to be addressed is; what theory of punishment should be applied to a person who injures or kills a ‘witch’? At the present time, the so called ‘unitary theory’ that has gained support in most parts of the world is in my submission the relevant theory to be used to answer this question. This, therefore, leads us to discuss this theory of punishment which is known as the unitary or inclusive theory.

2.1.1.3 Unitary Theory / Inclusive Theory

The proponents of the unitary theory stipulate that all the above discussed theories should be merged together. In other words, those who espoused the inclusive theory of punishment advocate that all the theories of punishment may be beneficially employed. Accordingly, courts do not have to admit a single theory of punishment to the exclusion of other others but bring them all together with the primary aim being to determine the possible theory that may justify the imposition of criminal sanctions on a specific criminal.

2.1.2 Analysis

To sum up, it can be noted from the above discussion that a person who injures or kills a witch should be punished accordingly. For this study to clearly establish the criminal
liability of one who kills another person under the overpowering fear of a witch, a discussion of one of the cardinal philosophical cornerstones of the criminal law is important. This is the element of criminal capacity. It should be made clear from the onset that if a human being kills a witch and at the time of killing lacked the capacity to choose right from wrong, he or she does not incur any liability. In a case wherein one is liable for the crime in question, killing a suspected ‘witch’, an appropriate punishment should be imposed in line with the above discussed theories of punishment.

Gleaning through all the given theories, the researcher seem to concur with the proponents of the unitary theory which stipulate that all the above discussed theories should be merged together. This is so because the theory seem to weigh all relevant factors in the case and choose the most relevant theory applicable to the perpetrator. Accordingly, the researcher submits that in the adjudications and rulings made by courts, they should be grounded in this view and shun from adopting a single theory of punishment to the exclusion of others. However, the presiding officers should bring all the theories together with the primary aim being to determine the possible theory that may justify the imposition of criminal sanctions on a specific criminal. This study has be grounded on this theory as it sought to influence and/or usurp the jurisprudence that is used by any forums, tribunals or courts in punishing the person who kills another person under the overpowering fear of a ‘witch’.

2.1.2 Human Based Approach
The research employed a Human-Rights based Approach (HRBA) as the theoretical framework. A Human-based approach (HRBA) emphasises about the empowering of right-bearers to ascertain the meaning and content of their rights. This, therefore, would enable the right-bearers to enforce these rights. More so, it underlined the issue of accountability of individual and state institutions mandated to respect, protect and fulfil the rights. Also, this translates needs into entitlements in a HRBA. Thus, adopting this approach in addressing witchcraft beliefs and criminal responsibility served the purpose
of requiring both the state and non-state actors (primary duty bearers) to respond to the needs and circumstances under which the accused witch and alleged bewitched are deprived of their rights.

HRBA has been defined as: “...a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights” (UNOHCHR 2006:15). Human rights can provide the framework for action which social enterprise needs. Rights can serve as a benchmark; an agreed upon ethical framework that can help to overcome the ambiguity that many perceive in life, social problems. The normative framework of international human rights is particularly concerned with individuals and groups that are vulnerable, marginal, disadvantaged or socially excluded.

More so, the HRBA was employed in a unique way; by focusing primarily on Sustainable Developing Goals (SDGs). Of late, the United Nations (UN) set a foundation for the starting of a post 2015 development agenda termed as SDGs which are set to be achieved by 2030 thereby succeeding the Millennium Development Goals (MDGs) which expired by December 2015. The intended SDGs suggest key progressive developments with regards to IKS; Goal 11.4 and 16:1 of the SDGs:

“Goal 11.4:

Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable.
Target 4: Strengthen efforts to protect and safeguard the world’s cultural and natural heritage

Goal 16.1:
Goal 16: Promote peace and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.
Target 1: Significantly reduce all forms of violence and related death rates everywhere.”

By grounding this study under this theory, the researcher argues that if the proposed SDGs are to be attained amicably within the stipulated time-line, states (South Africa and Zimbabwe) should adopt a HRBA in matters of cultural issues, especially belief in witchcraft. As such, this study employed the HRBA as a means to realise IKS-related SDGs to guarantee that the related-goals are trailed in an impartial, just and sustainable manner.

By invoking this HRBA, the researcher sought to strike the balance of human rights violations that have been ‘witnessed’. Although cultural rights are indispensable to the enjoyment of all other human rights, some human rights theorists and practitioners perceive them to be in tension with other rights. In recent years, human rights advocates from a broad spectrum of countries, religions, ethnicities, and social sectors have worked to emphasize the indivisibility of human rights and, in particular, to reassert the inter-relationships between cultural rights and other ‘human rights’. Despite a contemporary understanding of culture that clarifies its changing and contested nature, ‘cultural relativity’ (the principle that an individual's beliefs and activities should be understood by others in terms of that individual's own culture) is sometimes invoked to justify human rights abuses against alleged ‘witches’. The notion of cultural relativity emanates from an ethic of respect for cultural difference, which is wholly compatible with and in fact essential to a human rights framework (SDGs). However, a problem arises when respect for difference is conflated with an injunction against opposing any practice labelled ‘cultural’. As a result of such faulty logic, one set of rights (cultural rights) is used to excuse violations of another set of rights (alleged witch’s human rights).
2.1.3 Psychoanalytic theory
In addition, the research was premised upon the psychoanalytic theory, which is the brain child of Sigmund Freud. The theory depicts growth as primarily an unconscious phase and as profoundly decorated by emotion. Psychoanalytic theorists deem human behaviour as purely a smokescreen. However, to have a deep genuine understanding of growth and the human behaviour exhibited, one has to look critically at the representational significance of behavioural traits and the unfathomable inner workings of the mind. With regards to witchcraft beliefs and witch-killings, psychoanalytic theorists stress that early surroundings and childhood experiences extensively mould growth. In other words, they stress that childhood is father or mother to adulthood. The researcher used this theory to assess the mind of the witch-finder and witch-killer.

To Freud the psychoanalytic interview was not only a method of treatment, but it was also the research method upon which psychoanalytic theory is based:

“It is indeed one of the distinctions of psychoanalysis that research and treatment proceeds hand in hand.” (Freud, 1963:120)

An essential aspect of psychoanalytic technique is interpretation of the meaning of the patients’ statements and behaviour. The therapeutic interpretations are open to ambiguity and contradictions, and to the multiple layers of meaning of a dream or a symptom.

The theoretical impetus for the study came from psychoanalysis. Methodologically, the study was an innovative combination of interviews and case study. The best way to approximate an adequate view of the whole person was through the freedom of expression, the interview offered, as it permitted inferences of the deeper layers of the subjects’ personalities behind an antidemocratic ideology. The indirect interview
technique with a flexible interview schedule consisted of ‘manifest questions’ as suggestions for the interviewer to pose in order to throw light on the “underlying questions”, derived from the project’s theoretical framework. These underlying questions had to be concealed from the subject so that undue defences would not be established through the subjects’ recognition of the real focus of the interview. The interviews were analysed qualitatively in relation to the theoretical framework of the study. The researcher and research assistants had to undergo a mini-training workshop to be able to conduct the interviews and interpret the statements and behaviours of the participants. The interview results were compared with the findings from the questionnaires, and the interviews also served to check upon the validity of the questionnaires.

2.1.4 Socio-cultural theory
Lastly, the discussions of this study were informed by the socio-cultural theory as initially fathered by Vygotsky (1931/1997). The theory at hand stresses the relations between developing people and the culture they submit to. In other words, this theory examines the significant inputs that society contributes to individual development. In his theory, Vygotsky contends that a person’s development cannot be understood by a study of the individual thus, focusing meticulously on examining the exterior social African values in which that individual life has been shaped. The framework of this theory helped inform the criminal liability of a witch-killer who commits crime based on the over-powering belief in witchcraft.

Since the witchcraft phenomenon relates to gender and power relations between people, it is relevant for the researcher to discuss here the cultural matrix and social agonies to understand the study. Furthermore, the idea of re-interpreting the past social and cultural practices related to the witchcraft phenomenon in order to understand the present beliefs and practices of witchcraft hatches new strategies for the future criminal responsibility of one who commits a crime based on the belief. To do this, some concepts need to be unpacked for clear understanding of the argument that emerges in this study.
Worthy of note is the gender aspect embedded in the witchcraft belief. African gender scholars acknowledge that gender relations of power exists in most African contexts. Weedon (1987) notes that patriarchy alludes to power relations in which women's interests and views are subordinated to those of men. With regards to the phenomenon under study, ‘women’ are more accused of practising witchcraft than ‘man’ and the issue is formulated into a social meaning that witches are women. In that vein, patriarchal power rests on the social meanings given to biological and sexual difference. These power relations take many forms; division of labour in the family and society, cultural norms, belief systems and so no. As a result, patriarchy as the social and cultural system positions men to occupy a dominant and privileged category over women. As a result, when an evil is done in a community, women are always a scape goat and fall prey of witchcraft accusations and many more.

In the African tradition and cultural beliefs, the prevalence of polygamy has played a pivotal role in witchcraft accusations. It is common for wives to purchase charms to safeguard themselves from being bewitched by co-wives. Furthermore, intra-family witchcraft accusations among co-wives in polygamous marriages are common. Thus, polygamous marriages provide fuel to start problems that end up resulting in one being accused of practising witchcraft. This theory shall be adopted in that angle so as to check the belief in the selected areas of Zimbabwe and SA.

The social issue of wealth and poverty also play an important role in the accusations of witchcraft. Many Africans believe that poorer members of the community use witchcraft to gain the fortune of the wealthy. On the other hand, wealthy people are believed to use witchcraft to gain their fortunes by bewitching the ones who are poor. Extreme economic disparities between rich and poor become a factor in such witchcraft accusations.
The elderly are also a group that is highly suspected of practicing witchcraft in numerous African cultures. Many people believe that the elderly in the community live long because they obtain new soul-vitality, most likely from devouring the souls of tender children. Again it is alleged that many elderly people do not cry at funerals because they are the ones who killed or bewitched the deceased. Additionally, the facial wrinkles of the elderly are usually associated with witchcraft hence, they are accused of being witches. Therefore, the theory shall be used in interpreting the social and cultural aspects related to the witchcraft phenomenon in order to understand the present witchcraft beliefs and practices that can aid in providing effective palliates in addressing the issue of criminal responsibility in witchcraft cases. Thus this theory examines the significant inputs that society and cultural practices contributes to individual development and behaviour traits.

2.2 Literature Review

The following aspects are covered: the witchcraft phenomenon, witchcraft beliefs; accusations of witchcraft; witchcraft and the law; African value systems and healing; witchcraft and politics; African value systems (IKSs) and criminal responsibility as part of the traditional beliefs and African value systems. These are discuss below separately.

2.2.1 The witchcraft phenomenon

Some Western scholars, such as, Pelgrim (2003), have written authoritatively that witchcraft is something from the past in many African countries. In addition to Pelgrim’s views, numerous anthropological studies about witchcraft focused more on issues relating to ancestral or traditional beliefs, exorcism and rituals of purifications of witches (Zahradniček, 2006). For instance, Miller (2002:90-105) in the essay ‘Folk Healing Aspects of Witchcraft Practice in Seventeenth-century Scotland’, gives an exhaustive account of charmers’ practice. This essay was written in Scotland and based on the Scotland views, and was published in 2002. A critical reflection on this essay depicts that conclusions deduced from this research does not reflect the present picture in Zimbabwe and South Africa. Basing on this foundation, the researcher’s approach on this literature was based on the assumption that, to make sense of the social reality (African values and
norms) and contexts of witchcraft, one needs to take into cognisance the basic parameters upon which social relations and ideas are premised in the communities of a country. Worth noting are the historical dimensions and the neo-colonial situation which has plummeted South Africa and Zimbabwe into the position they are in terms of the violence perpetrated against alleged witches. Another issue which the researcher addressed which the above anthropology study omitted is that of discourse among diverse people which provides the basis for beliefs and meaning systems that operate in society. The present research examined the African value systems affecting Zimbabwe and SA which Miller did not cover thus adding to new knowledge.

Witchcraft, sorcery and magic are well-researched topics in anthropology where the topic falls under the study of religion amid societies. However, anthropological works on witchcraft and witch-hunts have not studied the problem from a legal perspective. They have focused mostly on sociological variables of gender, class and kinship (Gluckman 1968:20-34), and thus a gap exists which the researcher covered; merging the legal and sociological aspects.

Niehaus (1997:17) establishes that those who believe in the witchcraft phenomenon do not admit things at face value but they seek metaphysical answers. The Mpumalanga Witchcraft Suppression Bill (2007:2) describes witchcraft as:

“…the secret use of muti, zombies, spells, spirits, magic powders, water, mixtures etc, by any person with the purpose of causing harm, damage, sickness to others or their property.”

This definition was not easily accepted and Trapido (2010:1) disputes that the definition was thrown out by ‘self-proclaimed witches’ on the basis that it labels witchcraft as being injurious and depicts witches as being a menace to the society within. Furthermore, the
definition of a ‘witch’ was set by Ralushai before the Truth and Reconciliation Commission (TRC) in July 1999:

“A witch is a person who is endowed with powers of causing illness or ill luck or death to the person that he (she) wants to destroy.” (Leff, Fontleve and Martin 2001:6).

According to this report Ralushai et al. (1996:4), witches destroy property and animals, bring sickness or bad luck and cause death without provocation. On the other hand, Olukoya (2004:174) describes a ‘witch’ as a person who uses magic for evil purposes or who practises sorcery. In that regard, it should be noted that some scholars differentiate witchcraft and sorcery and others treat them as one. There are diverse similarities between these two and the notable differences as well. Maboea (2002:43) submits that witchcraft is an inherent quality that allows people to change shape, go about magically and invisibly whilst sorcery is the process of using destructive medicines to cause harm to enemies.

Maboea (2002:19) further argues that according to African Traditional Religion (ATR) sorcerers and witches are agents of disruption and destruction in the communities. Other scholars view witchcraft as the power of a person to do harm or influence nature through occult means (Makisto 2011:1). The present researcher begs to differ with the view of Maboea and other authors that ATR opines sorcerers and witches as agents of disruption and destruction in the communities. Noting from the foregoing analysis, the researcher cleared the dust raised in this area of study and paved the arena for researchers who are clouded by these diverse definitions thus giving room to have witchcraft beliefs understood. The researcher’s newly formulated unique approach leads chronologically to the raising of the following pertinent questions: “Is witchcraft a mere construction of the imagination? Are witches just a superstitious remnant of the ‘dark’ pre-colonial past or is there a more "rational" explanation for their existence? Is witchcraft an expression of the
failure of the ruling elites to come to terms with an "uncaptured" peasantry? What are the roles of rumor and gossip in the propagation of witch beliefs?" These thought provoking questions were addressed by the researcher as a means to fill the gap in literature which other scholars lacked as they seemed blinkered in addressing gullible readers.

2.2.2 Witch-hunting
A discussion of witch-hunts will be incomplete if no mention is made of the Salem witchcraft and witch-hunt cases. The Salem witchcraft and witch-hunts stand out very prominently in the history of witchcraft. Salem (Present-day Danvers, Massachusetts) was a town in colonial Massachusetts and Salem witch-hunting is one of the most infamous examples of mass execution in American history. The Salem witch trials transpired between February 1692 and May 1693 and led to the execution of many people (Linder, 2009). Several towns in Massachusetts were involved, including Salem Village, Ipswich, Salem Town and Andover (Behringer, 1999: 335-351). One pivotal contributing factor to the Salem witch trials was the superstition prevalent in the then European and American societies. This was the belief that Satan was present and active in Europe and was responsible for myriad calamities that plagued the world. This view eventually spread to Colonial America and resulted in a widespread belief in demons and attributions of all misfortunes to the supernatural.

In Europe and North America where these beliefs of Satan and demons became prevalent, witchcraft was alleged to be used by peasants who were said to invoke particular charms for farming and agriculture (Poole, 1869). Overtime, the idea of white magic transformed into dark magic (associated with demons and evil spirit). Men and women in Salem believed that all misfortunes such as crop failures, deaths and accidents were the handiwork of the devil. During this time all aspects of life revolved around the church. Prior to 1680s, Massachusetts government had been governed by conservative Puritan secular leaders. Puritans, influenced by Calvinism, opposed many of the traditions of the Protestant Church of England. The Salem witch-hunts in America dealt especially with female behaviour and inheritance conflicts. In this case the ‘female witch’ was the
victim of conflicts over property, religion, social status or social stress caused by epidemics or wars (Federici, 2008). In 1484 the Hammer for Witches became the guidebook for identifying, trying and sentencing presumed witches (Paul, 1977:1-31). Consequently, the secular state took over the great campaign of witch-hunting and persecution. It is therefore the secular state’s great campaign that spread the issue of witch killings around the world and resulted in countless innocent persons, particularly women, being executed by burning.

From then, witch-hunting starting to become so rife in numerous African countries. Witch-hunting has been given different names depending on who was saying it. In Ghana, it has been labelled mob justice or jungle justice in Cameroon. A plethora of thought has often viewed witch-hunting as the last defense against a world which is increasingly uncontrolled and uncontrollable. Even though witch-hunting activities or violence have often been sensationalised in media and presented in terms and language which persuades the majority of people to view these acts as shocking or appalling, it is also viewed as a good thing in some societies where it is practiced. The witch-murders in South Africa and Zimbabwe are submitted by this researcher as an outward manifestation of the ambivalence of state-societal relations in the countries. As a matter of fact, the witchcraft laws of both countries, being archaic and ambiguous, are inappropriate instruments in addressing a complex phenomenon like witchcraft belief. It is for this specific reason, societies who believe in witchcraft have had the audacity to torture, banish and kill alleged witches.

Between 1987 and 1988, in a Northern district (Lebowa) of South Africa, a total of 74 villagers were burnt or hacked to death after being accused of witchcraft (New-African October 1988:30). Similar outbreaks of witch-hunting occurred in 1991. During the first half of 1991, thirty-two accused ‘witches’ were killed, twenty seven of whom were women. Other suspects in the area were allegedly driven out of their homes, thereby providing peace officers with the problem of finding a camp to accommodate 125 suspects. Finally,
a camp was founded, and fittingly named ‘The Witches Hill’. The camp was said to have consisted of;

“A few army tents, most in makeshift shacks of corrugated iron, situated on an isolated spot in the middle of grazing land, a half an hours walk from the nearest water tap, farther still to the nearest store-a difficult journey for many of the residents, who are elderly.” (Shapiro, 1991; cf. New-African, October, 1988:30).

According to Koch and Ritchken (1990), when FW de Klerk (the then South African State President) unbanned previously banned political parties and released a number of prominent political prisoners including Nelson Mandela, witchcraft and witch-hunting in South Africa had become a political weapon (Koch and Ritchken 1990:15). After the release of these political prisoners, a political rivalry brewed between the black people and it resulted in a brutal battle as many black people were accused of being impimpi (government informers) or witches (Terril, 2013). Furthermore, witchcraft accusations and the persecution of alleged witches flourished as countless innocent people were made scapegoats and some executed in a bid to remove political opposition. The majority of people affected by such persecution were the poor, women and the elderly.

On the other hand, the political atmosphere in the course of Zimbabwe’s war for independence was dominated by allegations of the use of spirit mediums. Zimbabwe African National Union (ZANU) and Zimbabwe African Peoples Union (ZAPU) were said to employ the use of spirit mediums. Long before the Chimurenga (war), the spirit mediums were known of cleansing communities from witchcraft. In addition to cleansing to communities, these spirit mediums allegedly played pivotal roles during the liberation period. However, these spirit mediums that played a pivotal role in the mobilisation were side-lined in the post-liberation spoils after the triumph of ZANU and ZAPU in the protracted struggle in 1980. The new government found itself haunted by the resurgence
of witch beliefs and practices that led to many cases of witch-hunts. People consequently petitioned about the commotion witch-hunting was causing in their families and communities. Zimbabwe Traditional Healers Association (ZINATHA) was conceived as an institute to accommodate traditional healers and customary norms and practices. This noble goal which was assigned to ZINATHA at its formation quickly became an illusion. Traditional healers in ZINATHA became overzealous in their witch-hunting activities. Some members of ZINATHA were even indicted for such overzealous activities. This led to numerous petitions being sent to the government about the unpopular witch-hunting activities. As a result, the government attacked bogus spirit mediums and labelled witch-hunters as a ‘retrogressive development’ and ordered ZINATHA to put its house in order and re-orientate its membership in the direction of more scientific and positive approaches to herbal practice. The current researcher argued that the continuance of witchcraft in South Africa and Zimbabwe has to be assessed in an historical context – this is an unfair assessment. As such, the witchcraft phenomenon should be seen as one of the paradoxical expressions of state formation in Africa. In addition, it is as a consequence of the ambivalent stand taken by governments in the countries concerned.

Kgatla (2009) in his article noted that belief in witchcraft and magic is a common phenomenon across the world and in some societies alleged witches are hunted, persecuted and killed. Kgatla explored the intensification of malicious accusations of witchcraft and the consequential witch-kilings in South Africa. His study discovered that in the last three decades as many as 20 000 people were killed between 2004 and 2008 because of such witch-hunts. He submitted that in numerous instances, people’s gullibility is exploited by witch-hunters. Furthermore, he unveiled that in many cases the accusers often stand to gain in some way through the vulnerability of those they accuse. This article explored witch-hunts as a reaction to disaster as related to gender bias and relational problems. Finally, it showed that such persecution is difficult to control with social institutions. In an attempt to drill the veracity of the matter under study, the researcher noted that one of the predicaments of “social and cultural development” in South Africa and Zimbabwe is the extent to which people have been made to look upon witch-beliefs
as an indication and level of primitiveness and backwardness. Regardless of the overwhelming evidence of the persisting tenacity of the beliefs among the people, the witchcraft subject is rarely discussed. In a case where it is brought to the fore, it is discussed in secrecy and is mentioned almost indirectly. Surprisingly, although many people in South Africa and Zimbabwe, “of whatever status and rank”, are more inclined to believe in witchcraft. This made the researcher to note that the witchcraft phenomenon is an issue that appears better believed than discussed. In the struggle to critically engage why this is so, the reason for the warped attitudes to this phenomenon are rather complex and mind boggling.

Kugara (2015) examined the human rights implications of witch-hunts in selected areas of South Africa and Zimbabwe. He postulates that the incidence of witchcraft-related crime is patently high because these cases are largely unreported thus, poses serious enforcement problems to the police and society at large. Considering the brutal torture and killings that are frequently perpetrated by witch-hunters, the efficacy of the legal mechanisms that regulate the rights of alleged witches and witch-hunters was critically assessed. The primary motivation for the study of Kugara was the need to address the lack of updated laws and scholarly legal writing on witch-hunting related crimes. In his recommendations and suggestions based on the data gathered, he noted that the issue of witch-hunting requires a holistic approach involving stakeholders from relevant disciplines to make contributions in addressing this multi-dimensional phenomenon. Acknowledging the bases that has been laid down, it should always be noted strongly that witchcraft is one of the most mentioned subject but most unclear to many. Resultantly, this unclear atmosphere has hatched different ideas and misunderstandings about the witchcraft phenomenon. It is because of this that several definitional problems arose about the subject. ‘Witchcraft means different things to different people corresponding to historical developments, distinct cultural meaning systems and language variations’ (Okwaro, 2010: 17). The researcher supplemented the literature by elucidating on these complexities.
The socio-cultural underpinnings of beliefs in witchcraft and witch-hunting in South Africa and Zimbabwe seem to be similar. For this reason, it was deemed useful to merge the discussion of witch-hunting in South Africa and Zimbabwe. This study investigated the human rights implications caused by witch-hunting. A discussion of witchcraft and witch-hunting inevitably revisits the tensions between traditional and modern African culture and value systems. As such, an examination of the advent of the witchcraft suppression Acts and witch-doctors demonstrates the implacable antagonism between the traditional and the modern in African societies. The gap of this research thesis was to problematise the correlation made between witchcraft belief and violence and to investigate whether these two concepts are mutually constitutive. Also, the researcher investigated the criminal responsibility of a witch-finder and/or witch-killer. The purpose of this investigation was to gain a deeper understanding of witch-hunting related human rights violations and how it is perceived and understood in communities where it occurs.

2.2.3 Witchcraft beliefs and accusations
Numerous anthropologists have conducted research on the African beliefs in witchcraft. Among the many scholars, Gluckman (1955) and Evans Pritchard (1976) also played a pivotal role in their work by authoring that witch accusations were employed as 'a safety valve' to do away with dissatisfactions and/or disagreements in African communities. In their writings, these two construed that witchcraft accusations were used as tools for establishing social order in life through explaining the discourses of life. The researchers above are of relevance to this present study in looking at the beliefs of African people. It seems that in the “foreseeable future, South Africa and Zimbabwe will have to live with witchcraft, through both the denial of its existence on the one hand and on the other, the logic and culture of its practices.” Henceforth an oxymoron of its reality and the contradiction of its control. Having gone through all this, it is these meaning systems, oxymoron and challenges which concern and propelled the researcher to address the thorny and burning issues of the witchcraft phenomenon. To advance this exposition, the researcher provided a picture of South Africa and Zimbabwe as “nations progressing in modernization pursuits which should overwhelm witchcraft but which regrettably does not.” All this will result in a question which the researcher answered; what is there in this
modernization process which defies witchcraft? Furthermore, the present researcher gave special attention to witchcraft beliefs of selected areas in Zimbabwe and SA that are embedded in the African values in relation to criminal responsibility in the 21st century.

GechikoNyabwari’s (2014:1-9) writings on witchcraft beliefs indicated that many African people believe that the cause of many or almost all calamities like accidents and sickness is witchcraft. He suggested that Africans believed witches and wizards possessed mystical powers that could influence anything in life. Thus these beliefs in witchcraft and its practices were the agents of economic and social underdevelopment in Africa. Through the social change theory by Lauren Fitzpatrick (1976), GechikoNyabwari’s research deduced that some of the suspected witches or those who were caught red handed were confessing Christians. In this regard, he contended that most missionaries won African people into Christianity without disproving the African deep rooted teachings that mystical calamities happen as a result of witchcraft. This submission creates a contradictory situation created by these developments. These ‘developments will undoubtedly have repercussions in legal matters, politics and the polarization of elites and ordinary people’ (Cohan, 2001:46). In fact, in other given literature and public lectures, scholars assert that, ‘the present governments seem to be more eager to intervene in witchcraft issues, ‘because witchcraft is viewed as a dangerous form of subversion’ (Ciekawy, 1998: 36).

Middleton and Winter (1963:1) assert that witchcraft beliefs are everywhere in the world and not only unique to Africa. However, they maintain that despite their universality in the world, in Africa it is approximately common. They seem to come with a different approach by suggesting that these beliefs play a minute role in the daily living of some African communities. Furthermore, they recommended an extensive study on the knowledge of beliefs in witchcraft so as to fathom the behaviour of African people. Agreeing with these early scholars, Ashforth (2005) succinctly advocates that one should be well versed with witchcraft itself to be in a position of understanding life in African communities. In addition, extrapolating similar circumstances in South Africa, Ashforth (2002:126-127) posits that
more than one single system of witchcraft belief exists. Evans-Pritchard (1929: 637-638) postulates that even though some beliefs are peculiar to some ethnic groups, they may be assimilated, employed and changed by other groups and no wonder why at the end the belief system of many ethnic groups bear a resemblance. The above mentioned scholars’ recommendations and Ashforth’s assertions correspond with the researcher’s objective of assessing the African value systems with regards to witchcraft beliefs hence, new additional knowledge to be contributed.

Golooba-Mutebi (1998) investigated about witchcraft and social cohesion in Tiko, the North-eastern Lowveld of South Africa. He provided a descriptive study on the genesis of witchcraft accusations, who are the witches and ways of dealing with witchcraft violence. Employing the ethno-graphic research he disputed that assumptions are not all the time justified. His research was exclusively on strategies that require the poor to take part in decision-making, and the implementation of development projects and programmes. In this research, the researcher noted that successful poverty reduction inevitably leads to the growth of economic inequality which he noted to have the potential of provoking a deadly reaction of witchcraft beliefs. While this research is largely informative to this study on witchcraft beliefs, the present researcher to argued that Western science and laws against witchcraft have shattered the hope of accruing any possible benefit from IKSs to try to suggest possible palliatives to the problem of witchcraft beliefs, accusations and criminal responsibility.

Yaseen (2013) in her thesis entitled ‘Witchcraft Accusations in South Africa: A Feminist Psychological Exploration’ noted that regardless of the rationalism implicit in modern thinking, the belief in witchcraft is still active and alive. Chief among these beliefs is the notion that witchcraft is responsible for every sickness and death that occur. In addition, the witch-figure is believed to possess mystical powers and others say has got a pact with the Devil. Mawere (2010) also conceded that the metaphysical powers possessed by the witch-figure have the potential to harm or bring fortunes. A cacophonous hullaballoo has
been raised more on how this epistemology is linked to the African value systems, hence the justification for the present research.

Seidman (1966) noted that belief in witchcraft passionately drives people to violate the law for vengeance against witchcraft. In review of this belief, NkongeKagema (2014:9-18) opines that the over-powering fear of witchcraft by some African people has formidable force and persuades them to wish to eradicate suspected and/or accused persons from their societies. For instance, Hayes (1995:339-354) notes that numerous suspected witches were ruthlessly killed between 1994 and 1996 in the Northern province of South Africa because of these beliefs. In line with the belief, Kugara (2015:78) opines that Africans’ belief in witchcraft is timeless even if science and technology have not yet to come to elucidate the usual enigmas and phenomena which are irregular to Africa. In that vein, he notes that concluding from the unhurried tempo of technological progression would be injustice and missing the point. In addition, Kato (1969:401) stipulates that theambits of the law have got to merge with the reality that there are people who genuinely believe in witchcraft. Having all said by these scholars, the researcher sought to contribute to the witchcraft debate by arguing that the basis for witchcraft beliefs constitutes an indigenous knowledge system that is embedded in the African value systems that can contribute to enlightening the law thereby eliminating the mismatch that is there between the law and what Africans in the selected areas believe.

In addition, I argue that delay in accepting and applying the issue of witchcraft beliefs as an IKS is a manifestation of the western knowledge resistance and intolerance against the legitimacy of indigenous knowledge and belief systems. Dove (1988) stipulates that indigenous traditional beliefs are unsystematic and obsolete. Consequently, this resistance and intolerance of witchcraft beliefs have diminished the complete integration of IKS into the legal system. Moreover, the mere fact that most indigenous traditional beliefs are not systematically written threatens this knowledge with extinction (Langton and MaRhea, 2005).
Similar to Hayes’ submissions, Kgatla in the article ‘Witch-hunts in modern Africa and early modern Europe (1450–1750): A comparison Study’ also notes that the belief in witchcraft exists almost everywhere on the earth and alleged witches are tortured in various areas. In addition, the article shows the skyrocketing of witchcraft accusations and the consequent slaughters in SA and executions linked to the European witch-hunts. This article suggests that people’s gullibility is misused by the stronger and prominent ones who point the finger at others of practising witchcraft as they often stand to be advantaged through the vulnerability of their victims. In the end, the article discloses the complexity in harnessing witchcraft persecutions with social institutions. While applauding the work done by the above author, one ought to invoke the work of Reynolds (1963:165) who noted that just like the belief in religion or racism;

“...may not be eradicated by the stroke of the pen or fortuitous prosecutions...the cure, if this is appropriate expression, is the removal of ignorance by introducing a scientific view of the world through educating the masses.”

The present researcher humbly submits that the essence of restoring and safeguarding dignity in African knowledge and African value systems is grounded on the realisation that much of the knowledge production processes about Africa, and for Africa has been documented with possibilities for misrepresentation and misinformation. In view of such an assertion, there will be no doubt that this would have undeniably constituted an under-utilisation and misappropriation of IKSs and witchcraft. Thus this presents a dark area on the issue of criminal responsibility hence the area the researcher shed light on.
2.2.4 Witchcraft and social aspects in communities

Kohnert (1996) wrote that in spite of modern education, religion and social class of the people, the belief in occult powers is entrenched in various African societies. According to him, the progression in modernisation is even exacerbating this belief due to social stress and strain faced by African people. In addition, Kohnert establishes that this belief in occult forces has serious repercussions for development cooperation. His submissions were that progress development projects are most likely to add further social stress thereby making witchcraft accusations to flourish. Similar to Kohnert’s research, the current research focused on the implications of belief in witchcraft. In addition, new knowledge was added as the research went further to assess the African value systems with regards to witchcraft.

Walton (1996) researched about the concept of a witch-hunt as a structure of argumentation. In addition, he gives a well-structured way to follow in coming up with the guilty of an accused witch. In this paper, he mentioned the following as a cluster of properties characterising the witch-hunt as a skeleton in which arguments are used: stigmatisation, pressure of social forces, climate of fear, resemblance to a fair trial, use of simulated evidence, simulated expert testimony, non-openness and use of the loaded question technique. Acknowledging some crucial factors and issues raised by Walton, this research went a step further and deeper into examining whether belief in witchcraft should obviate criminal responsibility thus a new gap to be covered.

Some African scholars have observed that ‘witchcraft is reinventing and reproducing itself hand-in-hand with modern changes and on a rapidly increasing scale’ (Ciekay, 1998:41). Mensah-Aborampah (2005) further highlights that the new frontiers to be conquered are in the fields of urbanisation, political economy, power and gender issues. Nowadays, Tebbe (2007:93-4) observed that witchcraft beliefs are a central component of the cultural traditions and customs of many Africans. Moreover, Siegal (2003:135,136) notes:
“Witchcraft, it is clear, has not declined with independence and development; it has, rather, flourished in unexpected ways and entwined itself in political action and political thinking.”

Thus, the popularity of witchdoctors in many African societies reflects the prevalence of the society’s belief in witchcraft. The present study therefore investigated the discourse of the modernity of the law in response to the social changes vis a vis the African value systems. Sociological researches have concluded that most accusations of witchcraft are as a result of contradictions between forces of modernity and local traditional values (Westerfelhaus and Ciekawy 1998; Niehaus 2002). In addition, they have attributed these outcomes to the ‘difficulties of managing people’s occupation of multiple hierarchies of power or as perversions of power.’ This research, therefore, made an emphasis on the uniqueness and resilience of traditional indigenous knowledge base particularly the traditional belief systems which have stood the test of time. Moreover, the study also explored how the belief system(s) have led to the existence of certain behaviours or traditions.

2.2.5 Witchcraft and the Gender issue
In antiquity, witches have been argued to be women. No wonder why a witch has also been defined as a woman who is believed to have magical powers, especially to do evil things. In Western folklore, she usually wears a black pointed hat and flies on a broomstick (Creswell, 2013) Down history, witch-hunts have been seen as gender specific, with a large percentage of victims being elderly and solitary women (Alliance SA Review, 2007). This is why the word ‘witch’ itself has a feminine connotation. The masculine equivalent of a witch is wizard, a term which does not seem to conjure any evil connotation. Now that the gender bias of witchcraft has been introduced, the researcher therefore proceeds to examine this factor; why women are more often accused of practicing witchcraft than men. The essence of this undertaking was to later aid the researcher to examine and assess the legislation and policy relating to the witchcraft
phenomenon. This is mainly because the killings also indicate another discrepancy in the justice systems.

For some time now, witches are stereotypically believed to be females; generally elderly, full of wrinkles and poor (Kgatla, 2004). Women are beyond doubt the recurrent targets of witchcraft accusations and witch-hunts (Ludsin, 2003). Even though some cases have shown that men also practice witchcraft, females are viewed as the most dominant figures and little girls are strongly believed to succeed to their mothers’ or grandmothers’ witch powers (Ludsin, 2003:80). It is further believed that women learn witchcraft in childhood from their mothers-in-laws (Robert, 1996).

Exodus (22:18) states the following: ‘Any woman using unnatural powers or secret arts is to be put to death’ (Bible in Basic English Version, 1998). In the same vein, the New Kings James Bible Version (2000) says: ‘Thou shalt not suffer a witch to live.’ Barnes’ (2001) commentary interprets these verses as follows: if one allows the woman witch to live it means people will persist to suffer but for one to live with no problems then the woman witch must die. The main focus of witch-hunts have thus been on female witches. Writing as late as 2012, Levack (2012:3) observed that the relationship between women and witchcraft is quite obvious: witches were women; all women were potential witches.

Some churches have also been on the lead in propagating teachings that have exacerbated the issue of gender disparity and sown a seed that women are evil. Wagner (1997:304) who wrote about pastor Branham’s (founder of End Time Message Believers) teachings that have and still raise a bone of contention with regards to women:

“He also taught that women weren’t a created product of God, but were merely a by - product of man. He even suggested that animals were a higher rank of species than women because they were created from
nothing. Their secondary status, according to Branham, marked women as 'the most easily deceived and deceitful beings on earth'."

Branham also taught that women carried the seed of the Serpent. This doctrine taught that Eve and the Serpent had sexual relations in the Garden and created Cain. Branham said that God had meant for multiplication to come from the dust of the earth, as occurred with Adam, but Eve’s action with Satan altered that plan. Because of Eve and her sexual relationship with Satan, the inferior method of procreation came about. According to Branham (1997), every woman carries the literal seed of the devil.

Branham (1997: 17) once said:

“Every time that a funeral goes down the street, a woman caused it...Everything that's wrong, a woman caused it. And then put her head of the church...shame on her.”

In addition to pastor Branham’s teachings, this stereotype of women as witches has its own roots in the Aristotelian view of women as imperfect and the Judeo-Christian creed that women are the origin of sin and the fall of men. Women have also been said to possess the tendency to use hurtful words in situations of personal confrontation when men would resort to physical violence. The culture which attributed magical efficacy to verbal curses made accusations of witchcraft easier. It has also been suggested that the majority of witchcraft accusations documented in Scotland in 2008 were triggered by quarrels about women’s work and household duties (Zahradniček 2006). Quarrels about women’s work were the backbone of evidence used by prosecutors to demonise women of their productive and social roles within society Goodare (2002: 88).
Some anthropological studies have also advanced the view that women are more likely to be targets of witchcraft accusations because of what is considered the typically poor and often jealous relationship between mothers-in-law and daughters-in-law (Parrinder, 1963). Another view is that women may be targeted as witches because of the cultural practice of polygamy. Having multiple wives creates the possibility that one wife will accuse another of witchcraft (Parrinder, 1963). Similarly, the cultural practice of bringing women from their fathers’ families into their husbands’ homes leaves them vulnerable to attacks on their loyalty to their new family (Gluckman, 1955).

Carstens (2003) suggests a number of reasons for gender disparity and how it is linked to accuse women as witches: beliefs related to women’s reproductive powers, women are considered the weaker sex and in predominantly African patriarchal societies women are considered insignificant and are presented in a distorted style to accommodate a patriarchal cultural framework (Adrinkrah, 2004:10). Furthermore, Hults (2005) also points out that the talk and tradition surrounding the accusation of women as witches was closely intertwined to men’s thirsts to expand supremacy and prominence, deducted from ideals of masculinity.

The pursuit of witches could be seen as an action against the emergence of women as independent adults. Many women who were accused of witchcraft were those who challenged the patriarchal view of the ideal woman, Ruether (1980:842-7). They were accused not only by men but also by other women because women who conformed to the male image of them felt threatened by any identification of themselves with those who did not.

In a masters’ thesis entitled ‘Witch hunt in contemporary Tanzania: Exploring cultural and structural factors leading to violence against women in a Sukuma village’, Mette Røkke (2004) investigated the main causes behind contemporary witch-hunts in Tanzania. The research outlined the gruesome communal violence perpetrated against elderly women
who were accused to be witches in the region of Shinyanga. The traditional police, *sungusungu*, who remote-controlled women’s behaviour were noted to be the main perpetrator and the quantitative data deduced that this violence against women skyrocketed after independence. In this research, it was made clear that socio-cultural factors played a key role to exacerbate witch-hunts. In that vein, patriarchy and traditional knowledge in form of myths and religion were singled out to be the root cause of the violence against women. Furthermore, the researcher deduced that clear gender perceptions contribute to an additional and important aspect of Johan Galtung’s conflict theory.

On the contrary, some witchcraft researchers do not focus on gender as an instrument for investigation. For example, in the book ‘Witchcraft in Tudor and Stuart England: A regional and comparative study’, Macfarlane (1970) contends that witchcraft accusations at Essex Assizes in Britain ‘were not evidence of hostility between the sexes’ in spite of the overwhelming number of women who were accused of practising witchcraft. However, in a sharp contrast, in a bid to clarify the Essex witchcraft accusations against women, the feminist view alluded that Macfarlane over-generalised and oversimplified a pertinent and sensitive issue. For instance, Purkis (2003) vehemently blamed Macfarlane of devaluing women’s plights and casting a blind eye on gender theory. Nevertheless, from the foregoing analysis the current researcher notes that it is not surprising that research done before the arrival of the 1970’s women’s movement neither employ gender or patriarchy as a category of analysis.

Abrahams’ (1994:1088) study showed that during economic hardships time, the death toll escalates due to lack of food and some diseases like Human Immune Virus/Acquired immune Deficiency Syndrome (HIV/AIDS). To add, he notes further that women are more prone to be accused as witches in such economic hardships. In other instances, some women are taken advantage of by men who molest the accused (Behringer, 2004:2013). Many protagonists who wrote about the witchcraft phenomenon corroborate that
economic hardships and other aspects like which drought negatively affect women’s security and they become susceptible through witchcraft accusations.

The current researcher noted that it is not enough to just invest in more primary school education, better health and improving living standard in underdeveloped countries to do away with witchcraft gender-based violence. On the contrary, violent cosmology embedded in the culture must also be dealt with actively and strictly. The fact that every woman in Sukumaland is practically looked at as a ‘witch’, according to the book ‘Beyond Inequalities – Women in Tanzania’ (1997), informs the present researcher that there is a need to go into deep critical transformations of cultural epistemology in order to find the core conflicts in order to transform the practise. The thorny question the researcher answered is whether South African and Zimbabwean’s cultural beliefs make women more vulnerable to becoming victims of allegations of witchcraft accusations and witch-hunting.

2.2.6 Witchcraft and the law
Geschiere and Fisiy (1997) in their book ‘Witchcraft and the Limits of the Law: Cameroon and South Africa’ compared and contrasted the function of witchdoctors in the judiciary system regarding witchcraft matters. In the book, the Cameroonian judicial officials depicted that the ‘expertise’ of the witch-doctors is fundamental for establishing ‘proof’ in witchcraft cases. The critical question posed to the case was how the witch-doctors attest and disprove their cases against or for the accused. Another view unveiled was that of how witch-doctors are viewed as the most conspicuous agents of the supernatural aspects. Also, this view postulates that instead of prosecuting these witch-doctors for perpetrating this belief and for bewitching victims, they occupy the most prestigious place and tasked with a vital function during trial sessions. In showing the challenge at hand, it was argued that the place of witchcraft was particularly felt in the legal profession as African magistrates, trained in Western law, started to grapple with witchcraft in the countries under study.
Vicki (2014) propounded that witchcraft has been in existence since the time of Hammurabi (the ruler who chiefly established the greatness of Babylon, 1795-1750 BC), and witches are still prosecuted and persecuted today in many countries. This researcher noted that the United States and other first world counties do not share the idea of witchcraft as a crime. In the contrary, it is recognised as a religion. In that vein, Vicki submits that a witch is a person who has a pact with the devil to get extraordinary favours within the community thus she opines that witchcraft is a crime of thought not action. Her article gives an account of the history of the crime of witchcraft, outlines reasons why the first world countries do not regard witchcraft as a crime or delinquent act and establishes that this crime does not exist in the United States.

