

Is the Traditional Health Practitioners Act (No 22 of 2007) in conflict with the Witchcraft Suppression Act (No 3 of 1957) in present-day South Africa?

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Research

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Abstract

Background

The Traditional Health Practitioners Act (Act No 22, 2007) to regulate the traditional health fraternity had been driven since the 1960s and became a reality after the 1994 political change in South Africa. Although the Act was already promulgated in 2007 it is still not active. Certain definitions of the Act seemed to be very controversial; especially the role of the supernatural in healing that could be associated with witchcraft and criminal-related behaviour.

Aims

The aim is to determine if the Witchcraft Suppression Act (Act No 3, 1957) is discriminatory against the traditional healer as well as to determine if the Traditional Health Practitioners Act (No 22, 2007) and the traditional healer are contravening the regulations of Act No 3 (1957).

Methods

The exploratory and descriptive method was used to evaluate and to reproduce any research data. This

method offered information to compare the two acts in their functioning with each other.

Results

From the data extracted from various sources it seems as if Act No 22 (2007) was promulgated without in-depth research on the role that the traditional healer may play in witchcraft activities. The aim of Act No 3 (1957) was totally ignored.

Conclusions

Act No 3 (1957) does not discriminate against Act No 22 (2007). Instead, it seems that various stipulations of Act No 3 have been transgressed by the traditional healers without legal action being taken against them.

Keywords

Discriminatory, law-enforcement, partial prosecution, scapegoating, supernatural, traditional philosophy, witch, witchcraft

What this study adds:

1. What is known about the subject?

No in-depth study has so far been undertaken to compare Act No 3 (1957) and Act No 22 (2007) with each other.

2. What new information is offered?

This study clearly reflects that Act No 3 (1957) is not discriminatory against Act No 22 (2007) as the traditional-health fraternity often tries to project.

3. What are the implications for research, policy, or practice?

That Act No 22 (2007) indeed holds intentions that may be associated with witchcraft and criminality.

Background

With the promulgation of the Traditional Health Practitioners Act (Act No 22, 2007), the South African lawmakers, activists and the traditional-healing fraternity established the statutory status of the traditional health practitioner and traditional healing as a health profession, totally and blindly ignoring the existence of the Witchcraft Suppression Act (Act No 3, 1957).

This erring seems to have serious implications for the traditional healer's future ways of diagnosis, treatment as well as training. The supernatural, witchcraft, wizardry, etc. seem to be part of the traditional healer's practice, activities which are illegal in terms of Act No 3 (1957). It seems also in terms of Act No 3 (1957)'s regulations as if some aspects of Act No 22 (2007)'s practice definitions are possibly illicit.

Act No 3 (1957) triggered much criticism by the traditional-healing fraternity. Already enacted in 1957 it went fairly unnoticed until 1994, seemingly because it was enacted by the apartheid regime and fitted in well with its legal and governmental thinking and rulings up to the new political dispensation of 1994. Opposition to it by dissidents were not possible or allowed. The Constitution of 1996 and the Bill of Rights brought the opportunity to object freely to any supposed human-rights violation. After 1996 opposition to the Act by individuals, human-rights activists, the neo-pagans and the traditional healers, became more demanding. Especially their agitation in terms of Section 5 of the Civil Union Act (No 17, 2006) and support by outsiders like the Lawyers for Human Rights (LHR) put them in the foreground. [1](#), [2](#), [3](#), [4](#), [5](#)

The aim of this study is to determine if Act No 3 (1957) is discriminatory against the traditional healer as

well as to determine if the Traditional Health Practitioners Act (No 22, 2007) and its traditional healer, are contravening the regulations of Act No 3.

Methods

Research information and other literature on the legal standing of Act No 3 (1957) are very limited, besides the information published on the websites, journals and other publications by the neo-pagans, traditional healers and some individuals, reflecting their opinions, viewpoints, statements and own findings. This research strongly relied on this information, especially publications and appeals aimed at the South African Law Reform Commission (SALRC) to get the Act repealed.

