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15 September 2007

Rebuttal of the 'CNCI SAPC Conference Report'

South African Pagan Rights Alliance

15 September 2007

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Notice of Intent:

The Executive Members of the South African Pagan Rights Alliance are obligated to undertake the responsibility of ensuring that, in as far as is humanly possible, any and all media coverage on behalf of the South African Pagan Rights Alliance remains factual, accurate and truthful.

The Executive will not hesitate to challenge any factually incorrect, inaccurate or untrue statement made by any South African Pagan or non-Pagan in the public arena, press or media, where SAPRA deems this to be necessary.

But, SAPRA will not in any way attempt to prevent citizens of South Africa, whether Pagan or not, from exercising their constitutional right to freedom of speech.

1. Government intends to suppress Witchcraft in South Africa ?

The '**CNCI SAPC Conference Report**' states:

*Two sources * have confirmed that the South African Government is determined to go ahead with the suppression of witchcraft in South Africa, even if this proves to be unconstitutional; as too many people are being harmed as a result of (perceived) witchcraft activities and witchcraft accusations in South Africa. The solution according to Government is to suppress witchcraft in an attempt to protect victims of witchcraft related crimes. [Page 2. 'CNCI SAPC Conference Report']*

1.1. The Constitution of South Africa determines that the Constitution of the Republic of South Africa [Act 108 of 1996] is the supreme law of the Republic.

(a). Chapter 1 Section 2 [Act 108] states:

This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

1.2. Act 108 determines that no Provincial legislation may contradict the supreme law of the Republic [Act 108].

(a). Chapter 7. (1) and (2) [Act 108] states:

(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
(2) The state must respect, protect, promote and fulfill the rights in the Bill of Rights.

(b). Chapter 8. (1) [Act 108] states:

(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

(c). Chapter 9. (1) [Act 108] (1) to (4) states:

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

Cited sources for the above statement on Page 2. of the 'CNCI SAPC Conference Report' are given as * *Dr. Mathole Motshekga, politician with the African National Congress and founder of the Kara Heritage Institute. Mr. Jenkins from the Lawyers Association for Human Rights* [Page 2. 'CNCI SAPC Conference Report']

1.3. Mr. Jenkins – ‘Lawyers for Human Rights’ – stated that since the Mpumalanga legislature seemed adamant to draft something to fulfill their mandate, legal action to prevent this would be required.

(a). Mr. Rudolph Jansen - National Director for ‘Lawyers for Human Rights’ (LHR) contacted Mr. Luke Martin and offered the services of LHR to the elected SAPC delegation because LHR believe it necessary to prevent what they see as a miscarriage of justice.

(b). The LHR believe the SAPC Delegation have a sound constitutional case on merit to proceed on our collective behalf in order to:

(i). Prevent the Mpumalanga legislature from drafting any Bill which will criminalize South African citizens on the basis of belief or religion, and

(ii.). Approach the Courts to have the 1957 Witchcraft Suppression Act ruled unconstitutional.

The '**CNCI SAPC Conference Report**' states:

Government have made it clear that they will be going ahead with the drive to suppress witchcraft in South Africa, (witchcraft as understood and perceived by most Africans.)

[Page 1. 'CNCI SAPC Conference Report']

1.4. The Mpumalanga Provincial Government and Legislature have stated that they will not proceed with legislation against Witchcraft.

(a). Witchcraft is already a recognised belief system and religion in South Africa and as such, Witches are already accorded all rights, protections and privileges enshrined in the Bill of Rights of the Constitution of South Africa [Act 108 of 1996] by virtue of South African citizenship.

(b). Section 9 (3) [Act 108] reads: (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

The '**CNCI SAPC Conference Report**' states:

Pagans want to submit a proposed Bill before public opinion is sought on the witchcraft suppression Bill, with the aim of protecting the minority religion of Witchcraft in South Africa. (Witchcraft as it is understood and practiced by several hundred white South African Pagans.)

[Page 1. 'CNCI SAPC Conference Report']

1.5. The Mpumalanga Provincial Government and Legislature have absolutely no intention of pursuing the draft Witchcraft Suppression Bill.

(a). The Mpumalanga Premier's Office has stated that the Mpumalanga Provincial Government have a mandate to draft legislation to:

(i.) prevent ritual killings, and

(ii.) prevent accusations of witchcraft which lead to violence.