The criminal law's position in a situation where one takes away the life of another human being in order to harvest body parts for the use of witchcraft, that individual cannot claim his or her beliefs as an extenuating circumstance. This was started in the case of State V Kgeresi (High Court Criminal Trial 7 of 1984). In addition, a related judicial view was expressed in the leading Swaziland case of Dlamini and ORS V R [1970-75] SLR. Still on that view, anthropologists, such as Levi-Strauss (1962: 36-51), have investigated fundamental structures of the mind by means of analysis, for example, myth. What anthropologists and psychologists have paid less attention to is the criminal responsibility of persons who kill witches and to assess the efficacy of the steps that are in place to bring such perpetrators (witch killers) to book. Undoubtedly, this was a gap that the research covered thereby contributing to new knowledge.

Ludsin (2003: 62), writing on the South African situation makes the following observation:

“The Witchcraft Suppression Act[s have] failed to meet [their] primary goal of suppressing witchcraft . . . [yet also] erased what may have been a potentially adequate mechanism for controlling the manifestations of witchcraft belief.”
The argument here is that governments in many African states have failed in both curbing the notion of witchcraft beliefs and providing sufficient relief for those accused of witchcraft (Ludsin, 2003). For example, many scholars argue that witchcraft legislation in South Africa undermined the legitimacy of the customary law and the authoritative role of chiefs within the community, ‘block[ing] community members' access to justice’ (Ludsin, 2003:24). This research determined whether the above viewpoint was true, witchcraft legislation undermine the legitimacy of IKSs. It is argued that, on the surface, ‘South Africa and Zimbabwe are apparently an equitable, just, stable, orderly societies but the facts do not support such an affirmation when it comes to the violent nature perpetrated in witchcraft issues’ (Kgatla, 2004). Just because of the gross human rights violations, some scholars have even gone to the extent of branding the regime as totalitarian and undermining its African values at the expense of modernisation.

Belief in witchcraft as a defence in the provocation cases is usually sustained ‘where there has been an overt and physically provocative act on the part of the victim, to which the accused retaliates on sudden impulse’ (Nsereko, 1996). Nsereko submits that typically there must be some sort of ‘overt act or insult that is capable of derailing a person’s fortitude and power of self-control and likely to induce him to retaliate against the person who offers it. Moreover, Seidman (1966) argues vehemently that the threat must be physical, not metaphysical. In assessing the efficacy of the criminal law in the witchcraft cases, special attention was paid to the provocation cases and African value systems. In that regard, the research captured the reality that witchcraft is not necessarily about superstitions and myths to those who believe in it but is vested in their socio-cultural identity and traditional belief systems of sacredness and a connection to the spiritual world that define a cultural people.
Decades of Christian campaigns against witchcraft proved largely ineffective in changing traditional attitudes regarding witchcraft Nserek (1996:59). In fact, Geschiere (1996:37-8), opines that:

“[O]ne of the biggest challenges of early Christian missionaries was how to discourage the belief in witchcraft...[which] is still widespread at all levels, including among those in formal employment as civil servants and teachers, religious leaders and business people in local towns and urban centres.”

Niehaus (1997) asserts that in the midst of Tsonga and Sotho-speaking groups of the Transvaal Lowveld, a small number of killings were witnessed when traditional leaders presided and mediated in witchcraft accusation cases. In such adjudications, all parties were awarded time and their day for hearing. Furthermore, he points out that it was after the promulgation of the witchcraft legislation that a perception surfaced that traditional leaders sided with witches. Adding to Niehaus’ research, Hund’s (1999) research cleared out that South African state courts do not recognise the existence of witchcraft thus people could not seek redress in African traditional courts. He also noted that the exclusion of the African tribunals triggered witchcraft-related violence as the indigenous people were resorting to taking the law into their own hands. Following up the gaps left out by Hund, the present research assessed the efficacy of the steps that are in place to bring African value systems into written law in the 21st century.

The constitutions of the two countries recognise the right to religion and conscience (section 15 of the South African Constitution). A critical analysis was made of the law in regards to witchcraft violence and the circumstances that fuel it within the context of freedom of religion and belief. The research focused on the impact of witch-hunts on the communities. The rights of witch-hunters were discussed from the perspective of the possible defences that should be available to them where they are charged with a crime
as a result of harm or death caused in the course of their witch-hunts activities. In a bid to achieve this, the following questions were asked; should the person who kills another in the belief that the victim is a witch be exonerated from criminal responsibility? In other words, does over-powering belief in witchcraft constitute a defence in criminal law of the two countries under study? Again, should belief in witchcraft constitute sufficient or adequate provocation in cases of unlawful homicide (murder and culpable homicide)?

This was how this research came in handy and wished to add to the existing body of knowledge on the value of IKSs on spiritual belief systems and try to harmonise it with the law. The witch-killings in South Africa and Zimbabwe are a result of massive social malaise in the area coupled with the chronic failures of the state, especially in the delivery of justice. The witch-killings are resorted to because of the existence of a rigid legislation dating to the colonial days. The law upholds the official position that witch beliefs and practices are not based on fact and are anachronistic, especially in a country aspiring to build a socialist state. Wronged parties in the villages resort to self-help by witch-hunters to eliminate alleged witches in their midst. Sometimes witchcraft is used to justify the settling of conflicts. The killing of witches has become a lucrative business in an otherwise despondent economic situation.

To add, with regard to victims of belief in witchcraft which is perpetrated through witch-hunts and other ways, this researcher crafted a protective regime that the law should afford to the vulnerable in such cases. Most victims have been noted to be generally women and children who often become victims because of some African traditional beliefs that such persons, particularly old women, are witches and a danger to society. Through the HRBA, the traditional victims of the witchcraft accusations and witch-hunts were carefully examined and a proposed ‘Victims Charter of Alleged Witches’ (VCAW) was drafted. The proposed Charter attempted to spell out the steps which the victims of witch-hunts and/or witchcraft accusations may take to ensure that their human rights are enforced. The Charter was be drafted along the guidelines gleaned from the Domestic Abuse Victims Charter (DAVC).
2.2.7 Witchcraft and politics

In his book, 'Witchcraft in contemporary Tanzania', Abrahams (1994) cited that there was prevalence in witch-killings statistics. Building from the Tanzanian anthropology scholars, Abrahams established that most witch-murders statistics given in 1988 were linked to politicians and led to four senior politicians being demoted from their posts. Ultimately, after assessing the issue, the ruling party took a radical step and assigned a team of specialists and officials to investigate the situation. Extrapolating from the case of these politicians, one can imply that the witchcraft phenomenon is a hot political issue and its dissemination through the media ferments embarrassment in the political arena.

Kohnert (2007:37) noted succinctly that the beliefs in witchcraft have 'a significant impact on actual social, economic and political structures.' Additionally, Siegal (2003:135) postulates that 'witchcraft, it is clear, has not declined with independence and development; it has, rather, flourished in unexpected ways and entwined itself in political action and political thinking.' Writing in SA, witchcraft was noted to be brewing to a political weapon (Koch and Ritchken, 1990:150). In Africa, political rivals use the tactic of accusing their opponents of practicing witchcraft so as to tarnish and dishonour them thus, advancing their interests and cultivate power and wealth (Sanders, 1995:138-9). Such witchcraft accusation which is levelled against rivals is enough to kick start pandemonium and an outbreak of off-putting media attention thereby painting a prospective leader with paint that misrepresent their broader agenda.

Notwithstanding the latter view, this research unearthed the exceptional role played by spiritual beliefs because of the existence of political conflicts. The challenge is that the pieces of legislation that exist were enacted using the top-down approach especially during the colonial era and the public was not consulted to incorporate their knowledge in the issue hence the mismatch. As a result, this thesis probed the 'over-powering fear' of witchcraft and unknown repercussions sustained by the strong belief systems which are paramount in instilling unfathomable actions among the people.
2.2.8 African healing Ways Versus Witchcraft

In the PhD Thesis, ‘Dealing with ‘Remote Control’: Ritual Healing and Modernity in Western Kenya’, Okwaro (2010) investigated on why and how ritual healing continues in the modern dynamic world. He employed the ethnographic approach to assess the situations and circumstances under which ritual healing is said to be more useful contrary to listing ailments and their ritual remedies (Okwaro, 2010). In addition, he tackled the question of how ritual healing assume to the challenges brought by the contemporary world. In the study, the focal point was on practices rather than systems in view of the distinctive nature of traditional healing in Africa. Finally, the thesis summed up by tackling the efficacy of clients who cross both medical systems.

In the same vein, Foster (1976:773) contends that avoiding witchcraft and related issues is like using an index finger to stop an already fired rocket when tackling medical beliefs and practices in African communities. Similarly, Jumbe (2010) in his thesis, 'A critical analysis of the ethics of integrating traditional medicine into the Malawian health care system' puts forward a view that Traditional Medicine (TM) has a more likelihood to complement the western health care delivery system in Malawi. In addition, the researcher contented that to unleash the ignored and principal potential of TM appropriate systems that are well observed and assessed ought to be put in place. It is within this progressive framework that a legal framework that is founded on code of conduct should to be promulgated. Consequently, Jumbe recommended that Western scientists should exercise caution when approaching TM so as to accommodate their epistemologies which buttress its therapeutic assertions.

In the thesis entitled 'Art in Ethno-Medicine: A Case Study of Juogi (Mysticism among the Luo People) in South Nyanza District of Western Kenya,' Ogemb (2005) challenged the denial and misconception of Indigenous Medicine (IM) without the application of the rules of natural justice; hearing both side and/or according an independent arbiter to preside.
Ogemb showed through evidence that despite the coercion of African people to deny it, the ordinary people still relied on it. For instance, the majority of patients resorted to indigenous medicine instead of burdening themselves with medical expenses that were by far above their means. More so, numerous students believed that there are some other diseases that cannot be cured by Western Medicine (WM). Through the writings, Ogemb intended to amplify the feeling and belief on the value of IM and also how it has worked for the Luo people. The author systematically shed light on how one acquired the skills of becoming a medicine man or woman, how the medicine man or woman uses art to carry out the healing practices and how the qualification was manifested on the part of the practitioner.

Mensah-Aborampah (2003) observed that in African Traditional Religion, the diagnosing of illness and prescribing the right cure is generally the domain of women. Surprisingly, this is where the phenomenon of witchcraft comes in. Almost invariably, Sanders (1998: 143, 149) is of the view that witchcraft is believed to be the cause of misfortunes, death, diseases and women are invariably accused of these practices. Paradoxically, these women who function as traditional healers (sangoma or inyanga) in the African community are perceived to restore wholeness of life (Tebbe, 2007:96; 195).

Babirye (2007) critically examined South Africa’s process of cultural transformation through quizzing the IKSs’ policy framework. In this thesis, the researcher advocated that the government should prioritise cultural initiatives for effective social transformation in communities. More so, she submitted that the South African government should also address social imbalances and infringements and not merely put their thrust and commitment on political and economic ills. In regards to this transformation, Babirye assessed the degree in which the social and cultural significance was being trailed and the effectiveness of constitutional and legislative reform measures to meet the established policy framework of IKSs. In the study, the researcher observed that the ineffective development mechanism to combat diverse aspects of violence is largely due to be a lack of engagement of critical elements of IKSs, namely the belief system.
Building from the laid foundation above, this interdisciplinary research raised pertinent issues with regards to the approach in which indigenous knowledge issues are presently undertaken within the development paradigm. With a critical lens, it scrutinised the function that history plays in the contemporary conceptualisation of IKS with a view to persuade and assist the legal system to amend the witchcraft laws; to challenge scholars, policy makers and the hoi polloi to sternly quiz the veracity and appropriateness of cultural development initiatives within South Africa and Zimbabwe.

2.3 Chapter Conclusion
The chapter reflected on the theoretical framework used in this thesis; theories of Criminal Punishment, Human-based Approach (HRBA), the psychoanalytic theory and the socio-cultural theory. In addition, the chapter also synopsized various topics that are directly and indirectly linked to the broad topic in a bid to show the gaps that the thesis covered. In that regard, the following topics were covered: the witchcraft phenomenon, witchcraft beliefs; accusations of witchcraft; African value systems and healing; witchcraft and politics; witchcraft and the law; African value systems (IKSs) and criminal responsibility as part of the traditional beliefs and African value systems. After capturing such information in this chapter, it is judicious that more literature be reviewed as depth and broad information about the topic is plumbed. The next chapter, therefore, continues with literature review. Since this research adopted the legal research methodology and desk based research, the literature review is not exhaustive in this chapter thus literature was reviewed in succeeding chapter. This was done to expand and plumb deep on the research objectives through secondary sources.
CHAPTER THREE

AN EXPOSITION OF THE INDIGINOUS KNOWLEDGE SYSTEMS: WITCHCRAFT BELIEFS AND CRIMINAL RESPONSIBILITY

“Virtually every society in the world has some sort of witchcraft concept”

Harris (1974:213)

3.0 Introduction

This chapter builds on from the previous chapter and attempts to lay out an exposition of IKSs by focusing and reviewing witchcraft beliefs and criminal responsibility through reviewing a vast of literature. In so doing, it continues to unveil the gaps that this study seeks to fill and areas that it reinforces. However, this chapter invokes scholarly gymnastics in attempting to make new and unique contributions to the progressive movement in the research and well-informed modern academic community.

The concepts ‘witch’ and ‘witchcraft’ are interpreted differently by different people. I will discuss these terms below so that I draw a causal link to them with IKSs. The discussion of IKSs is indispensable because it helps in bridging the knowledge gap between what people believe and what the law says. I will first assess the witchcraft beliefs that cause the majority of alleged witches in the societies under study to be tortured and killed by individuals who suspect them and accuse them of practicing witchcraft. The atrocities perpetrated against the alleged witches, and the dehumanising treatment of these suspected witches necessitates an inquiry into the criminal responsibility of the perpetrators. To sharpen the discussion, the chapter identifies and attempts to provide answers to two crucial questions in the context of the criminal law of Zimbabwe and South Africa. Firstly, is a person who kills a ‘witch’ while labouring under overpowering fear that the victim possesses harmful witchcraft powers, a fit subject of criminal punishment? Secondly, if the answer to this last question is in the affirmative, under what possible
theory of criminal punishment would the punishment of the witch-killer (perpetrator) be justified? To effectively or comprehensively provide plausible answers, the researcher will discuss the IKSs in relation to the two aspects.

3.1 Witchcraft

Before discussing witchcraft beliefs in Zimbabwe and South Africa, the witchcraft phenomena needs to be unpacked. Witchcraft, sorcery and magic are topical subjects and an intriguing phenomenon in Africa. In addition, witchcraft and related phenomena are not just topics of curious conversation and amusement but matters of great concern in Africa. Thriving on belief systems, the ruling elites are often baffled and confronted with dilemmas on how to deal with it.

Witches and witchcraft in Africa are real, and part of Africans’ everyday reality (Wyk, 2004). Welbourn (1968) emphasizes that, in Africa the existence of ‘ghosts’ and witches is as real as the existence of electricity or magnetism. Schmidt (2005) further explains that, mystical (supernatural) powers are as real to Africans as electricity is real; although electricity cannot be seen, its effects in life are obvious. Highly learned and simple farmers, followers of African Traditional Religion (ATR), Christians and Muslims believe in the existence of witchcraft (Schmidt, 2005). Muhanika (2012) emphasizes that there is no evidence to prove or disapprove how witchcraft works, for the whole business is an attitude of mind, shrouded in secrecy, and represents idealism at its worst. Witches are believed to defy rules of nature and are capable of the impossible (Gram, 2011).

Due to deep rooted beliefs in witchcraft, witchcraft beliefs have not declined with independence and development level but it has rather flourished in unexpected ways and entwined itself in political action and political thinking (Siegel, 2003). Due to the adverse effects of witchcraft, there is a cry that witchcraft and its beliefs must be eradicated before they eradicate our national developmental efforts (Mafico, 1986). This is because communities which hold strongly to beliefs in witchcraft are poor, starving, and generally
illiterate (Koch, 1990). In such communities, every misfortune or problem is attributed to witchcraft, especially if natural explanations do not satisfy, giving the chance for witchcraft beliefs (through witchdoctors) to give explanations (Gufler, 1999). According to Brennan (2006), the eradication of witchcraft beliefs had long been a concern of Africans. But the reality is that the beliefs in witchcraft are still prevalent in most African communities. However, this thesis is not focusing on establishing whether witchcraft is real or not. I submit that human rights activists and workers from governmental and Non-Governmental Organisations (NGOs) acknowledge that “witchcraft is real for those who believe in it” and that “it’s no use pretending witchcraft beliefs do not exist or seeking some ground of neutrality” in a society where people believe in witches (Levack: 40, 51). More so, these beliefs are held by both the educated and uneducated, the wealthy and the poor, the old and the young in many societies (Aguilar, 2006).

To better understand the witchcraft phenomenon in Africa, it is necessary to have a brief understanding of the term witchcraft itself. Long back, the practice of witchcraft has been seen as gender specific, with a large percentage of victims being elderly and solitary women. For instance, like I said earlier, the word ‘witch’ itself has a feminine connotation, and its masculine equivalent is ‘wizard,’ a term which does not seem to conjure any evil connotation. In light of that, one wonders why it is not ‘wizard-craft’ and is known as ‘witchcraft.’ This conundrum therefore calls for the researcher to define the term ‘witchcraft’.

3.1.1 Definition of Witchcraft

The concepts ‘witch’ and ‘witchcraft’ are wide universal concepts that can refer to numerous supernatural activities. Thus it is essential to point out that no common definition of the term ‘witchcraft’ exists. This is largely due to the fact that witchcraft beliefs and practices vary from place to place. Witchcraft may have many different meanings depending on the cultural social milieu within which it is believed to exist, and therefore formulating a single definition of witchcraft is very difficult. Problems also arise when
definitions are too narrow. Again, problems arise when definitions are too wide because they may capture benign practices. Having emphasised the problems and difficulties of the definitions that exist, the researcher shall proceed to examine some of the more common definitions as well as activities that are associated with the witchcraft practice. In order to show clarity and coherence in argumentation, the researcher begins by defining a witch.

A witch has been defined as a person with an incorrigible, conscious tendency to kill or disable others by magical means (Robert, 1963:221,225; Kohonert, 2002 & Kugara, 2015). In that regard, many western writings have defined African beliefs as witchcraft or black magic. African writers or researchers have different understandings (Kugara, 2015). A careful scrutiny of this definition given the decolonialist movement and concerns shows that it leaves out some elements that many Africans would associate with witchcraft. Firstly, the definition does not show that it is done in secrecy. Secondly, the use of the word ‘magic’ in the definition also raises controversy. To many people (especially Americans and even some Africans), the word ‘magic’ conveys a picture of a dove being pulled out of a hat or something of that nature. Stein (2005:75) notes that magic refers to methods that somehow interface with the supernatural and by which people can bring about particular outcomes. In that vein, a magician is usually a worker in the kind of magic that is, on the whole, public and good, whereas a witch is generally considered an evil figure, whose activities are rather kept surreptitious and whose work is downright antisocial.

A witch has also been defined as a woman who is believed to have magical powers, especially to do evil things. In Western folklore, she usually wears a black pointed hat and flies on a broom-stick. Tebbe (2007:183, 190) expresses the view that a witch is someone who secretly uses supernatural power for nefarious purposes. I accepts Tebbe’s definition and also believes that the majority of Africans would accept this view that a witch is a human being who secretly uses supernatural power for nefarious purposes. Witchcraft,
then, is the practice of secretly using supernatural power for evil in order to harm others or to help the practitioner or his client at the expense of others (Ashforth, 1998:12).

To have an in-depth understanding of witchcraft, we shall now proceed to discuss some of the activities associated with the belief and practice of witchcraft. Most of the activities of witches are mysterious and practiced in secrecy. This is one of the reasons why it is difficult for the criminal law to deal with this phenomenon. This complexity shall be fully discussed below and the proceeding chapters.

3.2 Witchcraft Belief and Practices
This category interrogates the witchcraft beliefs and practices with the intention of unveiling some indispensable aspects underlying the African value systems. It should be noted from the onset that witchcraft beliefs and practices are also argued to be helpful. Besides it being a way of controlling over-population, it is used as a weapon to do away to terminate social outfits (Tatira, 2005). On the other hand, there are aspects within these witchcraft beliefs and practices that seem to grossly violate human rights. For instance, Kugara’s (2015) study noted that the beliefs results in witch-hunts thereby leading to the violation of the right to life and right to property among other basic human rights. In that vein, Essein (2010:535) notes that witchcraft beliefs and practices pose problems for people these problems include diseases as people are subjected to consume some concoctions during ordeals and social destruction as these guess work accusations destroy relationships. Nevertheless, some of these beliefs and practices, if properly assessed, are evidently for the protection of human rights and are applicable in social, economic and political issues. This idea can be argued to show the elements of restorative justice that existed in the witchcraft practices and beliefs. This, therefore, compels the researcher to explore the witchcraft beliefs and practices in order to show clarity and coherence in their implications.
Some educated people, especially those living in towns, have a tendency to laugh at witchcraft beliefs and practices as "primitive" beliefs. Nevertheless, beliefs in witchcraft form a fundamental ingredient of the African continent’s traditional religious heritage (Ludsin, 2003). To some Africans, witchcraft beliefs and practices present an outlet for explaining social calamities and incidents like death, sickness and natural disasters in some societies. Niehaus (1997) notes that those who subscribe to the beliefs of witchcraft do not accept things at face value but they go further to seek metaphysical answers for why an incident occurred to that individual and not the other (Niehaus, 1997:17).

On the other hand, these beliefs in witchcraft and associated practices are opined to be insidious and pose enormous challenges due to the mysterious nature of such beliefs and practices. Consequently, because of the mysterious nature of these beliefs and practices, the state machineries in Zimbabwe and SA raises a number of analytical challenges and as a result fail to address them. It is because of this that the elite opine that witchcraft beliefs and associated practices hinder progress (Brain, 1981:12). Lucas (1976:511-512) and Turner (1964:314) seem to buttress Brain’s view as they suggest that witchcraft is intricately connected with developmental and social change in Africa.

Numerous African people attribute to witches the power to destroy the lives of people, animals or property through mysterious ways (Nadel, 1952:18-29). It is believed among other indigenous groups that witches possess the power to eat the souls of their victims. Furthermore, it is believed that witches are functional at night and cannot be seen by ordinary means mainly because what they do takes place in a spiritual realm which is intangible and beyond empirical verification. African beliefs in witchcraft are neither antiquated nor stagnant but are flexible and adjusted to the conundrums of the contemporary world (Sanders, 2003:338-352). From this perspective, Mesaki (2005) notes that witches are no longer merely accustomed to ‘flying with brooms but are also modernised in their ways of operation’.
On the other hand, Mawere (2012) notes that witchcraft has a dualistic quality of being good or bad, positive or negative and it is its positive quality that is ‘abused,’ yet can be exploited for the common good once the practice is ‘tamed’ and fully recognised as an IKS. Unfortunately, Mawere’s suggestion is not practicable because ‘witches’ cannot come out in the open to negotiate for their ethno-science to be used for public good. In fact, their ethno-science will remain hidden and obscure and any hope to tap from its productive potential will be hopeless. Nevertheless, the current researcher contend that the idea or practice of turning a blind eye on the metaphysical epistemology of witchcraft and other such IKSs constitutes denialism that works to exacerbate the problem of victims falling prey to the negative application of the practice. Even though this research will not go the way of Mawere of ground-breaking and taming the ‘positive’ ways of witchcraft in human development, it shall employ an integration of knowledge and development of new insights on the subject, thus breaching the gap between law as it is in the books and law as people live it.

However, a belief in the supernatural is not only present among African cultures. Contemporary Westerners also believe in the existence of good and evil spiritual beings in the form of angels, demons and even Satan. Recent media reports attest to this fact. For example, in 2008 Morne Harmse,\textsuperscript{2} armed with a samurai sword, went on a rampage at his school, slashing a fellow pupil’s throat and injuring three others. During trial, Harmse testified that Satan himself ordered him to carry out this attack. An expert witness, however, testified that although there was evidence to suggest that Harmse was "dabbling in the occult", his behaviour did not correspond with that of a practising Satanist (Du Plessis and Roestoff 2008).

In summation of this, a closer scrutiny of the beliefs in witchcraft unveils that this belief is exacerbated by various factors which include fear, ignorance, poverty and religion (Chavhunduka 1980). In buttressing the latter, Igwe (2004) postulates that religion is

\textsuperscript{2} At the Nic Diederichs Technical High School in Krugersdorp, South Africa.
probably the most important cause of witchcraft, as it provides the "subsoil in which the belief and practice of witchcraft thrives." More so, he alludes that in terms of Traditional African Religion (ATR), there is no such thing as a randomness of event. Anything and everything is explained and interpreted in terms of the spiritual and supernatural (Chavhunduka 1980:127). Of these factors fear is the foremost driving force behind witchcraft and witch-killing (Igwe, 2004:74) Insofar as ignorance is concerned, Igwe points out that the belief in witchcraft is rooted in a lack of knowledge, especially with regard to nature and basic medical science. In fact, Igwe describes witchcraft as a pre-scientific belief that forms part of African traditional medicine. Consequently it is inevitable and sometimes unfortunate that certain beliefs are upheld merely because the majority of a particular community accept it and not because these beliefs have a valid scientific basis. This, therefore, leads the researcher to proceed to examine the reasons why some people in Zimbabwe and SA still cling firmly to witchcraft beliefs and practices.

Traditional healers are still considered to be seers in the society and their position has allowed them to stretch the cultural categories they work with (Hinkkanen, 2009). According to Gelfand as cited by Mesaki (2005), the presence of great numbers of witchdoctors in these regions gives assurance to the whole community.

3.3 Reasons why witchcraft beliefs and practices thrive
As has been pointed out above, some people in Zimbabwe and SA still cling firmly on witchcraft beliefs and practices despite the introduction of technology. In this modern dynamic world, numerous advertisements on services of ‘witches’ may be purchased for fees; restore lost lovers, amulets to foil rivals, to gander support and so on. Jonck J (S v Mokonto 1971 2 SA 319 (A) 320D-320E) opined that, even after more than a 150 years' worth of exposure to civilisation, these witchcraft beliefs and practices will remain active in Zululand. Furthermore, Cohan (2011:14, 15) extrapolating from the latter also adds that contemporary scientific technologies (educational facilities and the mass media) still have not prevailed in influencing some of the indigenous people to forsake their witchcraft
beliefs which are deeply rooted in the African culture. In the Mokonto case judgment, Jonck strongly believed that time will never come when nobody believes in witchcraft. It is in this context that the researcher shall now proceed to examine the factors that ferment and breed witchcraft belief and practices.

3.3.1 Socio-economic factors
The socio-economic factors that give rise to witchcraft belief and practices are cited as the use of witchcraft in business and politics, polygamous marriages and the religious beliefs and teachings. These are discussed below;

3.3.1.1 Witchcraft Accusations in Business
Some groups of people are of the belief that any form of achievement is attributed to the supernatural and not to the individual’s own efforts. This belief is deeply entrenched in the psyche and consciousness of some people who are therefore embarking in some adventures of barbarically butchering fellow human beings to obtain personal success. Professor Roelofse noted that at the heart of muti murder (ritual killings) is greed (Roelofse, 2009). These ruthless killings of fellow human beings are done to harvest body parts that are used for muti purposes. These medicinal potions are believed to be made powerful by the use of human parts, such as the hands, ears, nose, lips, eyes and genitals.

With the issue of witchcraft and muti-murder, scientists tend to shun engagement when confronted by mysticism and metaphysical tendencies as they maintain that such practices contradict the systematic, scientific and technological developments. The failure of scientists to engage in such practices has seen millions of people around the globe being negatively affected by these supernatural phenomena. On other hand, some of the cultural practices are not well known and they have not been well documented. For instance, the fact that culturally accepted ritual murder is often not reported by community members, is evidence enough that this sensitive matter still require much research. More
importantly, some of these cultural practices impact differently and negatively on the enjoyment of human rights, particularly the right to life.

As can be noted from the foregoing analysis, witchcraft accusations are therefore not uncommon within companies. In numerous instances wherein the management and human resources promote and merit hardworking employees, their fellow colleagues accuse them of employing witchcraft to advance their promotions and merits. On the other hand, it is opined to be common for thieves, con men, armed robbers, kidnappers, blood money ritualists and cultists to utilise charms from occult specialists to expedite their endeavours (Ogenyi, 2010). In that regard, most Africans believe that poorer members of the community use witchcraft to gain the fortune of the wealthy (Carson, 2004). On the other hand, wealthy people are believed to use witchcraft to gain their fortunes by bewitching the ones who are poor. In addition, when one community or family member who accumulates resources or wealth than others, it is usually believed that such an individual do so at the expense of others. It is argued that the created extreme economic disparities between rich and poor become a factor in such witchcraft accusations. In Africa, it is generally said to be within the public domain that when one accumulates wealth in a society, envy is hatched. And envy is intertwined with rigorous competition, and no wonder why witchcraft accusations thrive.

### 3.3.1.2 Politics

The mingling of politics and witchcraft can be traced from the Salem witch-scare, a New England myth-belief which escalated in the seventeenth century because of social and political problems. Kohnert (2007) expresses the view that witchcraft has ‘a significant impact on actual social, economic and political structures’ of the country. Since time
immemorial, chiefs and politicians have been suspected to have pursued or maintained their careers with the aid of witchcraft.3

“Motsi was allegedly tasked with wiping out senior party members to pave way for Machokoto’s ascendancy in party structures in the Limpopo province.” In South Africa, the last decades of 1900s witnessed numerous politicians being linked directly and indirectly in various matters concerning witchcraft accusations. It is, therefore, indispensable to have a theoretical analysis of the latter for one to fully objectively understand this political matter. For instance, Crick (2007) elaborated the concept that witchcraft was a symbol of power hence, should be broadly assessed for precise and concise answers. In a bid to unveil this conundrum, Niehaus’ (2002) thesis explores the mass executions of the alleged ‘witches’ during the ‘Juvenile Rebellion’ against the apartheid political opponents.

Building from the set foundation, it is also believed that politicians employ witchcraft to ‘seek to improve their relative power position’ or to aid and advance their own agendas (Sanders, 2003:6). Thus it is a well-known tactic that competing factions seeking to advance their own interests over their political rivals accuse the latter of witchcraft to discredit them (Fisiy, 1998:143, 149). In this regard, a mere accusation of witchcraft against a political opponent is sufficient to effect negative media attention thus making the person to be derailed in his or her political career.4

In 2015, for example, the President of Zimbabwe has been on record accusing the former Vice-President, Doctor Joice Mujuru, for trying to bewitch him. According to the

Independent Newspaper, ‘accusing Mujuru of witchcraft was also an attempt to legitimise her expulsion from the ZANU PF leadership, and it made her open to rhetorical and physical attacks.‘

In summation, Turner has maintained that in assessing witchcraft accusations it is insufficient for one to merely, in a logical manner, identify which relatives are being suspected and accused (Turner, 1970:366-372). He further insists that behind the many witchcraft accusations are a complex interplay of processes and forces which demand a dynamic treatment (Turner, 1970). A critical account of underlying structural principles, processes of change and of cultural facts, such as beliefs, values and legal concepts need to be understood before one can give a conclusion.

3.3.1.3 Polygamous marriages
Numerous people who are usually accused of practising witchcraft are typically thought of as being in more or less intimate relationships with perpetrators - relatives, neighbours, schoolmates, workmates and co-wives top the list of usual suspects. A close look at this shows that the motive of witchcraft accusations is mainly because of jealousy (Essein, 2010).

The dominance of polygamy in the African tradition has been argued by Zachrisson (2007:33-34) to be a main contributor in the propagation of witchcraft accusations. Moreover, typical African polygamous setting parades an internal civil war, wherein co-wives try to outshine each other and ultimately children rise up against themselves (Ben-Yehuda, 1980:1, 6). Consequently, wives join witchcraft to overpower fellow wives and to manipulate their husbands. In that regard, the easy way out is for co-wives to secure

http://www.theindependent.co.zw/2016/03/11/mugabe-succession-and-gendered-surveillance-against-joice-mujuru/ (accessed 07/06/2016)
witchcraft charms to foil the co-wives’ charms. Vontress (2005), an anthropologist, postulates that envy in such family set-ups is a daily acute agony. Thus, polygamous marriages provide fuel to start problems that end up resulting in one being accused of practising witchcraft.

A critical analysis of the respondents in the jurisdictions under study reveal that they have a large favourable attitude to Nigerian home video productions which among others underscores evils of polygamy, devilish spiritualism and related themes (Okpabio, 2007:99). It must be stressed that these ‘films’ play a pivotal role in the propagation of negative themes such as polygamy and muti that encompass ferocity in one way or the other.

**3.3.1.4 Religious reasons**

Sperry (2001:24) asserts that the spiritual dimension of humans is central to human experiences (namely social, psychological and moral). Furthermore, he stresses that the spiritual dimension may or may not include any formal affiliation with a religious tradition but it reflects the beliefs, effects and behaviours associated with the basic spiritual need for self-transcendence. In that vein, the spread of witchcraft belief and practices have often been attributed to religious reasons. For instance, during the notorious Salem witch-hunts, almost all aspects of livelihood revolved around the church. In 1484 the ‘Hammer for Witches’ became the guidebook for identifying, trying and sentencing presumed witches (Paul, 1977:1-31). Reynolds and Tanne (1995:305) opine that;

“....we have become convinced by the evidence worldwide that the function of religions is to respond to human need, to help people at times of personal crises (e.g., at funerals), or when they are undergoing a change of status (e.g., at weddings), or generally in relation to everyday strains.”
While writing about Tanzania, Oestigaard (2014:182) postulates that the substitution of IKS with Christianity seems to have made witchcraft belief, practices and witch-killings flourish. Thus a poignant burning question that needs to be asked here is; since the role of IKS have seemingly declined, why is witchcraft belief and practices thriving at the same time with Christianity? This shall be addressed in the following chapter.

In the modern dynamic world, it is clear that religion and African Christian movies are focusing more on the audience and the intricate challenges that people are facing, particularly witchcraft. Additionally, witchcraft and witch-hunting stories are being successfully spread through films aired by church-owned broadcasting agencies and other non-religious groups. African Magic movies are defined as films (especially Nigerian) that propagate African norms, values, traditions and emphasise more on sex, violence, fetishism, occultism, voodoo and other negative issues (Udomisor, 2012). Udomisor noted that they are meant to educate, socialise and play a therapeutic role in the entertainment function of the mass media. Adegoke, Foxcroft, Oladipo (2010:49) postulated the following sentiment in regards to reception of information disseminated through movies:

"In a country where people do not read and where public libraries are almost non-existent, you have people relapsing to supernatural explanation to national phenomena. People rely more on local films for social counselling and as means of reference. You often hear people, including unfortunately the so-called educated elite making reference to films they watch on witchcraft as reference as if they are citing academic work."
In view of the above, it is opined that those who treat these movies as documentaries and educational films attain fantasies from these films. On one hand, ‘witches’ may be said to use these documentaries as a platform to gain new tactics to ply their trade. On the other hand, the general populace learn new ways of punishing and disciplining ‘witches’ in their midst through these movies. Religious traditions command significant number of followers and as a result propagate the belief of witchcraft in societies in the thinking and living of the people concerned (Mbiti, 2003). Numerous churches teach and preach about the existence of witchcraft and that some of the calamities that people encounter daily are as a direct or indirect result of witchcraft. Furthermore, the newspaper reports have also been on the spotlight showing intra-religious competitions wherein other churches are labelled to use witchcraft to thrive. With that said, it can be noted that religious subscriptions of many people are fermenting the belief in witchcraft and practices.

Furthermore, Kaigh (1947:40) points out that in the event people who believe in witchcraft meet with misfortunes, they generally turn to traditional healers and diviners to help them determine whether their misfortune resulted from the anger of their ancestors or from witchcraft (Kaign, 1947:40). If witchcraft is suspected as a cause of misfortune, accident, disaster or death, the next move is to pin-point the perpetrator (witch). In the witch-hunting process, traditional healers’ help were sought and some traditional healers resort to divination, others a trial by ordeal and yet others are able to ‘smell out’ witches. The witch-hunting process and evidences used in these ordeals shall be discussed too below and in light with human rights.

3.4 Ways employed to identify ‘witches’
Now that factors that motivated the belief and practice of witchcraft have been discussed, the researcher will now show what this belief would lead to in societies. In a case where misfortune, accident, disaster or death was suspected to have been caused by a witch, the aggrieved party would in most cases take action to pin point who the witch was. There are many ways that aggrieved parties would engage into in order to establish the witch.
This mainly depended on the cultural group or belief systems of the people in question. Down history, some suspects were coerced to undergo various ordeals to prove their innocence or to force the perpetrator to confess their evil act. Iliffe (1979:28) points out that these ordeals were dehumanising. Moreover, different forms of cruel, degrading and inhumane treatment awaited suspects who escaped the ordeal test. On the other hand, Buxton (1963) points that execution of the suspects was a rare verdict and would only be taken as a last resort. Although these ordeals and ways used to identify suspected witches are against the statutory law of South Africa and Zimbabwe, it is alleged that customary ordeals are still resorted to in ascertaining the guilty or innocence of suspected witches. With that said, the researcher will therefore focus the discussion to the models used to identify witches by aggrieved parties.

3.4.1 Traditional Healers
Some people see traditional healers as witches. This is mainly because of the tools of trade which are similar (skulls of animals and animal skills), mode of operation (being partially naked or totally naked and working rituals mainly at night) which appears to be the same and also because both parties use supernatural powers. It has been noted that it is a mammoth task to differentiate the two because of the many similarities. However, Kugara (2015) noted that witches use this power to do evil and traditional healers use it for public good. Traditional healers are argued to still hold prominent positions in most rural and some urban areas. Regardless of how educated people become, they still place their belief in traditional healers. These traditional healers have been and are instrumental in establishing the guilty or innocence of suspected witches. Traditional healers were said to either use trial by ordeals or smell the witch in a case wherein they are consulted to identify the witch. Numerous Zimbabweans and South Africans are said to still maintain the cultural belief of approaching traditional doctors in a case of a death that is unusual in a family. More so, the traditional healers were also relied upon by a community or village in case there was a cry out for marauding witches. They would be summoned and every villager would be obliged to attend and they cleanse the community of witches.
3.4.2 Ordeals
In the case of trial by ordeals, the general known ordeal was that the traditional healer was noted to consult with the ancestors and prepare a special concoction that would be given to suspected witches to drink. However, these kind of ordeals differed from place to place. After the preparation of the concoction, suspects would be given to consume in front of the people. If one was guilty, they would retain the drink while the innocent ones would vomit. It has been argued that these ordeals were hazardous to the health of the consumers as many of them would develop diarrhoea (Seidman, 1966).

3.4.3 Smelling out Witches
On the other hand, some traditional healers were said to possess power to smell out the witch. It has been observed that some traditional healers possessed some unique gifts of sniffing witches who were believed to carry a terrible stench (Kagh 1947:40). It was through this way that clothes belonging to suspected witches were given to the traditional healer to pin-point a witch (Lines, 2011). After picking out the clothes, the traditional healer would leave it to the people to identify the witch by checking whose clothes were they.

3.4.4 Family Grudges
Within family units, the incidents of witchcraft involve members of the family accusing each other of using witchcraft. Thus, various factors come into play in identifying a witch. For example, where a member of the family holds a grudge against another or where particular members of the family have engaged in quarrels, this is often said to be indicative of the particular family member who has engaged in practice. Most times where a belief exists that one is a witch, chances are high that there is a hostile relationship between the bewitched and the witch or somebody who has employed the witch. The witch would be a close relative who bears a grudge. Furthermore, it is clear that people look for witches within their relational circles. Thus, if ever there was anyone who had a grudge with the bewitched; it was believed that the one who had a grudge was the witch.
In Zimbabwe, the use of *tsikamutandanda* (self-styled witch-finder) is rife in some rural communities. The *tsikamutandanda* is alleged to be invited by either the family head or the chief or consensus by the village. These *tsikamutandas* are said to come in the village and gather people and point out witches and people who are sick are alleged to have been bewitched. They charge a beast or more to cleanse a witch, to cleanse a house or to heal the bewitched. For instance, Ncube writing for Bulwayo24 news noted the following:

“A dubious traditional healer only known as tsikamutanda has unleashed a reign of terror in Mt Darwin where hapless villagers are allegedly being forced to attend his cleansing ceremonies with a 195 herd of cattle having already been extorted from them over the past two months.

The self-styled witch-hunter claims that he has the power to weed out troublesome witches after which he makes them pay in livestock – mainly cattle and goats. After receiving the livestock, the *tsikamutanda* who is not known by his official name in the area then sells the cattle for about US$400 per beast. This means he could have made about US$78 000 so far.”

In South Africa, the main issue that is raised wherein religious leaders mention relatives as witches. The practice of consulting *vhomaine* to identify witches was rife but is rather within family circles. With regards to religious leaders, some pastors pointed recklessly some witchcraft practitioners and/or televise confessions of witches thereby fermenting.

---

violence from the aggrieved victims. For instance, the news24 published a Musina case about witchcraft and witch-hunting Evans (News24, 2015);

“Seventeen people, including four children, were arrested in Nancefield, Musina, after a pastor's house was burnt down after claims of witchcraft, Limpopo police said on Friday. The violence started late on Monday evening when residents of Nancefield arrived at the house of the 70-year-old pastor, spokesperson Ronel Otto said. He had apparently been seen in a video saying he was involved in witchcraft and that his teenage daughter was an evil spirit.”

Whenever calamity, death or an evil would happen, the victims would always seek to identify a witch. This resulted in the victims or interested parties using any of the above models to identify the witch. The identification of the witch, circulation of rumours of who the witch might be and accusations of witchcraft mainly lead to attacks on the alleged witch (Stewart and Straught, 2004:38-40).

3.5 Disciplining and/or punishing witches
Customarily three main reasons of dealing with witchcraft were cited; protect individuals as well as whole communities, punishing or rehabilitating ‘witches’ and to get rid evil doers. Now that it has been established how on how suspected witches are and/or were ‘proven’ to be witches, the researcher shall now proceed to discuss various methods used to punish suspected witches. In most customary practices, the chief and his council were noted to be the one with the authority to punish witches (Bhlodhio, 1984:409). The essence of this discussion is to foreshadow and adumbrate human rights implications of these punishment options that traditional law has developed to punish ‘witches’, the Human Rights Based Approach. The following are the likely punishments that were imposed on suspected witches:
3.5.1 Ostracism/ Banishment
Ostracism or banishment is the act of taking away a suspected witch out of the community. Historically, ostracism was a procedure under the Athenian democracy in which a citizen could be expelled from the city-state of Athens for ten years or more (Blackwell, 2003:12-5). Obviously, ostracism has no relationship to modern notions of justice. It was so because there was no charge or defence, and the exile was not in fact a penalty but simply a command from the Athenian people (Blackwell, 2003). However, in the two jurisdictions under study, is it alleged that ostracism was the normal penalty in mild cases which enabled the culprit to reform and be reintegrated into society.

A similar practice existed among the Shona of Zimbabwe and AmaXosa in South Africa. Ostracism as the ultimate punishment for witchcraft involved treating an individual as non-human. The suspected witch ceases to enjoy social status within the community, which would eventually withdraws its support. In other words, the suspected witch would become a pariah to all intents and purposes thus could not be part and parcel in social activities. In Zimbabwe, the one suspected and ‘proved’ to be a witch was deprived of important social support and denied social identity (Karimunda, 2014).