In the light of the above information shortage, the exploratory and descriptive research method was used. It offered the researcher the opportunity to review and to consider new information as the research progressed. The narrative form was used to reflect the findings. ⁶, ⁷

Results

The traditional healer

Of all the role players that object in some way to Act No 3 (1957) the traditional healers seem to be the protagonists, based on the intentions of Act No 22 (2007) versus Act No 3 (1957) and the possible interrelation and conflict between these two Acts to regulate the traditional healer's diagnosis, treatment and training.

In the following discussion the intentions of Act No 3 (1957) will be compared with that of Act No 22 (2007). Further, the diagnosis, treatment and training practices of the traditional healer as bestowed on and allowed by Act No 22 (2007) will be evaluated against the regulations of Act No 3 (1957) to see if it is legally correct or illicit.

The 1957 scapegoating of the witch and neo-pagans

In contrast to some individuals and the neo-pagans who want Act No 3 (1957) to be repealed as a whole without any further type of witchcraft legislation to replace it, the traditional-health fraternity is far more radical and wants Act No 3 (1957) to be replaced by a new but stricter law that strikes a balance between protecting innocent people accused of witchcraft and punishing those found guilty of practising witchcraft. ⁸

This inclination brings conflict between the South African Pagan Council (PCSA/SAPC) which sees witchcraft as a "noble practice" and the Traditional Healers Organisation (THO) which distances them from wizardry and who argues that witches and witchcraft should be punished with the full severity of the law. ⁹

The hostile and snobbish attitude and dissociation from the so-called "witch" and "witchcraft" (including thus neo-paganism) by the traditional-health fraternity, has a long history. It was created in 1957 by Act No 3 (1957) itself with its specific scapegoating of the witch ("wizard") as the only criminal entity that commits witchcraft-related crimes, such as muthi, ritual, religious, cultural and other crimes (including murder), and thus the identity which can and must be prosecuted by a court of law. The viewpoint was sensationalised and driven over the years by the media, opportunistic religious and governmental groups and internalised in the minds of the public, notwithstanding if these assumptions were true or false. Through Act No 3 (1957)'s rule of law the "bad witch" was totally isolated as a stand-alone social, health, religious and cultural figure and a criminal-orientated practitioner that only intends to harm the innocent.ref]The 1957 Witchcraft Act. Available from <http://www.quackdown.info/article/1957-witchcraft-act/> (accessed 19/10.2014).[/ref]

The 1957 scapegoating declared the traditional healer unofficially as “good” or “bad” or a “witch”, distracting any attention from the traditional healer whose role in past, present and future could have negative connotations. The deviation between the other regulated health practitioners as “good” and the “witch” on the other hand as “bad” was grabbed and exacerbated by the opportunistic traditional healers; especially after the promulgation in 2007 of Act No 22 (2007). [10](#), [11](#), [12](#), [13](#)

The possibility of conflict between Act No 3 (1957) against Act No 22 (2007)

The present legal setup of the traditional healer sanctioned and certified as able by Act No 22 (2007) as a statutory healthcare practitioner, will be evaluated using the rules of Act No 3 (1957), specifically to see if there are cohesion and/or contradiction between the two Acts. For this it is important to state again the main aims of Act No 3 (1957), namely:

- To prevent any person or a community to identify a specific person (notwithstanding his position or doing, to justify such an identification) to be a “wizard” through witch-finding;
- To prevent that this identified person (“wizard”) is harmed (threatened, terrorised, victimised or even murdered) in anyway by the “witch-finder” or the community;
- To prevent a person to call himself a ‘wizard’ by prohibiting such self-naming / declaration as a crime, with the sole aim to safeguard him against harm by his own wrongdoing, to be identified as a ‘wizard’ by the ‘witch-finder’ and the community [see (a)]. [For full text see Section 1(a) to (f) (i) – (iv)].