2. Traditional Healers allied with the THO have warned that Witches should not pursue reclamation in order to prevent violence and bloodshed ?

The '**CNCI SAPC Conference Report**' states:

Phephsile Maseko, national co-ordinator of the Traditional Healers Organisation (approximately 26,000 members strong) warned Pagans at the conference that "blood would flow" as it does in any struggle. In all fairness, she did not advise against reclamation, but did point out that a price is always paid in a struggle such as the one Pagans-for-reclamation are willing to fight.

[Page 1. 'CNCI SAPC Conference Report']

2.1. Traditional Healers allied to the THO will not support a witch-hunt against self-defined Witches, and will support Pagans who seek to reclaim the terms ‘Witch’ and ‘Witchcraft’.

(a). Minutes of the SAPC Conference record Phephsile Maseko, National Coordinator and Spokesperson for the Traditional Healers Organisation (THO) as making the following statements:

(i.) *She [Phephsile Maseko] encouraged the Forum to strengthen themselves. The Forum is a force of the small pulling together. She reassured SAPRA and delegates that the THO does not want to infringe on our religious minority’s rights. They realized there was a minority group who would be injured otherwise and decided not to use the words Witch and Witchcraft.*

[Phephsile Maseko, National Coordinator and Spokesperson for the Traditional Healers Organisation (THO)]

(ii.) *We need to strive for unity. We need each other more than ever. This is a revolution. Join hands against the tribulation. Samora Machel said, “The act of liberating yourself is within you”. Be prepared to face tribulations. Who else can do it but yourselves? Stand up! Command your coming together to strategize. The People want you to come out. The challenge is to educate the public. We need to know we have sisters and brothers in you if you want us to walk with you. THO and Forum need to stand together! Remember that no legislation can stop you from believing in your belief. The 1957 Act never stopped us in our belief. Many were killed. Your blood will fertilize the struggle. Stand up. Fight to ensure that you are in control. The THO will go the journey with you. But we need to know you.*

[Phephsile Maseko, National Coordinator and Spokesperson for the Traditional Healers Organisation (THO)]

(iii.) *We have come to understand that WC is positive in your belief. It means ‘wise’. From the African point of view it is the opposite. This was caused by the disparities of colonization, poverty, etc. You need to reclaim the word WITCH. It is going to be a lot of work. The THO will support you in your definition of yourself.*

[Phephsile Maseko, National Coordinator and Spokesperson for the Traditional Healers Organisation (THO)]

(iv.) Donna Vos asked: *Is it feasible to reclaim?*

Phephsile Maseko replied: *The majority of you are women. This means you come from a disadvantaged background. Through the centuries evil has been associated with women. What it means to be a woman needs to be challenged. The Legislation will support you in this. Women are the owners of this century. You can do it. But not in divided spirits.*

[Phephsile Maseko, National Coordinator and Spokesperson for the Traditional Healers Organisation (THO)]

(v.) *The power to emancipate you is in you. You are intellectually rich. Combine your efforts. South Africa needs to be a better place for all. We must stand up for our rights. THO will support you. But they do not see Whites at the conventions speaking up against controversial issues. You must be seen at our consultations to take the process forward. Do not distance yourself from us. We need to know you to walk with you. Take the responsibility to support other groups.*

[Phephsile Maseko, National Coordinator and Spokesperson for the Traditional Healers Organisation (THO)]

2.2. Traditional Healers allied to the THO have expressed their desire for the drafting of a Bill that will curb and punish “Butsakatsi” practices.

(a). Minutes of the SAPC Conference record Phephsile Maseko, National Coordinator and Spokesperson for the Traditional Healers Organisation (THO) as making the following statement:

I do not believe that people should be let loose to do as they please. Everybody has a right to life. People must not be let loose to practice Butsakatsi or being involved in the damage or posing danger to life. Understand within context what Butsakatsi means not to clash with our ideals. We have come to understand that WC is positive in your belief. It means ‘wise’. From the African point of view it is the opposite. This was caused by the disparities of colonization, poverty, etc. You need to reclaim the word WITCH. It is going to be a lot of work. The THO will support you in

your definition of yourself.