3.5.2 Enslavement
Enslavement was a common penalty in some societies. Enslavement was given as a sentence to replace death for notorious witches as was the case in Pare and Shambala chiefdoms of Tanzania (Iliffe, 1979:26-7). To add, witches were also said to be enslaved and coerced to be part of military units in some societies (Iliffe, 1979).

3.5.3 Compensation
In a case where the labelled ‘witch’ is ostracised, their family members who remained behind were obliged to be liable for paying compensation to the aggrieved parties, victims. On the other hand, the payment of compensation was paid as well to the suspected witch
if it was proved the he or she was not a witch or the accusation was vague, not substantiated with evidence (Hund, 2004). Furthermore, a wife was issued with a decree of divorce if ever she was smelt out to be a witch (Schapera, 1937).

3.5.4 Execution
Most accounts point to the fact that the execution of alleged witches was the only verdict in many societies where many alleged witches were tortured to death. A person suspected of witchcraft was usually arrested at night and thrown into a stinking and dark dungeon. The following are methods that were employed to execute the suspected witch: hanging, drowning and burning. Burning was often favoured as it was considered a more painful way to die (Stack, 2006). However, other scholars begged to differ with the issue of execution of alleged witches in SA maintaining that such practice merely emerged after the Witchcraft Suppression Act came into force (Minnaar, 2001). Their submission seem misplaced as the Commission of Inquiry Report gave significant evidence that numerous chiefs were in the habit of ordering their subjects to death if ever found guilty of practicing witchcraft.

3.5.5 Analysis of the punishments or forms of discipline
Indigenous laws had already catalogued crimes and their punishments. The brutal conclusions were likely influenced by a punitive mind and blamed for their failure to consider the grounds on which the death penalty was either excluded or retained. In most traditions, the witness’ oath was made in the name of cosmic forces, ancestral spirits or God and witnesses swore to being struck by lightning or being killed if they perjure themselves (Emmet V Mittlebeeler 1976:159).

However, restorative justice itself was lodged in religious beliefs. In that regard, African gods were not focused on individual wrongdoing and punishment but also with the well-

7 Marcumstudio.weebly.com/uploads/7/.../thecruciblewitchcraftnotes.docx, 03/04/2016)
being and good relationships within communities as a whole. These laws were compensatory in nature and merely ceased to be punitive in the modern familiar sense. Thus, the exclusion of the death penalty in some indigenous laws was justified by the idea that an appropriate punishment should not destroy the offender. The punishment looked beyond the offender and the crime in considering the society at large, the potential widow and orphans. Compensation better served the aim of justice as a tool of restoration, retribution and rehabilitation.

If one is pointed out to be a witch through one of the above ways, the people who believe that witches should be punished by the law usually carry out their private vengeance by killing alleged witches in various ways. Carstens (2003:184) stresses that traditionally alleged witches faced their fate through burning, a custom believed by the perpetrators to destroy the soul of the witch and cutting ties with the ancestors responsible (Minnaar 2001:184). Carstens further gives other ways employed by the 'witch-killers' to punish 'witches'; neck-lacing, strangulation, drowning and banishment. More so, the alleged witch’s property was destroyed as well. It can be seen that usually victims of witchcraft-based violence undergo a great deal of suffering. The questions that need to be asked are: firstly, are there protection measures given to victims of witchcraft-based violence? Secondly, are the perpetrators brought to book for taking the law into their own hands? These questions shall be answered later.

Now that the above discussion has unveiled the belief and practice of witchcraft, the researcher shall therefore proceed to examine this factor; belief and practices versus the law. The essence of this undertaking is to later help us to examine and assess the legislation and policy relating to the witchcraft phenomenon.

3.6 Belief and practices of Witchcraft Versus the Law
In the leading article titled 'Witchcraft and Statecraft: Liberal Democracy in Africa,' (Nelson Tebbe, 1999) raised some interesting issues about witchcraft and the law. It focuses on
South Africa, one of the newest and most admired liberal democracies, and in particular on its efforts to recognize indigenous African traditions surrounding witchcraft and related occult practices. In 2004, Parliament passed a law that purports to regulate certain occult practitioners called traditional healers. Today, lawmakers are under pressure to go further and criminalize the practice of witchcraft itself. This Article presses two arguments. Firstly, it contends that the 2004 statute is compatible with liberal principles of equal citizenship and the rule of law. Secondly, it warns against outlawing witchcraft. The current researcher argues that the two above arguments given are designed to contribute to a wider discussion about the capacity of liberalism to respond to the global resurgence of religious traditionalism, especially in countries where traditionalists may comprise a large majority of the citizenry. With that foundation, the researcher shall analyse the issue of belief and practice of witchcraft versus the law.

The laws of the countries under study criminalise witchcraft practices. However, prosecutions for witchcraft under the very laws intended to suppress it are rare and if prosecution proceeds, the adducing of evidence to prove that a particular person is a witch is a difficult task. This difficult task in proving the guilty of witches has resulted in more problems. Alternatively, this lacunae in the law angers numerous members of the societies who believe that ‘witches’ should be punished. In that regard, they tend to take the law into their own hands and engage in private revenge. Seidman (1965: 28) notes that belief in witchcraft passionately drives people to violate the law for vengeance against witchcraft. The discussion above has shown that the majority of alleged witches are tortured and killed by individuals who suspect them and accuse them of practicing witchcraft. This then leads this discussion to review the existing laws in South Africa and Zimbabwe that address the witchcraft phenomenon.

It should be made clear that ever since the advent of colonial rule, laws to manage the problems of witchcraft in Africa have been based on Eurocentric views. Malawi, South Africa, Zimbabwe, Uganda, Kenya and Tanzania, are former British colonies and they more or less still use some version of the British Witchcraft Suppression Act. These laws
are argued to be inadequate and amount to part of the problem itself. Geschiere and other scholars allude that so far there is evidence that the current legislations that deal with this phenomenon mirrors colonial reasoning thus the failure to comprehensively address the witchcraft phenomena (Geschiere, 1997; Hund, 2004; Kohnert, 2002b).

3.6.1 South Africa
The South African government’s earliest enactments targeting witchcraft belief included the Cape of Good Hope Act 24 of 1886, the Natal Law 19 of 1891, the Black Territories’ Penal Code XI Act 2 of 1895, the Witchcraft Suppression Act of 1895 and the Transvaal Ordinances 26 of 1904. These laws, however, seemed effective in certain provinces only. Overall, the South African Witchcraft Suppression Act of 1957 was promulgated which outlawed witchcraft and other occult practices. The Act criminalised all witchcraft-related practices including engaging in witchcraft, pretending to profess knowledge of witchcraft, witchcraft imputation and engaging in divination techniques in order to identify witches (Cohan, 2005: 37). The Act was to suppress witchcraft beliefs, which administrators from the distant past regarded as mere superstition (Ludsin, 2008). Furthermore, the law deactivated tribal courts that had customarily adjudicated witchcraft disputes (Ludsin, 2008).

The 1957 Act came into force on 22 February and was further amended in 1970 by the Witchcraft Suppression Amendment Act. This added a new offence which is purporting to use supernatural powers to accuse another person of causing death, injury or damage. This Act was further amended in 1997 by the Abolition of Corporal Punishment Act which abolished the use of whipping to punish certain offences. The Witchcraft Suppression Act, as amended in 1999, remains in force in South Africa to date.

3.6.2 Zimbabwe
The 1899 Witchcraft Suppression Act was always accused not to mirror the realities in the Zimbabwean society hence it was foreign to the corporate beliefs of Zimbabweans. It
also contained the above provisions as those for Malawi and South Africa. Chavhunduka notes that the 50,000 member Zimbabwe National Traditional Healers Association (ZINATHA) played a role in influencing the amendment of the Zimbabwe Suppression of Witchcraft Act (Chavhunduka, 1980). In addition, this influenced the judicial system in January 2006 when a High Court judge recommended amending the law on the grounds that belief in witchcraft and that traditional healers’ work should be cherished in the modern dynamic world. Thus, due to the prevailing dissatisfaction with the old 1899 law on witchcraft, the 2006 Witchcraft Suppression Act was passed. The major amendment worthy of mentioning is that it is now a criminal offence to groundlessly, or use non-natural means to accuse any person of witchcraft.

3.6.3 The Law: General Assessment

Since colonial times, the laws and regulations stressed the need for concrete proof and evidence of direct causation in witchcraft cases. In other words, the law required a direct causal nexus between the conduct of the so-called witch and the particular unlawful result. Originally, the colonial WSA(s) were not meant to punish or bring suspected witches to book and no wonder why administrators were perceived as acquaintances and protectors of witches (Hund, 2004:7-8). No wonder why most African countries repealed the practice of magic and witchcraft (Ludsin, 2003).

Even at the present moment, Ashforth opines that the amended laws do not correctly provide for those who still believe in witchcraft (Fisiy and Geschiere, 1990; Ashforth, 2005a). Kohnert succinctly acknowledges that under the amended Acts of the countries under study, the ‘witch’ whom he labels the ‘real culprit’ is still going scot free and has the Act at his or her disposal as a tool of protection and remain a threat (Kohnert, 2002a). Consequently, such a gap in the law has left the ‘bewitched victims’ vulnerable and despite the petition of the people and various cases of this nature, the public institutions remain adamant and are unwilling to address the controversy thus the ‘bewitched’ have often resorted to their own forms of justice since they feel they have been failed and
remain vulnerable. Undeniably, this has greatly shaken and weakened the legitimacy of the public institutions since they are now failing to harness and control the witchcraft cases. Additionally, a few scholars are of the view that interference by the state outside the scope of amending the law has exacerbated witchcraft violence (Ciekawy and Geschiere, 2002; Hamischfeger, 2003; Hund, 2003; Kohnert, 2003).

It is clear from the above analysis that the Act mainly targets witch-hunting activities. Nevertheless, Kato stipulates that the ambiets of the law have got to merge with the reality that there are people who genuinely believe in witchcraft and they ought to be protected (Kato, 1969). On the other hand, the law ought to acknowledge that ‘witchcraft’ is real to those who belief in it. For instance, a published online story showed what can be arguably said to be a witchcraft case

“52-year-old Ellen Khayiya Mpofu, a suspected witch from Pelandaba in Bulawayo caused a stir in Mpopoma suburb after she ran out of her "witchcraft powers" and found herself at a stranger's house. Khayiya was picked up by police after she invaded Patricia Tshabalala’s house just before 2am and claimed that her friends "dumped her".

Dressed in a wrapping scarf with no shoes and holding a plastic bag with pieces of cloth, mysterious objects and some concoctions, Khayiya shocked Mpopoma residents after she apparently found her way into the house through a locked door.”

The above case is one of the many cases that people are going through daily. And in most cases, despite what the general public say is overwhelming evidence that the person in question is a witch, the courts will just throw it into the dustbin and speak of mental problems among other reasons. Now to arrest and prosecute a suspected ‘witch’ in light

of the challenge of supplying tangible evidence to prove that someone is a witch is an area that needs to be thoroughly investigated and amended. The Zimbabwe Witchcraft Suppression Act provides that any person who in the opinion of the court is suitably qualified to give evidence is competent to give expert evidence as to whether the act constitutes a practice that is commonly associated with witchcraft.

In cases wherein authorities pursue an investigation to bring an accused witch to book, the home of the suspected witch is searched to acquire evidence such as charms or any articles ascribed to witchcraft (Ciekawy, 1998). In that regard, should evidence of possession of articles customarily used in witchcraft be probative of proving a witch? How can these be distinguished from articles used generally by traditional healers? In addition, does mere possession of such articles constitute an offence? Why is it that the cases of ‘witches’ who are caught red-handed in the act always labelled as insane? These questions and more still need to be addressed from the Indigenous Knowledge System (IKS) and Western Knowledge System (WKS) perspectives and enact practical and feasible laws to safeguard those who believe in witchcraft. It is the submission of this researcher that such evidence should not be used in court independent of other facts. In such scenarios, the court should take judicial notice of evidence submitted but should merely convict an accused on other evidence presented rather than exclusively basing its conviction on such evidence. It is common cause that traditional healers and local museums also have some of the charms and articles ascribed to witchcraft yet still they are not institutes of witches or places viewed negatively for promoting witchcraft. This, therefore, leads the researcher to explore the belief in witchcraft as indigenous metaphysical epistemology.

3.7 Belief in Witchcraft as Indigenous Metaphysical Epistemology
As the theory of knowledge, epistemology is a universal phenomenon. To add, from the African perspective, African epistemology probes into the origins, nature, scope and boundaries of human knowledge. Furthermore, P Jacques (2001) stipulates that the epistemology of the African people is based on three realms; the human realm, the
spiritual realm and the natural realms. This belief is subscribed to by African traditional metaphysicians and indigenous epistemology. Moreover, scientists constantly looked down on this belief on the ground of scientism, even though to most Africans it is a belief system that is epistemologically plausible.

Furthermore, numerous versions of IKSs exist in Africa, but almost all of them primarily stress the nexus between the empirical world and the cosmos. Also, Mawere (2010:22) notes that;

“African epistemologies are adhesive vice grips that links the cosmological world with the spirit mediums, rainmakers and rural dwellers social relations and bind them together by setting the ground rules in terms of cultural practices and customs observance in their communities.”

Thus it is now clear that the nexus of these realms inspire people to have knowledge of many things in Africa; morals, values and beliefs, among other things (Comaroff, 1993). These can still be employed for the very reasons even today despite being zombified and demonised by science and have been labelled as superstitious. It is the researcher’s submission that IKSs is still relevant and stays multifunctional depending on the demands and needs of each society.

Bakari (1997) notes that it is regrettable that the scope of the definition of what makes up knowledge about reality of indigenous epistemology has been described in the WKSs. He further notes that for any person to put down an assertion to knowledge, such an assertion ought to be true and accepted with justifications. Unfortunately, the scope of the definition of what constitutes knowledge about reality has not been culturally defined to include the African perspective. In that regard, the European conception should not be concluded to
be concrete when defining the African systems but the African epistemology must be
construed through traditional customs and practices which in themselves emphasise the
close connections between the empirical world and the cosmos.

In line with the above, Meki Nzewi (2007:63) wrote about the preservation of IKSs as
African Epistemology and said;

“Contemporary Africans must strive to rescue, resuscitate and advance
our original intellectual legacy on the onslaught of externally manipulated
forces of mental and cultural dissociation now rampaging Africa will
obliterate our original intellect and love of life.”

It has also been argued that the providence of science in explaining African epistemology
of metaphysics owes itself to its internal logic, perceived objectivity and power of
prediction that may not immediately apply to African IKSs such as ngozi (avenging spirits).
Mawere (2010:209-21) notes that the belief in IKSs such as ngozi (avenging spirits) is
internalist on orientation. In other words, it invokes some internally coherent claims about
explanation of the functioning of cosmology to which scientific investigation is less
privileged to infer from or draw on. The functioning of these IKSs thus defies recourse to
scientific explanation, or prediction to sufficiently substantiate their existence and more
importantly practical relevance.

The discussion above tend to address a burning question that have been ignored for long;
whether different forms of knowledge cannot be developed outside the terms and scope
defined by science. To answer this question intelligently, the researcher submits that this
question cannot be adequately addressed without challenging the monopoly of science
as the predominant way of adjudicating, governing, assessing, communicating and
transmitting knowledge. In light of the foregoing analysis, one major question the research
shall attempt to address is whether there can be a shift from conventional scientific inquiry towards the unorthodox processes of searching for other forms of knowing like examining witchcraft? Nevertheless, such a challenge and inquiry is not meant to totally disregard the scientific but to complement it in order to solve witchcraft cases which the scientific have failed to solve independently. To achieve all that, the researcher shall first give an exposition of IKSs.

3.7.1 Indigenous Knowledge Systems:
Peires (2003:217) notes that merging IKS and conventional systems, Western Scientific Knowledge (WSK), is a mammoth task with numerous believing the dominance of a ‘culture of silence and untruth’ being played on the government side. Deducing from Peires’ words, it can be noted that in this present modern dynamic world, the recognition of the rights of indigenous people seems to be neglected in many jurisdictions. The plight to address these rights and recognition surfaced in the international sphere, culminating in 2007 with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Phuntsok Tashi, 2012:943). Nevertheless, the question of definition, identity, ethical values, rights and beliefs of indigenous peoples remains uncertain and vague to most people hence most of them not incorporated in the written laws. This discussion therefore attempts to unveil some of the above mentioned. The essence of this undertaking is to lay a foundation that will help understand witchcraft beliefs and the thorny issue of criminal responsibility. In addition, the study examines who ‘indigenous peoples’ are and whether there are any specific ethics, values and rights belonging to indigenous peoples.

(a) Definition
To better understand the beliefs in witchcraft in Africa by indigenous people, it is necessary to have a brief understanding of the term ‘indigenous peoples.’ Anaya (2001) notes that the term ‘indigenous peoples’ eludes simple and precise delimitation and is widely contested. As a result, Kingsbury (1998) propounds that there is deficiency in
universal agreement on meanings of the suggested definitions as they in one way or another tend to be either under-inclusive or over-inclusive. It is therefore pivotal to note that there is no solid and universally acknowledged definition of ‘indigenous peoples.’ This is largely due to the fact that different people define the term differently and also to suit their situations. Traditionally, ‘indigenous peoples’ have and/or are still being perceived to be those who were victims of colonial settlements. The term ‘indigenous peoples’ has equivalents which include the following; ‘Aboriginal Peoples’ (AP), ‘First Nations Peoples’ (FNP), ‘Local Peoples’ (LP), or ‘Traditional Peoples’ (TP) (Blakeney 1999).

The term ‘indigenous peoples’ is used in the 1993 UN Draft Universal Declaration of Indigenous Peoples Rights and other instruments in the jurisdictions under study. Even though the other equivalents mentioned above can be employed, but for the purposes of this research the term "Indigenous Peoples" is favoured and preferred simply because it tolerates a scope of justifications (Kingsbury 1998:415). In light of the historical realities and constraints, it is argued that the other equivalents might lack the ‘normative purchase’ possessed by the equivalent. Also, with regards to historical background, this term embraces the core of the historic encounter of the referred persons with their colonisers and demonstrates the existence of an invisible bond that exists with the territories they inhabit and/or assert as theirs. In that regard, a range of justification for using this term is based on historical background, impartiality, the value and importance of diversity and politics.

Furthermore, it should also be noted from the onset that there is no formal legal definition for ‘indigenous peoples’ that has been formulated and put in black and white. The absence of such a definition is brought forth by disputes over the definition of the term ‘peoples.’ The first question relating to the nature of rights and the status of ‘indigenous peoples’ were presented and answered within the African context by the African Commission in the leading case of Endorois (NO. 276/2003). Surprisingly, the term ‘peoples’ was highlighted as a controversial term. In that regard, the drafters of African
Charter refrained from proposing any definitions for this notion. The difficulty in defining the concept of “people(s)” was described by the African Commission in these terms:

“Despite its mandate to interpret all provisions of the African Charter as per Article 45(3), the African Commission initially shield away from interpreting the concept of ‘people’. The African Charter itself does not define the concept. Initially the African Commission did not feel at ease in developing rights where there was little concrete international jurisprudence. The ICCPR and the ICESCR do not define ‘peoples.’ It is evident that the drafters of the African Charter intended to distinguish between traditional individual rights where the sections preceding Article 17 make reference to ‘every individual.’ Article 18 serves as a break by referring to the family. Articles 19 to 24 make specific reference to ‘all peoples.’” (Martinez, 2001)

From the foregoing analysis, it can be noted that in the African Charter context the term ‘people’ is closely linked to collective rights. For the purposes of this study, the same definition given shall be adopted.

The term ‘indigenous people(s), similar to the term people(s) have drawn much debate than expected. In 1991 the World Bank defined ‘indigenous peoples’ from a modern developmental stance and submitted that they are ‘social groups with a social and cultural identity distinct from the dominant society that makes vulnerability to being disadvantaged by the development process.’ On the other hand, Melchias (2001:35) described ‘indigenous people’ as ‘culturally distinct ethnic groups with a different identity from the national society, draw existence from local resources and are politically non-dominant.’ In view and line of the above, Martinez Cobo (2001) postulated that ‘indigenous people are those which have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them.’
Despite the many definitions to the term by scholars from varying angles and perspectives, the mere thing to applaud to is that most of the given definitions have some common grounds. The general consensus that can be deduced from these definitions is that ‘indigenous people’ are persons living in an area within a nation-state, prior to the formation of a nation-state, but may identify with it and have maintained a great part of their distinct beliefs, cultural and organisational features. Underscoring the different definitions given, I submit that ‘indigenous people’ for the purposes of this research are the proprietors of unique cultural, social, beliefs and knowledge systems of practices that can be utilised for sustainable management of natural resources and governance of life.

3.7.2 Indigenous knowledge Systems (IKSs)

Transcending from the definitions we have discussed and that was submitted by the present researcher, though briefly, it is of paramount importance to now discuss ‘indigenous knowledge Systems’ (IKSs). Mawere (2010) defined IK as ‘local knowledge(s) that is unique to a given culture or society.’ Ajibade’s (2003) concept of IKSs is employed to denote the information systems built up by a local community vis-a-vis the Western Scientific Knowledge (WSK) commonly known as ‘modern knowledge.’ Also, Melchias (2001:14) defined IKSs as;

“What indigenous people know and do, and what they have known and done for generations - practices that evolved through trial and error and proved flexible enough to cope with change.”

There is no doubt that these definitions complement each other; they both acknowledge that IKSs are forms of knowledge that originate locally and naturally. However, in light of Melchias’ definition, one cannot resist to comment the colonial racist suggestion that IKSs is a monopoly of numerous trials and error whereas WSK is logical science embodied by
experimentation. No wonder why Nzwewi’s (2007) definition of IKSs is put as; the local indigenous attained knowledge that has survived and failed to expire or be eroded in spite of the racial and colonial onslaughts that it has suffered at the hands of Western imperialism and arrogance. This contention of IKS and WSK is going to be outlined below.

Considering the various senses of the definitions given above, my conception of IKSs is information birthed through traditional thinking and/or exploration by an indigenous community and is accumulated and preserved over generations. The intricacy of IKSs emanates from the logical qualification with the word ‘system’ as it implies a network of processes with different components such as knowledge, belief and technology. In addition, IKS is also generally known as ‘traditional knowledge’ (TK) and ‘Local Knowledge’ (LK). Also, for the purposes of this study the term IKSs shall be preferred about the other terminologies due to the reason given above.

3.7.3 IKS as a Contrast to WKS

Now going back to Melchias’ (2001) definition of IKSs given above; ‘it is what indigenous people know and do, and what they have known and done for generations - practices that evolved through trial and error and proved flexible enough to cope with change.’ The definition cannot be denied to be carrying some colonial ‘racist suggestion or connotation.’ Davis (2004) challenges the notion that IKSs are defined and described as contrasts to WKS alluding that it is rather artificial and problematic. It is because of these conflicts that the research will discuss IKSs vis-à-vis WKSs. This discussion is of importance as is paves way for the assessment of the African value systems partly with regards to witchcraft on the development of the law on criminal responsibility.

To begin with, WKSs is described by Bujo (2006) as knowledge system that is scientific in nature and is made up of experimentation that embodies rational, the systematic and said to be morally superior. On the other hand, Darien-Smith (2002) defines it as knowledge systems that principally originated from Western Europe and became more
pronounced during the Industrial and Agricultural Revolutions of the 19th century. There is no doubt that these revolutions ushered in the creation of scientific knowledge and modernisation of the then industrial and agricultural systems and merchandises. Juma (1989) stipulates that the advent of scientific knowledge during that time witnessed the challenging and overthrowing of some existing knowledge systems that were mainly based on Christian religion.

Down history, the IKS were often labelled and dismissed as archaic and ‘primitive’ while the WKS took precedence. This has been mainly to the reasons that IKSs have been birthed through traditions that developed in the course of ‘trial and error’ and confirmed to be flexible to acclimatise with time and change (Melchias, 2001). According to Nyamnjoh (2004), precedence has been set that the WKS are the plumb-line against which all knowledge systems have been assessed. In this fashion, Le Grange (2001: 139) also concurs that the WKS remain the approved benchmark for determining the validity of all other types of epistemologies (Le Grange, 2001). Consequently, the WKS persist to be leading, whilst the IKS stagger in the outskirts.

To clarify and shed light on the above, I beg to differ from what the above scholars outlined and submit that IKSs were also developed by experimentations though these experiments were not documented and the knowledge systems were legitimised and fortified under suitable institutional frameworks, culture and practices. They have been passed on to other generations (though discriminatorily) and have enabled indigenous people to survive, manage their natural resources and to govern themselves.

In addition, other schools of thought feel that IKSs are being examined and mercilessly judged out of context. Agrawal (1995) further argues that the distinction between IKS and WKS assumes that knowledge is fixed in time, space and content whereas the creation of knowledge is in fact a fluid process which evolves in terms of political, institutional, cultural and economic changes. Davis (2000) adds that the distinction has the effect of
creating hierarchies of knowledge thereby placing the so-called WKS in a dominant position and the IKS in a subordinated position.

The notable difference between the two WKS and IKS is acknowledged by this researcher. However, the present researcher submits that their content and structure are seemingly similar except the absence of genuine dialogue for mutually enriching the two systems. The researcher, therefore, argues that it is necessary to have a full understanding of the IKS. Having outline the above foregoing analysis, the researcher now need to assess whether belief in witchcraft can exculpate criminal responsibility.

3.8 Should belief in witchcraft be a ground of exculpation from criminal responsibility?

It can be noted from the above discussion that many people do believe in witchcraft. More so, those who believe in witchcraft usually inflict harm on the alleged witches as a way of revenge or castigating the evil in their community. In most cases, this harm done on an alleged ‘witch’ is tantamount to a crime of assault, attempted murder or murder. Also, it has been discussed above that such people are taking the law into their own hands because the public institutions are not addressing their petition and that they kill ‘witches’ while labouring under overpowering fear that the victim possesses witchcraft powers. The question that arises here is; whether belief in witchcraft should be a ground of exculpation from criminal responsibility in the jurisdictions chosen for this study? The discussion below is going to focus on whether belief in witchcraft should obviate criminal responsibility. To answer this question, the researcher shall be informed mainly by the psycho-analytic theory.

To start with, the African Traditional Religion and other Christian groups believe strongly in the existence of witchcraft. To add, accusations of witchcraft are the direct manifestations of witchcraft beliefs. On the other hand, belief in witchcraft is legally considered unreasonable. Seidman argues that sheer belief in witchcraft is inadequate
for a defence plea against conviction (Seidman, 1965). Scores of the beliefs in witchcraft are argued to emanate from spectral evidence. Spectral evidence consists of testimony of visions, word of knowledge, supernatural visitations, and appearance of the witch in dreams or other testimony about a vision that identifies the accused as a witch (Diwan, 2004). Spectral evidence is disregarded in the courts of law as inherently unreliable because it is entirely intangible and metaphysical in nature. In addition, the vision is merely seen by only one person who testifies about it and is susceptible to abuse by someone who has a grudge against the accused.

This leads to a discussion on how judges and magistrates view spectral evidence when presiding over a case. In the case of S. v. Muleya and Others (1982 (2) ZLR 359 (SC), Juliet Munkuli consulted a spirit medium to determine the cause of her children’s deaths. According to the spirit medium, the image of a male village dweller appeared in her mirror carrying the corpse of one of the dead children. Juliet’s relatives gathered with other villagers to confront the man whose image had supposedly appeared in the mirror. At the village meeting, the man admitted that he had caused the death of Juliet’s children by witchcraft. Juliet’s relatives commanded that he bring them the muti that he had used. Attended by Juliet’s relatives, the man went and returned with his hands bound behind his back, dragging a sledge. One of Juliet’s relatives was not satisfied and demanded that the man produce a certain water bag whose existence was denied by the man. The man was then coerced to lie on his back, his sledge placed on top, along with heavy rocks and soon after he was pronounced dead.

In Muleya case, the assertion that the victim’s image had appeared in the spirit medium’s mirror constituted spectral evidence. The judge pointed out that spectral evidence was mind-boggling and remains unexplained, and he beheld it with noticeable confusion and perplexity. Even though the presiding officer did not believe that spectral evidence was ‘legitimate or credible’, he did not openly dismiss it from consideration.
On the other hand, courts also seem to sympathise with perpetrators who may have acted on genuine fears of witchcraft in the commission of crime. Having in the back of the mind that witchcraft belief is not legally reasonable, yet still it is one of the few options open to courts to diminish an accused’s liability (S v Netshiavha 1990). Recklessness for another’s precious life and taking away a witch’s life for remuneration totally removes extenuating circumstances (S v Bungweni 1959; S v Ngubane 1980 (2) SA 741 (A)).

Deciding on the case of delusion, one thorny question that was put before the House of Lords for the judges to answer in M’Naughten’s case was as follows (1843, 8 Eng. Rep. 718):

“If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?”

The educated judges answered the question as follows (1843, 8 Eng. Rep. 723):

“…he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self-defence, he would be exempt from punishment.”

One of the thorny issues that has plagued the criminal law of SA and Zimbabwe is how to determine the criminal responsibility of a person who kills a ‘witch’ while labouring under overpowering fear that the victim possesses witchcraft powers. The law of the two countries states that for one to be convicted of murder, the accused person should have committed the crime through his or her conduct and that person did that with the full mental capacity. The latter element is the one at question. To answer this question, the researcher shall review the court cases that were decided about the issue in question.
In the case of *S v Lukwa en 'n Ander* 1994 (1) SACR 53 (A), the appellants went on a witch-hunt and killed those who were accused of being witches. They were sentenced to death by the Supreme Court of Venda. The death sentence was converted to life imprisonment as the court held the appellants subjectively cherished a deep-rooted belief and fear for witchcraft and the events of that night had been ignited and fuelled by such belief.

In *S v Motsepa en 'n Ander* 1991 (2) SACR 462 (A) and *S V Latha and Another* 2012 (2) SACR 30 (ECG) the respective appellants were found guilty of murdering men who were regarded as wizards or witch-doctors. In the former case the appellant killed the alleged wizard in the interest of his community and his sentence of death was replaced with an effective twenty two years imprisonment. In the latter case the appellants who murdered the deceased under the belief that he had bewitched their family were respectively sentenced to fifteen years and ten years.

In the case of *R v Biyana* 1938 EDL 310 the perpetrators killed a deceased who they believed was practicing witchcraft and had by supernatural means caused the death of their family members. The learned Lansdown JP stated;

“...when we find that this has been the motive of the criminal conduct under consideration, we feel bound to regard the accused as persons labouring under a delusion which, though impotent in any way to alter their guilt legally, does in some measure palliate the horror of the crime and thus provide extenuating circumstances”
In the case of S v Sibande 1975 (1) SA 966 (RA) the appellant consulted a traditional healer who advised him that if he raped his grandmother, then killed her, and then cut off a portion of her ear and chin for muti purposes he would be more successful in his gambling. The appeal against the conviction of murder and the death sentence was dismissed. The learned Beadle CJ stated at page 967 C-F;

“It is quite true that in certain circumstances where primitive people commit offences under the influence of witchcraft, that belief is regarded as an extenuating circumstance....but those are all cases where the accused killed the deceased in the genuine belief that by killing the deceased he was averting some great evil that would either befall himself or befall his family or his community. In no circumstance have I known a belief in witchcraft to be regarded as an extenuating feature where the motive for the crime is for personal gain of the accused himself. For example, cases come before this Court where a human being is murdered with the object of taking some portion of that human being's body for making “muti” to be used for witchcraft purposes. In every one of those cases the accused, who has been found guilty of such a murder, has been found guilty of committing the offence without any circumstances of extenuation, although the killing was prompted by the belief in witchcraft” (sinc)

People who subscribe to witchcraft beliefs perceive witches and wizards to be evil. In addition, they passionately believe that they should therefore be eradicated. This means that witchcraft beliefs go hand in hand with ‘jungle justice’. As a philosophy, witchcraft beliefs have presumed logic, fame and rationality in daily life. A close scrutiny unveils that beliefs in witchcraft contradict the systematic, scientific and technological developments in society which are pivotal foundations and basic principles. However, it
is unfair to dismiss belief in witchcraft because science and technology have fallen short to explain the natural conundrums and phenomena which are peculiar to Africa. More so, judging from the very low level and time-consuming pace of technological advancement would be injustice. It is sagacious to face this fact and amend the law accordingly.

In this regard, it is the researcher’s submission that the belief in witchcraft is not a problem but the cruel outcomes of this belief are totally unacceptable today. Also to note, it is true that the violent behaviour being exhibited is a result of complete lack of correspondence between the people’s beliefs and the relevant national legislations. The law is not representative of the people’s beliefs in that alleged witches are not facing the wrath of the law because of the evidence needed before the court of law which is hard to come by. Having all this in mind, can one who genuinely believe in witchcraft not invoke ‘cultural defence’ in a case of commission of the above crime?

3.9 Cultural Defence
Matthee wrote that the accused may raise a cultural defence by putting forth evidence of his cultural background to convince the court that his unlawful conduct is actually lawful and that he should escape criminal liability (Matthee, 2014). In criminal law, cultural defence is a defence to the prosecution for a criminal act which, according to the defendant results from his/her cultural background. A cultural defence maintains that persons socialised in a minority or foreign culture, who regularly conducts themselves in accordance with their own culture’s norms, should not be held fully accountable for conduct that violates official law, if that conduct conforms to the prescriptions of their own culture (Magnarella, 2003). The cultural defence is then referred to as a specific doctrine that recognises the cultural background of the defendant as an excuse or mitigating circumstance in a penal case. The practical effect of a cultural defence is that the accused, because of his or her cultural background and values, did not intend to commit a crime or did not necessarily realise that he was indeed committing a crime (Volpp Harv Women’s LJ, 2005).
However, not all offences by members of minority groups are cultural offences, only those where the cultural elements played a direct and important role in the constitution of the offence can be qualified as cultural offences (Comaroff, 1986). In order to qualify an act as a cultural offence, there has to be a specific connection between the act of the offender and his cultural background.

This calls for the discussion of the issue of influence of the cultural defence on the elements of criminal liability, conduct and culpability. The focus is to determine whether an indigenous belief held by an accused can cause him to act involuntarily. The test for determining involuntariness contains a component of the question into an accused’s culpability (Burchell and Milton, 2004:183). Both voluntariness and culpability entail a determination of whether the accused had the ability to control his bodily movements. The question can therefore be asked whether an indigenous belief held by an accused could result in a view that, during the commission of a crime, he did not perform a voluntary act in order to be held criminally liable.

In order for an accused person to be held liable for a crime committed under the overpowering belief of witchcraft, two things must be proved. Firstly, the accused person must have committed the unlawful conduct (actus reus). Secondly, the unlawful conduct of the accused person must have been done due to fault (mens rea) of the accused person. The term mens rea literally means ‘guilty mind’ (Mens rea and fault are mostly used interchangeably). Hactor (2004) in his paper alluded that the South African courts embrace the psychological concept of culpability to determine whether an accused person has acted intentionally or not. Intention in that regard takes various forms: dolus eventualis, dolus indirectus and dolus eventualis. In the countries under investigation, dolus eventualis is sufficient for criminal liability, but in exceptional cases dolus directus (where the individual actually aimed to achieve a particular result) and dolus indirectus (where the individual desires to achieve a particular result but is aware that, in doing so,
a secondary result will inevitably follow. There is a primary intention but there is a possibility that, in achieving this, a different indirect result may follow) can be evoked. For the purposes of cultural defence, attention is going to be focused on *dolus eventualis*.

*Dolus eventualis* in the context of murder was defined in the case of *Qeqe* (2012 (2) SACR 41 (ECG) pp 48) as “[performing] an action knowing and foreseeing that somebody may be killed, yet despite that knowledge and reckless of the eventuation of the possible result, persists with that action.” *Dolus eventualis* is best illustrated in the facts of *Jolly* (1923 AD 176). In the case, the appellants unlawfully and deliberately derailed a train. However, no one was seriously injured in the derailment. On behalf of the appellants it was argued that there was no desire to injure anyone, especially since the appellants had chosen a spot where the train was moving slowly up a rising gradient with banks on either side of the railway line.

Most definitions of *dolus eventualis* seem veiled in obscurity thus, many authors contest various definitions, but the courts tend to work with a definition similar to that expressed in one of the leading cases, *S v Malinga* (1963 (1) SA 692 (A) at 694G-H), in the context of the *locus classicus* for *dolus eventualis*, murder:

“In considering the issue of intention to kill, the test is whether the [accused] foresaw the possibility that the act in question ... would have fatal consequences, and was reckless whether death resulted or not.”

With this tenet in mind, *dolus eventualis* relates to circumstances which the actor does not plan or desire but which, in the light of human experience, can be expected to follow if the actor proceeds with the plan. The focus is upon consequences or circumstances foreseen by the actor and is based on subject test. The subjective test usually takes into account the state of mind of the accused person. Proof of intention in a criminal case
without a confession from the role actor is almost an impossible task. The main issue raised would be whether the accused person foresaw the consequences of his or her act. In the notorious case of *Nkombani* (1963 (4) SA 877 (A) 883), the subjective test was noted to be more appropriate than the objective test because it is in accordance with justice and it excludes the possibility of constructive and fictitious intent.

Thus, in determining whether or not the accused possessed intention in a particular case, the question is never whether the accused should have foreseen the result of his act. In other words, the question is not whether a reasonable man placed in the shoes of the accused, would have foreseen the result, the correct inquiry is whether the accused in fact foresaw the result. The reasonable man’s test is not a test of intention; it is a test of negligence or recklessness.

Moreover, in *S v Phama* (1997 (1) SACR 485 (EC)) the court denied a defendant to use the belief in witchcraft as a mitigating factor because of the perpetual ‘modernisation’ of South Africa. Undoubtedly the subjective standard was used as the accused was not a tribesman from some remote district completely cut from the influence of modern civilisation. The above implies that any individual in the modern dynamic world, no matter how educated or how strong his or her belief should be in a position of controlling himself when confronted by a witch.

A subjective test is now the preferred method used to check whether an accused person honestly believed in witchcraft (Humphreys 2013 (2) SACR 1 SA). Objectively speaking, the reasonable man so often postulated in our law does not believe in witchcraft. In that regard, the researcher impliedly submits that belief in witchcraft should only be considered in exceptional cases where one kills a ‘witch’ under genuine over-powering fear of a witch which robs the ‘criminal’ of the capacity to appreciate the wrongfulness of his or her conduct. The community may not be safe if belief in witchcraft is openly and freely used as a means of negating or mitigating criminal responsibility for acts committed under a reasonable, good faith belief in their propriety, based on the actor’s cultural belief.
in witchcraft. The community may not be safe if belief in witchcraft is openly and freely used to obviate criminal responsibility but mitigating or aggravating circumstance. As a general rule, belief in witchcraft which will result in the alleged witch being injured or killed should therefore not be accepted in this modern dynamic world. For courts to accept belief in witchcraft which results in harm to alleged witches would be to encourage the belief and authorising an aggrieved party to take the law into his or her own hands. Now that the standpoint of the law is clear about belief in witchcraft, the researcher needs to assess whether the position of the WSA(s) undermine the African culture and tradition.

3.10 Do the Witchcraft Suppression Acts Undermine the African culture and tradition?
For many years now, the general population in Zimbabwe and South Africa agitated for the amendment or annulment of the Witchcraft legislation so that the countries can recognise the existence of witchcraft. In Zimbabwe, the new amendment that took effect in July 2006 was a culmination of years of intense negotiations and acknowledges of the existence of witchcraft in the country. This amendment was hailed by many Zimbabweans as it resonated with Zimbabwe’s culture and tradition…the Act allows one to point one as a witch or wizard if they have a reasonable ground that is not based on supernatural power.

In antiquity, Feireman (1990) opines that witchcraft formed an integral part of the social construction in almost all traditional African societies. The practice and threat of witchcraft traditionally was viewed as one of the several moral artefacts of culture for sanctioning behaviour and conformity. Within the political arena, witchcraft was adopted to strengthen the political power of chiefs and rulers within their jurisdictions. As such, numerous tenets of customary law afforded its ardent followers a complex mechanism by which the rulers would restore equilibrium in society following afflictions of witchcraft.
As elaborated above by the researcher, a complex mechanism by which the rulers would restore equilibrium in society included traditional sanctions which embraced restitution as well as varying punishments depending on the severity of the witchcraft abuses. The prominent ways adopted to settle scores about the witchcraft phenomenon was divination and trials by ordeal. The identification of witches was in the hands of specialists who included traditional doctors who were seen or viewed as ‘witch-finders’ or ‘witch-hunters’. In a case wherein an alleged witch was smelt or identified, the type and severity of punishment ranged from ostracism to compensation and enslavement to execution. Also, cleansing of individual or the entire society to get rid of witches was one of the mildest forms of dealing with the witchcraft phenomenon. This therefore leads the researcher to give a glimpse of the role of witchcraft and/or witchcraft accusations.

3.11 The role of witchcraft or witchcraft accusations
Having outlined the backbone of witchcraft as an African culture and tradition, the researcher will now focus on the role of witchcraft accusations in African societies. Adinkrah (1995) notes that not only will an accused witch lose honour and respect within her community, but stigmatisation which result from the accusation may also lead to major emotional distress and mental anguish thereby leading one to do penance and abandon the practice. In contrast to the above, some scholars are of the view that witchcraft accusations do play pivotal roles in societies. In one vein, witchcraft accusations coupled with subsequent punishments serve a social purpose than just stopping witchcraft (Ludsin, 2005). Accusations of witchcraft in society do play the following roles. On a societal level, witchcraft accusations and witch-hunts help maintain social control within the community. Accusations of witchcraft bring tensions within the community into the open and allowing for a traditional leader or relevant authorities to mediate conflicts thereby bringing viable solutions (Mayer, 1954). In other words, in witchcraft accusations that are raised lies a social problem that is linked to witchcraft just to try to settle scores.
Witchcraft plays a balance of power role in African rural communities. It has been noted in some cases that the fear of being pointed out as a witch or of angering a suspected witch or wizard is an incentive for individuals to respect and treat each other with reverence (Van Blerk, 1978:333). In other words, suspected or known witches are feared and it is because of this that many people shun being at logger's head with them. According to Bennet and Scholtz (1979:287, 296), witchcraft accusations also curb antisocial behaviour and/or remove antisocial people from the community. In most cases, witch killings are often said to be justified as a mode of justice directed towards troublemakers in the communities (Luongo, 2008: 48). It is because of the latter that people tend to behave under African tradition and culture so as to prevent any accusations to be labelled against them. Moreover, witchcraft accusations provide a catharsis to the community (Ludsin, 2005:82). In this regard, the communities tend to utilise their witchcraft beliefs to provide a method of explaining random events like natural disasters (Niehaus, 1997:287).

Lamentably, the exhibition and practice of witchcraft belief in African culture and tradition is arguably noted to lead to violence, vandalism of suspects' property and death of the accused persons. As such, many witch killers seem to walk free after committing such horrendous acts. This leads to this discussion; how did the colonisers come in and disrupted the existing and much praised African culture and tradition on witchcraft.