Comparing the two Acts to determine if Act No 3 (1957) has negative effects on the activities of the traditional healer, two sets of data can be used: i) the witchcraft statistics of 1994 to 2004 of the 2006 Report of the South African Parliament and ii) the six descriptions of witchcraft offences in terms of Act No 3 (2007). These six offences are reflected later in Table 1.

The 2006 Parliamentary Report

The statistics of the 2006 report of the South African Parliament reflected that in 1994 only 13 persons were convicted on the accusation of having identified another person as a “wizard” and/or of actions to harm such an identified person as a “wizard”. In 2004, 10 years later and with seemingly a more strict implementation of the Act, these convictions rose to 345 cases (a rise of 332 or 96,2% in cases) [Officially the SAPS does not keep statistics specific to muthi or ritual assaults and murders; this limited an in-depth study on the matter, stretching from 1957 to the present. It forced thus the use of a few studies (like the 2006 report of Parliament)]. [14](#), [15](#), [16](#)

The 2006 report shows that in 1994 only 10 cases of withdrawals, with nil acquittals, occurred; in 2004 there were as much as 567 cases of withdrawals and 141 of acquittals. (In the withdrawn cases the rise was 557 or 98,2% and in the acquittal cases the rise was 141 or 100%). [17](#), [18](#)

It is also argued that the dramatic rise in the total registration of witchcraft-related cases in a period of 10 years – from only 23 (10 withdrawals, 14 convictions and nil acquittals) in 1994 to 1 053 (567 withdrawals, 345 convictions and 141 acquittals) in 2004 — by law-enforcement agencies like the South African Police Services (SAPS) and the National Prosecution Authority (NPA), that Act No 3 (1957) is an effective and working piece of legislation. Also, it is argued that these statistics, together with the law-enforcement bodies involved, confirms that Act No 3 (1957) is at all time in use. [19](#), [20](#), [21](#), [22](#)

The opinion is that Act No 3 (1957) is not aimed at doing any harm or injustice to the law-abiding citizen, even when he transgresses some of the regulations of the Act, knowingly and wilfully. The Act is only focussed and applied in terms of its main aims: to prosecute only the individual with criminal intent who would normally be prosecuted under any of the other criminal codes for serious law-breaking. In terms of

Act No 3 (1957) the context of the focus is the person who names, identifies and sniffs out any other person as a wizard and who intends to do or is involved in doing such person harm in some or other way.

[23](#), [24](#), [25](#), [26](#), [27](#)

The opinion is also that only certain sub-rules of the prescribed rule 1(a) to 1(f) are really implemented to prosecute: meaning that Act No 3 (1957) regulations are only partially executed to make prosecutions. To determine the true impact of this assumed executing of Section 1(a) to 1(f), is very difficult; seemingly governmental agencies do not refer specifically to witchcraft-related crime statistics or other research outcomes. The only guide to review the use of Act No 3 (1957) is the writings and appeals of the neo-pagans, individual objectors and other interest groups that are focussing their writings on the repeal of the Act, or who are doing research on the Act's benefits and shortcomings. [28](#), [29](#), [30](#), [31](#), [32](#)

In the evaluation in Table 1 the six main offences, as described by Section 1(a) to 1(f) of Act No 3 (1957), were compared with the statistics on witchcraft convictions of the 2006 report of Parliament for the period 1994 to 2004. [33](#), [34](#), [35](#), [36](#) These outcomes are reflected in Table 1:

Table 1: Six offences relating to witchcraft versus types of witchcraft-related convictions for the period 1994 to 2004:

Description of Offences	Convictions
Any person who imputes to any other person the causing, by supernatural means, of any disease in or injury or damage to any person or thing or who names or indicates any other person as a wizard	Convictions
Any person who in circumstances indicating that he professes or pretends to use any supernatural power, witchcraft, sorcery, enchantment or conjuration, imputes the cause of death of, injury or grief to, disease in, damage to or disappearance of any person or thing to any other person	None
Any person who employs or solicits any witchdoctor, witch-finder or any other person to name or indicate any person as a wizard	Convictions
Any person who professes a knowledge of witchcraft, or the uses of charms, and advises any person how to bewitch, injure or damage any person or thing. or supplies any person with any pretended means of witchcraft	None

