

THE COMMENTS TO MPUMALANGA WITCHCRAFT BILL, 2007

Problematic Definitions

Ritual killings, inyanga, kuthwasa, muthi, umhlahlo, igedla, witchcraft, wizard, witchdoctor, supernatural, Super powers, kunyanga, sorcery, traditional healers association, Butsakatsi

Title of the Bill

The proposed Bill needs to have a completely different title, this title should be determined by the content of the proposed legislation

Proposed title

The "**Control of Butsakatsi Practices**" Bill

Preamble

We need to use a new preamble that will carry the spirit of the contents of the Bill. It should indicate the objects of the legislation

The below could be used as a preamble:

In recognition of :

The Bill of Rights in the Constitution of the Republic of South Africa, 1996, is a cornerstone of democracy in South Africa which affirms the democratic values of human dignity, equality, right to life and freedom;

The state must respect, protect, promote and fulfil the rights contained in the Bill of Rights;

Section 15 of the Constitution guarantees that everyone has the right to freedom of conscience, religion, thought, belief and opinion;

And bearing in mind that-

The Witchcraft Suppression Act, 1957, wherein this Bill has been premised, was promulgated during a time in South Africa's history when members of the legislature had little understanding of traditional practices and beliefs;

Many citizens in the province and the country will lose faith in the Bill / Act and this will certainly without doubt bring down the credibility of the legislature in the province and the efforts of the hard earned democracy will also be undermined. Should Butsatsi not be controlled properly within the province, it may result in such cases being dealt with outside the criminal justice system;

And in order to control **Butsakatsi** practices-

➤ It is recommended that "**butsakatsi**" be defined as follows:
"**Butsakatsi**" includes 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

We propose that this Bill tie in with the proposed Traditional Health Practitioners' Act of No. 35 of 2004 (which has just been withdrawn)

Background

We expect your Bill to address the root cause of the problem of the province. It must make a paradigm shift from the denial and channel the anger and frustration of the people who have a justifiable belief that they are bewitched within the legal framework. Your proposed Bill should be thoroughly overhauled or reviewed does not give a clear background of this piece of legislation and as such its objects and functions are not understandable within the detects of a democratic government. The Bill still sound backward, racist, Christian, neo-liberal, lacks respect for other religious beliefs and still makes us feel that we are still under apartheid rule. This Bill must be objective and cease to demonstrate signs of biasness and religious intolerance because it will cause religious wars in the province and country which we do not feel that South Africa is yet ready to encounter after fighting against apartheid

This Bill should be abolished and destroyed since it is displaying elements of divisiveness and failure to address the core challenges of our community which result in witchcraft violence and displacement of innocent individuals. We need to ensure that correct tools are applied to address the following problems faced through witchcraft violence and that could be faced by promulgating this piece of legislation:

- The effect of witchcraft violence on women because they are biologically weaker than men is massive
- The administration of such crime in traditional courts further victimizes the victim because they are often not allowed to defend themselves. In most cases the husband and his family are the ones who choose the diviner who then points at the witch and in this case, women's rights are often compromised
- The need to create specialized witchcraft courts as appendages to the formal court system
- Undermining the rights of children and women
- Bringing torture and sometimes death, undermining the right to life
- This legislative is highly divisive and can cause disorder
- It undermines the human rights and dignity of citizens that are guaranteed by the Constitution of the Republic of South Africa
- Your bill does not talk about the protection of witnesses and self-confessed witches

Areas to be changed within the bill

- Abolishing of the Witchcraft Suppression Bill as it sounds more like a mirror image of the 1957 Act
- Proper introduction of the Bill
- Correct definition of key words
- Determining / proving witchcraft
- Recognition / acceptance of evidence

Definitions

- ✓ **Inyanga**- means a person registered or required to be registered with any accredited or formally registered traditional health practitioner association or organization practicing within the province.

- ✓ This would include the two major categories of practice in traditional medicine which could either be initiated or non-initiated practitioners
- ✓ **Umuthi-** means an object or substance used in traditional health practice for the purpose of:
 - a) The diagnosis, treatment or prevention of a physical or mental illness; or
 - b) For any curative or therapeutic purpose, including the maintenance or restoration of physical or mental health or wellbeing in humans
- ✓ **Ubuthi-**means an object, act or substance used in
 - a) The application of negative energy with an intention to kill or harm a person
 - b) The usage of any poisonous substance with an aim to kill or destroy one's life
 - c) Any act that is evil in its nature and does not uphold the principles of humanity and nation building as enshrined in our constitution
 - d) Casting a spell on any person
- ✓ **Ligedia-** non-initiated practitioner who was trained and mentored into healing by an initiated traditional health practitioner. This sub-category of THPs have a sound knowledge of traditional medicine application.
- ✓ **Witchcraft in this Bill shall mean:**
 - a) Any act or conduct, which causes or leads to the infliction of injury, illness, or even spiritual damage to another person through the use of ubuthi or other destructive means
 - b) Any act or conduct that leads to the death of another person through ukuthakatha

- c) Any act or conduct which is perceived by the community as unnatural and capable of causing danger or damage to the person or property of another through some negative energy
 - d) Any conduct or act which cannot be explained in western scientific terms but which is perceived or believed to exist and can be proved so to exist by those trained in African Science through diagnosis
- ✓ **Traditional Healers Association / organization-** a formally registered entity, registered with the Companies Registration Act of the Republic , responsible for the welfare of THPs in the province

Proof in Court

- a) Where it is alleged that a person is of unsound mind / health or physically ill/ sick and that ailment cannot be diagnosed by any western medical practice, but such a person is found to be unhealthy, physically or mentally, by a person qualified in traditional medical practice such latter person's diagnosis shall constitute sufficient proof of the fact that such person is being bewitched; or
- b) Where it is alleged that a person has been found to be mentally or physically indisposed by a western medical practice and that a person trained and qualified in traditional medical practice find such a ailment to be caused by an act of witchcraft then such traditional medical practitioner's diagnosis shall be prima facie proof of such person's being bewitched;
- c) Where a person is found in possession of any part of the human body and cannot explain how she / he came into such possession; then such person shall be deemed to be a witch (negative sense).
- d) Where a person is found to be in possession of any animal that is proved to be used for any witchcraft related act , such a person shall be deemed to be a witch

Recognition / acceptance of evidence in a court of law

In any proceedings in a court of law wherein witchcraft is alleged, proof of the existence thereof shall be on a balance of probabilities. The standard of proof beyond reasonable doubt is not recommended in this instance as it may prejudice the parties concerned and fail the objectives of the legislation.

Issues to think about on evidence (challenge for legislature)

- This would prevent inappropriate punishment and penalties, care should be taken to develop customary law and tradition in the spirit of the Constitution and the Bill of Rights
- A massive mindset change is necessary to allow for situations in courts that are currently disallowed today, i.e. the evidence of a person in a trance
- We must recognize that in some cases it will be quite easy to bring real evidence, in others the producing of necessary evidence can be very difficult
- Strengthening of traditional courts structures to be able to hear witchcraft related matters- these courts should compose of Snr. THPs, Local Chiefs, Rep from a strong womens' organization that is apolitical, children's rights rep, Christian religious faith, CDW member (the challenge for government is what about peri-urban areas where the traditional courts are not in place anymore?) there is need to question the legitimacy of these traditional courts . also is important would be to ask ourselves if it would be possible to address witchcraft in these courts without violating certain rights contained in the Bill of Rights? (Right to legal representation)

Remove THP Code of Conduct

We do not understand why only healers conduct needs to be regulated in Butsakatsi practices does this then alleges that Healers Practice this action.