[Phephsile Maseko, National Coordinator and Spokesperson for the Traditional Healers Organisation (THO)]

(b). In their submitted objections against the Mpumalanga Witchcraft Suppression Bill (2007), the Traditional Healers Organization (THO) proposed that legislation be drafted which they have entitled '*Control of Butsakatsi Practices Bill*'. The THO has defined "butsakatsi" as:

...including the use of harmful medicines, harmful charms, harmful magic and any other means or devices in causing any illness, misfortunes or death to any person or animal, or in causing any injury to any person, animal or property.

[THO objections to the Mpumalanga Witchcraft Suppression Bill submitted to the Mpumalanga Legislature – July 2007]

(c). The THO has motivated the drafting of the '*Control of Butsakatsi Practices Bill*' on the basis of the following statements which appear in their submission to the Mpumalanga Legislature:

1. *Should Butsakatsi not be controlled properly within the Province, it may result in such cases being dealt with outside the criminal justice system.*

2. *It (the Bill) must make a paradigm shift from the denial and channel the anger and the frustration of the people who have a justifiable belief that they are bewitched within the legal framework.*

[THO objections to the Mpumalanga Witchcraft Suppression Bill submitted to the Mpumalanga Legislature – July 2007]

(d). 'Butsakatsi' may loosely be translated as Maleficium, i.e. magic practices used with malice and intent to harm others.

3. In order to (a) protect Pagans in South Africa from harm, and (b) prevent violence against innocent African people accused of “witchcraft-related crimes”, the terms ‘Witch’ and ‘Witchcraft’ must be relinquished by european Pagan Witches ?

The '**CNCI SAPC Conference Report**' states:

CNCI-RSA and other critical thinkers amongst Pagan Leadership in South Africa are of the opinion that Pagans will have to sacrifice something. Be it blood or the terminology that many Pagans dearly wish to hold on to. This sounds dramatic, but the truth is that hundreds of innocent African people are killed every year due to witchcraft related crimes in South Africa. Blood is already flowing, which is why Government wants to take action. A price will have to be paid by Pagans in RSA, either we give up the terms 'witch' and 'witchcraft' and thereby support Government in putting an end to the senseless killing and mutilation of many Africans, or we fight to reclaim these terms and inadvertently add to the conflict by legalizing witchcraft, in which case blood will continue to flow. It is unfortunate that two forms of witchcraft exist in South Africa, but only one is predominantly perceived, the one that causes harm.

[Page 2. 'CNCI SAPC Conference Report']

and

In light of the African world-view surrounding witchcraft and how it is perceived by the majority (approximately 40 million people) in South Africa, we (delegates against reclamation) are equally firm in our resolve to engage with government in a cooperative relationship. We are prepared to relinquish the terms “witch” and “witchcraft” in an effort to make inroads with government and the African people to ensure the preservation and equality of Paganism, and in an attempt to protect those innocently accused and killed in witchcraft related crimes.

[Page 2. 'CNCI SAPC Conference Report']

and

It is not on our immediate agenda to debate whether witchcraft as perceived and understood in the African world-view is being discriminated against by government. Our immediate concern is to protect Paganism in South Africa, to claim equality for Pagans and to support government in protecting innocent victims accused of harmful witchcraft practices in RSA. We are of the opinion that we have little choice but to relinquish terminology now in order to avoid further discrimination against Paganism in South Africa.

[Page 3. 'CNCI SAPC Conference Report']

3.1. The right to self-determination, self-definition and freedom of belief and religion are cornerstones of a culture of Human Rights (enshrined in the Constitution of the Republic of South Africa) in which every individual must be accorded equality, dignity and freedom.

(a). As already stated in 1.2. (c) of this rebuttal, Chapter 9. [Act 108] (1) to (4) states:

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(b). Chapter 10. [Act 108] states:

Everyone has inherent dignity and the right to have their dignity respected and protected.

(c). Chapter 15. (1) [Act 108] states:

Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

(d). Chapter 16. (1) [Act 108] states:

Everyone has the right to freedom of expression, which includes

- a. freedom of the press and other media;
- b. freedom to receive or impart information or ideas;
- c. freedom of artistic creativity; and
- d. academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to

- a. propaganda for war;
- b. incitement of imminent violence; or
- c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

(e). Chapter 31. (1) [Act 108] states:

Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community

- a. to enjoy their culture, practise their religion and use their language; and
- b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

3.2. Relinquishing the right to self-definition will not prevent ongoing violence against individuals who are alleged to be witches or accused of bewitching others.

(a). Since 1957 the Witchcraft Suppression Act has failed to curb “Witchcraft-related violence”, and may in fact be fuelling violence against persons accused of using witchcraft to cause harm.