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

Convictions

Any person who for gain pretends to exercise or use any supernatural power, witchcraft, sorcery, enchantment or conjuration, or undertakes to tell fortunes, or pretends from his skill in or knowledge of any occult science to discover where and in what manner anything supposed to have been stolen or lost may be found

None

Table 1 reflects that regarding three of the six types of offences (defined by Section 1 as law-breaking), convictions occurred. This brings to the foreground that not more than 50% of the prescribed offences have been activated to be prosecuted and thus that the opinion that Act No 3 (1957) is indeed only partially implemented, is correct.

The traditional healers can surely not object that Act No 3 (1957) is discriminatory. It can thus be concluded that the traditional healer's practice is undisturbed by the Act.

The outcomes of Table 1 are vague and not fully informative about the alleged partial prosecution approach of the law-enforcement agencies. A more detailed analysis is needed. In this context it must be noted that the six offences, reflected in Section 1 of Act No 22, are compiled and described by the incorporation of different offence descriptions to obtain the six descriptions. These incorporated descriptions can lead to an over-simplifying interpretation about the partial or full-executing approach of Act No 3 (1957).

The re-written fourteen single offences

To obtain a more precise profile of a specific offence relating to a specific conviction, the above six offence descriptions were separated from each other where they are unrelated in terms of legal meaning. The offences were re-written to reflect specific (single) offences only. With this focussed approach 14 single offences, relating to the practice of witchcraft, were identified and described. In Table 2 these 14 offences relating to witchcraft were compared with the witchcraft statistics of the 2006 Parliamentary Report for the period 1994 to 2004. [37](#), [38](#), [39](#), [40](#), [41](#), [42](#)

To put into perspective the rules of Act No 3 (1957) and Act No 22 (2007) with each other, Section 1 (Offences relating to the practice of witchcraft and similar practices) of Act No 3 (1957) is again, as was done in Table 2, reproduced for clarity hereunder in 14 sub-descriptions. In terms of Section 1(a) to 1(f) an offence will be committed by any person who: [43](#), [44](#)

- Imputes to any other person the causing, by supernatural means, of any disease in or injury or damage to any person or thing;
- names or indicates any other person as a wizard;
in circumstances indicating that he professes any supernatural power, witchcraft, sorcery, enchantment or conjuration;
- in circumstances indicating that he pretends to use any supernatural power, witchcraft, sorcery, enchantment or conjuration;

- imputes the cause of death of, injury or grief to, disease in, damage to or disappearance of any person or thing to any other person;
- employs or solicits any witchdoctor, witch-finder or any other person to name or indicate any person as a wizard;
- professes a knowledge of witchcraft, to bewitch, injure or damage any person or thing; advises any person with any pretended means of witchcraft;
- supplies any person with any pretended means of witchcraft;
- on the advice of any witchdoctor, witch-finder or other person uses or causes to be put into operation any means or process which, in accordance with such advice or his own belief, is calculated to injure or damage any person or thing;
- on the ground of any pretended knowledge of witchcraft, uses or causes to be put into operation any means or process which, in accordance with such advice or his own belief, is calculated to injure or damage any person or thing;
- for gain pretends to exercise or use any supernatural power, witchcraft, sorcery, enchantment or conjuration;
- for gain undertakes to tell fortunes;
- for gain pretends from his skill in or knowledge of any occult science to discover where and in what manner anything supposed to have been stolen or lost may be found.