3.12 Colonialism: Undermining customary laws
When the British took control of colonies in Africa, they neither understood nor trusted the prevailing systems of social control. Believing that Africans were inferior and savage, they wanted to introduce their own ways of maintaining law and order, dealing with crime and settling disputes. They apportioned themselves the moral duty to "civilize the natives". Sir Hamilton (1935:25), a member of the British Parliament, spoke on behalf of the new overlords, when he called for the imposition of British concepts of the rule of law and morality as he concluded,
“It is the duty of the government to civilise and maintain peace and good order and this can only be done by the introduction of British concepts of wrong doing. Revenge and retribution as methods of punishing must go and crime must be regarded first and foremost as an offence against the community if the peoples of these territories are to advance in enlightenment and prosperity.”

From the beginning, the colonialists used laws as their principal mechanism in "civilising" their subjects. They retained customary laws only if they were not repugnant to the British conception of natural justice, equity and good conscience or norms of morality (Cameron, 1939:194; Merry, 1991:897). In the case of witchcraft matters, the skeptical English approach was that witchcraft was non-existent and that the "barbarous and injurious" acts need to be suppressed where witch-finding and the witch-related activities of the "witch-doctor" were rampant (Fields, 1982). The British anti-witchcraft strategy in the colonies reflected the "mother" country's own legal developments on the problem. Magic was viewed as nonsense. It was the law that "killed" witchcraft. Since then, witchcraft beliefs and practices were referred to as "pretended" offenses. It is because of this that anti-witchcraft laws were promulgated that undermined the African culture and tradition.

3.13 Anti-witchcraft legislation

The 1922 Witchcraft Ordinance was modelled on similar witchcraft laws in other British colonies, but by colonial standards the Tanganyika law was a moderate piece of legislation, particularly with regard to punishment (Roberts, 1935). In line with the 1735 law, witchcraft was delineated to include sorcery, enchantment, bewitching or the purported exercise of any supernatural power. In principle, the law prohibited engaging in such activities which were deemed, "...flagrantly and dreadfully barbarous and contrary to accepted standards of modern civilization" (Cameron, 1939:194). It went further by outlawing the naming or indicating any person to be a witch or wizard. Information regarding practitioners of witchcraft was supposed to be made available only to a court,
the police, a head man or other proper authority. All other manner of divulging such
information was regarded as imputation for witchcraft on a person and was criminalized.
The law also forbade any person to inform or advise on the use or exercise of witchcraft
or to supply the means of witchcraft with malignant intent to others.

The above foregoing analysis showed how the witchcraft ordinance upset the social and
judicial system of the governed. British repugnancy against witchcraft had led to the
institution of control mechanisms which disregarded the indigenous rulers. The serious
view taken by the colonial authorities as expressed in the statutes had, in fact, confirmed
the importance of witchcraft and its allied paraphernalia but at the same time weakened
the customary sanctions of the "tribes" in dealing with the phenomenon. Instead of
cooperating with the previously popular benefactor, the so called ‘witch-doctor’ was made
the villain. Without prior knowledge of native customs, traditions and institutions, the
colonial authorities cloaked witchcraft in legal obscurity. Whereas "natives" had
concerned themselves with restoring equilibrium after intervals of witchcraft, the
Europeans replaced the system with alien concepts of "rule of law" and justice (Roberts,
1935:490).

The witchcraft ordinance was a vivid example of how the colonial masters used statutory
legislation to undermine African cultures and traditions. The received English law suffered
from other improprieties such as wording. The phrasing of the law on witchcraft was
grossly unsatisfactory. The law was framed in legal jargon and draftsmanship which
proved cumbersome and a source of misunderstandings. The fact that the law had to
undergo so many amendments and revisions shows how difficult it was to enforce. The
mushrooming of witch-hunting not only tarnished Zimbabwean and South African culture,
but it divided the people as well.
The Colonial attempts at controlling witchcraft illustrate the conflicting meaning systems which were operating between the colonized and the colonizer. The result was confusion as the above excerpts testify. The discourse on witchcraft differed between the "natives" and the alien rulers. The colonizer's outlook on the subject was loaded and prejudicial with racial and superiority/inferiority overtones. The indigenous people accepted witchcraft as a fact but they had routine mechanisms to deal with its malevolent aftermaths. The English law seemed complex and at the apex of British jurisprudence, but in fact it was vague and inappropriate for the objective. These colonial factors were to overflow into the postcolonial period.

3.14 Chapter Conclusion
In summation, it has been established that a witch or wizard is a human being who secretly uses supernatural power for nefarious purposes. Witchcraft, then, is the practice of secretly using supernatural power for evil in order to harm others or to help oneself at the expense of others. However, it is still a conundrum from the definition to practically identify who a witch is because there are no objective characteristics or elements spelt out that would enable one to identify a witch. The chapter has shown the various factors used to accuse people as witches and also the ordeals to prove guilty of suspected witches in Zimbabwe and South Africa. These traditional punishment types obviously violate human rights provisions and standards which are found in the constitutions and other laws of the two countries.

Despite the traditional and cultural ways of Zimbabwe and South African not meeting the constitutional muster, the witchcraft law is a vivid example of how legislation is used to undermine African cultures and traditions. Belief in witchcraft should be to a particular extent considered as a mitigating or aggravating factor depending on the circumstances of each case. Belief in witchcraft should only be considered in exceptional cases where one kills a 'witch' under genuine over-powering fear of a witch, which robs the criminal of the capacity to appreciate the wrongfulness of his or her conduct. The community may
not be safe if belief in witchcraft is openly and freely used as a mitigating or aggravating circumstance. As a general rule, belief in witchcraft should therefore not be accepted as a mitigating and aggravating circumstance in this modern dynamic world. For courts to accept belief in witchcraft as a mitigating factor would be to encourage the belief and authorising an aggrieved party may take the law into his or her own hands. The next chapter will outline the methodology that the researcher will use to gather data to some critical questions raised in the discussion and answer the research questions raised in the first chapter.
CHAPTER FOUR

RESEARCH METHODOLOGY

“Cowardice asks the question: Is it safe? Expediency asks the question: Is it political? Vanity asks the question: Is it popular? But conscience asks the question: Is it right.”

– (Luther, 1967).

4.0 Introduction
This interdisciplinary study employed the qualitative research approach and the legal (doctrinal) approach. The effectiveness of the combination of these two approaches hinges on the extent to which the topic is aligned to, and is sensitive to the worldviews of participants. For a research study to obtain credible results, it should be founded on some underlying philosophical assumptions about what makes up a 'legally binding' research and which research method(s) is/are suitable for the advancement of knowledge. In carrying out and assessing a credible research study, it is therefore indispensable to be acquainted with the philosophical assumptions.

This chapter discusses the research methodologies and approaches employed in the study. Firstly, the research design adopted by the study will be outlined. The study is qualitative in design and multiple methods of data collection were employed in the data gathering process. Secondly, the chapter discusses in detail how the pilot study was conducted. Thirdly, the researcher discusses the population and project areas. This chapter also discusses the selection of research participants, data collection methods and method of analysis and synthesis of data.
4.1 Research Paradigm

The term ‘paradigm’ is used by Kuhn (2011) to denote a conceptual framework shared by a community of scientists which provided them with a convenient model for examining problems and finding solutions. Others stipulate that it is an integrated cluster of substantive concepts, variables and problems attached with corresponding methodological approaches and tools (Kuhn 2011:25). A paradigm therefore implies a pattern, structure and framework or system of scientific and academic ideas, values and assumptions (Olsen, Lodwick and Dunlop, 2012). A paradigm is thus a basic set of beliefs that guide action.

A paradigm defines relationships to the human and non-human environments. It shapes one's view of the universe, one's conception of time and of space. Lincoln and Guba (2014:15) assert that:

"Paradigms represent what we think about the world (but cannot prove). Our actions in the world, including the actions we take as inquirers, cannot occur without reference to those paradigms: as we think, so we act."

A paradigm guides the investigator, not only in choices of method but in ontologically and epistemologically fundamental ways (Guba and Lincoln, 2014:105). Social reality can be viewed as being constructed. In other words, it is based on a constant process of interpretation and reinterpretation of the intentional, meaningful behaviour of people – including researchers (Smith, 2011:85). Thus, depiction and/or interpretation of the social inquiry is a constructive process and consequently the researcher cannot be isolated from the phenomenon investigated (Smith, 2015). For the purposes of this interdisciplinary study, the researcher chose to conceptualise the study within the interpretivist paradigm.
4.1.1 Interpretivism
The interpretive paradigm is also called the phenomenological approach. For interpretivists, the world is too complex to be reduced to a set of observable laws and generalisability is a less important issue than understanding the real conditions behind the reality (Gray, 2014). The main goal of the interpretivist is to understand the meaning of the social situation from the point of view of those who live it. The researcher (inquirer) must interpret the phenomenon, understand the process of meaning construction and reveal what meanings are embodied in peoples’ actions (Schwandt, 2012).

The pivotal tenet of this paradigm is that research can never be objectively observed from the outside rather it must be observed from inside through the direct experience of the people. Furthermore, uniform causal links that can be established in the study of natural science cannot be made in the world of the classroom where teachers and learners construct meaning. Therefore, the role of the scientist in the interpretivist paradigm is to understand, explain, and demystify social reality through the eyes of different participants (Cohen et al., 2011:19). Interpretivism thus focuses on exploring the complexity of social phenomena with a view to gaining understanding. The purpose of research in interpretivism is understanding and interpreting everyday happenings (events), experiences and social structures – as well as the values people attach to these phenomena (Collis and Hussey, 2011:56-57; Rubin and Babbie, 2010:37).

Reality should rather be interpreted through the meanings that people give to their life world. The interpretivist paradigm was relevant in this inter-disciplinary study because it sought to unveil diverse direct experience of the people who are in the legal fraternity who interpret and execute the laws and the social indigenous values and norms of people who are directly affected by the phenomenon understudy. With regards to this study, meaning of social aspects were through exploring African value systems of indigenous people. By observing and learning the cultures and belief systems of the people under study,
knowledge is developed and theory is built through developing ideas from observed and interpreted social constructions. On the other hand, sifting through legal documents, decided cases and newspaper reports also gave the legal interpretation. As such, the researcher adopted this paradigm to combine these two worldviews (the legal and social), so as to make sense of the witchcraft phenomenon objectively. This was indispensable as it helped to understand, explain and demystify social realities of the witchcraft phenomenon through the eyes of different lens (social and legal). This consequently generated grounded palliatives beyond the common scientific knowledge (Rubin and Babbie, 2012:37; Blumberg et al., 2011:17). So, this paradigm sought to understand subjective realities, African norms, values and beliefs, and to offer explanations, which are meaningful for the participants in the study. The researcher employed a comparative legal research approach to compare and contrast norms, institutions, cultures, attitudes, principles, policies and even the entire legal systems. By so doing, it allowed the researcher to interpret and compare the laws, jurisprudence, norms, principles and legal propositions in relation to beliefs in witchcraft and criminal responsibility.

4.2 Research design
A research design can be succinctly defined as the road map or master plan of a research that sheds illuminating light on how the research study is to be carried out. Henn (2010) alludes that it is a plan or strategy that shapes the study. Also, Bless and Higson-Smith (2011: 63) defined a research design as a programme to guide the researcher in collecting, analysing and interpreting observations and data, in order to find answers to research questions. From the given definitions, one can deduce that it is a plan that includes sampling as well as data collection and analysis. Moreover, it further demonstrates the way in which all the pivotal parts of the research study coordinate in endeavoring to address the research objectives and questions. Vogt, Gardner and Hoeffel (2012) define a research design as the basic methods that a researcher can use to collect evidence used to make conclusions regarding an issue under investigation.
In addition, Yin (2013:17) submits that “colloquially a research design is an action plan for getting from here to there, where ‘here’ may be defined as the initial set of questions to be answered and ‘there’ is some set of (conclusions) answers.” In that regard, this interdisciplinary study employed the following designs or approaches to ensure that the study is of sufficiently high quality that makes it valid, reliable and objective: qualitative research design and the doctrinal approach. These two terms are explained below;

4.2.1 Qualitative research approach
The study adopted the qualitative research approach. The use of qualitative research ensured a deep inquiry and understanding of the topic. The study was an explorative research which investigated the witchcraft beliefs thus, employing the qualitative research method. This, therefore, assisted, to a greater extent, in finding out the reasons and activities that define and elucidate witchcraft belief, practices and imputations among other things.

Denzin and Lincoln (2014) define qualitative research as a multi-method that involves an interpretive, naturalistic approach to its subject matter. This implies that qualitative researchers study the phenomena in their natural settings, attempting to interpret them in terms of the meanings people make out of them. This involves the use of a variety of materials that describe experiences and meaning in individuals’ lives; life story interviews, observational, historical, interactional and visual texts. Myers (2010) alludes further that qualitative data sources include the following; fieldwork observation, interviews and questionnaires. In this regard, data is derived from direct observation of behaviours of the respondents from interviews, and also from written opinions. In expanding the latter, Domegan and Fleming (2011) argue that human beliefs are best researched by using qualitative data.

Guba (2013) proposes that in choosing an appropriate and best research methodology, "it is proper to select that paradigm whose assumptions are best met by the phenomenon
being investigated.” The rationale for using a qualitative approach in this study is because of the nature of the phenomena that is under investigation which is the people’s experiences and descriptions of the belief in witchcraft and criminal responsibility. The decision to adopt the qualitative method was driven by McNabb’s (2013:35) assertion that qualitative methodologies ‘provide a wealth of information, which is easy to understand and interpret.’ Furthermore, Leedy (2010) approaches this view from another angle and stipulates that ‘the primary goal of qualitative research is to develop an understanding of how the world is constructed.’ In that vein, the goal of this study is to expand on the understanding of witchcraft belief and criminal responsibility, and recommend relevant legal amendments.

The core data collection instruments adopted in this research were the following; semi-structured interviews, Focus Group Discussions (FGDs) and case study observation. These adopted data collection instruments shall be discussed below. These techniques were preferred for the reason that their strength is in the aptitude to give textual accounts of the phenomenon under study (Mack, Woodsong, Macqueen, Guest and Namey, 2012:1). Mack et.al (2012:1) opine that qualitative research is effectual in discovering intangible matters, attaining cultural information about the values, beliefs and behaviours of populations. This is relevant as the thesis shall probe into the African value systems embedded in the witchcraft beliefs.

4.2.2 Doctrinal approach or black letter law

From the legal perspective, the study adopted the doctrinal approach or black letter law. Garner (2010) defines the terms as the law printed in books set in Gothic type, which is very bold and black. On the other hand, Vibhute and Aynalem (2011) define the term legal research broadly as ‘systematic investigation towards increasing the sum of knowledge of law.’ Legal research was utilised in this research to get a better comprehension of matters relating laws in the study. The reason for the adoption of the legal research methodology was to attain a full and sound understanding of laws governing witchcraft
issues while arguing for amendment of such laws. This legal approach is particularly appropriate for this research because the proposals for amendment of the law are done through a critical evaluation of the black letters of the relevant legal provisions. Desk research was used in the study under the doctrinal approach. The desk-based research involves an in-depth legal and descriptive analysis of materials, focusing on secondary data such as books, journals and articles, legislation, newspaper reports, case law and scholarly materials from the internet. Aynalem Henn, Weinstein and Foard (2011:26) note the following about doctrinal research:

‘It is a research into legal rules, principles, concepts or doctrines. It involves a rigorous systematic exposition, analysis and critical evaluation of legal rules, principles or doctrines and their inter-relationship. It arranges the existing law in order and provides thematic parameters for such an order. It also concerns with critical review of legislations and of decisional processes and their underlying policy.’

The researcher preferred the black-letter-law method because the subject matter required one to check the rational coherence, uniformity and soundness of enactments relating to the issue of witchcraft beliefs and criminal responsibility. To add, it is clear that the black-letter-law approach has the capacity to unveil (in)consistencies and (un)certainties of the laws and/or legal principles. Under the doctrinal research approach, the researcher employed a comparative legal research approach.

4.2.2.1 Comparative Legal Research Approach

Under the doctrinal research methodology, the researcher employed a comparative legal research approach. It is generally agreed that comparative law has one method - to compare and contrast norms, institutions, cultures, attitudes, principles, policies and even entire legal systems. In that regard, it can be noted that comparison is an important and
useful means of seeing differences and similarities in a study. Palmer (2014) contends that there is no single exclusive method that comparative law research should follow or is demarcated to but there is a sliding scale of methods and the best approach will always be adapted in terms of the specific purposes of the research, the subjective abilities of the researcher and the affordability of the costs. This researcher utilised this approach to compare the laws, jurisprudence, norms, principles and legal propositions in relation to beliefs in witchcraft and criminal responsibility in the countries under study. This comparative legal study made it possible for the researcher to formulate sound and relevant recommendations in the development of the law in the areas under study.

In this regard, the researcher gathered all the relevant legal instruments in the two jurisdictions that govern and/or address the phenomenon under study. The process involved reading all the instruments and gathering information on the aspects that had to do with belief in witchcraft and criminal responsibility.

4.3 Study Area
One of the most important factors in choosing the study area is the ability to nominate an area that one can study more effectively. A study area is a geographic boundary created to define the extent of study analysis.

Bizarre and horrific incidents of alleged witches being caught red handed and in some cases, being tortured on Whatsapp message videos and internet have been on the rise. Furthermore, such headlines have been appearing in many newspapers in Africa. These incidents led to radio and television discussions locally, regionally and internationally. It was through these videos and discussions that this researcher became aware of the thorny and sensitive issues of witchcraft. These issues in one way or another triggered and motivated the present researcher to study this in South Africa and Zimbabwe. The two countries were chosen because the researcher had access to the two countries, and
also that the issues of witchcraft violence were still alive in some areas. Thus, for the purposes of this study, the following towns and villages were selected for fieldwork in the two countries.

### 4.3.1 South Africa

Wine’s (2011) writings as also reported in The New York Times reported that about ninety young people were arrested in Limpopo Province in South Africa ‘after a rampage in which thirty-nine homes were burned to the ground, apparently in a fruitless hunt for a witch’. In addition, Carstens (2003) wrote that in 1996 there were over 1100 witchcraft-related incidents of violence in this same province. It can therefore be noted that the incidence of witch-related violence is particularly high in South Africa’s Limpopo Province, which borders Botswana, Zimbabwe, and Mozambique. This is one reason why the researcher chose the province. Thus, for the purposes of this study, the following villages were selected for fieldwork: Thohoyandou, Tshilwavhusiku and Maupye. (The CRLRC launched this year’s (2012) ‘30 days’ campaign (29 March-27 April) in Maupye (Limpopo), one of three identified refugee villages occupied by South African citizens who have been accused of either being witches or of engaging in witchcraft).
Below is a map that shows the places where data was collected in Limpopo province (map 1)

(i) Map of South Africa
4.3.2 Zimbabwe

Bindura, a town located in Mashonaland Central province, North-East of Harare, is well known for the legendary spirit mediums like *mbuya Nehanda* and *sekuru Kaguvi*. It is an agricultural region that is rich in gold and nickel. There is a general belief that people practice witchcraft more in areas that mining and agriculture is rife. There is little research about witchcraft and witch-hunting that has been done in the area. In addition, the President of Zimbabwe has been on record accusing the former Vice-President, Doctor Joice Mujuru, for trying to bewitch him. This former vice-president is from Mashonaland Central. Moreover, the area is convenient for the researcher for he is conversant with the local language, “Kore-kore”. Thus, for the purposes of this study, the following villages were selected for fieldwork: Bindura, Shamva and Mount Darwin. Below is a map that shows the places where data was collected in Zimbabwe (Mashonaland province) map 2:
(i) Map of Zimbabwe
4.4 Population of the Study
According to Potter (2011), population of the study is a group of individuals drawn from the general population under study. The study population was composed of the following groups of people from the provinces elected: police officers, traditional leaders, traditional healers, pastors, victims and perpetrators, members of the legal profession, NGOs, politicians, members of ZINATHA and members of SAPRA and business people.

4.5 Sampling
Sukhutame (2014) stipulates that sampling is a statistical method of acquiring representative data from a population of study. Neuman (2011:240) defines a sample as ‘a small set of cases a researcher selects from a large pool and generalises to the population.’ Thus, not everyone in the province or an institution could give very relevant data especially with regard to research considering that data needs to be credible and reliable. The researcher decided to use judgmental sampling technique hence only those who were considered more likely to give the required information are the ones that were also targeted in the survey.

4.5.1 Sampling techniques
This research was qualitative in nature and that is why the researcher employed non-probability sampling methods. Non-probability sampling can best be defined to mean a modus operandi where the samples are collected in a process that does not allow all the entities in the population equal chances of being chosen. This process has many advantages; it was not sophisticated and reasonably cheap in terms of time constraints and financial expenses. Below are explanations of the adopted methods for this study.

4.5.1.1 Purposive sampling
Purposive sampling was used in this investigation. Purposive sampling is also known as judgmental, selective or subjective sampling method. As such, the researcher made an appropriate judgment as who participated in the study. To add, in using purposive
sampling, the researcher sampled with a particular purpose in mind; selected those who were custodians of witchcraft beliefs, African values and contemporary experts in regards to criminal responsibility. In justifying this selection, the researcher chose the study entities that were available and willing at the time of data collection was collected.

According to Jackson (2012), the researcher forms an outlook to the desired attributes of participants and can be utilised on highly sensitive research study populations. In that regard, purposive sampling was very helpful for circumstances where the researcher needed to reach a targeted sample fast and where sampling for proportionality was not the primary concern. In each of the selected communities the community chiefs, police, headmen, and key informants were requested to identify families that had been affected by the witchcraft phenomenon. These families were targeted to give an account of their life histories (narratives) and answer some of the questions and questioners.

### 4.5.1.2 Snowball sampling

In addition to purposive sampling, snowball sampling was used. Snowballing is whereby the researcher approaches the desired participants and those participants who were approached act as informants and identify other members who are experts in the field of witchcraft and criminal responsibility or victims and perpetrators (Rubin, 2012). During the data collection process, the targeted respondents were interviewed and asked to identify other persons who fitted the profile for this research and facilitated introductions. The nominated respondents were contacted and interviewed, and the process was repeated until saturation was achieved.

Contacts were already established with the key figures in the research sites, for example with chiefs, headmen, headwomen, and with some of the research participants. This had been done through my contacts (colleagues and family members), and the researcher was also acquainted with the other research site. For instance, in this study the researcher contacted the Zimbabwe National Traditional Healers Association (ZINATHA)
and asked to be linked with famous and founded traditions healers. The ZINATHA officers directed us to one traditional healer who had in-depth knowledge about witchcraft cases in their view. After interviewing this traditional healer, the researcher then asked him to suggest the name of other traditional healers or victims known to him who could also provide the information required. This formal procedure was followed with all the traditional healers and/or victims who were interviewed. This was helpful to the researcher, because there were certain traditional healers and victims that would otherwise have been inaccessible, but because the introduction was done by someone known to them, it became easy for the researcher to secure an appointment for an interview.

One benefit of snowball sampling during this research was that the researcher was able to unveil hidden participants who were of value to this research. Thus, this selection process enabled the researcher to include certain participants in the research project that he would otherwise not have known about. However, efforts were made to balance the gender to avoid one gender dominating. This sampling method was used when the researcher interviewed knowledge holders (victims, perpetrators, traditional healers and so on). In turn, these knowledge holders kept giving referrals to other knowledge holders.

4.6 The pilot study

The pilot study is defined as a mean study that pursues to validate the real study by giving reference to the extent to which it is able to measure what it is intended to measure. The researcher pre-tested all the research instruments among a selected group of people to measure its effectiveness. This was done successfully and this helped the researcher to refine the exact issues it was supposed to measure. For instance, the questionnaires were pilot tested to enable them to establish if they mean what the researcher intends them to measure. It was done so because a research instrument like a questionnaire might fail to measure an intended subject because the respondent understands the question in a different manner from the intended meaning. Consequently, this enabled
the researcher to fine tune such instruments to enable them to be correctly understood by the respondent, the way the researcher wants.

An initial FGD was conducted in Muledane, Thohoyandou (South Africa). Permission was first sought from the participants. The participants were 12 in total, seven males and five females. All of them attended the session because it was a holiday and fortunately there were no absentees. Prior to the FGD, a list of topics to be explored was developed, based on the research questions as set out in the research proposal. All the questions were piloted on the day. Pilot discussions took place in one of the staffroom after school.

The aim of conducting the pilot FGD was to explore and identify possible research sites, and gain more insight into the witchcraft phenomenon. This also helped in the conceptualisation of the questions to be used in the in-depth interviews and subsequent FGDs. The involvement of the research participants at this stage was meant to enhance the instrument's content validity, by recognising them as experts in their own right. As a result, the instruments were reviewed appropriately as required.

The pilot FGDs also informed the researcher's decision to use a balanced sex of FGDs participants. This was because women did not feel free to talk about the subject in the presence of their male counterparts who were dominating them. Furthermore, the pilot also informed my decision to select research sites, areas mainly affected by this belief were given out. My research assistants were present at this discussion as 'moderators' and as a note-takers. The sessions were audio-recorded and transcribed verbatim soon afterwards so that a preliminary assessment of the success of the session could be made and the tools be adjusted as necessary.
4.7 Data collection methods

This study was multidisciplinary hence, employed a holistic approach involving multiple research instruments to gather as much data as possible in addressing this multi-dimensional phenomenon. In this regard, the researcher mixed the legal and the empirical qualitative data collection methods. According to Brewer and Hunter (2011) multiple methods allow a systematic exploration of new avenues of research. They further state that multiple methods provide rich opportunities for cross-validating and cross-fertilising research procedures and findings (Brewer and Hunter, 2011). Moreover, they further argue that each type of method, if appropriately applied, could lead to potentially valid empirical and theoretical generalisations about society and social life. The investigation of witchcraft belief and criminal responsibility carried out in this study is a relatively new avenue of research, hence the adoption of multiple methods of data collection techniques to elicit rich empirical qualitative data and legal data.

4.7.1 Legal (Doctrinal) data collection methods

To start with, the legal data collection methods were used. As stated above, it involved an in-depth legal and descriptive analysis of materials, focusing on secondary data such as books, journals and articles, legislation, newspaper reports, case law observation and scholarly materials from the internet. This study used the following instruments:

4.7.1.1 Case law Observation

A case law observation is a research method that comprises of an in-depth and full-fleshed examination of subjects and the facts of a case including its related contextual conditions. A case law study seeks to analyse subjects in a social context by means of construing actions and beliefs of a single group and/or community. Cases are reported in legal books if they meet the following reasons: if the case contributes to legal development; (Bhe case, 2005 (1) SA 580 (CC)) or if a new legal principle is defined (set out); (Grootboom case, 2001 (1) SA 46 (CC)) or if a former court decision of a high court has been reversed; or if the case has an influential minority judgment.
In most cases, people have disputes over issues and in that regard, seek or need someone (a third party) to solve that dispute. That is where courts come in. Courts have the following duties; help to make the law clear by interpreting the law, making a decision on a disputed matter and courts are there to settle disputes about the legal position of parties. As such, courts are arranged from more important ones, ones with high status, to courts that are less important, with lower status. In that regard, the higher the status of the court, the more authority will its decisions have, the more weight it contributes as source of law. Therefore, decisions made by courts are all recorded (kept on record). Some of these decisions are published in law reports and they are used as a source of law. This reporting of cases creates legal certainty, and these decisions are referred to as case law.

In this regard, the research attended court sessions that were dealing with witchcraft issues. In addition, they would also ask the reported cases from the court. Two court cases were followed by the researcher, one from Zimbabwe and one from South Africa. The researcher picked out cases that seemed similar for the purposes of comparison. The case law study was used in many situations to contribute to our knowledge of individual, groups, organisational, social, political and related phenomenon. In general, the case study is the preferred method when ‘how’ and ‘why’ questions are being posed, which is the case in this research. Cases may be useful not as literal interpretations of a doctrine, but rather as indicators of how courts interpret the law. If, for example, the researcher want to build an argument about using plain meaning in interpreting statutes, one may look at how the court has interpreted a number of statutes, not just the statute in question.

For the two court cases that were followed, the researcher’s choice was influenced by the researcher’s personal choice and knowledge of the area which facilitated my access into data sources. It was, however, not possible to track these two cases to the end because
of numerous constraints including time and resources. In this regard, the researcher had to attend court sessions of the two chosen cases. Permission had to be sought from the chief prosecutors of the relevant jurisdictions for the researcher and his two assistants to sit not in the public gallery but to be close to the magistrate so as to follow and observe all clearly. Moreover, the researchers were also getting updates from the prosecutor and getting briefings before the court sessions resume. Furthermore, the researchers had access to charge sheets, sworn affidavits that were given by participants and the relevant laws that were used in the cases. However, this was not easily done as some information could not be given out for the sake of avoiding obstruction of justice in case any information would leak out unlawfully.

4.7.1.2 Newspaper reports
The desk-based research involves an in-depth legal and descriptive analysis of materials such as newspaper reports both electronic (from the internet) and printed. The researcher in this regard followed newspaper reports in Zimbabwe and South Africa. This exercise was meticulously followed to only pick out witchcraft related matters.

Because of costs and flexibility, the researcher opted to keep track of electronic newspaper reports from April 2016 to August 2016 in both countries. In that regard, the researcher would only pick one report per month for the analysis. The researcher chose this period (April to August 2016) because it was the time that was convenient for the researcher to do so. The researcher liked the method of collecting data in this way because it was cost efficient and time saving. Of importance was the rigorous nature adopted by the researcher in being careful in using them. For instance, the researcher checked the source of its production, its author’s position, its way of targeting the readership, and above all its purpose and ends.
4.7.1.3 Assessing Witchcraft Legislations

This study also assessed witchcraft legislations as a method of gathering data. Law is laid down (made) by the Government (state). Parliament is the national legislature (law-making body) of South Africa and of Zimbabwe. As such, one of its major functions is to pass new laws, to amend existing laws, and to repeal or abolish (cancel) old laws. This function is guided by the Constitution of South Africa, which governs and applies to all law and conduct within South Africa and Zimbabwe.

In that regard, the researcher had to assess the witchcraft legislations of Zimbabwe and South Africa. The South African government’s earliest enactments targeting witchcraft belief included, the Cape of Good Hope Act 24 of 1886, the Natal Law 19 of 1891, the Black Territories’ Penal Code XI Act 2 of 1895, the Witchcraft Suppression Act of 1895, the Transvaal Ordinances 26 of 1904 the Witchcraft Suppression Acts of 1957, 1970, 1997 and 1999. Focus would be placed on the last amended one. With regards to Zimbabwe, 2006 amendment would be assessed. This researcher utilised this method, so as to compare the laws, jurisprudence, norms, principles and legal propositions in relation to belief in witchcraft and criminal responsibility in the countries under study. The comparative study of the legislations made it possible for the researcher to formulate sound and relevant recommendations in the development of the law in Zimbabwe and South Africa.

4.7.2 Qualitative data collection methods

After utilising the doctrinal data collection methods, the researcher moved on to do empirical data collection methods. In that regard, the following qualitative data collection instruments were used; Focus Group Discussions (FGDs), semi-structured one-on-one interviews and case study strategy. These shall be discussed seriatim.
4.7.2.1 Focus Group Discussions (FGDs)

The researcher utilised the FGDs first to collect data from participants. This provided the researcher with opportunities to explore and gain more insight into the topic at hand. The FGDs were very useful, as some participants served as key informants later and it also made it possible for the researcher to penetrate quite easily among identified possible research participants, as some of them in turn served as my research assistants in the communities.

This study employed Focus Group Discussions to acquire both general and specific data relating to witchcraft beliefs and the criminal responsibility. Kelly (2011), defines focus groups as a qualitative research method that involves a way of listening to people and learning from their personal narrations. These FGDs were guided group discussions intended to generate understanding of participants’ experiences and beliefs. This allowed informants to the study to “speak their free minds” on the topic under investigation and this method gave room for informants to supply descriptive data from which deductions were made. This interview technique was suitable for this study because it gave room for follow-up questions to assess the researcher’s understanding of informants’ responses, allowing for the probing and clarification of answers (Petra, 2012).

The researcher noted that some embarrassing and sensitive matters that could have been missed or overlooked by an individual were raised and some important information one would not have thought about on their own were covered. In one of his studies about FGDs, Maughan (2013), recommends that FGDs participants should vary between six to twelve respondents. However, for the purposes of this study, two FGDs were conducted. One FGD in Zimbabwe (Bindura) and one FGD in South Africa (Thohoyandou). In Zimbabwe, Bindura, 11 people attended the session (six females and five males). Also, in South Africa (Thohoyandou), 9 people attended the session (four females and five males. The issue of gender balance was cautiously observed as this issue had been
noted on the pilot study, women did not feel free to talk about the subject in the presence of their male counterparts who were far-dominating them.

All in all, the researcher managed to conduct two FGDs in the two countries under study. For the participants, the research assistants, who were community members, made arrangements for the meeting, thus, the sessions took place in the community halls that the researcher booked with the local authorities. There was no specificity in terms of their composition, except that they should be above 18 years. The participants were drawn from diverse backgrounds as a way of capturing all different views in the society. The participants gathered by research assistants were considered to be representative of the community members, because rural communities have similar features: they are rural-based, share the same socio-cultural values, speak the same language, live a communal life, interact freely with one another, and have a sense of belonging to each other and their communities.

In line to Abbas’ (2010) submissions, the study entities that happened to be available and willing at the time of data collection were selected. However, caution was taken to balance gender and age groups. This study conducted FGDs, in order to triangulate data from other sources. In this research, one FGD was held in each country. Invitations were send to all groupings that in the view of the researcher had links to the phenomenon under study to send a representative to this FGD. Throughout, the researcher was interested in the way that people responded to each other’s contributions which helped me to build up a view out of the interaction that took place within the group. The FGDs also became one of the ways in which my study contributed to networking and enhancing social capital which is a vital element for community development. Contact numbers were exchanged between various stakeholders and participants and I could see a genuine determination to continue meeting and networking. The ZINATHA representative in Zimbabwe was particularly impressed as she was able to meet other officials whom she had wanted to
meet and got information on how to contact some other groups to address the thorny issue of self-styled witch-hunters (*tsikamutanda*) who ravaged chaos in communities.

The researcher carried out the FGDs with the help of chosen research assistants who helped to breach the language barrier due to the different languages in the targeted communities. Prior going for data collection, the researcher selected and chose a number of active and energetic research assistants who were willing to assist with the mobilisation of the respondents for this study and also for language translation. These research assistants helped in taking down notes and recording the interviews. With regards to recordings, proper relevant ethical procedures were observed and applied; filling in of consent forms and explanation of objective of the study. Attached at the end are copies of the consent forms and other relevant forms used.

Participants were encouraged to respond one after the other, in narrative form, with minimal interruption. All interviews, including the FGDs were audio-taped. This method provided an opportunity for me to observe non-verbal responses such as gestures, smiles and frowns, which carry information that supplement or even sometimes contradict the verbal responses. In each research site the convenience sampling method was employed in recruiting research participants for FGDs. The recruited sample accommodated participants in the communities who were available and willing to take part in the study. There was also no limit of attendance, and, as a result, the Zimbabwe FGD consisted of 11 participants (6 women and 5 men) and in South Africa consisted of 9 participants (4 women and 5 men).
4.7.2.2 Semi-structured one-on-one interviews

Interviews are methods of gathering information through oral questioning using a set of pre-planned core questions. In this study, semi-structured interviews were carried out with key informants. Some of these key informants were noted through the FGDs and/or through referrals of other key respondents.

Semi-structured interviews are methods of gathering information through which the interviewer poses open-ended questions which are already determined to the interviewee who in turn freely expresses his/her own opinion without demarcations. This method of data collection is advantageous. By using this method, there was high acquiring or generating of rich information and ideas. There was generation of rich information because the dimension and level of questioning was varied to fit the context and that the interviewer made follow up questions and interrogated the interviewee more deeply on specific issues as they arise. In addition, both parties (the interviewer and the interviewee) were relaxed because it was like a discussion on the given topic and the direction of the interview was set by both parties. However, Preece, Rogers, and Sharp (2012) postulate that semi-structured interviews make it complex to standardise the interview across other interviewees, since each interview takes on its own format. This was used by the researcher as a stepping stone since the study was multi-disciplinary; it allowed respondents to give their views with regards to their expertise.

The diagram above shows the number of participants who were interviewed in the study in different places in the two countries under study.
Table 1: Semi-structured interviews respondents

<table>
<thead>
<tr>
<th>Type of Key Respondent</th>
<th>Number in Zimbabwe (53)</th>
<th>Number in South Africa (49)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>Mnt</td>
</tr>
<tr>
<td>Police officers</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Traditional leaders</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Traditional healers</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>ZINATHA and SAPRA members</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Pastors</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Members of the legal profession</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Victims</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>NGOs</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Politicians</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>18</strong></td>
<td><strong>19</strong></td>
</tr>
</tbody>
</table>

**Key:**

- **B** = Bindura
- **THY** = Thohoyandou
- **Mnt** = Mount Darwin
- **TS** = Tshivulavusiku
- **S** = Shamva
- **M** = Maupye

The above diagram shows the distribution of the participants who were interviewed one-on-one with the researcher. The researcher tried to keep a uniform number in the study areas but sometimes this was not possible because of the unavailability of the participants.
and other complications like denial of access to meet the interviewee. For instance, clearance could not be granted to interview the Zimbabwe Republic police thus, the researcher added the number of victims to capture how the police had handled the case.

During the interactive interview sessions, the researcher closely observed research participants and took note of all non-verbal cues, especially considering the topic in question. This, according to Frankfort-Nachmias et al. (2012), is an attempt to understand their experiences and perceptions in consciously sharing their beliefs, values and emotions as far as circumstances allow. Rossman and Rallis (2011) claim that working in the field face to face with real people entails an understanding of how they make sense of their world through multiple methods that are interactive and humanistic. These methods focus on talking with people, listening to them, observing their physical behaviours, clothing, decorations and space, and reading them. During interviews, the researcher likewise observed respondents very closely. Talking and listening to most of the participants in this study as they narrated their stories generated the researcher’s understanding of their perceptions regarding the witchcraft phenomenon, and further stimulated my curiosity and understanding of the criminal responsibility aspect.

The fact that all interviews were audio-taped provided an opportunity for me to observe non-verbal responses, such as gestures, smiles, and frowns, which carry information that supplement or even sometimes contradict the verbal responses. There was an emotional outburst and crying by one young woman who claimed that her accusers were heartless. The point about emotions in the fieldwork experience emphasise that the researcher works with people who carry emotions with the experiences they share. It is therefore impossible, despite the claims for objectivity in intellectual scholarship, for any researcher to remain entirely neutral. My argument is that I was equally emotionally moved by some of the stories of people who shared their experiences with me. There were emotional outbursts, crying, hissing, and at times complete silence for two to three minutes from
some of the participants. The expression on the faces of some women registered feelings of pain and helplessness.

When talking to women who had emotional outbursts, I found myself grappling with the little knowledge of counselling skills that I acquired from counselling training I got at the University. For example, I had to divert to some other issues to allow a grieving respondent to gather up courage before we could continue. The rule of a counselling session is that a counsellor has to concentrate on her client (a person being counselled) and try to help him/her to be able to help himself/herself.

The researcher went to the research sites prepared in anticipation of such circumstances, and hence I revised and reviewed my counselling knowledge and skills. It was, however, noted that most of these emotional reactions came from the women, while male respondents maintained ‘manly’ attitudes. Actually, one could notice the pitch of their voices change when narrating their experiences or rather their involvement with the witchcraft phenomenon, as did their body language, with expressions made using both hands, and continual body movements accompanied by praises and the use of idioms and phrases to reinforce narrations.

Participants to the study were informed ahead of time and were ready on arrival for interviews. The researcher was accompanied by UNIVEN research assistants and other research assistants, who were members of these communities. There was no problem in gaining access to the area and neither was there any problems regarding trust. The initial sample for this study was five men and five women in each site for each category, but it was not possible to meet this number due to time constraints and the inaccessibility of some places in other research sites. Also, some participants in this study were identified using the ‘snowball’ technique of sampling.
The interview sessions with each interviewee lasted more or less an hour and a half to two hours. Questions were rehearsed with respondents for clarification, to enable them to respond to them. At times respondents turned to other issues during interview sessions. For example, there was a tendency by some respondents to interview me while I was in the process of interviewing them. Some interviewees focused on the purpose of my research, my use of the information, and whether their names would be disclosed, and they questioned how they would benefit from my research. For ethical considerations, I explained to them that this is my own investigation for academic purposes; however, presentations of the findings and recommendations would be made available to various stakeholders to serve as a springboard for social development. I explained that their names would not be used in the reports.

After being satisfied with my reasons for the interview, I gained access into their ‘private’ lives. As a young man researcher, I was sometimes told by some men that some information is too confidential to be revealed to a ‘youngsters’ who could ‘antagonise’ the ancestors. However, the presence of my male research assistant (a father of three), who was trained prior to conducting interviews and who was well equipped with the intentions of the research, was in my favour in this regard, as I got information that I would otherwise have been denied access to.

4.7.2.3 The case study

A case study is a research method that comprises of an in-depth and full-fleshed examination of a subject of study (case) including its related contextual conditions. A case study seeks to analyse subjects in a social context by means of construing actions and beliefs of a single group and/or community. Gillham (2010) defines a case study as an investigation to answer specific research questions which seek a range of different evidences from the case settings. In other words, it is an empirical inquiry of real-life experience. In that vein, Ritchie and Lewis (2013) perceive a case study as being ‘multiplicity of perspectives which are rooted in a specific context.’ A case study approach was helpful in circumstances where background and/or historical information of the
phenomena being studied was very critical. The study employed the case study method to assess the witchcraft beliefs and criminal responsibility aspect. The researcher made use of the case study strategy in the two court cases that were followed by the researcher, one from Zimbabwe and one from South Africa. This was done, so as to try to collate the legal findings and the empirical findings.

Denscombe (2011:30) postulates:

“The logic behind concentrating efforts to one case rather than many is that there may be insights to be gained from looking at individual case that can have wider implications and importantly that would not have come to light through the use of a research strategy that tried to cover a large number of instances – the survey strategy. The aim is to illuminate the general from the particular.”

As a research strategy, the case study was used in many situations to contribute to our knowledge of individual, groups, organisational, social, political and related phenomenon. The case strategy is one of the most widely used methods in social research. In general, the case study is the preferred method when ‘how’ and ‘why’ questions are being posed, which is the case in this research.

Determining what the case is going to be involves deciding whether it will focus on an individual, group, institution or a community as was the case with this study. For the two court cases that were followed, the researcher’s choice was influenced by the researcher’s personal choice and knowledge of the area which facilitated my access into data sources. It was, however, not possible to track these two cases to the end because of numerous constraints including time and resources. In this regard, the researcher had to attend court sessions of the two chosen cases. Permission had to be sought from the chief prosecutors of the relevant jurisdictions for the researcher and his two assistants to
sit not in the public gallery but to be close to the magistrate, so as to follow and observe all clearly. Moreover, the researchers were also getting updates from the prosecutor and getting briefings before the court sessions resumes. As that was not enough, the researchers would also interview face to face the people (interested parties) who would attend the court sessions. Additional informational, if possible, was solicited from the two separate parties that were before the court of law, so as to have a bigger picture of the matter at hand. The researchers also visited the places of the parties to see how the people around the communities behave towards the investigated phenomenon, witchcraft belief. Background checks were done to see how the places where the parties in the cases are from to see how they could have been influenced by their local environments or belief systems of the communities.