(i.). The ‘*Thohoyandou Declaration on Ending Witchcraft Violence*’, issued by the Commission on Gender Equality in September 1999 states the following:

The Witchcraft Suppression Act 3 of 1957 falls short of a pragmatic approach to the issue of witchcraft, and may in fact be fuelling witchcraft violence. Legislative reform is required as matter of urgency. We call on the government to repeal the Witchcraft Suppression Act and introduce;
(1) Legislation dealing with the issue of witchcraft, so that those who are engaged in harmful practices can be separated out from those who are falsely accused; and so that those who make false accusations can be brought to book. Such legislation would, inter alia

** Represent a paradigm shift from the current act which operates from a premise that denies the belief in witchcraft; leading to the Issue being dealt with outside the criminal justice system.*

** Provide clear definitions for words and concepts such as "witch", "wizard" and "witchcraft".*

** Introduce structures to deal with certain witchcraft-related complaints by means of conciliation and mediation, thereby attempting to resolve underlying tensions.*

(2) Legislation to control the practice of traditional healing: which should be accompanied by a Code of Conduct to ensure that the practice of traditional medicine is separated from sinister practices.

*The conference requested the Commission on Gender Equality to convene a meeting with the Ministry of Justice and other interest groups to initiate the above legislative reform in * October.*

[The Thohoyandou Declaration on Ending Witchcraft Violence, issued by the Commission on Gender Equality September 1999]

* Note: No legislative reform was undertaken.

(ii.). Following the 1995 Ralushai Commission the following recommendations were made:

(1). encouraging Traditional healers to “emphasise the curative and preventive aspect of medicine, instead of pointing out so-called ‘witches”,

(2). prosecuting perpetrators of ritual murders and instigators of witch-hunts, and

(3). a call to draft appropriate legislation to govern the activities of Traditional Healers.

[Report of the Ralushai Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province, 1995]

(b). Violence against persons accused of ‘witchcraft’ is motivated by several factors, all of which need to be understood and addressed constructively in order to bring an end to ‘witch-hunts’ and ‘witch purging’ in South Africa.

(i.). Whilst the state of emergency in South Africa during the 1980’s may indeed have contributed to increasing insecurity and paranoia, witch hunts did not come to end after 1990. During the 1990’s the expelling and killing of suspected witches occurred frequently in several provinces. The frequency of occurrence of witch hunts within the Limpopo Province prompted the former Premier of Limpopo Province in 1995, Advocate Ngoako Ramathodi, to appoint a Commission of Inquiry to investigate, amongst other things, the ‘phenomenon of witch purging’.

(ii.). The ‘*Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province*’ chaired by Professor N. V. Ralushai revealed the tragedy of ‘witch purging’. The ‘Ralushai Report’ found that prior to 1980 suspected witches identified through various methods of divination by ‘witchdoctors’ (diviners or traditional healers acting as witch finders) were apprehended by members of their community and killed without trial. Many testified that some murders were politically instigated.

(iii.) Participants of the Conference, including survivors and perpetrators of violence against suspected / alleged witches, supported the assertion that accusations of witchcraft were most often simply motivated by jealousy and that victims of such violence were innocent of the allegations made against them.

(iv.) Findings show that the murder of suspected witches increased sharply during the 1980's in Venda, Lebowa and Gazankulu in the Northern Province (Limpopo). Between January 1990 and April 1995, 455 cases related to witchcraft accusations were opened by the South African Police Service in the Limpopo Province. In 1996 the number of witchcraft related cases dropped from 676 to 417.

[Report of the Ralushai Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province, 1995]

(v.) In November 1995 'Human Rights Watch' reported:

In some rural areas of South Africa, violence against women also includes the phenomenon of witchcraft killings, which are most often directed against women, although men are also on occasion attacked after accusations that they have practiced black magic. At least ninety-seven women and forty-nine men were killed in Northern Province during the period April 1994 to February 1995, according to police statistics quoted in an interim report published by a commission of inquiry appointed by the new provincial government to investigate witchcraft and ritual killings in the province. All kinds of misfortune, including matters as varied as financial problems, illness, drought or lightening strikes, are blamed on witchcraft, and traditional healers or "witch doctors" may then be paid to search out the individuals responsible. A number of villages have even been created under police protection to house people accused of witchcraft who have fled their homes. While convictions of the perpetrators of these killings have been secured in some cases, in many cases the reluctance of witnesses to come forward prejudices any investigation.