Table 2: Fourteen offences relating to witchcraft versus types of witchcraft-related convictions for the period 1994 to 2004:

Description of Offences	Convictions
Any person who imputes to any other person the causing, by supernatural means, of any disease in or injury or damage to any person or thing	None
Any person who names or indicates any other person as a wizard	Convictions
Any person who in circumstances indicating that he professes any supernatural power, witchcraft, sorcery, enchantment or conjuration;	None
Any person who in circumstances indicating that he pretends to	None

use any supernatural power, witchcraft, sorcery, enchantment or conjuration;

Any person who imputes the cause of death of, injury or grief to, disease in, damage to or disappearance of any person or thing to any other person;

None

Any person who employs or solicits any witchdoctor, witch-finder or any other person to name or indicate any person as a wizard;

Convictions

Any person who professes a knowledge of witchcraft, to bewitch, injure or damage any person or thing;

None

Any person who advises any person with any pretended means of witchcraft

None

Any person who supplies any person with any pretended means of witchcraft

None

Any person who on the advice of any witchdoctor, witch-finder or other person uses or causes to be put into operation any means or process which, in accordance with such advice or his own belief, is calculated to injure or damage any person or thing

Convictions

Any person who on the ground of any pretended knowledge of witchcraft, uses or causes to be put into operation any means or process which, in accordance with such advice or his own belief, is calculated to injure or damage any person or thing	None
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Any person who for gain pretends to exercise or use any supernatural power, witchcraft, sorcery, enchantment or conjuration	None
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Any person who for gain undertakes to tell fortunes	None
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Any person who for gain pretends from his skill in or knowledge of any occult science to discover where and in what manner	None
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Table 2 reveals only three offences with convictions out of the 14 offences, meaning so much as 78.5% of the regulations were apparently not use in law-enforcement. This is in line with the opinion obtained in Table 1 that concludes that Act No 3 (1957) is only partially applied to make prosecutions and to obtain convictions. It again confirms that Act No 3 (1957) is not discriminating against the traditional healer.

It seems from the outcomes of this sub-division that Act No 3 (1957) benefits society and the individual specifically, overshadowing its prejudice. The view that the Act is only in part applied and then only to bring true criminality to book, supports the opinion that the constitutional rights of the individual or even the group are not transgressed. These outcomes seem to declare why the South African Law Reform commission (SALRC) and the government itself are hesitating to repeal it, seeing that the Act fulfils its main aims to protect the individual.

Act No 22 (2007) and criminal intentions in perspective

With reference to Act No 22 (2007)'s rules, the practice of the traditional healer is determined in terms of two definitions, namely the definitions of traditional health practice and traditional philosophy in Chapter 1 of the Act. Traditional health practice means the following: "The performance of a function, activity, process or service based on a traditional philosophy that includes the utilisation of traditional medicine or traditional practice", while traditional philosophy incorporates the following sub-definitions:

- indigenous African techniques;

- indigenous African principles;
- indigenous African theories;
- indigenous African ideologies;
- indigenous African beliefs;
- indigenous African opinions;
- indigenous African customs;
- (i) The uses of traditional medicine communicated from ancestors to descendants, or (ii) from generations to generations, with or without written documentation, whether supported by science or not.

It is clear, although it is not verbally described as such, that the supernatural plays a dominant role in the traditional health practice as the reference “communicated from ancestors to descendants” in the definition clearly indicates a traditional philosophy. This masked role of the supernatural in the practice of the traditional healer is specifically supported by the definitions of indigenous African theories, ideologies, beliefs, principles, opinions and customs as described in the traditional philosophy. The reference to “the existence of traditional medicine without written documentation, whether supported by science or not”, brings the presence of occult science in the traditional practice of the traditional healer to the foreground.

The healer’s activities in perspective

Act No 22’s (2007) definitions of traditional health practice and traditional philosophy fail to offer formal, in-depth descriptions on the diagnosis and treatment processes of the traditional healer and thus any doings that can be in conflict with Act No 3 (1957). To over-come this lack in information and to can reflect on the diagnosis and treatment processes of the traditional healer, the descriptions offered by thirteen independent researchers and experts on the traditional healer’s practice in South Africa, were compiled. Here-through it was possible to profile the true diagnosis and treatment of the traditional healer and to can use it as a guideline to evaluate the possibility of the transgressing of the regulations of Act No 3 (1957). This profile of the thirteen researchers (identified by names) is reflected later in Table 3.