During the case study, the researcher closely observed parties involved in the case and took note of all non-verbal cues, especially considering the topic in question. This was an attempt to understand their experiences and perceptions in consciously sharing their beliefs, values and emotions as far as circumstances allow. Rossman and Rallis (2012) claim that working in the field face to face with real people entails an understanding of how they make sense of their world through multiple methods that are interactive and humanistic. This method involved focusing on talking with people, listening to them, observing their physical behaviours, clothing, decorations and space, and reading them. During interviews with some participants who attended the court sessions or in the village where these parties were from, the researcher likewise observed respondents very closely. Talking and listening to most of the participants in this study as they narrated their stories generated the researcher’s understanding of their perceptions regarding the witchcraft phenomenon, and further stimulated my curiosity and understanding of the criminal responsibility aspect. The non-verbal responses of respondents, such as gestures, smiles, and/frowns carried information that supplement or even sometimes contradict the verbal responses. Some emotional outburst, silence and crying by other respondents spoke vividly than the spoken words they uttered. The researcher and his team were able to read all this without because of the small training workshop they had
with regards to behavioural traits of participants. However, some respondents were noted to be dramatic especially when they saw tape-recorders and cameras with research assistants and knew that their attention is being captured. For ethical considerations, the researcher would not record or capture anything without first acquiring informed consent from the participants in the case being investigated.

4.8 Data analysis method
Data used in this study was collected and stored on the recorder and in note books. For the purposes of data analysis, it was re-read and played more than a few times to capture the overall account of the interview. Such meticulous measures were done in order to put in writing the fundamental views and comments of respondents. Furthermore, all the recorded data from informants was translated from the different languages of the respondents into English and this was further transcribed into writing. The captured data from respondents was conceptualised as responses to the research problem.

Data analysis is the process of systematically applying statistical and/or logical techniques to describe and illustrate, condense and recap, and evaluate data. Valle and Halling (2011) notes that the description of data collected can be a complex and a difficult process hence a need to break it down into manageable units. A vital aspect of analysis and interpretation in qualitative case study is the exploration for meaning through direct interpretation of what is observed by the researcher as well as what is experienced and reported by the subjects or respondents. In this research, data was analysed and interpreted using thematic analysis.

4.8.1 Thematic Analysis
This thesis adopted the thematic analysis approach. Braun (2012) described thematic analysis as a way of using themes that emerge as being significant to the description of a phenomenon. The themes to be used were drawn from the research questions used in the study (Fereday and Muir-Cochrane, 2012: 4). This approach was selected because it
is the standard or generally accepted method for analysing qualitative data. To add, Braun and Clarke (2014:78) also submits that thematic analysis is usually preferred over other methods of analysis because by “…its theoretical freedom, it provides a flexible and useful research tool, which can potentially provide a rich and detailed, yet complex, account of data.” This categorisation aided the researcher to construct comparisons among patterns and make deducing them.

4.9 Reliability, validity and generalisability of data

An instrument is said to be valid when it measures what it claims to measure. To ensure that all the data collected would be reliable and valid, the researcher ensured that the data collection instruments were easy to understand and not vague. The researcher devised a control mechanism in which response given were tested. When the respondent gave a response which did not fit into the category, then the researcher would be alerted that either the respondent failed to understand the question or the question needed to be rephrased.

To avoid such challenges, all the research instruments were pilot tested before the actual data collection was done. Afterwards, the researcher attended to the weaknesses noted on the data collection instruments. Also, the researcher had to amend some questions which respondents had difficulties in answering or understanding.

4.9.1 Bias

The researcher guarded against bias. The researcher was fully aware that certain group of people carry similar beliefs and as such avoided including similar groups as respondents at the expense of other groups. Also, to avoid bias, triangulation was designed to verify the authenticity of the responses.
4.9.2 Credibility
According to Shenton (2013) credibility is mainly concerned with the question of, “How congruent are the findings with the reality”. On the other hand, Guba and Lincoln (2012) argue that ensuring credibility is one of the most important factors in establishing trustworthiness. The researcher was aware that some of the participants could not read and write, but they were Knowledge Holders (KH) who were useful in the study. The researcher catered for these participants by simplifying the questions and/or by translating the questions to the local language. Also, the researcher ensured that the translation was accurate by liaising with experts in the field of the language being translated.

4.9.3 Confirmability
According to Edgerton (2012), confirmability is a way of establishing efficacy of the research. In other words, it refers to the objectivity or neutrality of the data. Furthermore, this objectivity and neutrality was sought so that the checks and balances on whether the data is relevant and is meaningful. The researcher ensured that the findings of the study are true reflections of the participants’ responses during interviews. To ensure that, the researcher previewed the findings by replaying the recordings and reading responses with the participants to ensure that the findings are given accurately.

4.9.4 Transferability
Mouton (2012) indicates that in a qualitative study transferability rests on those who will be willing to use it appropriately at the receiving context. The researcher ensured that the findings were easy to be applied to related studies from similar environments. Furthermore, the researcher ensured that the data collected from the participants and recorded was analysed at the best of the researcher’s ability. This was done so that those who wish to use the findings for policy and other things would find it easy to use.
4.9.5 Neutrality
Nachmias (2011) defines neutrality as not supporting either sides or impartial. It implies that the researcher will not take sides when conducting the research. The findings of the study were influenced by the participants and not by the researcher’s bias, interest and motivation during an interviewing process. So during the study and compilation of the findings, the researcher kept the duty of good faith and reported the findings without any attachments of the feelings of the research.

4.9.6 Truth Value
According to Mies (2014), truth value refers to the trait given to a proposition in respect of its truth. The researcher never interfered with the findings of the study to suit personal outcomes. The researcher applied all relevant methods to make the study speak for itself.

4.9.7 Triangulation of Data
Multiple methods of data collection were employed by the researcher to provide rich opportunities for cross validation and cross-fertilisation of research findings (Brewer and Hunter, 2010). The multi-method approach adopted in the study was a means of triangulation. According to Denzin (2011) triangulation is a method of cross-checking and confirming the information elicited from qualitative data sources. He proposed multiple methods of data collection as part of the methodology; these yield rich data and provide opportunities for more in-depth analysis, which is a major benefit of the research design used in this study. Data were interpreted from many perspectives.

4.9.8 Training of field assistants
Two field assistants (both with Masters in African Studies) who were multi-lingual were enlisted to assist with conducting in-depth interviews. Two training sessions were held for field assistants on the research focus and procedures. Practical demonstration sessions
were also conducted to ensure competence and mastery before commencement of fieldwork.

4.10 Research Ethics

The study of witchcraft beliefs and criminal responsibility raised several ethical issues that were addressed during and after the research had been conducted. Ethics are defined as moral philosophy or code of morals practiced by a person or group of people. Berg (2011) notes that the availability of research ethics in a thesis assists researchers to address ethical dilemmas that may arise during the course of the research write up. Billings (2013:73) stipulates that the concept ‘ethics’ is an intricate construct, instilled with meticulous values and beliefs that persuade how research is approached. Gallagher (2011) simplified the term or concept to mean ‘principles of right and wrong conduct’ that should not be violated. This study was founded on a qualitative study that entails exploring data of witchcraft beliefs and criminal responsibility. Looking at the sensitivity of the nature of the topic, it therefore required strict adherence to ethical issues to gather fruitful data.

Creswell (2013) postulates that a researcher or author has an obligation to respect the rights, needs, values and desires of the respondents. All relevant research ethics were obeyed during the study. The UNIVEN policy research ethics were adhered to throughout the study: research techniques, policy, procedures and ethical guidelines. In the interest of research participants, the researcher had the following ethical issues taken into account.

4.10.1 The UNIVEN policy research ethics

To start with, the UNIVEN policy research ethics was adhered to throughout the study: research techniques, policy, procedures and ethical guidelines. Relating to the clearance certificate, the researcher presented and submitted the research proposal to the University of Venda Research Publications Committee (RPC), which scrutinises all
proposals for conducting human research under the auspices of the institution, for it to be scrutinised by a panel of lecturers before it was approved. This board, which is made up of scholars and researchers across a broad range of disciplines, checks proposed research studies to ensure that the procedures are not unduly harmful to participants, that appropriate procedures are followed to obtain participants’ informed consent, and that participants’ privacy and anonymity are assured.

4.10.2 Informed Consent, Confidentiality and Anonymity
Throughout the fieldwork and writing-up phases of this research study, the anonymity and confidentiality of informants was guaranteed. To achieve this, informants’ identities such as their names were not used in the analysis. Thus, all names referred to in this study are pseudonyms. Informants were not be coerced in any way to participate in interviews. With no harm on informants in mind, informants were informed of the right to withdraw from the interviews at any point. The researcher also ensured that research participants were not be exposed to physical or psychological harm, and they were not subjected to unusual stress, embarrassment or loss of self-esteem. Where necessary, the researcher first obtained the necessary permission from the traditional authorities, or any relevant institution, in an area to interview residents or employees. The purpose for the study was explained to all informants and informed consent sought from them before interviews are conducted. This was done by disclosing the topic, aims and purpose of the research study.

4.10.3 Interview ethics
The significant ‘experts’ (respondents) of this study were contacted and enlightened of the goal and were invited to take part in the research data collection process. Also, prior to the interview, these participants were formally given a copy of the UNIVEN ethical clearance letter and an interview schedule as a way to establish the authenticity of the research. Every time during the interviews, the researcher would make sure that he clearly elucidated his motive to keep count of notes on issues emanating from the
discussion. The researcher was doing this procedure meticulously to put away skepticism that frequently comes out when the interviewee notices that his or her contributions were being recorded.

Cultural sensitivity is usually one fundamental aspect that is frequently given a blind eye. In light to that, this investigation was mainly premised upon cultural values and no wonder why all cultural values, beliefs and customs were strictly adhered, to so as to be openly welcomed. Silverman (2011) strongly opines that the correlation of the researcher and the intended subject during and after an interview needs to be esteemed in line with the values of the researcher and cultural values.

4.10.4 Referencing
The researcher reported his findings in a complete and honest manner, without distortion of the truth or misrepresentation thereof. The researcher did not fabricate data to support his conclusions, and acknowledged all sources, to avoid plagiarism or academic shoplifting. In that regard, all the work of other scholars or authors used in this thesis was properly referenced in accordance to the UNIVEN Human and Social Sciences approved style. Moreover, some of the sources used in this thesis were collected from newspaper articles, journals, books and the internet. These were also referenced as such.

4.11 Limitations Encountered
Limitations encountered includes difficulty of getting respondents at appointed times. Some appointments were cancelled or postponed thereby disrupting other set meetings thereby leading to setting new appointments. More so, a challenge existed wherein some respondents had high expectations. These respondents had high expectations that the researcher was yet another philanthropist who had come to offer them some material support and some expected remuneration for their contribution. Also, the issue of
emotions proved to be a fundamental limitation. It was quite challenging ignoring emotions of some of the respondents as well as my own emotions. Numerous respondents, especially those who had been direct and indirect victims, could easily become very emotional during the interviews. As that was not enough, the poor road networks in some study areas, coupled with the remoteness of some of the communities made it impossible to visit those communities.

The primary limitation encountered during the investigation phase was the barrier of language. An interpreter was used during the semi-structured interviews and informal discussions with informants. The interpreter’s grasp of the language seemed compromised due to dialect problems. To overcome this linguistic challenge, the researcher posed additional questions for clarification during the interviews and this was one of the reasons why the interviews were semi-structured, to permit the investigator to ask follow-up questions as a way of attempting to avoid linguistic misunderstandings in the translation process.

Another limitation was the difficulty in acquiring data from informants because of the sensitive nature of the topic under investigation. The investigator was sensitive to the phobias of the informants by informing them that they are not obliged to answer questions that they are uncomfortable with. In addition, access to information in most areas was dependent on the researcher adhering to the established channels of protocol. Before interviewing local residents in a village, the investigator approached the traditional leadership in a specific village to get permission to speak to the residents. As a matter of protocol, headmen were usually obliged to accompany the researcher to the homes of informants. This, however, made informants nervous and reluctant to respond to some questions.
Lastly, yet another challenge encountered was in obtaining data of actual cases from SAPS and ZRP dockets for case analysis of documented witchcraft-related cases. The researcher was required to obtain written approval from the SAPS and ZRP of the Provincial Commissioner before access to data was granted. The process was not easy, too long to follow and never gave feedback until the analysis of data was completed.

4.12 Chapter Conclusion
This chapter has explored the research design, population and sample. It has also dealt with data collection tools namely interviews and questionnaires, highlighting their strengths and limitations as well as the design tools. The administering of these tools in collecting data was aimed at producing quality and reliable results. Secondary source were also consulted to corroborate the data collected using these research tools. This chapter also assessed the research ethics which the researcher rigorously observed during the data collection processes and after. Concluding the quote given at the beginning of this chapter, I say the method adopted is right as it complements and meets the expected standard of collecting data without allowing me to manipulate the data. The next chapter provides the findings from the questionnaires, interviews and secondary documents that were gathered in line with the research objectives and research questions.
CHAPTER FIVE

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

5.1 Introduction
In this chapter, the focus is placed on the presentation, analysis and interpretation of data. In other words, this chapter presents the main findings of the study that are relevant to the objectives of the study. Firstly, it presents a comparative analysis and findings of fieldwork done in the Mashonaland Central province in Zimbabwe, and the Limpopo province in South Africa. Secondly, the chapter also discusses the extent to which legislation addresses the challenges of witchcraft-based violence in the two countries.

5.2 A comparative analysis and findings of the fieldwork done in the Mashonaland Central province in Zimbabwe, and the Limpopo Province in South Africa.
The study was undertaken to give a comparative analysis of the fieldwork done in the Mashonaland Central province in Zimbabwe, and the Limpopo province in South Africa. This analysis is indispensable as it will show the African value systems with regards to witchcraft beliefs that are peculiar to Zimbabwe and South Africa. To have a full understanding of the indigenous knowledge systems that are linked to witchcraft beliefs and criminal responsibility, the researcher did the historical background of the study areas in Zimbabwe and South Africa. These were meticulously followed to unveil contextual relevance of the witchcraft phenomenon.

5.2.1 Historical background on African Values and norms: the witchcraft phenomenon in Zimbabwe and South Africa
The preliminary historical investigations were conducted to have a clear understanding of the African value systems with regards to beliefs in witchcraft. Lévy-Bruhl (1966:135) emphasises the importance of conducting a preliminary investigation. This included reports from missionaries, knowledge holders, scientists or traders. In that regard, the researcher followed Levy-Bruhl's blueprint and visited offices of the Zimbabwe National
Healers Association (ZINATHA) in Bindura, Shamva and Mount Darwin. In South Africa, the researcher visited a committee of traditional healers (Vhomaine). Also, the researcher visited ancient places for information about witchcraft. In preparation for this, I visited the departments of Anthropology at the University of Venda and the University of Zimbabwe. Other places visited in the two jurisdictions included local libraries and museums. Because the study included desk-based research under the doctrinal methodology, newspapers and magazines were consulted in South Africa at the Periodicals section of the University of Venda, and in Zimbabwe at the University of Zimbabwe.

The findings from this study underscore the importance of extending the thinking about Indigenous Knowledge Systems-legal integration beyond aspects that suit the scientific and coherence evidence but to consider the supernatural aspect that IKS carries, as well as considering relevance to community needs. In that regard, the researcher’s historical research approach was also based on finding and making sense of the social reality and context of witchcraft belief in the research sites. In that regard, the researcher had to take into consideration the basic premises upon which social relations and ideas of how witchcraft function in the societies in the research sites. This was meticulously followed to assess the influence of and the role of African value systems particularly with regards to the witchcraft phenomenon. A discussion of the discoveries and the information gathered through desk-based is below:

5.2.1.1 The Limpopo Province
The belief in witchcraft has a long history in the Limpopo Province, South African. Its history is older than colonialism. In the early 1990s, the so-called ‘homeland’ of Venda was plagued by disharmonious social relations linked to witch beliefs and related conflicts (Lévy-Bruhl, 1966:135). Alleged witches were killed and their houses set on fire by their accusers. Apart from the disharmony engendered, some inhabitants were said to kill people for the procurement of human parts to make, what is popularly known in South Africa as muti (magic medicine for prosperity). One-on-one interviews with almost all the participants reflected that such cases persist in this province to date. Numerous cases
opened by the police and newspaper reports of these muti-murders are a testimony that this phenomenon is still alive in the present day Limpopo province.

Awakened by muti-murder statistics and witchcraft-related crime statistics, the social unrest and the subsequent media attention during the late 1980s and the early 1990s, the new national African National Congress (ANC) government felt that it needed to address this situation. In an attempt to combat the ever-growing problems caused by the belief in witchcraft, it appointed a special research committee in 1995: the Commission of Inquiry into the Witchcraft Violence and Ritual Murders in the Northern Province of South Africa. Through means of semi-unstructured interviews this commission, headed by Professor Ralushai, conducted extensive research regarding the subject of witchcraft and its related problems. After the notorious witch-hunts in the past years, the Ralushai report was given. In 1998, the Commission for Gender Equality issued the Thohoyandou Declaration on Ending Witchcraft Violence. This was done by also recommending urgent legislative reform to mitigate harmful witchcraft practices and violent witch-hunts including new legislation to regulate the practices and conduct of traditional healers.

In the Limpopo province, the towns of Thohoyandou, Maupye and Tshivulavusiku were selected for collection of data. The justification of why they were chosen was discussed above. The researcher discussed these study areas seriatim:

(i) **Thohoyandou**

Thohoyandou (meaning 'head of the Elephant') was made the capital for the Venda people in 1979. Due to financial problems, the Venda people requested admittance back into South Africa, which was approved in 1994. It is now the administrative and legislative centre for this Venda region in the Limpopo Province. Under the apartheid system the land of the Venda people was designated a homeland so they were fairly unaffected by the political and social changes that had such a massive effect on the rest of the country. In Thohoyandou, I noted that some people still believe in spirit mediums, witchcraft, Rain
Queens and the sacred baboons. Nowadays, Thohoyandou has much more activity and has been modernised with the buildings and other infrastructures. Despite the modernity, the people in Thohoyandou still keep and follow some cultural aspects, language, arts and crafts that have survived so strongly in the area. Focus group discussions held showed that many people in Thohoyandou still believe in witchcraft and ritual murder killings.

(ii) Maupye
Maupye is next to Damplaats, and is located in the Capricorn District Municipality, Limpopo, South Africa. The CRLRC launched 2012’s advocacy campaign in Maupye (Limpopo), one of three identified refugee villages occupied by South African citizens who have been falsely accused of either being witches or of engaging in witchcraft. It was unfortunate the researcher could not locate the alleged refugee villages in question and efforts to contact SAPRA to locate the village were fruitless. However, participants who were interviewed showed that the people in this place still closely follow some of the cultural practices that was passed by their ancestors including the belief in witchcraft. It was noted that it is always a case that if one is accused of witchcraft in the place, the people of the community will burn your house. This, as said by participants to the study, is a way of dismissing the alleged witch from the community.

(iii) Tshilwavhusiku
Tshilwavhusiku is situated in the former homeland of Venda in the most north-eastern part of the present-day Northern Province of South Africa. The Soutpansberg mountain range forms the predominant topographical, geographical and ecological factor of the area. Stretching about 125 km from east to west and 15 to 30 km from north to south, the Soutpansberg is the northernmost significant mountain range in South Africa. It includes some of the best-watered regions in Southern Africa and consequently the former area of Venda is often referred to as ‘the Land of a Hundred Streams’ (Van Rensbeek 1979:18).
The area of Tshilwavhusiku, about 15 km west of Louis Trichardt, stands in stark contrast to the pleasant mountainous landscape of the rest of Venda. Instead of being situated in the actual Soutpansberg, it is located at the foot of the mountain-range. As a consequence, Tshilwavhusiku’s landscape is not one of rolling hills, but rather of complete flatness: horizontal planes reach as far as the eye can see. Moreover, Tshilwavhusiku is deprived of the general rainfall than other parts of Venda receive: the annual rains bring Tshilwavhusiku only a fraction of the rainfall of what the rest of Venda receives. This is critical with regards to the belief of witchcraft in the area. Some participants indicated that this was regarded as the home of witches. The name Tshilwavhusiku means ‘someone who fights at fight.’ The place is dry and it is depicted to mean that it is not productive because of the residence witches. Most participants seemed even afraid to discuss about witches as they indicated that almost everyone in there might be a witch. Everything that happens in this place is always attributed to witchcraft. Some participants confided that almost every household have ways of protecting themselves against these ‘night fighters’ (witches).

5.2.1.2 Mashonaland Central Province

Mashonaland Central Province had been the centre of activity for many traditional mediums during the liberation struggle. Many spirit mediums like mbuya (grandmother), Nehanda, sekuru (grandfather), Kaguvii who are believed to have led and given spiritual guidance during the first Chimurenga (war), were from this province. Their duties included flashing out varoyi (witches and wizards) and giving them suitable punishments. From that time, people in this province had developed a culture of calling the tsikamutandandas (self-styled witch-hunters) to cleanse their societies. To date, numerous spirit mediums still live in the province. The Mozambique border post, Mukumbura, is located in this province. Many people believe witches travel to Mozambique to procure witchcraft powers. Mashonaland Central province has many times been labelled the ‘epicenter for political violence’. In that regard, some people resort to use violence whenever a cleansed witch persist with their evil trade.
In Mashonaland Central province, Bindura, Mount Darwin and Shamva were selected for collection of data. The justification of why they were chosen was discussed above. The researcher discussed these study areas *seriatim*:

(i) **Bindura**
Bindura is a town in the province of Mashonaland Central, Zimbabwe. It is situated in the Mazowe Valley, approximately 88 km north-east of Harare. It is the administrative capital of the province. Cotton and maize is grown intensely in the region. Bindura was originally named Kimberley Reefs after the gold mine which was opened in 1901, and changed to Bindura in 1913 when the railway arrived. Most people who live in Bindura fully believe in their ancestors. There are a lot of Mozambiqueans, Zambians and Malawians who migrated to this town for job-hunting and are now residents of the town. These people are believed to use a lot of *muti* and rituals. As such, witchcraft beliefs in Bindura is rife. The issue of witchcraft is highly linked to gold mining and as such most gold miners are feared and their wealth is viewed as witchcraft money. The clash of different nationalities and ethnic group in this small town makes the belief so rife. Some participants claimed that other nationalities have witchcraft powers to transform into any animal, especially cats.

(ii) **Mount Darwin**
The town lies in Mount Darwin District, in Mashonaland Central Province in the North-Eastern part of Zimbabwe. The town has a public hospital, Mount Darwin District Hospital, and a mission hospital, Karanda Mission Hospital. It is alleged that Mount Darwin was named by the hunter and explorer Frederick Courtney Selous after the British naturalist Charles Darwin. Mount Darwin (alternate: Darwin) is one of seven districts in the Mashonaland Central province of Zimbabwe. The district's capital is the town of Mount Darwin. Mount Darwin is surrounded by so many rural areas and these rural areas believe so much in mystical issues. Desk-based studies showed that most *tsikamutandas* operate in this area. The place is located close to the two hospitals and no wonder why there a
lot of sick patients who visit this pace to seek medical attention. This is taken and interpreted by *tsikamutandandas* as to say there are lots of witches bewitching people.

(iii) **Shamva**

Shamva is a village in the province of Mashonaland Central, Zimbabwe. It is located in the Mazowe valley about 90 km north-east of Harare. It is an area with fertile soils hence there is high farming activity. The village was established in 1895 when gold was discovered in the area. It was originally known as Abercorn but was changed to avoid confusion with Abercorn (now Mbala) in Zambia. The name Shamva is derived from the Tsamvi a tree, common to that region. Early settlers could not pronounce Tsamvi, hence changed it to Shamva. A vast majority of the population survives through gold panning. The area is rich in alluvial gold and most of it is found along the Mazowe basin. Gold panning is the greatest threat to the environment in the area. Shamva residents get their water supply from Mazowe River which runs about 5 km from the Wadzanai Township. The mining of gold is usually associated with the use of witchcraft.

5.2.1.3 **Comparative analysis**

The above foregoing analysis of the historical places where traces of the witchcraft places or related aspects shed and provide a clear understanding of the African value systems with regards to belief in witchcraft. This small outlined history provided the researcher with a pivotal foundation to compare and contrast the African values and norms that are associated with the belief in witchcraft. Both provinces showed that Zimbabwe and South Africa believe that witches can control the physical aspects of their lives. However, in South Africa accusations are usually accompanied by violence perpetrated against accused witch. Whereas in Zimbabwe, in suspicion of violence, a witch-finder is always called to cleanse the alleged witch at a price. The knowledge of the places gave the researcher a picture of how the belief system is and this also reinforced some of the discussions given below.
5.2.2 African Value Systems as Reflected in day-to-day news reports

To have a picture of the belief in witchcraft in the two jurisdictions, reported cases were compiled from newspapers and internet websites (desk-based research). The researcher noted that if one flips the pages of most newspapers in Zimbabwe or in South Africa, stories to do with witchcraft dominate. In Zimbabwe and South Africa, belief in witchcraft is still common in rural areas and also urban areas. Hardly a week or a month passes without a local report or newspaper story on the practice. There were unreported cases in these areas that were not covered through the media but managed to get settled informally without the involvement of the police and/or local authorities. The undertaking of this compilation was done to give a comparative examination of the belief systems and see how the Criminal Justice System (CJS) dealt with the liability issues. Below is a list and summary of newspaper reports on witchcraft cases.

5.2.2.1 Zimbabwe

(a) April 2016

‘Former Education minister in court for witchcraft accusations’

In Marondera, a magistrate, Shane Kubonera, has been accused of making a biased ruling in a matter where Mangwiza Chigwedere labelled his father and former Education minister Aeneas Chigwedere, a wizard. In an application for review filed at the High Court (HC 3401/16) on April 1, Mangwiza argued that Kubonera, who handled the witchcraft case at Marondera Civil Court, was biased in his ruling and that he applied general law instead of customary law when he presided over the matter. Mangwiza accused Kubonera of being bribed to arrive at the ruling and asked the courts to review the judgment.

In Mutare, a creepy looking suspected teenage witch was caught on a Tuesday morning in action in the sprawling high-density suburb of Dangamvura allegedly trying to remove an 18-year-old’s uterus in a suspected case of witchcraft. The young witch is alleged to have run out of luck when the would-be victim, Joy Marwa of P346B woke up to the shock of her life around 2am to come face to face with the young witch who was allegedly staring on the mirror in her bedroom preparing to “transfer” the uterus to her “elders” in Buhera. Further newspaper investigations also revealed that the alleged witch was heating seven rand coins on the stove in Joy’s kitchen as part of the uterus transfer rituals. Surprisingly, the main gate, main doors and screen gate at the house were all locked. Zimbabwe National Traditional Healers Association president, Mr. George Kandiero, said that was a clear case of witchcraft;

“If she wanted her uterus, then that is a clear case of witchcraft. She was really determined to complete her mission without failure. It is very possible that she could have been sent by some people. If the doors and gates were locked and she did not have spare keys to enter into that house then she can be safely called a witch,” said Mr. Kandiero.

---

In a terrifying case of suspected witchcraft which once again put African science on the spotlight on whether it is real or not, a 13-year-old girl from Inyathi in Matabeleland North’s Bubi District has confessed to have stayed in a granary for four days in the company of four goblins and six neighbours during which they feasted on dead people’s flesh. So scary was her story that when the community came to be aware of it, they labelled her an outcast and forced her out of the village and is now housed at Musasa Projects offices at Inyathi Business Centre. The girl alleged that another villager, Mr. Smart Mkhwebu, kidnapped her and locked her in the granary where she stayed for three days and came out on the fourth day. However, Mr. Mkhwebu denied any wrong doing. Furthermore, the girl said that the group used a stick to open graves before they get inside. The girl said that at funerals, one of the group members would put a mark, which would make it easier for them to open the grave when they return at night. She further alleged that her mother was a witch and used umuthi (traditional herbs) to bewitch anyone. On the other hand, Mr. Mkhwebu claimed to have seen the young girl in his granary and called the police to take her.

A woman who was banished from headman Musonza’s village in Goromonzi following her witchcraft confessions was reported stranded as she had nowhere to stay. Euna

---

11 Sunday, June 26, 2013 NeswsdzeZimbabwe

Dabalanga, 47, and her husband, Taurai Muponda were both ousted from headman Musonza's village after they both confessed to be involved in witchcraft. Euna says they sought refuge in Damofalls in Harare, but have since been asked to move out by the owner of the property since she came to know of their past. In her report, she is reported to have said;

"My past is now haunting me. I do not like this evil spirit which is in me. I am appealing to the public for help. Anyone who knows how the spirit of witchcraft can be exorcised should help us."

"Sometimes I hear my dead mother's voice calling me and when I follow it I see myself in the graveyard. Sometimes I see different creatures even when I am just sitting."

"Currently, a traditional healer in Goromonzi said we should bring cattle so that she helps us. The problem is that we do not have money to buy the cattle."

"All I want is to be able to be accepted by the community so that I will have a place of my own to stay. I want help that is all I want. My situation has also affected my child's education as she is currently not attending school because we have no permanent place to stay."
5.2.2.2 South Africa
(a) May 2016

‘Joburg bound Zimbabwean witch crash lands in Limpopo’

A suspected witch was found naked outside a house in Vhembe district in Louis Trichardt around 7am. Police spokesperson Sifiso Mbuyani said the woman was found naked with an assortment associated with paraphernalia including an owl, two winnowing baskets which are used for flying in witchcraft mythology and a baboon skeleton in a local homestead. When the matter was reported to the police, the witch was given a red cloth to cover herself. It was alleged that the woman was coming from Zimbabwe going to bewitch her daughter in law who had turned her son against them. The alleged witch was with no travelling documents and was handed over to the Beitbridge Zimbabwean police. The Mayor of Makhado local municipality, Mavhungu Luruli, thanked the residences’ response to distaste from violence as they handed the matter to the police.

(b) June 2016

‘Family jailed for brutal murder of witch’

A family of five were sentenced to a collective 102 years behind bars for the brutal murder of a Limpopo woman they accused of witchcraft. Police reported that the murder case reached its end on Tuesday with the family being sentenced at the Limpopo High Court in Thohoyandou. They were found guilty of murdering Catherine Nkovani, 52, earlier this month. In this case, it is reported that in April 2014 community members from Thomo village in Giyani accused Nkovani of witchcraft after a younger member of her family died

---


14 By Roxanne Henderson: Jun 14, 2016

due to natural causes. Madala Nkuna, 39, Vonani Nkuna, 24, Ntokoza Nkuna, 39, Christopher Nkuna, 32 and Ernest Nkuna, 27, assaulted and stoned Nkovani before dousing her body with petrol and setting her alight. She later died in hospital.

The five Nkuna family members were subsequently arrested in connection with the murder. Madala and Vonani both received life sentences. Ntokoza and Ernest were sentenced to 16 years behind bars each, while Christopher was sentenced to 20 years in jail. South African Police Service’s (SAPS) Provincial Commissioner Lieutenant General Nneke Ledwaba said that the strong sentence should serve as a deterrent to members of the community not to accuse innocent people of wrongdoing and then brutally murder them.

(c) July 2016

(i) ‘Zuma: Independents are treacherous witches’\textsuperscript{15}
27 Jul ’16, 12:42am, Bongani

In Durban, President Jacob Zuma launched a scathing attack against independent candidates contesting the local government elections on Tuesday, calling them treacherous “witches” who would have been “impaled back in the day”. Zuma accused the independents of dividing the ANC by standing against the party. However, he said they could not be killed because “we are now living in a democratic system”.

The President’s words were not received well by the South African Pagan Alliance (SAPRA) who commented on the words.

We wish to remind the President that hate speech constitutes an offence under law, and that making untested accusations against alleged “witches” remains illegal. SAPRA calls on the African National Congress to honour and uphold the law, and to cease and desist from making any further defamatory accusations against alleged “witches”.\(^{16}\)

(ii) ‘Alleged witchcraft gogo killed’

Date: 22 July 2016 - Kaizer Nengovhela.\(^{17}\)

The two suspects who were arrested for allegedly killing an elderly woman appeared in the Tiyani Magistrate court last Tuesday on a charge of murder. They allegedly killed the gogo in a witchcraft-related murder.

The incident happened almost two weeks ago at Rotterdam. Three men allegedly murdered a pensioner, Ms. Mijaji Mkhari (82), and set her body alight. “It is alleged that the suspects took the deceased forcefully from her house to another house in Rotterdam village and killed her,” said Lt Col Moatshe Ngeope, the SAPS spokesperson in the area. He said the motive for the murder may be related to witchcraft.


\(^{17}\) Date: 22 July 2016 - Kaizer Nengovhela
Shortly after the incident, word spread like wildfire in the local community that a *gogo* had been killed. Residents from Rotterdam and their neighbours gathered and decided to hunt for the suspects. Community members apparently came across a suspect, who was hiding in thick bushes. He was not given an opportunity to explain his presence and the angry mob started attacking him with every weapon that they could lay their hands on. The suspect was taken to the local cemetery where his body was set alight. Shortly after the incident, the police managed to arrest two more suspects in the Hlanganani area.

**(d) August 2016**

‘Police brutally beat up woman, “witch”’\(^{18}\)

In Bushbuckridge, a 38 year old Tsonga woman was arrested on Tuesday morning while she was on her way to a Women’s day celebration. Joyce Maluka, a mother of two, was on her way to celebrate women’s day in Thulamahashe Bushbuckridge, when a police van suddenly stopped right in front of her and just like that she was accused of witchcraft.

Witnesses say two police officers beat her up on the spot before bundling her into the van with her clothed ripped off. She was taken to the Bushbuckridge police station and soon after released due to lack of evidence to tie her to the case. The two police officers apologised for the incident but locals insisted that a case should be opened against them. Reports are that a witchcraft-related case had been reported and opened the night before women’s day and Joyce unfortunately matched most of the characteristics of the suspect mentioned in the case. The police’s defence was that they were looking for a very black, short and thin woman who was spotted naked at midnight in one of the resident’s houses.

\(^{18}\) Mandisa Ndaba: August 9, 2016

Unfortunately, Miss Maluka fitted the description of the suspect hence the attack and assault.

5.2.2.3 Comparative analysis of the compilation

The above assessed newspaper articles and others attest that ‘witches’ use owls, hyenas and baboon hands as “tools of the trade” and some alleged witches have “flown” unimaginable distances in reed baskets. The researcher submits that throughout human history, unexplained happenings that extend beyond pure reason and physical sciences have been reported, and these fuel beliefs in witchcraft and the occult. Although Zimbabwe and South Africa are widely regarded as Christian nations with more of their populations identifying themselves with one denomination or the other, beliefs in witchcraft and the occult is still widespread.

We have heard of lightning being “manufactured” in parts of Manicaland Province (Zimbabwe), with the bolts sent to strike down enemies and rivals. Also, in Mashonaland West and Central provinces, we hear of a magical spell called runyoka which married people use to trap cheating spouses. In Gokwe, there is much talk about a magical spell called zvishiri – magical birds sent by witchdoctors to maim and kill people. They attack from the blue and often no one else but the victim can see them. On the other hand, in South Africa, the reports are mainly far-fetched as compared to the ones in Zimbabwe. We have very few cases of people being caught red-handed. Most of the cases that dominate are those of witchcraft imputation mainly founded on circumstantial evidence and/or traditional healers’ diagnosis. However, in Zimbabwe the witchcraft-based violence associated with the belief seem to be lower as shown in the compiled newspaper articles.
Almost monthly, newspapers’ front pages and headlines disseminate images of startled self-confessed witches being caught stark naked in people’s houses. Although “witches” have been reportedly caught in almost all parts of Zimbabwe, some areas seem to have more than their fair share of suspects. The compilation of the newspaper articles show that the majority of the people in these two countries still believe in witchcraft and that their day to day affairs are also affected by this belief. It was upon this backdrop that the researcher went on to probe more on the belief in witchcraft.

5.2.3 Belief in Witchcraft
The belief in witchcraft is a subject which has been studied by sociologists and other specialists over a long period of time. Their conclusions are as diverse as they are many. Looking at some of the latest newspaper articles above and the research done in Zimbabwe and South Africa by some authorities on witchcraft beliefs, it is clear that the subject is a thorny issue and still carries a lot of difficulties. The researcher probed into factors precipitating witchcraft belief practices and imputations in South Africa and Zimbabwe. The findings were more or less the same, hence are discussed jointly for Zimbabwe and South Africa. These were gathered through empirical data (FGDs and one-on-one interviews) and desk-based research. The following sub-themes were discussed to understand and assess the African values of indigenous knowledge systems to the witchcraft phenomenon; economic factors, witchcraft confessions, strange and bizarre incidents, role of the charismatic churches, movies and dramas, culture and the gender aspect.

5.2.3.1 Economic Globalisation and Struggle for Scarce Resources
Comaroff (1997:7-19) postulates that economic globalisation points to the trickeries and frustrations of 'modernity' wherein some become rich and others stay poor thereby promoting violence accusations against suspected witches. Capricious swings in fortunes and money making endeavours in Zimbabwe and South Africa have pushed some people to engage into witchcraft activities and ritual murders to secure witchcraft portions, so as
to make a living. The study showed that most cases of ritual murders were rife in South Africa than in Zimbabwe. In Limpopo province, some groups of people are of the belief that any form of achievement is attributed to the supernatural and not to the individual’s own efforts. This belief is deeply entrenched in the psyche and consciousness of some people who are therefore embarking in some adventures of barbarically butchering fellow human beings to obtain personal success. Roelofse (2006) noted that at the heart of muti-murder is greed. These ruthless killings of fellow human beings are done to harvest body parts that are used for muti purposes. These medicinal potions are believed to be made powerful by the use of human parts, such as the hands, ears, nose, lips, eyes and genitals.

The strong belief that some family or community members are involved is such have ignited frustrations from victim families to accuse and in some cases, kill the old and the rich, whom they see as blocking their own advancement through witchcraft. Some of the elderly people in the communities feel that their values and norms are undermined, thus depriving and despairing many people who have come to believe that they are victims of evil conspiracies, carried out by supernatural means.

Generally, in Zimbabwe, since 2008 the level of unemployment reached a sorry state, the currency was devalued and adopted bearer cheques, basic commodities became scarce, state-subsidies to basic services like education, health and public transport were gutted. In short, many people in rural and urban areas found themselves unable to provide for their families and there was no any hope for the future. As that was not enough, the rising mortality rates, especially among children, due to the collapse of the healthcare system, growing malnutrition, and the spread of AIDS contributed to fuel suspicions of foul play and blame on suspected witches.

The majority of respondents concurred that in most cases witchcraft takes precedence when rational knowledge fails to explain causes of some diseases and some unfortunate
events in life. Moreover, they noted that it is only through the prism of witchcraft that one can explain the causes of unknown diseases, the mystery of death and bizarre and enigmatic misfortunes. Many people in the research sites visited were sure that witchcraft exists but would not want to talk about it or pretend as if it does not exist. However, they noted that in the advent of problems, witchcraft is a plausible explanation to those problems. Contrary to what used to happen in the past, people vulnerable to HIV/AIDS are mostly the youth who migrate to urban areas in search for livelihood. These youths’ infection and ailing from HIV/AIDS is mostly blamed on some members within their lineage to be against their efforts to improve their economic status due to jealousy. To some respondents, jealous is one of the ways which can prompt a ‘witch’ to cast an evil spell on one who is becoming successful.

In the realm of medical science, HIV/AIDS is a slow wasting disease with multiplicity of infections due to compromised immunity. However, this is not so in these communities where some people believe in the supernatural. Among some of the traditional healers (vhomaine and n’angas) interviewed, they confidently alluded that illnesses that exhibited multiplicity of symptoms, wasting in nature and defies any form of treatment are taken to be caused by witchcraft. These sentiments were shared by quite a number of community members in Zimbabwe ad South Africa, especially in the research sites that were in the setting of rural areas. In the meantime, people who are dying of HIV/AIDS are predominately young people. Such deaths are classified as bad deaths and presumed to be caused only by witchcraft (LeVine, 1982). Meanwhile, Kamaara opines that the misconceptions and traditional beliefs associated with curses and witchcraft have enhanced the spread of HIV/AIDS (Kamaara, 2005:73).

During the study, a question was asked to find out whether respondents in both jurisdictions believed that witchcraft causes diseases and death. The responses to this question were recorded through the use of one-on-one interviews:
Verbatim Interview

Researcher: “Does witchcraft cause disease and death?”

Respondent A: “Yes it does. Witchcraft causes diseases that cannot be diagnosed in hospitals. Diseases such as speech impairment and epilepsy are caused by witchcraft and cannot be successfully treated in hospitals. Thus, witchcraft causes dangerous diseases and death of human beings.”

Researcher: “Have you ever been bewitched yourself or members of your family?”

Respondent A: “Yes. Sometime back I felt pain on my knees for a long period of time for unclear reasons while I was at work. I went to various hospitals and doctors but they could not diagnose the ailment. One day I decided to then consult a traditional healer who told me it was witchcraft. The traditional healer removed a razor blade from my knee. Secondly, my cousin is now dead. He was bewitched. It was unfortunate that some family members refused to take him to see a traditional healer saying that they are Christians. After his death we consulted and we were told a witch had done this. People are not good.”

The above foregoing verbatim interview suggest that some diseases are psychological since no one can expect a razor blade to enter into one’s knee. He argued, ‘It’s true because ultimately after the removal of the razor blade, the pain ceased and I was free’.
5.3.2.2 Witchcraft Confessions exacerbating witchcraft belief and Violence

Analysing witchcraft confessions, Conti noted that coerced-compliant confessions arise when the suspect ‘witch’ confess despite the knowledge of their innocence, due to extreme methods of communal interrogations (Conti, 2011:62). Numerous false confessions in Zimbabwe are elicited through the use of torture, threats and promises that the witch suspects will not be killed. These confessions are usually elicited by the self-styled witch-hunters (tsikamutanda) who will be having the support of the whole angry village.

An issue that has been asked by the researcher to some experts with regards to these confessions is as follows;

**Researcher:** “What is it about witch-hunter’s interrogations that cause some innocent people to incriminate themselves?”

Various theories were developed by expert witness in such cases to respond to the question:

**Expert Respondent 1:** “From a psychological viewpoint coerced-compliant false confessions among the accused ‘witches’ are explained by the innocent suspect’s wish to escape an aversive situation and ensure a pleasant consequence.

**Expert Respondent 2:** “To account for the phenomenon of internalised false confessions, some have compared the interrogation process to hypnosis. Witch-hunter questioning can produce a trance-like state of heightened suggestibility in the suspect so that truth and falsehood become hopelessly confused in the suspect’s mind.”
However, there are some people who disputed the above and said that ‘witches’ were there. To add, they said some are born witches, some inherit it and some are taught to practice the art. They cited many cases wherein children have confessed to have been taught to do the art. They indicated that children were innocent people and would not in any way plot evil on someone and say whatever they confess. Others indicated that some people who are not young are also confessing without any witch-hunter or pastor exorcising them. These confessors were said to go to pastors for spiritual help since they know that they practice the art.

Some respondents noted that perception of increased witchcraft belief and hysteria in South Africa and Zimbabwe today is due to the growing role witchcraft plays in the media and other areas of public discourse. The media forums - television, radio, Whatsapp videos and images - are helping to spread stories of witches who are caught red handed in the act and also creating the image of modern witchcraft practice, which provides the basis for many of the witchcraft belief (Gram, 2011:17).