[The State Response to Domestic Violence and Rape: South Africa - November 1995 by Human Rights Watch]

(vi.) The 'Thohoyandou Declaration on Ending Witchcraft Violence' makes the following additional recommendations to legislative reform of the Witchcraft Suppression Act in seeking to remedy the effects of acts of violence against men, women and children accused of being a witch or of practicing witchcraft:

Extract from: The Thohoyandou Declaration on Ending Witchcraft Violence, issued by the Commission on Gender Equality September 1999

RECOMMEND THE ADOPTION OF A NATIONAL PLAN OF ACTION FOR ERADICATING WITCHCRAFT VIOLENCE INCLUDING THE FOLLOWING KEY

COMPONENTS:

DECLARING THE ERADICATION OF WITCHCRAFT VIOLENCE A NATIONAL PRIORITY at the highest political level is crucial to ensuring that the issues is given the prominence its deserves. We request that the Minister of Safety and Security, who will close the conference on behalf of the Deputy President, convey this recommendation to the President for his immediate consideration.

ECONOMIC EMPOWERMENT OF WOMEN; poverty and illiteracy, particularly among women, are a major contributory factor to the superstition and false accusations, which lead to witchcraft violence. The eradication of poverty and illiteracy and achievement of gender equality, are central to all strategies for ending this scourge.

STRENGTHENING THE RESPONSE BY THE SOUTH AFRICAN POLICE SERVICE: The current response by the police to witchcraft violence is inadequate. Investigations into witchcraft violence are often poorly conducted, because of the reluctance of the police to deal with the issue as well as the fear by witnesses to come forward with evidence. We recommended to the Minister of Safety and Security, and to provincial MEC's for Safety and Security that the following specific measures be adopted as soon as possible:

** NATIONAL CRIME PREVENTION STRATEGY: Inclusion of the eradication of witchcraft violence as a priority at national as well as at provincial level in the NCPS so that it is given prominence and a specific budget allocation.*

** TRAINING: Special training for police in the handling of witchcraft violence as part of the human rights, investigative, crime prevention and intelligence training which they receive.*

** SPECIAL INVESTIGATIVE UNITS; the establishment of specially trained, dedicated units for investigating witchcraft violence.*

** THE HANDLING OF SURVIVORS AT POLICE STATIONS: Survivors of witchcraft violence who seek refuge and help at police stations are often forced to wait long hours and are treated with indifference. Procedures and physical arrangements at police stations, especially in areas, which are afflicted by this problem, should be reviewed to ensure that survivors are treated with dignity and are encouraged to lodge their cases.*

** HELP LINE: Consideration should be given to establishing a help line for survivors which they can access at the nearest police station they are able to reach.*

** STRENGTHENING POLICE-COMMUNITY CO-OPERATION in ending witchcraft violence can be achieved through establishing Community Police Fora (where these do not exist); strengthening existing CPF's; the offer of rewards to those who come forward with evidence; and conducting rallies at which police interact with the community on this issue.*

** PREVENTIVE APPROACHES: Better relations with the community should enable the police to take pre-emptive measures to stop witchcraft violence before it occurs.*

** ADEQUATE RESOURCES: Because witchcraft violence often occurs in remote areas with no telecommunications, effective policing of the problem requires considerable human and financial resources. It is crucial that adequate resources be allocated at national and provincial level for this purpose.*

PUBLIC EDUCATION:

We recommend the adoption of a comprehensive public education and awareness campaign, which builds on the work already started by the government and NGOs in the Northern Province, and includes the following components:

** Getting perpetrators of the violence (including those who have served prison terms) who have shown contrition to give talks at schools and at other youth fora, discouraging other youth from engaging in such violence.*

** Use of drama to highlight the trauma that surrounds witchcraft violence.*

** Including education on witchcraft violence in Curricula 2005.*

** Launching a pilot project in one of the worst affected areas including videos, debates, pamphlets, the media, essays, competitions etc. from which lessons could be learned and extended to the broader public education campaign.*

[The Thohoyandou Declaration on Ending Witchcraft Violence, issued by the Commission on Gender Equality September 1999]

'The Thohoyandou Declaration on Ending Witchcraft Violence'
<http://www.womensnet.org.za/pvaw/campaigns/witchcraft.htm>

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