Possible supernatural practice activities and legal transgressing by the traditional healer of the rules of Act No 3 (1957)

To obtain a decision if the traditional healer’s diagnoses, treatment and training practices contravene the fourteen offence-rules of Section 1 of Act No 3 (1957), these fourteen offences are reflected under in Table 3 (see also Table 2) against the specific descriptions by the thirteen researchers.¹⁵⁻²⁷ The researchers’ names were reflected in Table 3 when they referred to processes that correlate to the actions of the traditional healer. ^{45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56}15-27

Table 3: Fourteen offences relating to the practice of witchcraft versus the diagnosis, treatment and training processes of the traditional healer for the period 1994 to 2004, as identified by thirteen independent researchers :

Table 3: Fourteen offences relating to the practice of witchcraft versus the diagnosis, treatment and training processes of the traditional healer for the period 1994 to 2004, as identified by thirteen independent researchers :

Description of Offences

Names of Researchers

Any person who imputes to any other person the causing, by supernatural means, of any disease in or injury or damage to any person or thing

Essien, 2013; Hofstatter, 2014; "Traditional African medicine", 2014; Truter, 2007

Any person who names or indicates any other person as a wizard

None

Any person who in circumstances indicating that he professes any supernatural power, witchcraft, sorcery, enchantment or conjuration

Gumede, 1990; Mbiti, 1991; Pretorius, 1999; Rheeder, 2012; "South African Traditional", 2014; "Traditional healers of", 2014; Truter, 2007

Any person who in circumstances indicating that he pretends to use any supernatural power, witchcraft, sorcery, enchantment or conjuration

Mbiti, 1991; Onwuanibe, 1979; "South African Traditional", 2014; "Traditional African Medicine, 2014; "Traditional healers of", 2014; Truter, 2007

Any person who imputes the cause of death of, injury or grief to, disease in, damage to or disappearance of any person or thing to any other person

Hofstatter, 2014; Truter, 2007

Any person who employs or solicits any witchdoctor, witch-finder or any other person to name or indicate any person as a wizard

None

Any person who professes a knowledge of witchcraft, to bewitch, injure or damage any person or thing

Hofstatter, 2014; "Traditional African medicine", 2014; Truter, 2007

Any person who advises any person with any pretended means of witchcraft

None

Any person who supplies any person with any pretended means of witchcraft

Hofstatter, 2014; Truter, 2007

Any person who on the advice of any witchdoctor, witch-finder or other person uses or causes to be put into operation any means or process which, in accordance with such advice or his own belief, is calculated to injure or damage any person or thing

None

Any person who on the ground of any pretended knowledge of witchcraft, uses or causes to be put into operation any means or process which, in accordance with such advice or his own belief, is calculated to injure or damage any person or thing

Hofstatter, 2014; "Traditional African medicine", 2014; Truter, 2007

Any person who for gain pretends to exercise or use any supernatural power, witchcraft, sorcery, enchantment or conjuration

Gumede, 1990; Hofstatter, 2014; Holland, 2005; Peters, 2013; Pretorius, 1999; "Traditional African medicine", 2014; "Traditional healers of", 2014; Truter, 2007

Any person who for gain undertakes to tell fortunes;

Essien, 2013; "South African Traditional", 2014

Any person who for gain pretends from his skill in or knowledge of any occult science to discover where and in what manner

"South African Traditional", 2014; "Traditional healers

From Table 3 it is clear that regarding only four out of fourteen (28.5%) offences the traditional healers are not implicated, namely regarding the offence to indicate another person as a "wizard" (no. 2), employs or solicits a witch, witch-finder, etc., to name or to indicate another person as a "wizard" (no. 6), advises another person to bewitch, injure or damage another person (no. 8), and the use of advice by a witchdoctor, witch-finder, etc. to injure or to damage any other person (no. 10).