The media, particularly the print and electronic media, has contributed a lot to the spread of witchcraft belief and witchcraft violence against suspected witches. Many home videos surfacing on the internet depict deliverance rituals of ‘witches’ and confessions of former ‘witches’. In addition, there are radio and television programs and/or stations dedicated to testimonial sharing, where ‘witches’ who have converted to Christianity are encouraged to share their stories. And many people in the area under study are audiences to these hence it also cultivates their belief in witchcraft. In accordance to the United Nations Children’s Emergency Fund (UNICEF) report - writer Cimpric (2010), this packaging of modern witchcraft beliefs for mass consumption has contributed to a sense of witch hysteria widely felt among the Zimbabweans and South Africans.
5.3.2.3 Strange and bizarre incidents

Some respondents indicated that even though they do not want to believe in witchcraft, there are some strange and bizarre incidents that force them to. On the other hand, even if they do not, these incidents prove to them beyond doubt that witchcraft exists and witches are out there. They alluded that strange and bizarre things happen which can convince people of the possibility of witchcraft and the existence of witches. The following cases are just a sample of the countless episodes the researcher collected:

**Incident 1:** A dead, black chicken and white dove was found in front of the Magistrates' Court one morning. The dead chicken and dove had been clothed with a red burial shroud similar to the manner in which human corpses were buried in some culture in the past. Upon inquiring from the court officials, the researcher learnt that such incidents were common and added, “Those who do such things believe in witchcraft and are doing so convinced that they will win their cases.” The court officials disputed that this would not affect their judgment but however, they were afraid to remove them as they indicated that misfortune or even death will befall anyone who tempered with it.

**Incident 2:** Two school children began to laugh uncontrollably. They did not stop, even when disciplined by their teachers. Bizarrely, the laughter spread until more than 50 students were laughing for no apparent reason. The laughing fits allegedly lasted anywhere from a few hours to more than 4 days. Officials tried to find a cause but were unsuccessful. The epidemic laughter led to the closure of schools as the laughing spread to other villages nearby. Its cause remains unknown. The laughter episodes continued on and off for about one year, and then mysteriously ceased.
Incident 3: During times when rain is not expected (seasons not for rain). When there are people who are known to be disputing and failing to reach a consensus. During a sunny afternoon where there is no cloud in the sky, some few clouds can just gather at one of the disputing members. With a matter of minutes the weather changes and rain starts. And before one knows about it, lightning strikes and the opponent is killed. Anyone who is with the opponent is not killed, they are either carried outside by some unnatural forces. Immediately after, the rain stops and the clouds will just vanish. After that incident, rain will not in any way come again until its rain season.

Nevertheless, the researcher gathered that the belief in witchcraft is a territorial phenomenon hence its manifestation differs from area to area. The majority of people in the two jurisdictions agreed that there is no systematic sequence or philosophy of witchcraft. The few above mentioned incidents are examples that compel other people to believe in witchcraft. Despite the fact that some do not believe in witchcraft, one notable thing in them is the fear to get in contact with alleged 'witchcraft tools'. The multi-determining incidents of witchcraft range from mysterious happenings, incurable diseases, the bragging by some persons about their powers of witchcraft, rumor and gossip.

5.2.3.4 The Role played by charismatic Churches in exacerbating witchcraft belief
Some respondents interviewed in the two jurisdictions noted that some charismatic churches have promoted witchcraft beliefs and accusations. In that regard, Ogembo observes that Pentecostalism 'with its emphasis on exorcism have preyed on the indigenous beliefs about mystical forces and powers, coercing other religions to re-examine their doctrines’ on these forces (Ogembo, 2006:86). Numerous respondents were saying many unknown churches are mushrooming and lack wisdom in dealing with witchcraft cases. Cohan (2011) in his leading article on witchcraft, ‘The Problem of
Witchcraft Violence in Africa’, contends that witchcraft accusations are fuelled by charismatic churches that benefit from treatment offered to exorcise people who are identified as witches. One leading reported writing on activities of Pentecostalism is given below:

“Their pastor-prophets fight against witchcraft in the name of God, identifying witches through visions and dreams, and then offering treatment - divine healing and exorcism - to the supposed witches. This “spiritual” work, often of a violent nature, reinforces beliefs in witchcraft and increases accusations ...” (Suffolk University Law Review, 2011: 836).

It is argued that the divine healing and exorcism of some of the actions of the pastor-prophets complement those of traditional doctors (tsikamutanda and/or vhomaine) who are mainly known to fight against the malevolent forces of witchcraft by detecting supposed witches. Preachers in these two countries have increased people’s anxiety about the devil through books, open-air sermons in public spaces, preaching about the connection between Satan, illness and death. There are claims that violence against suspected witches is mainly linked to such preachers. In these churches, confessions of witches or Satanists who participate in killing humans, eating human flesh, drinking human blood and causing misfortunes in the society, are an acute daily agony thus propagating the spread of the belief.

In the research sites visited, the researcher was informed that there are many pastors from Charismatic Churches who claim to have the gift of healing those who have been bewitched. In most cases the Charismatic Churches attribute all misfortunes befalling people to witchcraft, a problem that they claim they could counter. However, most of these pastors do not reveal or pin-point and particular persons responsible for witchcraft cases. This, in other words, leave the people who hear or attend these churches to suspiciously
identify the witches responsible, a factor which has increased accusations in the society. In such cases, the researcher was informed that most congregant always belief and give reverence to their pastors who tell them that they are bewitched as they are said to have spiritual eyes to see such. Some of the respondents said the following:

**Respondent 1:** "Witches are rivals with divinity. Exodus 22:18 gives mandate us Christians authority to kill as it reads, ‘Thou shall not suffer a witch to live’. If the Bible justifies killing of witches, who I am to say no?"

However, some people gave different views about the manner and way that the charismatic churches operate. Some respondents who attend and do not attend these churches noted that many people assume what happens at these churches. They noted that no one is labelled a witch but since this is a spirit it operates through the human bodies. Pastors and prophets were indicated to be at the forefront of helping and delivering alleged witches. Furthermore, prophets were said to be called in most critical cases to bail out alleged witches and bring peace in family conflicts. Despite the fact that some pastors were said to preach about forgiveness and loving everyone, it was also noted that some pastors surely ferment the spread of witchcraft accusations. Some respondents noted that these few bad eggs are spoiling and affecting many pastors in that they take exorcism as a money-making mechanism.

In the two jurisdictions, the researcher found out in the survey that witchcraft belief stories are being successfully spread through films, dramas and soupies aired by church-owned broadcasting agencies and other non-religious groups. African Magic movies are defined as films (especially Nigerian) that propagate African norms, values, traditions and emphasise more on sex, violence, fetishism, occultism, voodoo and other negative issues (Udomisor, 2012) Udomisor noted that they are meant to educate, socialise and play a therapeutic role in the entertainment function of the mass media. Furthermore, Adegoke
(2010:49) postulates the following sentiments in regards to reception of information disseminated through movies:

“In a country where people do not read and where public libraries are almost non-existent, you have people relapsing to supernatural explanation to national phenomena. People rely more on local films for social counselling and as means of reference. You often hear people, including unfortunately the so-called educated elite making reference to films they watch on witchcraft as reference as if they are citing academic work.”

Many people in Mashonaland Central Province and Limpopo Province watch these African magic movies. To the majority of the inhabitants of the study areas, African movies that deal with African magic are treated as documentaries or educational films. We also gathered that those who treat these movies as documentaries and educational films attain fantasies from these films. Some respondents claim that ‘witches’ use these documentaries as a platform to gain new tactics to ply their trade. On the other hand, the general populace learn new ways of punishing and disciplining ‘witches’ in their midst through these movies.

5.2.3.5 Movies and Dramas (Muvhango and Generations)

The two countries are noted to have ardent followers who follow the famous television programmes that have been said to propagate witchcraft beliefs, Muvhango and Generations. These two programmes are viewed every day from Monday to Friday for 30 minutes during prime time by almost everyone in the two jurisdictions. On Muvhango, a storyline featuring a zombie was underway. This drama regularly showcases witchcraft with a resident witchdoctor appearing in most of its scenes.
With regards to Generations, commentators on newspaper feedbacks were saying viewers are getting insight into the use of intense witchcraft. According to The Sowetan (Times LIVE: 26 February, 2016 13:00), the Traditional Healers Organisation (THO) complained that Generations and Muvhango were showcasing African spirituality in a derogatory manner. More so, Phepsile Maseko, national coordinator of THO was reported in the Sowetan newspaper to have said, "In both scenarios, sangoma regalia is used. This is distasteful and disrespectful to African practice and an outright human rights injustice. The plots in the dramas were misleading and a distinction between healing and witchcraft was not made."

The researcher’s observation was that these films and videos have become vital mediums used to exhibit the evil ways of dealing with suspected witches. There are some major concerns about the way and manner the films and video mediums are used to portray how people should ignore the proper channel of dealing with problems of witchcraft and resorting to taking the law into their own hands. Most respondents noted that the majority of the people who watch these movies watch them as documentaries hence a need by the government and private sector organisations to intervene and help in the content of its stories.

The desk-based research (online newspaper) showed that some of the responses on the Sowetan page from the general public was:

**Respondent 1**: “Personally I think Generations is on point, it’s touching on things that do happen in real life, Mamlambo is something we grew up hearing and reading about and now one will get to know the real story behind that snake. Eventually the wrong side of it all will come out and we’ll all learn our lesson, at least that’s how I view Generations".
Respondent 2: “I didn't sleep at night I had horrible dreams Hayi not fair, from now on am no longer watching this crap”.

Respondent 3: “I've always said Generations is in a league of its own. This is real life it's talking about. Desperation will have you keeping a monster in the house. As Africans we all know this is true.”

Many people in Mashonaland Central Province and Limpopo Province watch these African magic movies. To the majority of the inhabitants of the study areas, African movies that deal with African magic are treated as documentaries or educational films. The research team also gathered that those who treat these movies as documentaries and educational films attain fantasies from these films. Some respondents claim that ‘witches’ use these documentaries as a platform to gain new tactics to ply their trade. On the other hand, the general populace learn new ways of punishing and disciplining ‘witches’ in their midst through these movies.

It is the researcher’s observation that some of these films and videos have become vital mediums used to exhibit the evil ways of dealing with suspected witches. There are some major concerns about the way and manner the films and video mediums are used to portray how people should ignore the proper channel of dealing with problems of witchcraft and resorting to taking the law into their own hands. It can be noted that the majority of the people who watch these movies watch them as documentaries hence a need by the government and private sector organisations to intervene and help in the content of its stories.
5.5.5 Culture

As the researcher pointed out in the introduction, the research sites chosen are generally said to be culture-oriented societies. In that regard, many scholars argue that witchcraft is a culturally constructed belief. In other words, witchcraft is a cultural question. The Knowledge Holders (KHz) in the areas were in consensus that witchcraft is interwoven with people’s culture. These KHzs indicated that culture is a fundamental concept in any society. It is the ideas and behaviour learnt by individuals and groups in adapting to their environment. More so, they indicated that culture of a society entails the formation of designs for adapting, living together and interpreting events. It was therefore in that line that the researcher noted it worthwhile to analyse culture from the point of view of anthropology in the spreading of belief witchcraft.

The majority of KHz interviewed noted that some individuals use witchcraft as adaptive strategies and others respond with maladaptive reactions. In the previous chapter, the researcher has shown how witchcraft is woven into the fabric of societal life to the extent that it is not easy to say whether the phenomenon is a form of religion, social control mechanism, mere belief or calculated malevolence.

5.5.6 Gender Aspect of the witchcraft phenomenon

Authorities like Chavunduka (1990), defines a witch as "a person, now a woman who professes or is supposed to practice black magic or the black art, a sorceress. An ugly or malignant woman, a hag". In Zimbabwean and South African myth and folklore, women witches have been portrayed as the perpetrators of wickedness mainly due to some universal symbolic characteristics such as behavioral traits, imagery and misogyny. In most newspaper reports and incidents reported in Zimbabwe and South Africa, witches are generally women. Some respondents argued that witches are women. These respondents refused that a witch can never be a man. These respondents were elderly and the researcher assumed that this could be because of the influence of patriarchy. On the other hand, some respondents noted that both males and females can all be witches.
Even though they believed that all can be witches, they believed that females are prone to be witches than males.

In comparison to male equivalents, females in South Africa and Zimbabwe are disproportionately accused of witchcraft. In almost all the interviews that the researcher conducted, the alleged witch was always a woman. Respondents indicated that most women are accused of witchcraft because of economic reasons. It was noted that women who would have benefitted from property inheritance are accused of practising witchcraft so that they are stripped of the assets they have. In Zimbabwe, accusations against older women was rampant. This was noted by many respondents as a tactic by family members who sought to get rid of them as they were burdening them economically. In addition, it was reported that the complex economic situation drives the poverty-stricken community members to turn against the weaker members in the society and draw a causal link of their peril to the engagement of these older women into the evil practice of witchcraft. Older women who said to show no sign of emotional loss during funerals hence they are likely to be accused of eating the deceased through witchcraft.

Some people indicated that the matrilineal inheritance of witchcraft practice and patriarchy make women to be susceptible to witchcraft accusations. These respondents believed that witchcraft was passed from mother to daughter through matrilineal linkage. With regards to patriarchy, women were subjected to the verdicts that were passed by the traditional community leadership which was merely constituted by males with the exclusion of females. The majority of the FGD respondents in the two jurisdictions agreed that women are suspected of practising witchcraft more than men. In addition, the majority of informants pointed out that elderly women are more prone to be suspected than younger women. The following are some of the reasons given by FGD participants and key informants as to why women are more often suspected of witchcraft than men:
Respondent 1: “Women do not show mercy on others. They cannot fight like men do hence they do avenge through bewitching their enemies”

Respondent 2: “Women are cruel. Throughout generations it is known that they do evil. Step-mothers are an example. They show cruelty to the children under their custody”

Respondent 3: “In conflicts between villagers, the women are the easy scapegoat. They do not know how to talk, anger affects them. As such, because of what they may have said before, they become easy targets.”

5.2.4 Forms of violence against alleged witches in Zimbabwe and South Africa

The killing or injuring of a suspected witches or wizards is seen as a commendable service to the community and is necessarily viewed as adherence to expected behaviour (Diwan, 2004:380). Witch killings and/or injuring gives a catharsis to the community (Ludsin 2003:82). Nsereko (1996:44) notes,

“Witches or sorceresses are generally viewed with revulsion, fear and abhorrence. They are considered to be inhuman and not fit to live.”

Likewise, witch-finding and punishing witches promotes one’s status to preserve authority as it showcases their competence to chastise the perpetrators of misfortune (Ludsin, 2003:83).

A lot of information and facts given by chief respondents and FGD respondents hint that those who are accused of practising witchcraft are generally vulnerable to many forms of...
violence. The study found that many alleged witches are subjected to many forms of violence including death threats, banishment from the community, verbal abuses, demolition of property and seclusion from and neglect by fellow family or community members. In addition, the study showed that the key perpetrators of witchcraft-based violence are usually the youth. On the other hand, the most common victims of witchcraft-based violence are women and the elderly. The four major forms of violence that the participants said to the researcher are physical violence, economic violence, social violence and psychological violence. The researcher gives the research findings of these forms of violence seriatim.

5.2.4.1 Physical violence
The findings of the study from key informants and FGDs are of the view that the most prevalent form of physical violence alleged witches undergo are beatings by community members. The informants were clear to say that suspected witches are often beaten up, tortured and sometimes killed by their assailants. In addition, informants also noted that at other times alleged witches' houses and other properties were burnt or demolished. A n’anga (traditional healer) from Shamva observed that suspects are beaten. In line with how n’angas (traditional healers) operate, informants did not mince words as they explained that exorcism is a very painful experience for suspected witches. Many of them said that suspects feel excruciating pain as incisions are made over their body.

An elderly pastor in Thohoyandou observed that some suspected witches are beaten up by their accusers or even killed in cases of mob violence. The pastor emphasised that even the death of suspects is not merely brought by beatings, but by concoctions that are prepared by these vhomaines in their ordeal processes to identify the witch or during their cleansing ceremonies whereby they cleanse witches. Below are examples of study participants’ observations about the physical violence they witnessed:
Respondent 1: “I witnessed the burning of a witch’s granary because he was using people to do work in his field.”

Respondent 2: “I overheard a neighbour being beaten up to make confessions that she was a witch.”

Respondent 3: “I was told some village men pursued my aunty with axes because she was bewitching their family.”

Respondent 4: “I observed a cleansing ceremony whereby I saw two elderly woman vomit and died after a witchdoctor gave them traditional medicine to drink.”

It was through group discussions that we learnt that in order to escape more beatings and other forms of physical violence, some suspects would make the confession that they are witches even if they know that they are not witches.

5.2.4.2 Economic violence
Besides physical violence, economic violence is a further form of violence that alleged witches undergo. Economic violence takes place in several forms; alleged witches are dismissed from work or barred from being employed, denied access to sources of livelihood such as capital, land and labour. In addition, suspected witches are made to pay heavy fines and their valued property get confiscated or demolished. This brings back the issue discussed above wherein the tsiksmutandas make suspects pay beasts for the cleansing.
Most informants indicated that the economic violence that the alleged witches may undergo is perhaps an outcome of them being evicted from their communities. In that regard, after the property is confiscated, looted or destroyed it becomes a mammoth task for people who are already poor to secure new land for settlement and cultivation and to start life all over again. On the other hand, the majority of the people decline and shun to welcome people who have been accused of witchcraft into their community. Moreover, key informants highlighted the scarcity of arable land due to influx population growth and the risk of banished persons or family becoming squatters. The following narration from a study participant in South Africa attests to this observation:

**Respondent 1:** “My influential neighbour came to my house with his followers who were singing stupid songs about me to convince and influence other people that I am a witch. With his influence, people broke windows of my bottle-store, restaurant and damaged iron sheets as they tried to remove them from the roof. They stole my money and I lost my valuables and the business I had struggled to put up for years.”

In Zimbabwe an alleged witch is ordered to pay to the *tsikamutanda*, the self-styled witchdoctor, a cow or more beasts for their cleansing. This leaves the alleged witch impoverished.

### 5.2.4.3 Social violence

In almost all the research sites visited, informants clearly indicated that they are afraid of and hate alleged witches to the extent that they segregate and pay no attention to them. Some few informants, however, indicated that they interact with them but not in the way they do interact with other people in the community. On the other hand, relationships between child suspects and their parents and other close family members are kept secure but however sour. In scores of cases, the relations remain sour even after the ‘witch’ has been cleansed by a witchdoctor or a religious leader. A few informants also mentioned
that some alleged witches are even excommunicated from their religion or denomination. The overall information furnished by the key informants show beyond doubt that there is clear evidence that suspected witches are discriminated against in all social spheres including the family, religion, education and employment. The following statements from key informants and FGD participants lend support to this observation:

**Respondent 1:** “In some instances, if the suspect is renting a house in the area, he or she is given a notice to go out or is forced to move out.”

**Respondent 2:** “One of the major reasons why people do not associate with suspected witches is that other people want to avoid being labelled ‘witch’ through association. Otherwise they would face the same harsh treatment their associates receive.”

**Respondent 3:** “Married people who are in relationship with someone suspected of practicing witchcraft have their relationship shaken or even broken by his or her partner. At times the partner’s relatives put tremendous pressure on both partners to end the marriage or relationship. They wonder, “How come you are maintaining a relationship with a ‘witch.’” (FGD participants and key informants observed that this happens more often when the suspect is a woman than when it is a man.)

In almost all the study areas, the alleged witches are stigmatised for life regardless of the witchdoctors’ diagnosis that the person in question is not a witch. Moreover, the same still exists even after the witchdoctor or religious leader performs exorcism on the ‘witch’. Victims of witchcraft and key informants in this study noted that it is difficult for alleged
witches to enjoy their rights as human beings and to totally take part in community engagements, in order to improve their socio-economic lives.

5.2.4.4 Psychological violence
Psychological violent involves undesirable epithets in the form of insults, mockery, threats and other acts that negatively affect the emotions of the alleged witch. The FGD participants indicated that the psychological violent behaviour employed by the perpetrators is meant to disgrace the alleged witches and to coerce them to amend their deeds and discontinue their witchcraft practices. The following is a sample of observations made by key informants and FGD participants:

**Respondent 1:** “Almost everyone in my community and neighbouring communities were talking a lot of things. Some were saying words like, "You evil witch, you killed and ate our relatives. We are going to make sure that you are also killed by us."

**Respondent 2:** “It breaks my heart when someone point at me and says I am a witch and I know that I am not.”

**Respondent 3:** “Suspected witches are mocked through songs that they eating a lot of people’s flesh every day and have some remains in their witchcraft granaries.”

**Respondent 4:** “Some suspects end up behaving fun and have low self- esteem as they become mentally confused.”
Psychological violence such as insults, threats of death or mockery, can be more hurting than bodily injury to the victim. It is because these threats of death on the suspect constitute to psychological torture that makes the suspect to live in constant fear that one day the threats will be executed. More so, public exorcism by witchdoctors and religious leaders can be dehumanising to the alleged witch who can ultimately commit suicide or face physical violence through confessions that are made through the exorcism process.

The data presented above pin-points on the matter of belief in witchcraft. This issue is theoretically construed and founded on the socio-cultural theory and psycho-analytic theory. This conundrum of witchcraft belief has its roots in the socio-cultural practices of people in South Africa and Zimbabwe. As such, this study courageously faces one of the most controversial issue of unravelling the different concepts or theories that are relevant to this study. For example, gender, culture, African values and criminal responsibility are deeply rooted in why people believe in the witchcraft phenomenon. The findings given by the participants surely tally with the given theories.

The social issue of wealth, strange bizarre incidents, movies, culture, gender, violence and poverty was intensely noted to play a pivotal role in the accusations of witchcraft. Some of the participants in the study believed that poorer members of the community use witchcraft to gain the fortune of the wealthy. On the contrary, some participants were of the view that wealthy people are believed to use witchcraft to gain their fortunes by bewitching the ones who are poor. As such, extreme economic disparities between the rich and the poor become a factor in such witchcraft accusations. Therefore, this tallies with the theory’s underpinnings. Interpreting the social and cultural aspects of the people in South Africa and Zimbabwe provides illuminating light for one to understand the present witchcraft beliefs and practices that can aid in providing effective palliates in addressing the issue of criminal responsibility in witchcraft cases. Thus this theory was significant in
shaping the inputs that society and cultural practices contributes to individual development and behaviour traits.

5.3 The extent to which legislation addresses the challenges of witchcraft-based violence faced in the two countries.

The legal methods indicated that since colonial times, the laws and regulations stressed the need for concrete proof and evidence of direct causation in witchcraft cases. In other words, the law required a direct causal nexus between the conduct of the so-called witch and the particular unlawful result. The colonial WSA(s) were not meant to punish or bring suspected witches to book and no wonder why administrators were perceived as the acquaintances and protectors of witches (Hund, 2004). With time, most Zimbabwe (2006) and South Africa (1999) repealed the practice of magic and witchcraft (Ludsin, 2003). The witchcraft suppression laws of South Africa forbid three things: practicing witchcraft and interconnected offences, consulting a diviner to finger-point a witch and imputation of witchcraft. For Zimbabwe, it forbids all the mentioned ones besides the latter. As such, the researcher wanted to know the extent to which the legislation of Zimbabwe and South Africa address the challenges of witchcraft-based violence.

5.3.1 Legislation and Policy governing witchcraft
The study examined and assessed legislation and policy relating to the belief in witchcraft in Zimbabwe and South Africa. Also, to assess the main aspects of the legislations and policies governing the witchcraft phenomenon. The two legislations are more of less the same in content. The main difference in the two is imputation in Zimbabwe is not a crime if one has reasonable reasons while in South Africa it is a crime. For this reason, the two legislations shall be discussed jointly.

The notable amendments are noted in the part (Part 6 of Zimbabwe’s Criminal Law (Codification and Reform) Act [Chapter 9:23] [Act 23/2004]) which is entitled “Witchcraft,
Witch-Finding and Crimes Related Thereto." In general, the Act criminalises merely harmful or injurious witchcraft practices. Section 97, Interpretation in Part VI of Chapter V:

In this Part –

“Accuse a person of witchcraft” means to indicate that the person

(a) Has used, is using or is likely or able to use non-natural means to cause

(i) Death or injury to or disease or disability in any person; or

(ii) Destruction or loss of or damage to property of any description; or

(b) Is possessed by a spirit which has caused, is causing or is likely or able to cause

(i) Death or injury to or disease or disability in any person; or

(ii) Destruction or loss of or damage to property of any description;

“Non-natural means” includes the practice of witch-finding."

Section 98 is entitled “Engaging in practices commonly associated with witchcraft.” It provides thus:

(1) “Any person who engages in any practice knowing that it is commonly associated with witchcraft shall be guilty of engaging in a practice commonly associated with witchcraft if, having intended thereby to cause harm to any person, such practice inspires in the person against whom it was directed a real fear or belief that harm will occur to that person or any member of his or her family.”
This subsection creates substantial liability for the practice of witchcraft. It states that anyone who will knowingly engage in practices commonly associated with witchcraft shall be guilty. The question one needs to ask is what are those practices which are commonly associated to witchcraft? Cohan (2005) notes that in Zimbabwe a judge may hear expert evidence as to whether certain practices are commonly associated with witchcraft or not. This, however, does not create uniformity as it will differ from experts hence resulting in miscarriage of justice. The notorious Budiriro case was founded on the basis that the suspected witches were found with a live owl, winnowing basket and were naked – ‘practices associated with witchcraft.’\textsuperscript{19} There is no clear reason why the law to some degree exempts traditional healers from the offence of practicing witchcraft since they also have and use such instruments and are naked at most times when they do their rituals. To clear this issue, the Act ought to spell out the practices that are commonly associated with witchcraft.

(2) “Spoken words shall not in themselves constitute a practice commonly associated with witchcraft for the purpose of this section, unless accompanied by or used in connection with other conduct commonly associated with witchcraft.”

It is noted in this subsection that words alone are not tantamount to a practice related to witchcraft. However, the requirement stated in the Act is that the act or threat must involve some disorders to public order or tranquility. There is a prerequisite that the act of witchcraft should consists of something beyond and outside mere words.

(3) For the avoidance of doubt it is declared that any person who assists another person to commit the crime of engaging in a practice commonly associated with witchcraft, by giving advice or providing any substance or article to enable that person to commit the crime, shall be liable to be charged as an accomplice to the crime.

Sub-section (3) deals with accomplice liability in the witchcraft cases. An accomplice is a person who knowingly helps, aids or assists another in a crime or wrongdoing, often as a subordinate. It should be noted that accomplice liability makes a person who is not the actual perpetrator guilty of a crime so long as he helped, aided, counselled or influenced the perpetrator and did so with the required mens rea. The law usually treats accomplices in the same way as the principal offender. The moral logic of the law is simply to punish the accomplice for lifting a finger to help or for offering an encouraging word to the perpetrator (Sherif, 2013).

(4) “A court shall not take judicial notice of any practice that is said to be commonly associated with witchcraft, but any person who, in the opinion of the court, is suitably qualified to do so on account of his or her knowledge, shall be competent to give expert evidence as to whether the practice that forms the subject of a charge under this section is a practice that is commonly associated with witchcraft, whether generally or in the particular area where the practice is alleged to have taken place.”

This subsection provides plain evidentiary terms, authorising judges to rely on expert testimony as to whether the defendant’s actions are commonly associated with witchcraft. During trials in Zimbabwe, magistrates and judges are allowed to enlist the support of registered witchdoctors as expert witnesses. Very critical questions that need to be addressed to validate the efficacy and fairness of such testimonies; are witch-doctors or
traditional healers fit and proper persons to be called ‘expert witnesses’? What role should these expert witnesses play? These questions posed require an extensive research so as to align such practices with the law.

The implications of the revised Zimbabwe Witchcraft Suppression Act (Part VI of Chapter V) in light of the challenge of supplying tangible evidence to prove that someone is a witch is an area that need to be thoroughly investigated. The Act provides that any person who in the opinion of the court is suitably qualified to give evidence is competent to give expert evidence as to whether the act constitutes practice that is commonly associated with witchcraft.

When authorities pursue an investigation to bring an accused witch to book, the home of the suspected witches is searched to acquire evidence such as charms or any articles ascribed to witchcraft (Ciekawy, 1998). In that regard, should evidence of possession of articles customarily used in witchcraft be probative of proving a witch? How can these be distinguished from articles used generally by traditional healers? In addition, does mere possession of such articles constitute an offence? It is my submission that such evidence should not be used in court independent of other facts. In such scenarios, the court should take judicial notice of evidence submitted but should merely convict an accused on other evidence presented rather than exclusively basing its conviction on such evidence. It is common cause that traditional healers and local museums also have some of the charms and articles ascribed to witchcraft yet still they are not institutes of witches.

In practice, courts authorise traditional healers to give expert evidence to prove the existence of witchcraft and testify for or against one who is accused of being a witch.20 One question we need to ask ourselves is who qualifies them to be an expert witness? In

---

addition, what role should expert witnesses play, such as traditional healers or witchdoctors? In my view, the issue of traditional doctors acting as expert witnesses seems to contradict the other provision in the Act of not using super-natural powers which cannot give overt evidence in court. In that regard, it is known that traditional healers use supernatural ways to pin-point whether one is a witch or not. It is my submission that there is a pure contradiction of section 99 (1) which is entitled “indicating witches or wizards.”

Section 99, titled “Indicating witches or wizards” provides:

(1) “Subject to this section, any person who groundlessly or by the purported use of non-natural means accuses another person of witchcraft shall be guilty of indicating a witch or wizard and liable.”

This subsection gives a substantial offence of groundlessly or by the purported use of non-natural means accusing someone of practicing witchcraft. Beliefs in witchcraft by Africans were commonly perceived to be a sign of their backwardness and it was illegal to accuse anyone of being a practitioner of witchcraft (Rutherford, 1999). It was associated with backwardness because of the consequences that followed an allegation labelled against anyone. However, it is argued that witchcraft is not an insignia of backwardness but a commentary on the ill gains, inequities and forms of domination found in Africa (Rutherford, 1999). The revised witchcraft seeks to discourage people from unjustifiably accusing others of practicing witchcraft and brutalising them by trials and ordeals.

It constitutes a criminal offence to groundlessly, or using non-natural means, to accuse any person of witchcraft. However, it is problematic for the prosecutor or accuser to prove that the accused used nefarious supernatural powers to harm others or their property. Chireshe noted that the colonial government and the post-colonial government display both continuity and discontinuity in their approach towards witchcraft. It demonstrates
continuity in the logic that there is punishment for one who accuses another of practicing witchcraft (Chireshe, 2012).

Witchcraft is still a punishable offence and one accused of witchcraft is subject to prosecution but the accuser must provide evidence. It is common cause that the issue of evidence may be difficult to come by and under such conditions the accuser may be prosecuted, a set-up reminiscent of the past colonial epoch.

(a) “In a case of any purported use of any non-natural means, to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both;”

(b) “In any other case, to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.”

(2) “For the avoidance of doubt it is declared that no crime is committed by a person who, without the purported use of non-natural means and having reasonable grounds for suspecting another person of committing an offence referred to in section ninety-eight, accuses that person of committing that offence.”

The above subsection gives a justifiable witchcraft accusation. In this regard, the Act seeks to be there to punish genuine witches that are proved to be without any non-natural means. On the hand, the Act requires reasonable grounds thus standing to do away with petty accusations.
(3) “It shall not be a defence to a contravention of subsection (1) involving the purported use of any non-natural means for the person charged to prove that the person he or she accused actually engaged in any practice commonly associated with witchcraft, but the court may regard such circumstance as mitigatory when assessing the sentence to be imposed.”

Section 100 entitled ‘Employing non-natural means to resolve crimes or delicts’ provides that

(1) Any person who

(a) “By the purported use of non-natural means, intentionally indicates another person as the perpetrator of a crime or delict; or"

(b) “In the purported investigation by non-natural means of any crime or delict, requires, advises or incites another person to undergo any test or consume any substance; shall be guilty of employing non-natural means to resolve a crime or delict and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.”

The above subsection sheds more light on punishment for employing non-natural means to resolve crime or delict. The use of non-natural means by the community and diviners to resolve a crime has been believed to constitute jungle justice. Many suspected persons are coerced to consume concoctions which lead to diarrhea and even death. The Act therefore safeguards people from such abuses that put their health at stake.
(2) “For the avoidance of doubt it is declared that any person who procures the services of another person to do any act referred to in paragraph (a) or (b) of subsection (1) shall be liable to be charged as an accomplice to the crime of employing non-natural means to resolve a crime or delict.”

(3) “It shall not be a defence to a contravention of subparagraph (a) of subsection (1) for the person charged to prove that the person he or she indicated actually perpetrated a crime or delict, but the court may regard such circumstance as mitigatory when assessing the sentence to be imposed.”

Section 101 entitled, ‘Belief in witchcraft to operate in mitigation and not as defence to crimes’ provides that;

“It shall not be a defence to murder, assault or any other crime that the accused was actuated by a genuine belief that the victim was a witch or wizard, but a court convicting such person may take such belief into account when imposing sentence upon him or her for the crime.”

The above provision clearly puts it clear that belief in witchcraft shall not be a defence but the trial court shall consider such belief as a mitigation factor only. People who honestly believe in witchcraft perceive the suspected witches to be very dangerous. In that regard, the trial court should sympathise with perpetrators who may have acted on genuine fears. This part shall be discussed below to show whether belief in witchcraft should obviate criminal responsibility.
Section 102 entitled ‘Charges alternative to or concurrent with charges under Part VI of Chapter V’ provides that;

“A person accused of engaging in a practice commonly associated with witchcraft, indicating a witch or wizard or employing non-natural means to resolve a crime or delict, involving conduct that is in itself otherwise unlawful” –

(a) “may be charged in the alternative with the crime constituted by that conduct if the punishment to which the person is liable for that crime is the same or less than that provided for under section ninety-eight, ninety-nine or one hundred, as the case may be;” or

(b) “shall be charged with the crime constituted by that conduct, whether or not concurrently with the crime of engaging in a practice commonly associated with witchcraft, indicating a witch or wizard or employing non-natural means to resolve a crime or delict, if the punishment to which the person is liable for that crime is greater than that provided for under section ninety-eight, ninety-nine or one hundred, as the case may be.”

Cohan has applauded the Zimbabwe’s amended Witchcraft Suppression Act to be the most liberalised enactment pertaining to witchcraft in Africa (Cohan, 2011). In addition, many stakeholders also applauded the amendment as a great achievement; the chairman
of the Traditional Medical Practitioners’ Council commented the amendments of the Act as a great achievement as African values had been enshrined.²¹

The 1899 legislation declared witchcraft to be a false belief with the result that witches went free and accusers punished. The amendment of 2006 explicitly recognises the practice of witchcraft. According to the 2006 Act, witchcraft had no real existence and now Zimbabwe’s amended law accepts the existence of witchcraft. The government, in 2006, revised the Witchcraft Suppression Act and noted that as long as there is sufficient evidence witchcraft is a punishable offence. Gleaning through the Acts of these two countries, the researcher could not conclusively point a provision that addresses the challenges of witchcraft-based violence. Based on this and the foregoing analysis, the researcher submits that the Acts are framed in unclear terms that do not offer solutions to both the ‘bewitched’ and the ‘witch’.

5.3.1.1 Awareness of Witchcraft Suppression Legislation
Ever since the enactment of the Witchcraft Acts, one would presume that the majority of Zimbabweans and South Africans are acquainted with at least some of the provisions of the Acts. Information gathered from FGDs and respondents in this research shows that a large number of the Zimbabweans and South Africans do not know what the law says about witchcraft. It was gathered that many of the people have never even heard about the Witchcraft Act. In addition, a small number of FGD participants claim they sometimes hear it mentioned on the radio. Worse still, very few of the legal practitioners interviewed showed knowledge of the Act, some could not even give the title correctly. Generally, the youth and the middle-aged respondents appeared slightly more knowledgeable than the children and the elderly. This may be attributed to the fact that the majority of the youth

and middle-aged persons can read and also have better access to information such as
the internet, radio and newspapers.

(i) Position in Zimbabwe
It was plain from the data gathered that even though traditional leaders handle witchcraft
cases in Zimbabwe, the majority of them are not conversant with the Witchcraft
Suppression Act in Zimbabwe. For instance, many of them did not know that by calling a
tsikamutandanda (self-styled witch-hunter) to identify witches in their area is outside the
parameters of the law. Most of traditional leaders confidently claimed that there was no
law addressing witchcraft in Zimbabwe. From the answers given by respondents, it
emerged that the knowledge of the Witchcraft Act in Zimbabwe is low in spite of the fact
that it was passed. This is an obvious signal that the public has not been adequately
sensitised to the law. In addition, this ignorance of the law explains to some extent, why
witchcraft-based violence is accepted by the majority of the people.

When the respondents who had said they knew what the law says on witchcraft were
asked what it states; some said that the Act states that nobody should be arrested for
practicing witchcraft while the others maintained that suspects should be arrested and
prosecuted. When those who claimed to be familiar with the law were asked to unveil
what the law entails; they gave following answers:

Respondent 1: “The Witchcraft Suppression Act says that all witches
should be arrested

Respondent 2: “If anyone labels someone a ‘witch’, that person who
claims someone to be a witch can be summoned to court to answer
charges
Respondent 3: “A person caught red handed practicing witchcraft should be severely punished.

Respondent 4: “If someone labels another to be a witch without having evidence, he or she is supposed to be arrested.

Respondent 5: “The rights of the suspected witches should not be violated.”

Respondent 6: “Have never heard about what the law says on witchcraft. I invite witchdoctors to my area to identify witches so that justice must prevail.”

Respondent 7: “When there is proof beyond reasonable doubt that a villager is practicing witchcraft, the villager is evicted from the village.”

The researcher asked the informants whether witchcraft should be recognised by law so as to check the awareness of the Act to the inhabitants. The majority of people were of the view that it should be recognised for the reason that its recognition would diminish witchcraft-based violence. On the other hand, a few of the respondents were of the view that witchcraft should not be recognised by law merely because there is no concrete evidence of its existence. In addition, this group was of the view that the recognition of witchcraft would result in continuous beatings and executions of suspected witches on a large scale.
(ii) Position in South Africa

FGDs participants and key informants in this study shows that many of the South Africa people do not know that there is a law (the Witchcraft Act) that deals with witchcraft. It was gathered that even some of the people in the legal profession have never even heard about the Witchcraft Act. In addition, a small number of FGD respondents alleged that they suspect that there is a witchcraft Bill. Very few of the legal practitioners interviewed showed knowledge of the Act, some could not even give the title correctly and very few of them were aware of the provisions in the Act. Some of the participants said the following:

Respondent 1: “Ahhhh...my man! Is there something like that? Witchcraft Supplementary Act! I want to see it or you want to prank me. Let me see it first.”

Respondent 2: “I do not think we do have an Act that govern this issue of witchcraft and that is why people accused of witchcraft cannot be brought to court to be prosecuted.”

Respondent 3: “I think I once heard someone speaking about this Act when my learned friend prosecuted the ritual murder case.”

Respondent 4: “Witchcraft should be recognised by law because it exists even though one cannot provide tangible proof. Witches are not seen by our naked eyes because people choose to go to witchdoctors. If they choose to consult God through prayers, witches can be seen physically because God exposes unseen things to be seen.”
Respondent 5: “There should be laws specifically for witchcraft because most traditional leaders are biased in their judgments. The courts should be responsible for cases of witchcraft.”

Comparative Assessment
From the answers given by respondents, it emerged that the knowledge of the Witchcraft Act among many Zimbabweans and South Africans is low in spite of the fact that it was passed. However, in Zimbabwe the lack of knowledge in the law seemed better than that in South Africa. This, in the view of the researcher, is signal that the public has not been adequately sensitised to the law. In addition, this ignorance of the law explains to some extent, why witchcraft based violence is accepted by some of the people in these communities.

5.3.2 Limitations of the witchcraft legislation(s)
The few legal officers interviewed indicated some limitations of prosecuting witchcraft cases. The witchcraft Acts of the two countries do not address the challenges of proving supernatural practices in a court of law (the “evidentiary challenge”). From the evidence gathered by the researcher, no case has been heard in the courts of law of an alleged ‘witch’ who was facing any charges. However, the cases that are in number are the ones of those who accuse others of practicing witchcraft and also of those who assault or kill the alleged witches. In that regard, the law seem to protect alleged ‘witches’ than the bewitched. Any alleged ‘witch’ who is caught in the act is usually acquitted on the ground of insanity and are referred to the mental care or to consult a doctor and be discharged.

The study (desk-based study and empirical study) found that many people in the two jurisdictions do not have access to the justice system, the older people accused of witchcraft are often unaware of their rights, which is heightened with lack of legal advice. The respondents alluded that barriers to justice in the two jurisdictions include lack of legal information and physical infrastructure of courts in some regions, unaffordable court
and lawyers’ fees, and illiteracy. Moreover, even though Legal Aid is there to help indigent people, the issue of witchcraft seem to be shunned for prosecution. On the other hand, if the victims get access to court, the inability of independence and impartiality of the judiciary coupled with corruption among the law agents is a further barrier to justice. Arguably, the police and the judiciary are unwilling to prosecute cases related to witchcraft because of fear of reprisals and also of being perceived as protecting those accused of witch. Respondents noted that despite frequent occurrences of these ritual murders and witch-killings and/or bewitchment of people, the legislature is struggling to eradicate this scourge. A few experts who were interviewed indicated that this is mainly because muti-murders are treated as mere murder, assault, assault with intent to do grievous bodily harm or attempted murder cases. Furthermore, they indicated that muti-murders are distinctly different from the listed crimes and should accordingly be combated and prosecuted in a different manner. The researcher’s analysis was also that many incidences of muti-murders and witchcraft related violence go unreported and detailed statistics of such incidents are not being used sagaciously to eradicate the problem from the root.

Some of the respondents noted that following;

**Respondent 1:** “This Act is a crap! It doesn’t address anything at all.”

**Respondent 2:** “We have a big challenge of using colonial laws to address indigenous laws. These colonial laws undermine our traditional and as such do not give any remedies to indigenous people who believe in witchcraft.”
5.3.3 Followed Court Cases

This study adopted a legal research method in assessing the witchcraft belief and criminal responsibility of the two countries. To achieve this, the researcher had to focus on books, journals and articles, legislation, newspaper reports, case law and scholarly materials from the internet. In that regard, the researcher choose two prominent court cases that were ongoing so as to follow them and use them as case studies. One from Zimbabwe and one from South Africa. This was particularly appropriate for this study because the proposals for amendment of the law are done through a critical evaluation of the black letters of the relevant legal provisions.

Even though the doctrinal approach involves a rigorous systematic exposition, analysis and critical evaluation of legal rules, principles or doctrines and their inter-relationship, the case study part of such was put so as to synergise these written laws to the people’s beliefs. The researcher also utilised this approach to compare the laws, jurisprudence, norms, principles and legal propositions in relation to beliefs in witchcraft and criminal responsibility in the countries under study.

