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**Project 135 The Review of the Witchcraft Suppression Act 3 of 1957**  
**Revised Discussion Paper 158 of 24 June 2022**

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## **Comment on draft "Prohibition of Harmful Practices and Unlawful Accusations of Harmful Witchcraft Practices Bill"**

In February 2007 I requested the South African Law Reform Commission, on behalf of the South African Pagan Rights Alliance, to investigate whether the Witchcraft Suppression Act was consistent with section 15 of the South African Constitution, which guarantees the right to freedom of conscience, religion, thought, belief and opinion.

In January 2016 the Commission concluded that the Act's prohibition against identifying as a Witch and professing knowledge of Witchcraft was inconsistent with section 15 and therefore unconstitutional.

In June 2022 the Commission has confirmed its recommendation for the repeal of the Witchcraft Suppression Act.

On behalf of this Alliance, I wish to extend my gratitude and thanks to the Commission for its review and recommendation for the repeal of Act 3 of 1957.

This Alliance herewith submits further comment in objection to the proposed draft "Prohibition of Harmful Practices and Unlawful Accusations of Harmful Witchcraft Practices Bill".

1. The draft Bill defines "harmful witchcraft practice" as: *"invoking a claim to the ability to use non-natural or supernatural means, whether that involves the use of physical elements or not, to threaten or to cause: (i) death or injury or disease or disability to any person; or (ii) destruction or loss or damage to property of any kind; or (iii) severe psychological distress or terror."*<sup>1</sup>

1.1. Any claim to possess an ability to use non-natural or supernatural means to cause harm (1(i) and 1(ii)) amounts to nothing more than an unproveable claim of faith and belief.

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<sup>1</sup> Prohibition of Harmful Witchcraft Practices Bill page xxviii 'Revised Discussion Paper' 158, Project 135: The Review of the Witchcraft Suppression Act 3 of 1957  
<https://www.justice.gov.za/salrc/dpapers.htm>

Admissible evidence must prove a causal link between the averred supernatural means and the harm allegedly caused. No real evidence for the existence of non-natural or supernatural means can be admitted before a court. Since hearsay, circumstantial and confession evidence, on its own, cannot prove the existence of either the supernatural, or its agency as cause for the harm, such evidence may only serve to prove that the persons making such admissions believe them to be true.

1.2. Any claim to possess an ability to use non-natural or supernatural means to threaten to cause harm, which results in severe psychological distress or terror (1(iii)), amounts to ordinary intimidation, albeit a threat motivated by an unproveable belief in an ability to manipulate an unproveable supernatural agency.

The ordinary act of intimidation may have been remedied through the Intimidation Act 72 of 1982, had the Constitutional Court not declared that Act constitutionally invalid in *Moyo and Another v Minister of Police and Others*.<sup>2</sup> Prior to the Constitutional Court's decision in 2019, a restrictive interpretation of the Act required that intention be proved as a requisite form of fault for all forms of intimidation.<sup>3</sup>

Severe psychological distress or terror may be elicited from nothing more than a subjective belief in the ability of an unproveable supernatural agency to cause harm, without any existing chain of causation.

Cultural beliefs about witchcraft do not amount to evidence for those beliefs.

2. Section 5 of the Bill reads:

*"5. Crimes associated with harmful witchcraft*

*(1.) A person who unlawfully and intentionally:*

*(a) engages in harmful witchcraft practices;*

*(b) advises any other person how to engage in harmful witchcraft practises; or*

*(c) supplies the means or the means perceived to enable any other person to engage in harmful witchcraft practices shall be guilty of an offence.*

*(2.) (a) Any person with credible evidence that another person is engaging in harmful witchcraft practices must provide such evidence to the South African Police Service;*

*(b) A person who fails to provide evidence as contemplated in subsection (2)(a) is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment."*<sup>4</sup>

2.1. In the context of our analysis of the definition of "harmful witchcraft practice" above, section 5(1)(a) to (c) fails to demonstrate any additional means with which to engage in making what amounts to nothing more than an unproveable "claim" or

<sup>2</sup> *Moyo and Another v Minister of Police and Others* [2019] ZACC 40

<sup>3</sup> *S v Cele* (2008) JDR 0123 (N)

<sup>4</sup> Prohibition of Harmful Witchcraft Practices Bill page xxix.

“threat” - based solely on a subjective belief in an unproveable supernatural agency - other than a verbal declaration itself.

The section appears to be criminalising nothing more than an unproveable verbal declaration, whether claim or threat (5. 1(a)), advising someone how to make such a declaration (5. 1(b)), and supplying the means believed to enable (?) any other person to make such a declaration (5. 1(c)).

2.2. Neither section 5, nor the definition of “harmful witchcraft practice” in section 1, mentions any actual Witchcraft practice.

The Commission relies on the existing text of section 1(d) of the Witchcraft Suppression Act, “1(d) [*professes a knowledge of witchcraft, or the use of charms, and - text excluded*] *advises any person how to bewitch, injure or damage any person or thing, or supplies any person with any pretended means of witchcraft;*”<sup>5</sup>, but excludes reference to “knowledge of witchcraft” and “use of charms”, the actual means of Witchcraft practice.

2.3. Section 5(2)(a) invites accusations of witchcraft.

Makers of supernatural claims have an inescapable burden of proof, but section 5(2)(b) ensures that all accusations of witchcraft will result in the commission of an offence through the accusation alone, as no admissible evidence, as is required to prove the accusation in this section, can be led to demonstrate causation between verbal declarations of claim and threat (“harmful witchcraft practices”, according to the Bill’s definition), and the alleged harm.