As to the correlations between the offences and the descriptions of researchers as reflected by Table 3, as much as 71,4% of the descriptions indicate that there can be or are transgressions of Act No 3 (1957)'s fourteen criteria for offences. All thirteen the researchers reproduce in their descriptions in some way an overlapping between the practice processes of the traditional healer and the offences of Section 1 of Act No 3 (1957).

Discussion

The traditional healer's image of himself as only "good" against the witch as only "bad", mistakenly created by Act No 3 (1957) in 1957, is wrong and opportunistic. Evidence is overwhelming that his practice processes are based on the supernatural, that he professes and indicates himself that he uses supernatural powers, that he does fortune-telling, occult science, supplies in certain circumstances his clients with means of witchcraft and that he intends to harm, injure and even kill other people. The 1957 identification of the witch as a sole entity and as a reality is thus incorrect. There is no guarantee whatsoever that the traditional healer is not involved in witchcraft-related crimes, like ritual, muthi, religious, cultural and revenge murders. The pointing out by researchers of the traditional healer, with elements in the police, politics, religion, as the real culprits who are committing witchcraft crimes, is thus not far-fetched. ⁵⁷, ⁵⁸, ⁵⁹4,11,28

It is clear that Act No 22 (2007) was promulgated without an in-depth understanding of the already fixed offences of Act No 3 (1957). Basically this makes Act No 3 (1957), as confirmed by this research (see Table 3), Act No 22 (2007) null and void. It is time that the lawmakers revisit Act No 22 (2007) to look to its legitimacy as a law.

Act No 3 (1957) is of cardinal importance to counteract the dangers of the traditional healer's practice processes. It is an important criminal law, constitution-friendly and thus cannot be repealed. Indeed, it can be made more comprehensive to combat the criminal intention of the traditional healer. In comparison Act No 22 (2007) is an improper Act that offers opportunities for criminal behaviour and must be repealed because it is in conflict with Act No 3 (1957).

It is clear that Act No 22 (2007) was meant for an established healthcare profession, one with clearly defined, legally correct practice processes. In contrast, the traditional healers failed all the standard rules required by a statutory healthcare profession. It interferes with the privileges and rights of the already-registered health professions. The Act also confirms that the traditional healer's entrance into the established health facilities of the country and to practice a health service he is not trained for or capable of executing, was a mistake.

Act No 3 (1957) reflects further shortcomings in relation to Act No 22 (2007) and the doubtful status of the traditional healer as a "good" health practitioner. It indeed confirms that certain of the beliefs and activities of the traditional healer are based on the supernatural, future-telling and even occult science, etc., all outcomes that are illicit in terms of Act No 3 (1957).

Strength and limitations

The exploratory and descriptive research approach of this study successfully built a viewpoint on the positive role of Act No 3 (1957) in combatting witchcraft in South Africa. This research approach also helped to position for the first time Act No 22 (2007) versus Act No 3 (1957).

The well-established position of Act No 22 (2007), based on “African Culture”, politically favoured since 1994 and the successful “scape-goating” of Act No 3 (1957) as a pre-1994 discriminatory piece of legislation, is going to mute the findings of this study.

Conclusions

Act No 3 (1957) is not discriminatory against the practice behaviour of the traditional healer or the regulations of Act No 22 (2007) which determined the professional status of traditional healing in South Africa. On the contrary, Act No 3 (1957) is very accommodating of the misbehaviour and malpractice of the traditional healer.

Some of Act No 22 (2007)’s regulations seem to stand in conflict with certain of the regulations of Act No 3 (1957), while the traditional healer’s practice activities seem also to violate extensively some of the regulations of Act No 3 (1957) which determine criminal behaviour.

Act No 22 (2007) is an improper Act, an unacceptable reality in modern-day South Africa and must be repealed and not Act No 3 (1957). Act No 22 (2007) seems to be a true *dolus eventualis* case for the South African Constitutional Court in the near future.

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