5.3.3.1 Zimbabwe: Chigwedere Case

The case of Former Education minister Aeneas Chigwedere being accused of being a witch was selected. This in the view of the researcher had a lot to learn from, perusing at the profile of the parties involved. Aeneas Soko Chigwedere was born in Hwedza district, Zimbabwe. His father was a teacher and had worked as a foreman at a commercial farm, and his mother was a communal farmer. His grandfather was the Chief of the area representing one of the senior houses of the Svosve dynasty. Aeneas Chigwedere who was born 25 November 1939 is a Zimbabwean politician, historian, educationist, and traditional leader. He served as the Minister of Education, Sports and Culture since August 2001, and was appointed as the Resident Minister and Governor of Mashonaland East Province in August 2008. He was installed as headman Svosve Mubayiwa the 10th of March 2008. During his tenure in office, Chigwedere attracted controversy and criticism as minister for once suggesting that all students should wear one uniform, for attempting
to rename schools that still bear colonial names, and for pushing an act that empowers
him to regulate the fees charged by government and private schools. He claims some of
his suggestions have been attempts to dampen the effects of hyperinflation on the
education system.

In 2015, Mangwiza, Aeneas Chigwedere’s son (first respondent), sued his father and wife,
Emilia Zharare Chigedere (stepmother to Magwiza: second respondent) for practising
witchcraft and possessing goblins that were reportedly terrorising the whole clan.
Magwiza also cited ZINATHA as the third respondent as he wanted their expertise to get
rid of the goblins that were terrorising the family. Magwiza also noted that the victims were
fleeing Hwedza for Refugee. Magwiza alluded that his father possessed two pieces of
ivory (family members and those deceased are inscribed in pencil on it) which also plays
part in causing female members of the family not marry, those that are married not
conceive, broken homes, lost dreams and lost lives. Magwiza further claimed that his
father performs bizzare and fiendish rituals on other family members’ offspring. He further
alleges that his father was once an expert on tradition and culture and now twists all
acceptable cultural norms to suit his ‘dark designs.’ Magwiza is said to have said,

“Due to the quasi-supernatural powers vested in him by the goblins and
his physical presence and stature, First respondent gathers the whole
clan at his residence, fills a dish with porridge concocted with herbs. First
respondent then makes deep cicatrices (nyora) on the little finger of each
and everyone drop blood and then scoop the porridge and eat it using
that bleeding little finger. This was done in order of seniority down to
those little ones who were still being breastfed. At every end he remained
with a dish full of blood droppings from everybody present.” (sinc)

His father was noted to have made threats to kill anyone who dare challenges him.
Magwiza wanted the director general of ZINATHA to appoint three traditionalists and two
Apostolic prophets with unquestionable expertise to conduct an exorcism and cleanse the family.

In February 2016, it was reported that the matter was referred to a Marondera Civil Court stating that the Harare court had no jurisdiction over issues that happened in Marondera where both parties reside. Thus, Civil Court (CC) resident magistrate Mr Brighton Pahwe dismissed the matter and order Magwiza to approach the Marondera court if he wished to pursue the matter further.

In April 2016, Magistrate, Shane Kubonera, was reported to be accused of making a biased ruling in a matter where Mangwiza Chigwedere labelled his father and former Education minister Aeneas Chigwedere, a wizard. In an application for review filed at the High Court (HC 3401/16) on April 1, Magwiza argued that Kubonera, who handled the witchcraft case at Marondera Civil Court, was biased in his ruling and that he applied general law instead of customary law when he presided over the matter. Mangwiza accused Kubonera of being bribed to arrive at the ruling and asked the courts to review the judgment.

In the matter, magistrate Shane Kubonera dismissed the case noting that the matter was spiritual and could not be handled by the courts. Disappointed by the magistrate’s ruling, Magwiza is reported to have uttered the following to the magistrate;

“What are you saying your worship, so you say there is no case here while family members are perishing? What about all the family members, who are now mentally challenged as a result of witchcraft being practised by this man (Chigwedere)?”
In January 2017, Chingwiza and others were reported to have approached the Constitutional Court (ConCourt) seeking to compel his father and stepmother to undergo a cleansing ceremony to exorcise the whole clan against alleged witchcraft activities that have allegedly caused several deaths in the Wedza-based family.

Mangwiza, in his founding affidavit, said,

“These acts of cultural violations have greatly disadvantaged myself and thousands in the clan who have had to flee Wedza, but to no avail. The right to life has been violated and with the courts even being told on paper and viva voce that we are dying; we are being killed and maimed; we have more than 10 mentally-challenged; we are being exploited through culture. I have undergone more than 200 cultural procedures on myself personally, which I have now discovered were uncultural acts and the basis for our ill-health, pain, headaches, suffering, anomalies, having five brothers and sisters mentally-challenged, sisters, who fail to find fecundity to bear children, sisters who fail to marry.” (sinc)

The matter is still ongoing and the researcher will continue to make follow-ups of the matter and hopefully publish an article from the whole case.

(i) Analysis and Comments

It is clear from the case that the law is adamant about witchcraft beliefs. The law does not seem to address the witchcraft matters, does not acknowledge its existence and the bewitched are left vulnerable. On the ground people believe on the existence of witchcraft thus, there exist a mismatch between what people believe and what the law says. Frequently, laws and by-laws respond to the serious needs and desires of a society. This
seem to be contrary to the matter of witchcraft hence, the disgruntled citizens end up taking the law into their hands. At times, society will render the law ineffective because the unshakeable deep rooted and profound cultural beliefs of African people do not find expression in written law. This is reflected in the above case study followed in Zimbabwe.

Some of the comments that were written on the comment sections by people who read the internet news are as follows:

**Respondent 1**: “I personally feel that there is great bias in the judgment as to the laws applied and proceedings that took place. The respondent’s lawyer is there to protect his client, though he is not the only one blocking justice, but mainly it is the learned presiding officer, Shane Kubonera.”

**Respondent 2**: “Mangwiza has no case to prove, since he was still living in “the Stone Age era. It is medieval concepts that are based on conjecture, suspicion and the need for people to attribute their failure or misfortune to greater powers they cannot understand. It is an unsustainable concept, has no place in modern society and should be relegated to conspiracy pages. A modern society cannot waste State resources talking about witchcraft. The magistrate was more than right”

**Respondent 3**: “Customary law is effective, but it’s not the case in this country due to the economic hardships and of people, as nowadays many tend to weigh the pockets of the individual rather than the case. Our case has taken many six feet under and even telling the courts we are at their mercy and they are our last port of call, our only hope. They throw our the case without even hearing of it and one wonders what it means by serve and to protect.” (sinc)
Respondent 4: “Mangwiza has violated customary laws by dragging his father to court, let alone to accuse him of witchcraft – that’s a taboo.”

5.3.3.2 South Africa: Mrs Killer Case

In June 2016, a grandfather, Mr. Madala, died from wounds inflicted by a knife. His alleged killer was his daughter-in-law, Mrs. Killer. The attack on Madala was perpetrated without warning in daylight and in front of witnesses by a neighbour's fireside. Mrs. Killer said nothing at the time of the attack, but when queried later she explained that Madala had killed her children with witchcraft and that he had threatened to kill her through witchcraft as well.

Mrs. Killer: “I struck Madala and meant to kill him because he bewitched my children. He told me that he would finish off both my children, and in consequence one of my children died, and one is now very ill and I was feeling dizzy and knew would die. When he said that my children would die my first child died on the very same day. I believed Madala implicitly when he said he would bewitch my children. I know Madala placed witchcraft to kill my children and I saw it myself. Because he was such a bad man I killed him.”

In this case, Madala threatened to kill Mrs. Killer together with her two children. It is alleged that after the threat, Mrs. Killer's child became very sick within a matter of hours and died. As she was still in shock, the other child also fell and started to cry saying she was not well. To Mrs. Killer the sickness seemed very serious than the one that killed her first son. As she was still nursing her daughter, she started feeling dizzy and sick. She said to herself if Madala is still breathing then her daughter and her were going to die. It is because of this that she decided to take a knife and stabbed Madala five times.
Mrs. Killer was arrested and pleaded self defence to the charge of murder. The plea of self-defence was denied as it was indicated that there was no threat of eminent danger that she was facing and was found guilty of murder. The issue of her belief in witchcraft was noted as mitigating factors during her sentencing.

(i) **Analysis and Comments:**

The above statement of Mrs. Killer introduced the issue of belief and raised questions about what made threats of witchcraft believable. Looking at the village where Mrs. Killer and Madala were coming from, belief in witchcraft was common. Also, cases of ritual murder were rife and suspected ritual killers’ houses were set alight. The Madala who was killed was generally believed by most villagers to possess very strong muti which he used to bewitch others and use women as his wives at night. Now a close analysis of this reveal that Mrs. Killer’s actions were made because she passionately believed that Madala possessed the witchcraft powers, had killed her son, made her daughter sick and was beginning to make moves to kill her.

Many villagers posed this question, which other option was she having besides what she did? Reporting the matter to the police was a sheer waste of time as they would need evidence for the allegation and would risk arrest for witchcraft imputation. Secondly, was she going to make it to the police since Madala had already initiated the attack? Most people in the village showed lack of respect to the decision taken by the court as they noted that this issue of witchcraft should not be confined to the jurisdiction of the court as they do not know how to handle witchcraft cases. Some of the people noted that vhomaine (traditional healers) should be given power to handle such cases and should be allowed to work with the courts to ensure that innocent people are protected and the dangerous people (witches) should be put behind bars. On the other hand, some noted that it was not helpful to put them behind bars because their work is not limited to the walls of the jail, they should be handled in the traditional way.
The post-mortem of Mrs. Killer’s son did not in any way show that the child died because of witchcraft. Some knowledge holders in this area argued that post-mortem is nothing when it comes to witchcraft issues, it is a supernatural aspect. Some family members who had consulted a vhomaine, confirmed that the African X-ray, bones, had pointed the cause of the death to Madala.

5.3.4 Traditional healers acting as expert witnesses in witchcraft trials

In some witchcraft cases in Zimbabwe, the courts have been noted through the desk-based study to use members of ZINATHA to act as expert witnesses in witchcraft cases. This is the same in Cameroon. The Eastern region of Cameroon has long had the unenviable reputation of being "witch-ridden". As a result, there has been a reversal in the justice system of the Eastern Province. In this province, the trial of alleged witches, based on seemingly precarious evidence, have become the norm as opposed to the pre-independence ineptitude of courts to confront witchcraft head on. A traditional healer is called to give evidence in witchcraft cases. In that way, these traditional healers form a decisive body in witchcraft accusations and provide the bases of convictions in the Eastern Province (Fisiy and Geschiere, 1990:149-150). In that regard, the researcher asked the participants in Zimbabwe and South Africa to give their views about the issue. Their responses were similar thus, discussing them as one.

The majority of the respondents in the two jurisdictions are of the view that witch-doctors should not be used as expert witnesses in witchcraft trials. Some respondents indicated that there is no difference between a witch and a traditional healers. More so, some respondents indicated that witches and traditional healers work hand in hand in their art. On the other hand, a few respondents indicated that traditional healers are skilled in hunting witches thus, they should be used as expert witnesses as they help the judges with supernatural evidence that an ordinary person cannot see. In addition, some elderly respondents indicated that traditional healers are very helpful in many cases including
rain-making and no wonder why they should also be consulted in such trials as expert witnesses. Some of the views of the participants are outlined below:

**Respondent 1:** “Under customary law, tribal courts adjudicated witchcraft conflicts and ordered compensation for false accusations of witchcraft. This was considered a good way of dealing with such issues, for witchcraft accusations bring tensions within the community into the open, often allowing for a traditional leader to mediate conflicts.”

**Respondent 2:** “Traditional healers act witness in the court. Especially in cases like this one because they really understand the science fiction behind the witchcraft powers and they are able to dictate the powers of witchcraft.”

**Respondent 3:** “They should really act as witness, since in some case sometimes they treat sick people whom medical doctors cannot help. So if traditional healers can actually dictate and diagnose the spiritual malfunction of someone, it then means with witchcraft cases they are good.”

**Respondent 4:** “To a larger extent, these traditional healers shouldn’t be witnesses because we don’t know how they measure or identify that this person has been bewitched or is a witch. To my surprise, these guys must be one and the same (I mean they are witches and also traditional healers at the same time). If so, it will result in that proverb; ‘how can a blind leading another blind’. (sinc)”
Respondent 5: “No, I do not agree that these traditional healers should act as experts in the cases of witchcraft. These guys who perform witchcraft consult traditional healers and are given ‘muti’ to use so that they can bewitch someone. So yaaah they do not have to be in the court to witness the procedure because they are witches too.”

Respondent 6: “Traditional healers from the word go, they are also witches or wizards, they are only given a name that can polish or make them so different from these witches but they all rhyme the same, so yes they should not act as expert witnesses in court cases since some matters.”

Respondent 7: “We can see in the supernatural as traditional healers. These witches use the power wrongly and we use it for public good. We use the holistic approach; spirit, soul and body. Because we have power than them we should be used as expert witnesses.”

The views of traditional healers acting as expert witnesses is totally outweighed by those who oppose it in all the jurisdictions. It is because of this that the researcher now inquired about the traditional ways of bringing accused witches to justice.

5.3.5 Traditional ways of bringing accused witches to justice: African values
The above limitations of the current laws and courts that fail to adjudicate the cases of alleged ‘witches’ led the researcher to inquire about the traditional ways in which witchcraft cases were tried. The researcher would want to indicate that this was a mammoth task as very few knowledge holders still had the unadulterated versions of the customary way of addressing such cases. The traditional ways of addressing witchcraft
cases were similar in the two jurisdictions hence, discussed without differentiating. Some of the views were as follows:

**Respondent 1:** “Under customary law, tribal courts adjudicated witchcraft conflicts and ordered compensation for false accusations of witchcraft. This was considered a good way of dealing with such issues, for witchcraft accusations bring tensions within the community into the open, often allowing for a traditional leader to mediate conflicts.”

**Respondent 2:** “In tribal communities, witchcraft accusations were dealt with on a local level, with the chief mediating disputes. The whole community used to be focused on social balance and peace, and because of that the African justice system was of a reconciliatory nature. A chief would always try to reconcile two fighting parties.”

In some communities, it was noted that wherein a witchcraft dispute started, the close family members would meet to resolve it. Furthermore, if they fail, the matter would be referred to the headman. In a case where the headman fails, the matter would proceed to be handled by the chief. The chief may mediate the case or fine the one found to be guilty. However, in cases wherein the chief was of the view that the person (‘witch’) was now a danger to the society, the chief would order that the person should leave the village. In such instances, it was alleged that the chief and his council would make arrangements that as the person would be leaving the village they would ambush ‘him or her’ and kill ‘him or her’ and dispose of ‘his or her’ body secretly. Respondents to the study also indicated the use of “witch-hunters or witch-finders or witch-smellers” to resolve witchcraft issues as one of the traditional ways of resolving witchcraft disputes.
5.3.5.1 Witch-hunters

The researcher shall now proceed to a discussion of models for identifying witches in African societies where people believe in witchcraft. If people meet with misfortunes they generally turn to traditional healers, diviners or religious leaders to help them determine whether their misfortune resulted from the anger of their ancestors, God or from witchcraft. The issue of who bears the grudge, people with wrinkled faces, seeing witches in visions and dreams (spectral evidence) shall be discussed too as ways of identifying witches.

Divination covers many practices. Divination may entail that a diviner must fall into a trance to discover the witch. It may require the use of physical materials that can be observed and interpreted through the help of the ancestors to identify a witch.

For instance, some diviners look into a mirror until the image of the witch appears (Kaigh 1947:40). Other diviners throw and observe lots which help to identify the witch. This method constitute to spectral evidence. Spectral evidence is a form of evidence based upon dreams and visions. In Zimbabwe and South Africa spectral evidence is disregarded as inherently unreliable because it is entirely intangible and metaphysical in nature. The South African Witchcraft Suppression Act, as amended in 1999, remains in force in South Africa to date. The amended Act reads as follows:

Section 1:

“Any person who:

(a) Employs or solicits any witchdoctor, witch-finder or any other person to name or indicate any person as a wizard;

(b) On the advice of any witchdoctor, witch-finder or any other person or on the ground of any pretended knowledge of witchcraft, uses or causes to be put into operation any means of process which,
in accordance with such advice or his own belief, is calculated to injure or damage any person or thing;”

The subsection outlines the substantive crime of employing or using a traditional doctor to indicate a witch. Traditional doctors are known to use non-natural means to indicate witches and the law has criticised it for being subject to abuse since it is only open to the traditional doctor and not to the general public, spectral evidence. Below are some of the models used by traditional healers to identify ‘witches’:

5.3.5.2 Trial by Ordeal
In regards to trial by ordeal, the respondents indicated that this is still practised in some societies. Some traditional healers indicated that they use this method wherein they do not want to be blamed for pointing anyone to be a witch. As such, they sprinkle water on the family members and they say that the ‘witch’ will therefore manifest. On the other hand, the traditional healer prepares a special medicine for community members or suspected witches to drink. After the consumption of the concoction by suspected witches, the innocent will survive while the ‘real witches’ will vomit or die. Upon inquiry whether their concoction will be poison free, the researcher learnt of a real case wherein a ‘witch’ had died. The respondents indicated that the traditional healer was arrested and detained pending results of the concoction from the laboratory. The outcome, as the respondents reported, from the laboratory proved that it was harmless. In addition, they indicated that the concoction was noted to be good for health. The researcher learnt that this method was not being done these days as many victims would refuse to consume the prepared concoction.

5.3.5.3 Smelling out a witch
Smelling out of witches is based on the belief that witches carry a terrible stench that diviners can detect. This model entails that diviners have the ability to detect witches by the scent they produce. Diviners walk through the victim’s property smelling out the
objects used by the witch to cause harm. Diviners will not identify the witch but instead will describe the witch (Lines, 2011). This will leave the people with the task of identifying the witch.

This model of detecting witches in these two jurisdictions is no longer prominent in this modern times. Some respondents indicated that it is however still exercised is some areas. The areas where it is still done are said to be still rural. The traditional healers also indicated that witches carry terrible stench. In addition, most spiritualists (including pastors) indicated that demons stink hence those who are possessed also carry that stench.

Observations made by four FGD participants point out that traditional healers do smell the witch:

**Respondent 1**: “The person goes to the chief to complain about inexplicable problems at his or her home. The chief grants the person permission to bring a witchdoctor to his or her home to perform rituals. The witchdoctor asks the person who he or she suspects is the cause of the problems. When he or she mentions a suspect, the witchdoctor’s next step is to perform rituals to find out whether the suspect is indeed the ‘witch’ causing the problems or not. This is at times done by throwing bones that point at the witch or the witchdoctor smells the stench.”

**5.3.5.4 Grudge**

Most times where a belief exists that one is a witch, chances are high that there is a hostile relationship between the bewitched and the witch or somebody who has employed the witch. Respondents indicated that it is selfdom for strangers to bewitch someone without a hand from the relatives who gives them access. In that regard, most traditional
healers indicated it’s a principle that when one is bewitched, the witch would be a close relative who bears a grudge. It is because of this that people look for witches within their relational circles. Thus, if ever there was anyone who had a grudge with the bewitched, it was believed that the one who had a grudge in the family circles was the witch.

Whenever calamity, death or an evil would happen, the victims would always seek to identify a witch. This resulted in the victims or interested parties using any of the above models to identify the witch. The identification of the witch, circulation of rumours of who the witch might be and accusations of witchcraft mainly lead to attacks on the alleged witch (Stewart and A Straught, 2004).

(i) Zimbabwe

In Zimbabwe, most respondents indicated the use of tsikamutandanda (self-styled witch-finder). The tsikamutandanda is alleged to be invited by either the family head or the chief or consensus by the village. These tsikamutandas are said to come in the village to come and gather people and point out witches and people who are sick are alleged to have been bewitched. They charge a beast or more to cleanse a witch, to cleanse a house or to heal the bewitched.

It was plain from the data gathered that even though traditional leaders handle witchcraft cases, the majority of them are not conversant with the Witchcraft Suppression Act. For instance, many of them did not know that by calling a tsikamutandanda (witch-hunter) to identify witches in their area or banishing suspected witches from their area, they were acting outside the parameters of the law. It was also gathered that numerous sabhukus (traditional leaders) who participated in this study, and some who had presided over witchcraft cases, handled the cases not in accordance with the dictates of the law. Most of them confidently claimed that there was no law addressing witchcraft in Zimbabwe.
About three quarters of the participants in all the three research areas agreed that some suspected witches had to pay something to get the favours from the police so as to get protected and for their accused to be arrested. Some participants also indicated that the police, especially the officers in charge, also get a beast from a *tsikamutandanda* to allow them to go ahead with their witch-hunting missions. However, some respondents from ZINATHA and some NGOs noted that the police respond to incidents of witch-hunts to protect victims. Moreover, they even come in areas affected and take a list of names of victims and through the chief offer the necessary remedies.

A review of documents, records and media reports done by the researcher shows that the other method is by witch-hunts. Some chiefs allow witch-hunters to undertake witch-hunts and cleansing in their communities. According to researcher’s findings through victims and participants of witch hunts, the following is what happens:

**Respondent 1:** “The chief is approached by a few aggrieved people to call for a witch-hunter and the Chief authorises the collection of money per house in a village to pay as fees for calling the witch finder. Those that refuse are branded as witches straight away.”

**Respondent 2:** “Those identified as witches are asked to pay fines of goats or cattle and money.”

**Respondent 3:** “This leads to many victims to suffer in silence. However, some courageous victims have reported witch hunts to the police. Police have taken action in arresting chiefs and witch hunters or stopping witch hunts in some cases and not in others.”
Witch-hunters have found witch-hunts to be a very lucrative business and great economic incentive for witch-hunters. It is reported that chiefs do get a cut from the fines imposed on suspected witches. Some witch-hunters boast of being rich and amassing reasonable wealth at the village level.

Community members confirmed that concerned community members invite witch-hunters with permission from the village heads. For some village heads, rejecting a request to invite a witch-hunter is tantamount to not only protecting ‘witches’ but also to suggesting that the village heads themselves are witches. That is a major reason why many village heads bow down to the demands of concerned villagers. A traditional leader observed:

**Respondent 1**: “Some troublesome villagers wanted a witch-hunter and me denying them was going to cause chaos. I saw they were determined and I said those who want to be part of it should participate in it and those that do not want should not.”

(iii) **South Africa**

In South Africa, the main issue that was raised was the issue wherein religious leaders mention relatives as witches. The practice of consulting *vhomaine* (traditional healer) to identify witches was rife but is rather within family circles. Some respondents pointed that some pastors pointed recklessly some witchcraft practitioners and this would result in some form of violence. For instance, the news24 published a Musina case about witchcraft and witch-hunting Evans (News24, 2015);

“Seventeen people, including four children, were arrested in Nancefield, Musina, after a pastor’s house was burnt down after claims of witchcraft, Limpopo police said on Friday. The violence started late on Monday evening when residents of Nancefield arrived at the house of the 70-year-
old pastor, spokesperson Ronel Otto said. He had apparently been seen in a video saying he was involved in witchcraft and that his teenage daughter was an evil spirit.”

In most cases of pointing out witches, respondents indicated that the youths are generally used. Despite the sections in the WSA that criminalise witchcraft finger-pointing, this practice is still opined to be rife. To sum up, the issue of witch-hunting by vhomaine or tsikamutanda in this age was said to have diminished by most respondents. Nevertheless, some still maintained that some community members still consult vhomaine surreptitiously to point out the witch in cases of deaths or events that are unclear. In that regard, if a witch is pointed out violence who follow. Some participants in the study area noted the following:

**Respondent 1:** “Some people they visit vhomaine to consult if ever they are affected with mysterious issues like death and illness and the vhomaine will point who is causing it or they fight the power without disclosing the name of the witch.”

**Respondent 2:** “Do you watch Muvhango dude. That’s how most of our people live. If you see them in suits and cars you won’t think they do have personal healers. Wait until they are in trouble and you will see them having rituals. Only that you won’t see them because most of them do it at night. If they hear you are a witch, they will spread the rumours in the community and the next thing people will come to burn your house or stone you to death.”
The above findings noted that most of the alleged witches are susceptible to be hunted. Based on those findings and also of the violence perpetrated against alleged witches, the researcher focused on the eradication of witchcraft beliefs and witchcraft-based violence in Zimbabwe and South Africa.

As already mentioned above, psychoanalytic theorists deem human behaviour as purely a smokescreen. However, to have a deep genuine understanding of growth and the human behaviour exhibited, one has to look critically at the representational significance of behavioural traits and the unfathomable inner workings of the mind. This theory was usurped by the researcher during the data collection phase. The indirect interview technique with a flexible interview schedule consisted of “manifest questions” as suggestions for the interviewer to pose some indirect questions, in order to throw light on the “underlying questions”, derived from the project’s theoretical framework. These underlying questions had to be concealed from the subject so that undue defences would not be established through the subjects’ recognition of the real focus of the interview. The interviews were analysed qualitatively in relation to the theoretical framework of the study. The theory underscores growth as primarily an unconscious phase and as profoundly decorated by emotion. To get a deep genuine understanding of growth and the human behaviour exhibited in the study, the researcher had to look critically at the representational significance of behavioural traits and the unfathomable inner workings of the mind. With regards to witchcraft beliefs and witch-killings, psychoanalytic theorists stress that early surroundings and childhood experiences extensively mould growth. This was proved to be a fact as many participants who were involved in witchcraft issues were noted to have been affected by the witchcraft issues in their early upbringing. The reflections of the Witchcraft Suppressions Acts and how participants (witch-finders, victims and perpetrators) acted was an indicator of their upbringing environment.
5.3.6 Eradication of witchcraft beliefs and witchcraft-based violence
Study participants were asked what needs to be done to prevent witchcraft beliefs and witchcraft-based violence against people suspected of practicing witchcraft and to assist them to lead normal lives. The responses given by informants in Zimbabwe and South Africa were more or less the same thus shall discuss their responses simultaneously.

5.3.6.1 Poverty and riches
Many people in Zimbabwe believe that the persistence of witchcraft is associated with poverty. The majority of informants were of the view that many alleged witches were poor. Moreover, many community members believed that the poor people use their witchcraft powers against the rich. In that vein, the majority of Zimbabwean informants concurred that the incidence of witchcraft is closely associated with poverty and therefore poverty reduction will reduce the incidence of witchcraft. Contrary to the Zimbabwean view, very few South African informants associated poverty with witchcraft. The majority linked witchcraft to the rich. This was because some people believed those who were making it in life were using witchcraft. To eradicate witchcraft based violence, the majority of key informants were of the view that addressing economic disparities between the rich and the poor would pave the way.

5.3.6.2 Punishing witches
Some respondents in both countries who knew about the law blamed the witchcraft suppression laws for failing to address and decrease witchcraft-related offences. They named the following for the failure of the witchcraft suppression laws: customary courts no longer had jurisdiction to preside over witchcraft cases, witchcraft accusations were criminalised and the lack of enforcement by the authorities. All these reasons made other study participants to strongly believe that ‘witches’ must be punished by harming them physically, destroying their property, banishing or evicting them from their communities, or by jailing them in order to stop them from practicing witchcraft.
5.3.6.3 Civic education

Some key respondents in the two jurisdictions noted that if witchcraft-based violence is to be eradicated and if victims are to lead normal lives, the government and human rights organisations should actively participate in teaching the populace. In that regard, the general public should be educated on the Witchcraft Act and human rights. In line with civic education, some informants suggested counselling services and spiritual guidance to be made available to suspected witches. Many respondents were of the view that counselling is the best way forward to deal with witchcraft violence and to eradicate it. These respondents indicated that law is not a panacea when it comes to witchcraft accusations. The legal route were said to be too rigid and unable to provide a satisfying outcome for most people who resorted to it.

(i) Empirical case study: Supper-Lady

Supper-Lady was happily married to her second husband after being widowed for close to four years. She had three grown-up children from her first marriage; a male and two females. It took time and persuasion from some of her family members to convince her to get married for the second time after the unfortunate death of her first husband. She had to finally yield to the persistent persuasions and pressures of the family members. The outcome of the persistent pressures and persuasions compelled her to get married and thus move into her second marital home, this time, in a different village. From this second marriage came two other children; both females.

Growing up, Supper-lady was not given the opportunity to go to school just like many other people in the community. She was however very fortunate to have acquired some basic skills in local sewing and alcohol brewing.
As part of the traditions of her people, she had been raised by the money made from beer brewing. Now in her adulthood, Supper-lady was now earning her living from sewing and brewing beer. Though limited money was realised from these businesses, she was quite satisfied because the little money she made from them were supportive enough to enable her to live a dignified life.

One day, she was accused of witchcraft by a community member, a male relative she so much respected. She was alleged to have killed the wife of the man in question, through witchcraft. They pointed at her success as having been brought by her witchcraft powers. No one was willing to look at her hard work but took advantage of their poverty to point fingers at her wealth they allege to have been brought about through an evil act.

The allegation, in the form of a rumor, was the commonest talk in the community for almost a week. She only became aware of it when people started pointing accusing fingers at her physically. As a result of this, members of the communities also avoided buying her products. She tried to talk to her aunty about going to the police but she was discouraged as that was going to exacerbate the situation. The husband started to act strangely and no longer lived with her as her husband. She felt she was in prison as she was now just staying at home doing nothing. Her children were being affected psychologically and performing badly at school. With the accusation growing by each passing day, she had to find alternative solutions as the community members could at any point in time react violently towards her. She was disturbed and confused as neither her husband nor other family members came to her rescue. Rumours came to her ears that people were calling for a witch-hunter to be invited to the village. She began to see herself as targeted and decided to take her
children and relocated secretly to stay with an uncle in a far location, where she was not known.

It was in this village that the researchers met this woman. She had left her husband and matrimonial home for her safety. In this regard, it can be noted that avoiding the risks of being physically attacked or beaten up by angry community members were the immediate factors that influenced the movement of most of the residents to other places of safety. One could tell from the interview that she was still disturbed even though the incident had happened four months prior meeting her. It was not a secret that she and her children needed counselling. On the other hand, the general populace need to be educated to handle such cases. Failure to may result in the victims committing suicide. Supper-lady was also of the view that if she had consulted a legal way (formal or traditional courts) she would have risked worsening the situation. This was one of the case study recorded to show the need for civic education and counselling to eradicate witchcraft beliefs and accusations. If the man who accused Supper-lady had gotten proper counselling, he would not have peddled the malicious rumours about Supper-lady. The community also lacked civic education on how witchcraft rumours and accusations should be handled. The just believed a word they heard without checking the credibility of the source and believed it.

5.3.6.4 Cleansing witches
It was clear from this study that the two jurisdictions are dominated by Christianity and African Traditional Religion. In most FGDs, the minority of people suggested that to eradicate witchcraft violence, traditional doctors should cleanse people who practice witchcraft. In that regard, key informants from the ZINATHA concurred that this was a great idea even in settling many legal issues wherein witchcraft was alleged. The majority of people in the FGDs were of the view that contacting the religious leaders who are into deliverance ministries to pray for suspects so that they should not be victimised was a viable way to eliminate witchcraft violence. A few informants in South Africa were of the
view that everyone suspected of practicing witchcraft was supposed to be subjected to undergo cleansing or exorcism to eliminate witchcraft based violence.

Church organisations, especially deliverance ministries, also confirmed the existence of witchcraft which they said is part of Satan’s work. They said those practicing it are obsessed with demons that need to be exorcised by the Holy Spirit. So they say instead of punishing the person obsessed by demons we should strive to deal with the demons. If the demons are exorcised, they say, the person who had demons will be born again and will not be a threat to the society. Christians posit that even if we jail those who practice witchcraft they will continue do so even in jail because we will have dealt with the human flesh and not the evil spirit troubling that person. In that regard, they indicated that a spirit cannot be arrested. The person arrested will also be a victim of the evil spirit in them.

5.3.6.5 Mediation
Down history most conflicts within communities were settled through dialogue. With regards to witchcraft accusations, some institutions noted that the cases of witchcraft accusations can be best settled by engaging the process of mediation. They indicated mediation because usually in a conflict, conflict parties often find it difficult to negotiate hence, the coming in of a third person to facilitate negotiation disputants. Mediation, according to Moore (1996:1), is ‘the intervention in a negotiation or conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute.’ Moreover, Goodpaster (1997:203-04) sees mediation as:

"A problem-solving negotiation process, in which an outside, impartial neutral party works with disputants to assist them to reach a satisfactory negotiated agreement. Unlike judges or arbitrators, mediators have no
authority to decide the dispute between the parties; instead, the parties empower the mediator to help them resolve the issue between them."

Paralegals that once dealt with the witchcraft accusation cases noted that witchcraft was simply a smoke screen for deeper family issues that were not resolved.

(ii) **Empirical case study: The story of X-MAN**
The story of X-MAN is a watershed example of a successful mediation session on the case of witchcraft accusations and belief in witchcraft. The case that seemed a pure witchcraft case in the eyes and ears of many proved to be a pure and unadulterated family dispute that needed people to sit down and talk the differences. The facts of the case are as follows;

* X-MAN approached a local respected pastor with cascading tears and desperate for assistance from the man of the cloth. He narrated that his sisters and brothers were accusing him of practising witchcraft in the family. The family had made conducts to summon a tsikamutandanda to expose and destroy his witchcraft powers. Fearing for his life and irretrievable breakdown of the family of the family without outside help, he approached the pastor. X-MAN is one of the five surviving siblings. In 2008, before his father died, he appointed X-MAN (the third eldest son) as the family head and guardian of the family’s estate and property. According to X-MAN, his father by-passed his two elder brothers in favour of him because of their alcoholism and womanising in the community. Furious and failing to believe their father’s direction, the two elder brothers and two sisters teamed up together against X-MAN and accused him of employing witchcraft to control their father’s reasoning and ultimately his death. This accusation spread within the community and everyone was buying their story. Any calamity within the society was
pointed to him. Despite his hardworking and being an open person, X-MAN was now being avoided and even children gave him names. This greatly affected X-MAN psychologically and made me wish to relocate but he desired to keep the unity with his family. He held out for help as most times his siblings and relatives still relied mostly for his assistance and counsel in numerous family contentions.

Instead of reporting for witchcraft imputation and have his siblings prosecuted, X-MAN resorted to involve the pastor to mediate his case. With his permission, his siblings were invited for a meeting with the pastor. All the siblings happily and voluntarily participated in the mediation and represented other family members in the clan. The whole mediation process started with the pastor speaking about love, peace and reconciliation before setting out ground rules. Afterwards, X-MAN retold his side of the story and indicated how these accusations had affected him and how much he feared for his life. The siblings in the first instance were very defensive and distanced themselves from having been part of the people who accused him. Faced with these defensive family members, the pastor reminded everyone of the non-adversarial nature of their proceedings and reassured them that the session was merely meant to restore the family.

After some time, the siblings finally opened up and disclosed their unhappiness over their father’s favouritism over X-MAN. He had been send to better schools and was well up than them. This made their children look at him with more respect than them. Also, whenever they approach him with their problems for help he is very hard headed and even swears at their children. They indicated that they wanted to be treated with respect as they were close people, family. Upon hearing this, X-MAN apologized for the treatment he had exhibited and promised to
change. X-MAN also asked them to sit down their children and stop accusing him of witchcraft. At the end, the once rivals were hugging each other and becoming more open that they feared going to jail or made to pay fine by the chief if they matter had been taken there. They shook hands and thanked the man of the cloth and stated that this was a simple and quick way to settle disputes rather than a trial in the courts of law or at the chief’ kraal.

It can be noted from the foregoing case study that this successful mediation demonstrates how witchcraft accusations are often times a cover up for underlying resentment and other diverse problems in the family. In this X-MAN case, witchcraft accusations masked a serious communication breakdown in the family. Thus, the use of mediation proved to be a successful tool for dispute resolutions, especially witchcraft accusations, as it unveil and remedy the real source of the problems in a friendly manner that does not cost the parties involved.

5.3.7 Protection of and Support for Suspected Witches
It can be noted from the above foregoing analysis and literature review that throughout history, accused witches have been executed by hanging, drowning and burning. The ‘prosecution’ and persecution of accused witches persists in these two countries. Both men and women are at risk of accusation and children are increasingly falling victim to such allegations. Startling accounts of torture, abandonment and death have been reported. Protection concerns can arise at home and in the context of forced displacement or voluntary migration. Witchcraft accusations, the associated risk of persecution, the cycle of displacement continue to be the acute daily agony of those suspected as witches. In that regard, the researcher wanted to find out the mechanisms that are in the two countries that are provided to protect and support suspected witches.
5.3.7.1 Position in South Africa

In most cases, like it has been shown above, alleged witches rarely lead a regular lifestyle like other community members because of the physical, economic, social and psychological violence they experience. In addition, their lives and that of their immediate family members are ruthlessly upset and regularly they are absolutely ruined. Many of the interviewed victims' life is a testimony of misery and suffering. With this in mind, the researcher will now focus on the protection of alleged witches and also the support they are given.

The majority of the district police stations visited in Limpopo Province, in South Africa, had a Victim Support Unit (VSU). In accordance with the South African Police Services key respondents, the police have an obligation to carry out awareness campaigns through the VSU on burning issues (including witchcraft and ritual murders) so that people should be aware that the law does not recognise subjecting alleged witches to any form of violence. In addition, the police offer protection to victims of witchcraft based violence when their life and/or their property are under threat of violence from perpetrators. In fulfilling these duties and obligations, at times they patrol the victim’s area. They furthermore elucidated that they have an obligation to counsel victims of witchcraft-based violence when they have such trained officers and provide victims with temporary shelter when they are evicted from their area. A Coordinator at a Victim Support Unit said that at times they make available legal advice to the victims so that they can sue the culprits. On the other hand, another coordinator said that they send to hospital victims who have been beaten and charge the culprits.

The majority of the police key respondents admitted that often they are unable to fully offer required services by reason of constraints on human, financial and other resources. In addition, they are required usually in a dilemma to handle these cases judiciously because of the complications of some of the cases. On the other hand, responses of some police key informants that some police officers arrest persons accused of practicing
witchcraft was a clear indication that not all police officers understand and enforce the Witchcraft Act.

The majority of the NGOs and Social Welfare Institutions submitted that they do not offer security services as this is the job of the police and falls within their jurisdiction. However, to give aid to such cases, they mainly give counseling services to victims and perform the role of an arbitrator when approached by the accused and the accuser. In addition, they highlighted that cases of witchcraft-based violence are generally referred to the police. Moreover, they generally take part in sensitising the general populace on the rights of the people suspected of practicing witchcraft.

A good number of FGD participants and key respondents together with victims of witchcraft disagreed with the claims by the people that they are doing enough to protect victims of witchcraft and witch-hunts. These study participants observed that suspected witches, victims, do not receive protection and support from the police. Some FGD participants said that:

**Respondent 1:** “*The police officers responsible for witchcraft cases do not take any positive action except the suspected person are assaulted and their valued property is destroyed by perpetrators.*”

**Respondent 2:** “*The police do not really play any pivotal role to help. They are just like community members since some of them take sides and also help to attack suspected witches.*”
Those who had been suspected of witchcraft in the past pointed out that they received some protection from the police, some from strangers and a few from very close relatives or friends. Nevertheless, many of them observed that police protection came late as the suspects had already been abused. They noted that often, police officers were dispatched mainly when their lives were in serious danger or either during or after the destruction of the suspects’ property. A key informant narrated his experience as follows:

**Respondent 1**: “No community member came to help me, except for only two friends who fought tooth and nail to keep my assailants from beating me. The police van arrived after an hour with only five officers to disperse the people who were vandalising and looting my property. They could not even arrest anyone save for the witchdoctor who had identified me as a witch. However, the police patrolled my area for than two weeks until I asked them to stop the patrol as I felt safer in the community.”

Religious leaders who were interviewed and those who participated in the FGD held that they provide counseling sessions to the accused and accusers who voluntarily or are brought to them. They also conduct exorcism on the witches through prayers. Furthermore, they give accommodation to victims whose lives are in danger or whose houses are burnt. Two of the religious leaders and a traditional leader reported that:

**Respondent 1**: “Many community members appreciate the help we offer to people who accuse and are accused. Many people we help come back to us and thank us saying that without our help they could have committed suicide or done something bad to the accusers.”
Respondent 2: “A church father noted that the Roman Catholic Church provides civic education to its members to remind them not to harm a person accused of witchcraft.”

Respondent 3: “I always warn my clients and the people who come to witness my ordeals during hearing that the accused should not be exposed to any kind of violence. For example, some old woman was threatened by some influential community members that they will kill her because she was a witch, but with my intervention the people reversed their decision to kill her.”

On the other hand, a number of victims do not get police protection because the victims do not seek protection and assistance. At times this is because these victims do not have the knowledge of where they can get assistance from. Also, other groups of people do not report witchcraft cases to authorities. This is because some of the police officers are not conversant with the Witchcraft Act and end up arresting the suspected witch rather than their accusers. This explains why many suspected witches do not go to the police to seek protection and support. Some study participants suggested that suspected witches are helpless:

Respondent 1: “People are confused when they are attacked and do not know where to go for help. I, for instance, did not seek protection or assistance because I did not know what to do or how to go about it.”

Respondent 2: “Community members do not provide help to suspected witches because the moment others see you doing that they conclude that you too are a witch too.”
**Respondent 3:** “Suspected witches do not get help because people do not tell the police, NGOs and Social Welfare Officers about what is happening in their villages.”

The police have a complicated duty to protect suspects of witchcraft since some police officers also believe in witchcraft. Also, the majority of community members where they come from have very strong beliefs in witchcraft and many do not want suspects to be protected and assisted. So the police officers standing to protect victims also put their lives in danger from such perpetrators. In fact, FGD participants’ views were that ‘witches’ should be killed and they should not be protected or given any support:

**Respondent 1:** “It is unfair and immoral to support witches. They are bad and cruel people and they deserve to be killed and punished for their sins. Anyone who supports them are either witches too and will be helping their own. Supporting them is bad. I think if anyone supports witches they should be treated as witches too.”

**Respondent 2:** “Why should a killer be protected and given good life? The person who is accused of witchcraft should not be taken care of because he or she is a killer. You cannot help someone who wants to kill people. The witch is the one who should die to save many lives.”

5.3.7.2 Position in Zimbabwe

The religious leaders in Zimbabwe gave diverse views in regards to the protection of and support for suspected witches. Similar to South African religious leaders, the majority of them indicated that they provide shelter and conduct exorcism on the witches through prayers. Most responses from the FGDs suggest that religious leaders in Zimbabwe are respected and their role in the society is very important. Some of them have been noted
to stop the whole community from attacking a suspected witch. At times, suspected witches run to them for help if they suspect people want to attack them. Some religious leaders are, however, reluctant to move against those who murder witches, since doing so may open them up personally to witchcraft accusations.

The majority of the NGOs and Social Welfare Institutions based in Zimbabwe shun taking part in issues that are related to witchcraft. However, a few of them are there to aid victims by supplying them with food. Many informants noted that suspected witches’ children are jobless and these institutions play a role of paying school fees for some of them. During preparations for a start of a season, these institutions also help victims with farming inputs as most of them are forgotten and sidelined.

From the onset of the data collection process, the researcher could not get a police clearance to interview the police who deal with witchcraft cases. The respondents who took part in the FGDs gave their views on how the police act, respond and deal with witchcraft cases. The majority of respondents observed that victims of witch-hunts do not receive protection and support from the mentioned authorities. They were said to come late in the area to investigate the already horrendous act that would have been perpetrated to victims. Some of them were noted not to respond to reports made as they cite that they do not have transport to go to the area. Almost the majority of the study participants agreed that only the advantaged ones who had their own cars could receive immediate help if they report an imminent attack of a suspected witch. About three quarters of the participants in all the three research areas agreed that some suspected witches had to pay something to get the favours from the police so as to get protected and for their accused to be arrested. Some participants also indicated that the police, especially the officer in charge, also get a beast from a tsikamutandanda to allow them to go ahead with their witch-hunting missions.
However, some respondents from ZINATHA and some NGOs noted that the police respond to incidents of witch-hunts to protect victims. Moreover, they even come in areas affected and take a list of names of victims and through the chief offer the necessary remedies. A victim who participated in the FDGs also highlighted that he received help from the police from the time he reported his case until the case was closed. One view raised was that in most cases the police cannot help at all in such cases but turn parties back or give referral.