2.4. We argue that unconscious bias against the subject of witchcraft leads the Commission to assume, without evidence, that simply alleging some harm in relation to the practice of witchcraft is sufficient cause to criminalise the spoken word – a claim and a threat - without having to demonstrate the actual means through which Witchcraft has caused the alleged harm.

This bias is indeed confirmed in the next section of this submission in objection to the draft Bill.

3. Section 6 of the Bill reads:

*“6. Muti crimes*

*(1) A person who unlawfully and intentionally purchase, obtains or use any part of a human body for purposes of making muti, is guilty of an offence and liable upon conviction to 10 years imprisonment.*

*(2) A person who unlawfully and intentionally purchase, obtains or use any part of an animal body for purposes of making muti, is guilty of an offence and liable upon conviction to 2 years imprisonment.”*<sup>6</sup>

<sup>5</sup> Witchcraft Suppression Act 3 of 1957

<sup>6</sup> Prohibition of Harmful Witchcraft Practices Bill page xxx.

3.1. On page 43 of the Revised Discussion Paper 158, the Commission briefly examines only 3 prominent criminal cases involving muti murder. They appear in footnotes as:

92 Independent online 'Four in the dock for 2009 muti murder.' 14 August 2014. Web

93 Independent Online "Life terms for Limpopo Muti Killers.' 14 August 2013. Web

95 Independent online 'Child's muti killers get life sentences.' 7 March 2014. Web.

It must be noted that convicted perpetrators, whether those involved in the actual crime of human mutilation, the sale of human body parts, or the use of human body parts for the production of muti for trade, did not self-identify as Witches and did not identify themselves as practitioners of Witchcraft.

This Alliance in fact finds no instance of convicted perpetrators of these crimes as ever self-identifying as Witches or as practitioners of Witchcraft.

In many reported instances, the criminal perpetrators obtained human body parts for sale to traditional healers, nyangas and sangomas, who then traded these human muti products for money.<sup>7</sup>

There are no reported instances of criminal perpetrators selling human body parts to Witches. The very use of the term "muti" tells the Commission who is involved here.

3.2. How inconvenient for the Commission to have taken the decision to erroneously include such horrific crimes under the rubric of "harmful witchcraft practices" (claims and threats), without having to make any effort to at least attempt to prove any causal link between the crime and actual Witches or the practice of Witchcraft.

This Alliance strongly objects to the erroneous defamatory association being reinforced by the Commission between muti murders and Witchcraft.

The term 'witchcraft' cannot continue to be used as a convenient trope for whatever crime its actual perpetrator refuses to own, and Witches will not be used as scapegoats for the crimes of rogue traditional healers, nyangas and sangomas.

4. Unconscious and overt bias against witchcraft within Traditional African religion and cultural beliefs, constitutes a regrettable motivating factor in all reported cases of accusations of witchcraft, the pointing out of alleged witches (witch-finding), and witch-hunts in South Africa. Traditional healers remain complicit in confirming suspicions of witchcraft and in making accusations of witchcraft within their communities. This is confirmed by traditional healers themselves in the Revised Discussion paper.<sup>8</sup>

4.1. This Alliance cautions the Commission against unwittingly facilitating the agency of traditional healers who act as witch-finders, through giving credence to

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<sup>7</sup> Tshwane sangoma and two men arrested for allegedly digging up graves for muti  
<https://www.iol.co.za/news/crime-and-courts/tshwane-sangoma-and-two-men-arrested-for-allegedly-digging-up-graves-for-muti-e2481344-f6fa-4277-ba6f-a3d3c0602913>

<sup>8</sup> pages 38, 39, 45, 47 and 66 of the 'Revised Discussion Paper' 158

unconfirmed hearsay of alleged “harmful witchcraft practices”. Such confirmation through legislative instrument will only serve to justify inciting further accusations of witchcraft against innocent civilians.<sup>9</sup>

## 5. Limitation of Rights

The Commission seeks to justify the introduction of the “harmful witchcraft practices” Bill by relying on a section 36 constitutional analysis of the limitation of rights.

It is unfortunate that demonstrated bias on the part of the Commission against witchcraft has led the Commission to erroneously determine that Witches are the target group whose rights must be limited.

5.1. As has been demonstrated by this submission, Witches are not the perpetrators of muti murders, muti murders are not a practice of Witchcraft, and the Commission’s definition of “harmful witchcraft practices” amounts to nothing more than unprovable claims of belief, and ordinary intimidation which cannot be restricted to any single faith group in this country.

5.2. The Commission has correctly identified (a) the making of accusations of witchcraft and (b) the procuring of traditional healers to identify suspected witches, as activities which require prohibition. These activities do not however amount to “harmful witchcraft practices”, as they do not constitute practices engaged in by Witches.

It may be more appropriate, and more accurate, to refrain from intimating that Witches engage in harmful practices, by correctly identifying the harmful practices – accusations of witchcraft and witch-finding – as activities engaged in by traditional healers and ordinary citizens who make accusations of witchcraft against their neighbours.

5.3. Whilst the Commission correctly states, “the limitation test provided in section 36 requires the law that infringes rights to serve an acceptable purpose, and requires a balance between the harm caused by the infringing law and the benefits that society will gain from such infringement”<sup>10</sup>, the Commission has failed to justify that it is the practices of Witches that are harmful, and that it is therefore the rights of Witches that are in need of limitation.

The Commission’s proposed target for the application of section 36 is therefore unreasonable and unjustifiable.

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<sup>9</sup> Remember their Names – Reported cases of witch-hunts in South Africa 2000 to 2021

<https://paganrightsalliance.org/remember-their-names/>

<sup>10</sup> page 70 of the ‘Revised Discussion Paper’ 158

In conclusion, this Alliance thanks the Commission for its time and patience in conducting this review.

I trust we can anticipate the finalisation of this review process without further delay.

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