5.13.2.1 Case Study Three: Police Referral

Two families (Family A and B) were close in a small town. They shared everything in common and would support each other in times of deficit. What cemented the friendship of these two families is the fact that they were coming from the same home village hence they would refer to each other as relatives. Some members of family A left the old church they used to attend and joined a prophetic movement church. On the other hand, family B remained in the old church. With time, Family A’s child manifested demons at their home during a prayer session. During exorcism, the demons spoke through the possessed child that Family B was the one bewitching family A and causing all the setbacks the family was experiencing. Perplexed by the confessions during prayers, family A decided to call family B to come and hear the confessions that were coming out as they exorcised the demons. Family B honoured the invite quickly and arrived as exorcism was still taking place. Upon hearing the news, family B quickly pointed that family A was accusing them of practising witchcraft. A police report was made. However, the police could not help them alleging that such cases are difficult to handle. Therefore, family B was advised to refer the matter to their home area, to the chief. Family B is alleged to have reported the matter to the chief and word was send to family A via family B to come and pay two beasts for such allegation. Family A was anxious as to how could the chief make
The above discussion showed that there is still more that needs to be done to protect rights of the alleged witches and also those who accuse others of witchcraft. In most cases, it seems the accused witch always find themselves in a desperate situation with no help coming from even the peace officers.

The above gross human rights violations that participants gave during data collection phase tallied with what the Human-based approach (HRBA) emphasises. This approach underscores about the empowering of right-bearers to ascertain the meaning and content of their rights. The social violence, physical violence, economic violence and psychological violence depicted the horrendous act of some people against alleged witches. At the same time, the perpetrators of the violence against alleged witches also complained that their rights to be protected from the supernatural violence against them was being ignored. An analysis of the violation of rights defined the parties to the matter. This, therefore, would enabled the right-bearers to enforce these rights. More so, it underlined the issue of accountability of individual and state institutions mandated to respect, protect and fulfil the rights. Also, this translates needs into entitlements in a HRBA. Despite a contemporary understanding of culture that clarifies its changing and contested nature, “cultural relativity” (the principle that an individual's beliefs and activities should be understood by others in terms of that individual's own culture) is sometimes invoked to justify human rights abuses against alleged ‘witches’. The notion of cultural relativity emanates from an ethic of respect for cultural difference, which is wholly compatible with and in fact essential to a human rights framework (SDGs). The study submissions clearly considered the issue of human rights and the aspect of “ubuntu” in basing the given theory. With that in mind, the researcher invoked the theories of criminal punishment. In balancing the rights of the parties involved (victim, perpetrator and third parties) in an issue of violation of rights, the punishment to be accorded was argued to fit
the persons. In other words, those who espoused the theory of criminal punishment advocate that all the theories of punishment may be beneficially employed. Accordingly, courts do not have to admit a single theory of punishment to the exclusion of other others but bring them all together with the primary aim being to determine the possible theory that may justify the imposition of criminal sanctions on a specific criminal.

5.3.8 Proposed Victims Charter for Alleged Witches

It is because of the above that the researcher decided to craft a Witchcraft Victims Charter. Through the HRBA, the traditional victims of the witchcraft accusations and witch-hunts were carefully examined and a proposed ‘Victims Charter of Alleged Witches’ (VCAW) will be drafted. The proposed Charter attempts to spell out the steps which the victims of witch-hunts and/or witchcraft accusations may take to ensure that their human rights are enforced. The Charter was drafted along the guidelines gleaned from the Domestic Abuse Victims Charter (DAVC). In addition, some of the aspects that participants said were used in the crafting of the charter of alleged witches;

**Respondent 1:** “I was beaten and did not get any protection from anyone. I did not know who to approach. They took some of my people during the time they were beating me. Some of them I see them using some of my belongings which they did not burn.”

**Respondent 2:** “They are beaten up to make them confess that they are witches.”

**Respondent 3:** “No acts of violence were perpetrated against me because I am young and people in my village felt sorry for me because I did not choose to practice witchcraft but it was some woman who taught me.”


Respondent 4: “We had a case whereby a witchdoctor gave a suspected witch traditional medicine to drink. Unfortunately, the suspect died after drinking the medicine.”

5.4 Chapter Conclusion
To sum up, this chapter has revealed that many people in Zimbabwe and South Africa have strong beliefs in witchcraft and they have little or no knowledge about the witchcraft laws. Because of little or no knowledge of the law, suspected witches are exposed to various forms of violence including physical, economic, social and psychological violence. Such violence is mainly perpetrated against the vulnerable; mostly women, the elderly and poor people. On the other hand, the law on witchcraft is, to a large extent, ignored, and never considered as it is argued to be against the African values and norms. These violence traits are engineered, in some cases, because of the available legal mechanisms that are too rigid, unhelpful and rejected by clients simply because they were not yielding satisfying outcomes. Even though the law is supposed to protect them, they generally receive inadequate protection and support. The chapter also showed that some people strongly believe in witchcraft. As such, they at times kill the suspected witch because of the overpowering fear that the victim possesses harmful witchcraft powers. Consequently, these ‘victims’ (bewitched) end up facing the wrath of the law as the same law seem not to shield them against alleged witches. Some traditional palliatives to deal with witchcraft accusations and belief were noted. Above them all, mediation seemed favourable, viable and flexible rather than the route of the law which respondents said is rigid and unfruitful. Building from the data collected in this chapter and previous discussions, the next final chapter gives conclusions and salient recommendations.
CHAPTER SIX

FINDINGS, RECOMMENDATIONS AND CONCLUSION

“It might be a matter of some urgency that anthropologists use their intimate knowledge of local [witchcraft] to analyse its implications with respect to state formation and the new contradictions between peasants and state elites”

(Geschiere, 1988:40)

6.1 Introduction
The study was designed to comparatively analyse the witchcraft belief and the efficacy of the corresponding the legal framework in South Africa and Zimbabwe. As such, this study had two main aims. Firstly, to evaluate and assess the impact and influence of African value systems particularly ethical ideas on the development of criminal responsibility. Secondly, to determine the extent to which legislation addresses the challenges of witchcraft-based violence in the two countries. In order to systematically determine these two broad aims, the researcher examined the legislative framework, interviewed knowledge holders and selected institutions that work closely with the related phenomenon. The researcher proceeded to test the understanding of the victims, perpetrators and professionals (also knowledge holders) who deal frequently with witchcraft related cases. The study also identified the reasons behind the paucity of reported and prosecuted cases in the countries under study.

The purpose of the present chapter is to discuss the conclusions of the study, the knowledge gap and to make recommendations on how the law can be used as a tool to reduce the incidence of witchcraft-related violence and to address the belief in witchcraft so as to preserve tranquility without offending any of the parties involved.
6.2 Findings
The purpose of this section is to synthesise the main findings to the study’s research questions and to ascertain whether the study’s research objectives have been fulfilled. The prominent research question dealt mainly with the influence of African value systems when assessing the efficacy of the legal framework. The purpose for such an undertaking was to understand whether efforts to promote awareness on such legislation have been successful or not. To determine the study’s conclusions on whether the law is efficacious or not in addressing the witchcraft phenomenon, the assessed the two main aims.

6.2.1 African Values and Criminal Responsibility
This study undertook a comparative analysis and findings of the fieldwork done in Mashonaland Central province in Zimbabwe and Limpopo Province in South Africa. The study’s first aim was to assess the influence of and the role of African value systems particularly with regards to witchcraft on the development of the law on criminal responsibility in South Africa and Zimbabwe. Below are the findings;

The study unveiled that the African value systems of the two countries have been affected by modernity. However, Zimbabwe has been affected more and traces of it prove to be a mammoth task compared to South Africa which has most societies that highly esteem their African values and norms. Modernity has intertwined and eroded African value systems thus, negative distorted witchcraft belief stories are being successfully spread through films, dramas and soupies aired by church-owned broadcasting agencies and other non-religious groups. As such, the African value systems are seen as backyard tools which play a small role in remedying witchcraft cases on criminal responsibility. Nevertheless, the situation seems to be worse in South Africa than Zimbabwe where traditional doctors are neither consulted to give opinion on such cases. On the other hand, the African value systems have played a pivotal role merely in preserving the belief in
witchcraft and the horrendous act of punishing suspected witches. However, African value systems of addressing the witchcraft phenomenon have been sidelined.

6.2.2 Comparative law on criminal responsibility
This second aim was undertaken to determine the extent to which legislation addresses the challenges of witchcraft-based violence in the two countries. Below are the findings;

Generally, the two countries have similar laws governing the aspect of belief in witchcraft. The law governing the matter stipulates that the quantum of punishment to be imposed to a perpetrator should not be disproportionate to the committed crime. In a case where an offender has been convicted of a crime of witch-killing, that allows the court to impose a sentence that curtails the rights of the offender. In that regard, the punishment should be determined by the seriousness of the offence itself. Furthermore, to punish beyond that level would be to subject the offender to an unjustifiable loss of rights that may well be cruel, inhuman or degrading.

A factor that must be considered in the determination of the sentence to be imposed is the restoration of the rights of victims. The researcher would like to submit the following general principles to be applied for the determination of sentencing of perpetrators who injure and/or kill ‘witches’:

‘(a) The seriousness of the social harm caused.
(b) Sentence must be proportionate to the harm caused.
(c) Sentence must seek to offer the optimal combination of the following:
   (i) Restoring the rights of victims of the offence;
   (ii) Protecting society against the offender; and
(iii) Giving the offender the opportunity to lead a crime free life in the future.

(d) Substantial and compelling circumstances that aggravate or mitigate significantly the moral blameworthiness of the offender with reference to the offence committed.'

6.2.2.1 Existence of strong legal framework and policies
According to the study, there exists weak and archaic legal framework and policies dealing with the witchcraft phenomenon. In addition, the legal framework that exists does not represent people’s belief. The witchcraft suppression laws seem to disagree with the existence of witches and witchcraft. ‘Witches’ seem to enjoy special protection of the law and accusers or the bewitched are not at the mercy of the law. Laws that are in place to prove that one is a witch are water-tight and excludes the traditional African norms. The witchcraft legislation discourages any interested parties to approach the courts of law with any witchcraft case. In addition, no precedence exists of a successful witch accusation case. This ‘under-development’ ensures that cases involving witchcraft sentiments avoid the normal litigation process and this promotes violence against the accused witch.

From the foregoing analysis, it is apparent that the South African and Zimbabwean legislative framework seems more firm in protecting the rights of ‘witches’ at the expense of the bewitched.

It was apparent from the study that most respondents used in this study were not aware of most of the statutes that address the witchcraft phenomenon; thus, the researcher submits that there seems to be a general lack of awareness of campaigns that conscientise people about the said witchcraft legislations.
Although both countries have measures in place to protect and support suspected witches, South Africa seems to have a system that is more effective and better structured in addressing the victims’ needs than Zimbabwe. South Africa also has more organisations that actually focus on such issues than Zimbabwe.

6.2.2.2 Enforceability

Enforceability focuses on the quality of service provided by law enforcers for victims of the witchcraft phenomenon. The term victims in this study was found to be debatable; the bewitched claimed to be victims and also the alleged witches claimed to be victims too. For the purposes of this sub-theme, the victim means the suspected witch. A discussion on the issue of enforceability sought to establish whether the law enforcers effectively apply the law and whether the victims were satisfied with the rendered help or services.

Based on the findings of the study, the majority of the police personnel were not adequately informed on witchcraft laws, thus any attempt to effectively enforce it was problematic because of lack of knowledge. It has been pointed out that the South African legal system is supported by NGOs as well as the involvement of government social workers. Social workers have a great role to play in cases involving minors and South Africa seems to be more progressive in integrating their involvement. Based on the findings of the study, professionals such as social workers and those from NGOs who specialise in these cases merely deal with cases of domestic violence and shun witchcraft cases.

Generally, the picture which emerged indicates that there is a need for law enforcers to enhance their capacity to deal with cases relating to the witchcraft phenomena. If these witchcraft cases are to be abated, the system cannot solely rely on the institutions mentioned above to enforce justice. No matter how important these institutions may be, they cannot substitute the police and judicial officers in serving justice but such institutions
can only complement these efforts. The police are some of the main enforcers of the criminal law, as such, they have to be properly educated and equipped on domestic violence legislation.

6.2.2.3 Belief in witchcraft as a ground of exculpation

Lastly, the study was taken to determine whether belief in witchcraft should be used as a ground of exculpation from criminal responsibility.

The study unveiled that there is a group who believe in witchcraft to the extent that it suspends their thinking ability. In that regard, over-powering fear of witches may rob a person of the ability to appreciate the wrongfulness of the act in question. However, not all cases of over-powering fear deprive the actor of the capacity to appreciate the nature and effects of the wrongfulness of the act. A person who kills a witch while he or she is able to appreciate the actions should be found guilty. On the other side, punishing a person who has killed another while labouring under an over-powering fear that the victim is a witch, smacks of imposing liability without fault on the role actor. This in effect would make murder into a strict liability offence.

Belief in witchcraft is dangerous and threatening but should not be made a crime. However, if belief in witchcraft is now leading one to kill or injure suspected witches, the law should protect victims by punishing such people who take the law into their own hands. It should be noted that belief in witchcraft should not be accepted as a defence but at exceptional circumstances should be raised as a mitigating factors depending on the circumstances of the case.

6.2.2.4 Resource efficiency

This sub-theme primarily focuses on whether, according to the study, South Africa and Zimbabwe have supported their legislative framework and policies with the necessary
resources to enable effective implementation. Resources can be in the form of monetary funding used to establish institutions that enforce witchcraft legislation and can also be in the form of the payment of salaries to professional personnel.

According to the study, governmental organisations greatly lack the required resources to be effective thus, its work has been hampered by funding constraints. The special units of the Zimbabwe Republic Police (ZRP) and South African Police Services (SAPS) also lack the required resources to effectively enforce the witchcraft legislations. The researcher affirms that the current economic climate in the two countries makes it difficult for the state to allocate adequate resources to such institutions thus, the efficacy of legislation is greatly reduced. Zimbabwe, however, seem to lack NGO participation in combating violence against, especially on witchcraft matters.

6.3 Recommendations
The problem of witchcraft belief presents a thorny issue and human rights challenges to law and policy-makers in the two countries. It is a thorny issue because some people kill the suspected ‘witch’ while labouring under overpowering fear that the victim possesses harmful witchcraft powers. These people feel that the law is not protecting them and construe their actions as ‘self-defense’. Also, the witchcraft phenomenon represent human rights challenges in the following ways; how does one give practical realisation of the right to life, right to due process of law, property rights, the right to non-discrimination, the right to liberty and security of person, the right to dignity, the right to access of justice and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment to witches. The issue of belief in witchcraft is obviously a pressing and complex subject that needs more in-depth and comprehensive research that would pave the way for meaningful intervention strategies. Based on the findings of this study, the following recommendations are advanced to combat incidents of witchcraft-based violence and address the issue of witchcraft belief in Zimbabwe and South Africa:
6.3.1 Scarce resources and infrastructure
The two states should prioritise the provision of resources and infrastructure required to address the witchcraft phenomenon. South Africa and Zimbabwe may solicit assistance from local and foreign non-governmental organisations (NGOs). Shortage of resources greatly diminishes the quality of service provided. Adequate infrastructure is also needed to alleviate the plight of victims of those alleged of being witchcraft practitioners in the countries considered in this study.

6.3.2 Awareness Campaigns and Education
It is recommended that state institutions and non-governmental organisations should organise awareness campaigns to familiarise the populace with the witchcraft legislation. These awareness programmes should be conducted in both countries in all districts. Furthermore, such campaigns should be designed to make people aware of the laws relating to the witchcraft phenomenon. Distribution of educational materials like books and leaflets along with awareness campaigns will be of importance in preventing or minimising witchcraft-based violence and protecting the lives of vulnerable people. Moreover, the production and performance of drama plays on the issue of witchcraft can act as an extremely effective awareness raising tools at a community level.

These awareness-raising activities have to focus also on the production and dissemination of standardised television, telephone, Facebook, ‘Whatsapp’, radio and billboard advertisements. These adverts should appear directly to the general public and they are particularly effective as many people today spend a great deal of their time on such media. In addition, the government should ensure that such initiatives reach all areas of the country.

Educational conferences for legal practitioners, pastors, traditional healers, traditional leaders, business people, politicians and other relevant stakeholders should be organised
to update these service providers of developments and changing policies in this area to be better informed about the relevant laws. These legal practitioners should also be trained to defend victims of witchcraft-based violence and how to deal with perpetrators without violating their human rights.

To successfully address the belief in witchcraft in the two countries, they should seek to get rid of the undesirable gap between the legal rules and the social realities. This is a best way to do away with the witch-killings happening across the region. The study has highlighted that the use of legislation which ignores the phenomenon does not give any assistance but instead perpetuates taking the law into one’s hands and further unwarranted witch-killings. Religious views and other cultural values should be interrogated so as to do away the belief that is becoming dangerous day by day.

6.3.3 State Institutions and NGOs
In line with the witchcraft laws, state institutions such as the police and courts should ensure that they enforce the provisions of the witchcraft legislation properly and without fear, favour or prejudice.

The state institutions should strengthen measures to protect and support victims of witchcraft-based violence by enhancing the capacity of Social Welfare Offices, the police and Victim Support Units (VSUs). They should also develop mechanisms to ensure that suspected witches (victims) come forward and speak out on witchcraft-based injustices. Such strategies should be utilised to report cases to state authorities and relevant NGOs. In addition, the state institutions should build and oversee the provision of temporary shelters for victims and offer legal services and assistance. Such services should not only be provided to those in urban areas but also those who are living in remote areas, far away from the police and other relevant authorities. In that regard, offices that render special services should be set up and erected in remote areas.
The government and related institutions should train people at local levels to offer counselling services. The following groups of people should be included; traditional leaders, religious leaders and teachers.

With regard to the issue of access to justice, the government is urged to:

(a) fast-track the process of transferring the responsibility of criminal prosecution from the police to public prosecutors
(b) apportion more resources to the judiciary for the improvement of court infrastructure especially in rural areas

6.3.4 The Role of Legislation
There is still a need for legislative and policy reforms in the two countries under study. The study has shown some strengths and weaknesses of the existing legislative framework discussed legislation and gaps were identified. The existing laws should be periodically and progressively amended to keep up with changes in the society. Furthermore, effective monitoring and evaluation of legislative framework and policy as well as resources is very crucial. Resources that are invested in the system to support the effective implementation of legislation need to be strictly monitored if the witchcraft phenomenon is to be addressed. One of the major reasons behind poor implementation of legislation is the abuse of resources hence, there is an urgent need to monitor and evaluate such.

The promulgation of legislation by governments in consultation with traditional leaders and human rights agencies to eradicate witchcraft-based violence should to be considered as a feasible instrument to shield vulnerable people from witchcraft accusations. In that regard, in South Africa and Zimbabwe, the state should prosecute perpetrators who are found to have abused the rights of suspected witches. The Ministry of Justice together with relevant stakeholders have to take a proactive stance to enforce
the witchcraft law. The witchcraft statutes should be reviewed to positively and comprehensively address findings of this study. To successfully eradicate witchcraft-based violence, the governments are urged to:

(a) Make sure that law enforcers scrupulously adhere to the established principles of accountability, professional codes of ethics and conduct.
(b) Positively empower law enforcement agencies in terms of resources to provide them with regular human rights education.
(c) Ensure that the police force carefully and effectively carries out investigations and hands over perpetrators for prosecution in matters of witchcraft-based violence.
(d) Boost community teaching and campaigns on the right to life and the respect for other human rights.

The researcher also recommends that South Africa and Zimbabwe should consider constituting belief in witchcraft that is coupled with unreasonable action as a separate criminal offence. The study found that except in cases where there is severe violence, other forms of abuse are unlikely to be prosecuted. Witchcraft-based violence must not be trivialised; it should be considered as a criminal offence which attracts stiff penalties which will deter offenders.

There is a need for the Witchcraft legislation to be amended in both countries. The Zimbabwean legislators have done better than South Africa on that but it needs to recognise the existence of the belief so as not to leave the believers of witchcraft without protection. This amendment will to a great extent play an indispensable role in preventing the incidents of self-help across in the two jurisdiction. It must, however, be made clear that recognising belief in witchcraft is not to promote witchkillings but assert a reality in the communities (South Africa and Zimbabwe) for which such legislation is formulated. Resultantly, this will diminish the rate of witchkillings as a genuine believer in fear of
witchcraft will have a recourse to the law rather than taking the law into their own hands. Be that said, the law is at the present moment not offering protection hence people taking self-help thus, there will be no excuse for self-help and stiffer punishment can be recommended for such witch-killers.

Issue of providing palpable proof in witchcraft matters must not be disregarded when the belief is pleaded in mitigation of sentences. The courts have to be alert in determining how genuine the belief in witchcraft is so as to prevent unwarranted witch-killers from getting away with low and/or lighter punishments. In that regard, this alludes to the appointment of assessors, well abrest with witchcraft practices to assist in the examination of proof in terms of determining whether things advanced can be admitted and regarded as objects used in the witchcraft cases.

In the light of the afore-mentioned, the countries considered in this study should consider instituting a “no drop” or “no dismissal” policy. Fundamentally, a “no drop” policy takes the decision of whether or not to prosecute an offender off the victim’s shoulders and places it where it belongs: on the discretion of the prosecutors whose job is to enforce the criminal law and hold offenders liable for their crimes. The prosecutor’s client then becomes the State, not the victim. Aggressive prosecution might greatly help in reducing the belief in witchcraft and also deter ‘witches’ from bewitching others.

6.3.5 The use of human rights norms to tackle witchcraft-based violence

The application of human rights norms to ‘witchcraft-related violence’ is an emerging issue in the context of international and regional human rights law. It can be tackled through utilising some of the well-recognised human rights that exist under national, regional and international human rights provisions. These include the right to life, the right to non-discrimination, the right to liberty and security of person, the right to dignity, the
right to access of justice and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Under the obligation of ‘due diligence’ (The standard of ‘due diligence’ means that the State is not held responsible for the acts of others, but it is held responsible for its own failure to prevent, investigate, prosecute or compensate for the commission of the act), it is recommended Zimbabwe and South Africa are to undertake effective investigations, prosecution and sanctions, guaranteeing access to adequate and effective judicial remedies, ensuring comprehensive reparations, identifying vulnerable groups and eliminating prejudices and (customary) practices based on the idea of inferiority or superiority of certain members of society. Furthermore, Zimbabwe and South Africa should investigate and punish witchcraft-based violence and in appropriate cases provide compensation to the victims of witch-hunts.

6.3.6 More research in the field
The current study dealt with the witchcraft belief and criminal responsibility and did attempt to discover the impact of witchcraft-violence on the children’s right to life, education and other fundamental rights of children. The researcher recommends a systematic study specifically focusing on the violence that children suspected of witchcraft are subjected to. A component of the study should be devoted to the thorny issue of sexual violence that child witches are subjected to during cleansing and exorcism by witchdoctors and religious leaders. Furthermore, the emerging killing of albinos for witchcraft or muti purposes in South Africa should be aggressively addressed before it spreads and the belief is deeply rooted in the general populace.

6.4 Proposed Victims Charter for Alleged Witches
The proposed Charter attempts to spell out the steps which the victims of witch-hunts and/or witchcraft accusations may take to ensure that their human rights are enforced.
The Charter will be drafted along the guidelines gleaned from the Domestic Abuse Victims Charter (DAVC). Below is the proposed Victims Charter for alleged witches;

**Who is a victim of crime?**
A victim of crime is someone who suffers harm as a result of an act or omission committed by another person in the course of a crime, witchcraft imputation or witchcraft violence. This includes physical and psychological harm, as well as loss or damage to property. Family members of a person who dies as a result of a crime are also considered victims of crime.

**Purpose**
The purpose of the Charter is to ensure that victims of crime receive appropriate information and protection and are able to participate in criminal proceedings (typically as a witness giving evidence to the police or at court). The Charter sets out what your entitlements are and the standards of service that you can expect to receive. Service providers will take account of your particular needs where possible and where they know about these. You may also decide that there are services or information that you do not wish to receive; you can inform the relevant criminal justice organisations about this (unless the information must be provided as you are taking part in proceedings).

**Overview of the key entitlements in the Victim Charter**
As a victim you will receive services under the Victim Charter, a Charter for victims of crime. These are described as entitlements which apply to a range of service providers. Full details of the entitlements, how they will work and the conditions for these are set out in the body of the Charter. The text below is simply a summary overview of the main elements. Broadly speaking you are entitled to:
• be treated fairly, professionally, and with dignity and respect;
• be understood and to understand – in your first language if necessary;
• be updated at key stages and given relevant information;
• have your needs considered by service providers;
• be told about available support and bring someone with you to give support;
• apply for compensation (within two years of the incident causing the injury) if you were a victim of a violent crime;
• ask for a court familiarisation visit and be kept separate from the accused as much as possible at court;
• have the opportunity to tell the court how the crime has harmed you;
• ask to be told how the offender’s sentence is managed; and
• let service providers know if you are unhappy with their service.

Summary flowchart of the criminal justice process:

1. Reporting a crime

You can access support services, including specialist support, whether or not you report the crime to the police. Contact Victim Support can also advise you about specialist support.

2. Support services

You can access support services, including specialist support, whether or not you report the crime to the police. Contact Victim Support can also advise you about specialist support.

3. Police investigation
The police will investigate the crime and check what support you need. They will refer you to Victim Support. You may have to give a witness statement. The police will update you within 10 days and tell you whether a suspect has been identified. If there is no suspect or there is not enough evidence, the investigation may be closed. In some instances, the police may deal with the case in a way which means that it does not have to go to court.

4. Will it go to court?

If the police send a file to the Public Prosecution Service, a prosecutor will decide whether there is enough evidence for the case to go to court and whether it is in the public interest for this to happen. In some cases, the prosecutor may decide that, for example, a caution is more appropriate. The Victim and Witness Care Unit will let you know the decision. If the case is going to court, the Unit will check what support you need and give you information on how to make a victim personal statement. They will also tell you whether you have to give evidence at court.

5. The trial and giving evidence

Depending on your age, you can get support from Victim Support’s Witness Service (for adults aged 18 or over) or Young Witness Service (if you are under 18). This may include visiting the court so that you have a better idea of what to expect.
If the defendant pleads guilty before the start of the trial you will not usually have to give evidence. If the trial goes ahead, the Victim and Witness Care Unit will keep you informed about what’s happening and what you need to do. They will also check again what support you might need. If you have additional needs, some extra help (known as ‘special measures’) may be provided if you want this and the judge agrees.

6. Outcome

The Victim and Witness Care Unit will tell you the case outcome. If the defendant is found guilty, or pleads guilty, they will tell you about any sentence given and what this means.

7. After the trial

If there is a sentence of six months or more, the offender is going to be supervised by the Probation Board or will be subject to a hospital order, the Victim and Witness Care Unit will send you details of the relevant post-conviction victim information scheme.

Additional support for victims with particular needs

Victims with particular needs may require additional support as they go through the criminal justice system. You are considered to be an intimidated victim, when giving evidence, if the quality of your evidence is likely to be affected because of your fear or distress about testifying. You automatically fall into this category if you are a victim. You may also be considered to be intimidated, when giving evidence, if you:
• have experienced domestic violence;
• are a victim of hate crime;
• have been harassed, bullied or victimised;
• neglect or harm yourself;
• are a frail and older person;
• are a victim of exploitation; or
• are a victim of organised crime;

You are considered to be a vulnerable victim, when giving evidence, if:

(a) You are under the age of 18 at the time of the offence, or

(b) The quality of your evidence is likely to be affected because you have:

• Mental health issues;
• Learning or communication difficulties;
• A neurological disorder; or
• A physical disability

6.5 Knowledge gap

Witchcraft, sorcery and magic are well-researched topics in anthropology where the topic falls under the study of religion amid societies. However, anthropological works on witchcraft and witch-hunts have focused mostly on sociological variables of gender, class and kinship, (Gluckman 1968, 20-34). Kgatla (2009) explored the intensification of malicious accusations of witchcraft and the consequential witch-killings in South Africa. His study discovered that in the last three decades as many as 20 000 people were killed between 2004 and 2008 because of such witch-hunts. He submitted that in numerous instances, people’s gullibility is exploited by witch-hunters. Furthermore, he unveiled that in many cases the accusers often stand to gain in some way through the vulnerability of those they accuse. Gluckman (1955) and Evans Pritchard (1976) also played a pivotal role in their work by authoring that witch accusations were employed as ‘a safety valve’ to do away with dissatisfactions and/or disagreements in African communities. In their
writings, these two construed that witchcraft accusations were used as tools for establishing social order in life through explaining the discourses of life. Kohnert (1996) wrote that in spite of modern education, religion and social class of the people, the belief in occult powers is entrenched in various African societies. According to him, the progression in modernisation is even exacerbating this belief due to social stress and strain faced by African people. These social studies still present the same issue from different views and no wonder there has been less redress of the phenomenon. In some views of the empirical studies of the social studies, witchcraft laws are seen as vivid examples of how legislation is used to undermine African cultures and traditions (Roberts, 1935). On the other, the witchcraft phenomenon is demonised and considered legally unreasonable.

From the legal perspective, Geschiere and Fisiy (1997) compared and contrasted the function of ‘witchdoctors’ in the judiciary system regarding witchcraft matters. Also, Hund’s (1999) work cleared out that South African state courts do not recognise the existence of witchcraft thus people could not seek redress in African traditional courts. Seidman (1966) argues vehemently that for the witchcraft defence to be recognised and work, threat must be physical, not metaphysical. The witchcraft laws of Zimbabwe and South Africa criminalise witchcraft practices. However, prosecutions for witchcraft under the very laws intended to suppress it are rare and if prosecution proceeds, the adducing of evidence to prove that a particular person is a ‘witch’ is a difficult task. This difficult task in proving the guilty of ‘witches’ has resulted in more problems. Alternatively, this lacunae in the law angers numerous members of the societies who believe that ‘witches’ should be punished and resort to jungle justice. The legal eye maintain that belief in witchcraft contradicts the systematic, scientific and technological developments in society which are pivotal foundations and basic principles. However, the IKS worldview argues that it is unfair to dismiss belief in witchcraft because science and technology have fallen short to explain the natural conundrums and phenomena which are peculiar to Africa.
There are still discrepancies and gaps in knowledge due to conventional misconceptions and errors of analysis on the subject. As such, proper participation and collaboration from the two disciplines have been shunned hence the issue remains a conundrum. This interdisplinary study employed the qualitative research approach and the legal (doctrinal) approach to bridge the unshakeable deep rooted and profound cultural beliefs of African people which do not find expression in written law and therefore introduce a mismatch between law as the people live it and law as contained in the statute books. This is the gap that the study sought to fill. For social empirical findings to be useful in integrating with the legal issues, the study adopted an IKS perspective. This was done to identify the indigenous knowledge held by the communities and the worldview underpinning that knowledge. By so doing, the study also contributed to transformation of indigenous knowledge research by following methods that recognise indigenous knowledge, practices, beliefs, values and norms as valuable.

6.6 Conclusion
This study has established that belief in witchcraft is still prevalent in Zimbabwe and South Africa. This finding is evidenced by many research participants who reported that witchcraft is still being practiced in their areas. Furthermore, the research outcomes proved that regardless of educational levels or social status of the people in these two countries, the belief in witchcraft prevails. Despite the changes brought by modernity in these two jurisdictions, witchcraft is thus a pervasive reality. Consequently, it has attracted fear because on one hand it is believed to be the cause of misfortune and on the other hand it is sought after for wealth and other advantages in life. Because of this belief, whenever a misfortune befalls people, a witch-hunt is very often opted for. At the moment, the ways in which witches are hunted and/or identified are cruel and degrading. To identify a witch, traditional-doctors carry out ordeals and people would at times suspect someone of being a witch because he or she is not liked in the community. In addition, churches have been gaining mileage with number of witchcraft cases as well. It should again be emphasised that the witchcraft phenomenon causes problems in the courts of law because witchcraft cannot be proven scientifically.
This study has also established that a large proportion of the people suspected of practicing witchcraft are subjected to arbitrary violence perpetrated mainly by men and the youth. This violent behaviour perpetrated against suspected witches may take any of the following forms; physical attacks, economic deprivations, social and psychological trauma. In general, a suspected witch undergoes one or a combination of these forms of violence. It is through such violence that the rights of the suspected witch are violated. In addition, the suspected witch’s family also suffers. The study has also established that the majority of perpetrators of witchcraft violence strongly believe that they are offering a public service. In some cases, others kill the suspected ‘witch’ while labouring under overpowering fear that the victim possesses harmful witchcraft powers. The acceptance of such witchcraft-based violence against suspects in Zimbabwe and South African has been attributed to the cultural belief of some people, lack of knowledge of the law relating to witchcraft by citizens and also revolts against the witchcraft laws that are said to protect ‘witches’ and undermine cultural beliefs. The ineffectiveness of witchcraft suppression laws and the lack of enforcement has been noted in the study to be a contributing factor that exacerbates the problem. To sum, the general view from the study indicate that the witchcraft laws do not represent people’s belief.
Appendix A: Research Safety Protocol

Research Topic: Witchcraft Beliefs and Criminal Responsibility: A Case Study of Selected Areas in South Africa and Zimbabwe

I, the undersigned, will acquaint myself with the vital cultural values, norms, traditions and beliefs of the place and people prior to carrying out the interviews. Furthermore, meticulous care shall be taken to make sure these norms are respected in the data collection process. With regards to meeting places, conducive areas where participants are at liberty will be selected. Conducive places like halls or offices shall be a priority.

The issue of the security of the research and research assistants shall be of paramount importance. For the safety of the research team and participants, travelling and interviews shall be conducted during working hours, between 0800hrs and 1600hrs. In addition, extreme caution shall be taken to make sure that no open air interviews will be conducted.

Interviews shall be done in participants’ houses only at the request of participants. However, in such incidents, the researcher shall employee the following security measures:

The security measures to be employed shall include a time-line of travelling times, meeting times, names of participants that I will meet and physical addresses. Below is the information pertaining to the plan;

- My updated time-line shall made available to supervisors and research team;
- A well detailed update and feedback of the running of the days shall be communicated to all my supervisors through either email, whatsapp messages or
text messages as to whom I am done with and where next I will be conducting an interview and with who;

- The researcher shall carry along an updated personal diary that will also carry all the information about my movements;
- Each research team shall comprise of not less than two people;
- Permission and clearance shall be sought from relevant officials.

In cases of individual participants, they shall be reminded of their right to carry along a person of their choice to be there with them during the interview. Nevertheless, this person will merely be allowed to observe and not to reply to questions or distract the proceedings in any way.

Researcher’s Signature: ________________________________
Appendix B: Consent Form

Research Topic: Witchcraft Beliefs and Criminal Responsibility: A Case Study of Selected Areas in South Africa and Zimbabwe

Consent Form
I am Kugara Stewart Lee and studying for PhD at the University of Venda. I am conducting a comparative research on the topic: Witchcraft belief and criminal responsibility: exploring the frontiers of African value system in the 21st century. You are kindly invited to participate in this study on the following theme.

1) Procedures
I, _______________ (Name), understand that participation in this research is voluntary and that I have the right to withdraw from participation at any time. I understand that I can contact Professor Vhonani Olive Netshandama (015 962 8801/2) vhonani.netshandama@gmail.com, about any concerns I have about this project and may also contact Doctor Rendani Tshifhumulo (Rendani.Tshifhumulo2@univen.ac.za) and/or Doctor Pfarelo Matshidze (Pfarelo.matshidze@univen.ac.za), with any questions concerning this research and about my rights as a participant. You may be asked to answer questions contained in a questionnaire as well as face to face discussions or individual group interviews.

2) Right to Refuse Participation
Participation in this project is voluntary and participants have the right to withdraw at any time. You may skip any questions you do not want to answer. Your decision whether or not to participate in this study will not in any way be prejudicial to you. This consent form may contain words that you may not understand. Therefore, feel free to stop me and ask any questions concerning the consent form and other things related thereto. I will take my time to answer and explain to you all you need to know.
3) Confidentiality
All information obtained in this project will be kept private and confidential and would be used for purposes of research only. You will be assigned a code or number that is unique to you for this study. No one will know whether you participated in this interview. All information will be stored in a locked file cabinet. It can be viewed only by authorised research staff members. No information about names will be released and recorded other than in terms of the consent forms. All personal information about you will be kept private. When the study is completed, all information linking participant’s names to the study will be destroyed and your name would not be used in any report.

4) Type of Research Intervention
This research will involve your participation in group or individual discussions which may last for about one hour. This depends on how interesting it is or if you wish to give me more information.

5) Risks and Benefits
Risks of participating in this study are minimal. Participating in this study will help the researchers to better understand the practical implications of witch-hunting. It may also tangentially benefit your community. There are no direct benefits to be given to participants.

6) Participants with limited legal capacity
I will endeavor to obtain consent of the guardians on behalf of persons with limited legal capacity and those with disabilities.
7) Informed Consent

By signing this consent form, you indicate that you have read the procedure described above and that you voluntarily agree to participate in the procedure and you have received a copy of this form. You also consent that this interview will be audio recorded.

8) Signature

Signature of participant: _______________ Date: __________

With my signature, I affirm that I am 18 years of age and that I have received a copy of the consent form to keep.

Signature of guardian, curator, parent, etc of persons without locus standi in judicio.

___________________

With my signature, I confirm my consent as guardian/curator/parent of the participant.

Signature of Researcher: _______________ Date: __________

I certify that I have personally explained this document before requesting the participant to sign it.
Appendix C: Transcriber’s Confidentiality Agreement Form

Research topic: Witchcraft Beliefs and Criminal Responsibility: A Case Study of Selected Areas in South Africa and Zimbabwe

- I, the undersigned transcriber, fully understand that I am the one to transcribe the information given to me and that the information to be transcribed calls for my good will and utmost confidentiality.
- I further oblige myself to confer the transcribed information in black and white to the researcher of this study.
- I consider myself guilty and responsible if any original or copies of either the transcripts or tape recordings leak to third parties while under my control.
- I, therefore, bind myself to the conditions given above.

Transcriber’s name: ________________________________

Transcriber’s signature: ________________________________

Transcriber’s personal details (if appropriate):

________________________
________________________
________________________
________________________

Date: ________________

(Note: The Transcriber should retain a copy of this form.)
Appendix D: Semi-structured Interview Questions

Research Topic: Witchcraft Beliefs and Criminal Responsibility: A Case Study of Selected Areas in South Africa and Zimbabwe

You are welcome to this interview. You are reminded that your participation in this study will not in any way be prejudicial to you. This questionnaire may contain words that you may not understand. Therefore, feel free to ask any questions concerning the words and other things related thereto so that you answer questions properly. Furthermore, the issues to be discussed here will be kept confidential no one will know whether you participated in this interview. As you will remember from the consent form, all information will be stored in a locked file cabinet. Therefore, I encourage you to give your independent views.

- Do you have any questions before we start the interview?

1) What are the African value systems with regards to witchcraft on the development of the law on criminal responsibility?
2) What laws do other jurisdictions have on criminal responsibility in cases relating to belief in witchcraft?
3) Is there any legislation and/or policy that deal with belief in witchcraft?
4) What are the steps, if any, that are in place to bring African value systems into law relating to criminal responsibility?
5) Should belief in witchcraft be a ground of exculpation from criminal responsibility in the jurisdictions chosen for this study?

Thank you for your participation.

Date: ____________________
7. References

Abbas, S.Z. and Abbas, S.Q. (2010). ‘Research Methodology’ Muhammad Medical College.’ *Journal of Muhammad Medical College Mirpurkhas*. Volume 1, Number 1, 2075-9983.


Clemmont, E.V (2005), Animism: Foundation of Traditional Healing in Sub-Saharan Africa. *Integrating Traditional Healing Practices Into Counselling And Psychotherapy* 133 (Roy Moodley & William West.)


Hund, J. (1999). “Witchcraft and accusations of witchcraft in South Africa: Ontological denial and the suppression of African justice” Society for the Anthropology of Consciousness at the Faculty Club of the University of California at Berkeley, University of the North


Roelofse, C. (2000). Ritual and Muti Murders amongst the Vha-Venda People of South Africa: An Ethnographic Assessment of the Phenomenon, Department of Criminology and Criminal Justice University of Limpopo, South Africa


### 7.2 Cases

*S. v. Muleya and Others* 1982 (2) ZLR 359 (SC)

*S v Netshiavha* 1990 (2) SACR 331, 333 (A)

*R v Bungweni* 1959 (3) SA 142
S v Ngubane 1980 (2) SA 741 (A)

S v Lukwa en ‘n Ander 1994 (1) SACR 53 (A)

S v Motsepa en ‘n Ander 1991 (2) SACR 462 (A)

S V Latha and Another 2012 (2) SACR 30 (ECG)

R v Biyana 1938 EDL 310

S v Sibande 1975 (1) SA 966 (RA)

S v Qeqe 2012 (2) SACR 41 (ECG) pp 48

Jolly 1923 AD 176

S v Malinga 1963 (1) SA 692 (A) at 694G-H

Nkombani 1963 (4) SA 877 (A) 883

S v Phama 1997 (1) SACR 485 (EC)

Banda v Chakalamba [2001] MWSC 4

7.2 Acts of Parliament

7.2.1 Zimbabwe

Part 6 of Zimbabwe’s Criminal Law (Codification and Reform) Act [Chapter 9:23] [Act 23/2004]

7.2.2 South Africa
The Recognition of Customary Marriages Act 120 of 1998

The Cape of Good Hope Act 24 of 1886

The Natal Law 19 of 1891

The Black Territories’ Penal Code XI Act 2 of 1895

The Witchcraft Suppression Act of 1895

The Transvaal Ordinances 26 of 1904


Criminal Procedure Act 51 of 1977

7.3 Websites
http://www.yourdictionary.com/ethics (07/03/2015)
http://www.paganrightsalliance.org/Witchcraft_accusations_and_human_rights_abuses_in_Africa.pdf (07/03/2015)

(http://ahmadiyyatimes.blogspot.com/2013/09/perspective-outrage-is-wrong-reaction.html; accessed 06/12/2016).


http://www.theindependent.co.zw/2016/03/11/mugabe-succession-and-gendered-surveillance-against-joice-mujuru/ (accessed 07/06/2016)


Marcumstudio.weebly.com/uploads/7/.../thecruciblewitchcraftnotes.docx, 03/04/2016)


Sunday, June 26, 2013 NesanwsdzeZimbabwe


By Roxanne Henderson: Jun 14, 2016,


Date: 22 July 2016 - Kaizer Nengovhela

Mandisa Ndaba:  August 9, 2016 (http://imzansi.co.za/police-brutally-beat-up-woman/) (accessed 09/08/2016)

Http://www.newzimbabwe.com/news-12423-
Budiriro+witch+crash+landing+a+hoax/news.aspx (accessed 06 July 2016).

The Zimbabwean Newspaper;