Is the Witchcraft Suppression Act (No 3 of 1957) a medieval throwback to the Dark Ages for South Africans? Think again!

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Abstract

Background

The Witchcraft Suppression Act (Act No 3, 1957) seems to have been totally ignored since 1994 as an old apartheid law by the new political dispensation. The question is: Why is this happening and can the Act can be seen as pre-modern and discriminatory to South Africans?

Aims

The aim of the study was thus to determine what effect the Act has or can have in the future on the constitutional rights of the individual as well as groups and why the post-1994 government has kept it on the law books until now.

Methods

The exploratory and descriptive research method, in line with the modern-day historical research approach to the investigation and reviewing of information, was used. Emphasis was on the use of primary research resources, like news papers, reports and articles, to reflect on present life situations, thinking, opinions, trends and activities around witchcraft. Research was also focussed on putting into perspective the future status of the Witchcraft Suppression Act in South Africa. The findings were offered in narrative form.

Results

The putative error in keeping the Act on the statute books may have serious implications for every citizen, at present and in future. Agitation in public and in courts of law by certain individuals and groups, like the neo-pagans, traditional healers and human-rights activists that the Act is in conflict with the human-rights code of the Constitution, have become very intense and demanding. Pleas are heard that it must be repealed.

Discussion

It seems that various other role-players can be identified, apart from the general opposition to the Act, who are backing it. It is specifically argued that the Act is successfully combatting serious crimes, such as murder and that it is not indiscriminately applied by law-enforcement authorities.

Conclusions

Although Act No 3 of 1957 may be defined as a law with negative political and emotional connotations, six decades after its promulgation it is still working and may only be repealed if a better alternative can be put in place. Such an alternative has so far not been offered.

Keywords

Afterlife, human rights, neo-pagan, opinion, witch-finder, witch-hunting, wizard

What this study adds

1. What is known about the subject?

Act No 3 has become a central and prominent point of discussion by the neo-pagans and the traditional healers.

2. What new information is offered by this study?

Other than the neo-pagan and the traditional healer's one-sided arguments to prevent possible wrong-doing by them and to have Act No 3 repealed, this study offers objective reasons and views about the need to keep the Act on the statute books.

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

The constant efforts to repeal Act No 3 must be resisted. The Act is applied at present with justice and wisdom by the authorities to the benefit of the law-abiding citizen.

Background

The Witchcraft Suppression Act (Act No 3, 1957), after 60 years of existence, has started to trigger much criticism by opponents with different agendas and intentions.[3]

Already instituted in 1957, it went fairly unnoticed up to 1994, seemingly because it was enacted by the apartheid regime and fitted well in their legal and governmental thinking which held sway until the new political dispensation. Opposition up to 1994 by dissidents was just not possible and hardly tolerated. 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-right activists and groups, especially the neo-pagans and the traditional healers, became more assertive. Specifically their agitation in terms of Section 5 of the Civil Union Act (No 17, 2006) and supported by the Lawyers for Human Rights (LHR), placed them in the foreground. This is well-illustrated by the various pleas since 2007 (2007, 2010, 2014) to the South African Law Reform Commission (SALRC) and the government to repeal it. Specific bodies in leading this appeal are the South African Pagan Rights Alliance (SAPRA), the Traditional Healers Organization (THO) and the Pagan Council of South Africa (PCSA/SAPC). [4], [5], [6], [7], [8]

The aim of the study was to determine the possible discriminatory and criminalising effects of Act No 3 (1957) as to the constitutional rights of the individual as well as groups.

Methods

Research information and other literature on the legal standing of Act No 3 (1957) are very limited. This study therefore strongly relied on the exploratory and descriptive approach, used in modern-day historical research, to obtain information and to reflect on the everyday thinking, opinions, trends and activities around witchcraft in South Africa. To obtain these outcomes, the research starts from the ground level,

using primary resources. The focus of the study was information as published in daily newspapers, limited articles by researchers as well as information published on the websites and in the publications of the neo-pagans, traditional healers and some individuals, reflecting their opinions, viewpoints, statements and findings on witchcraft. There was also a strongly reliance on the appeals and motivations directed at the South African Law Reform Commission (SALRC) to get the Act repealed. Subjective and one-sided literature on witchcraft by religious institutions and groups, were critically reviewed. The research findings were presented in narrative form. [9], [10]

Results

History

Act No 3 (1957), as amended, is based on the Witchcraft Suppression Act of 1895 that was applicable to the British Colony of the Cape of Good Hope. This early Act, it seems, was in turn based on the archaic Witchcraft Act of 1753 of Great Britain (that was repealed in 1951 and replaced by the Consumer Protection Regulations in the United Kingdom of Great Britain).[11], [12], [13], [14]

Various other territorial laws in South Africa preceded Act No 3 (1957), namely Act No 24 (1886): The Black Territories' Penal Code (Cape of Good Hope), Act No 2 (1895): The Witchcraft Suppression Act (Cape of Good Hope, Law No 19 (1891): Natal Code of Black Law (Natal), Ordinance No 26 (1904): The Crimes Ordinance (Transvaal) and Proclamation No 11 (1887): Laws and Regulations for the Government of Zululand (Zululand).[15], [16], [17]

Act No 3 (1957) was enacted by the pre-1994 regime and came into force on 22 February 1957. It was amended in 1970 by the Witchcraft Suppression Amendment Act (No 50, 1970), which added one new offence (purporting to use supernatural powers to accuse another person of causing death, injury or damage) and which also converted fines, denominated in Pounds, into Rands. The maximum fines of the Act were fixed in 1991 by the Adjustment of Fines Act (No 101, 1991). In 1997 the Act's operation was also made uniform across the former homelands by the Justice Laws Rationalisation Act (No 18, 1996). The Act was again amended in 1997 by the Abolition of Corporal Punishment Act (No 33, 1997), which abolished the use of whipping to punish offenders. This amended Act of 1957 (1970, 1991, 1997) is currently in force.[18], [19], [20], [21], [22], [23], [24]

Perspectives on Act No 3 (1957)

Literature still shows some support for the retention of the Act. On the other hand, opposition to Act No 3 (1957) seems to be growing. In this respect the opinions, statements, beliefs, viewpoints and arguments from both sides were considered, and compared and analysed to obtain insight into the moral dilemma around the issue of the supernatural, witchcraft, dissident religions and the use of law to combat such.

Supporting opinions for Act No 3 (1957)

It seems that there is still a group of people in the government, public professions and the law fraternity who see the Act as workable (notwithstanding its negative political and emotional connotations at present). For its supporters, change to the Act or its repeal, should only occur when a better alternative is put in place. Notwithstanding the strong opposition to the Act, they would be in favour of its retention.

The opinion is held that the Act's main aims, namely to prevent witch-finding and harm to innocent people under the pretence that they are wizards, are noble, focussed and successfully executed. These main aims are:

1. to prevent any person or a community to identify a specific person (notwithstanding his position or conduct which may justify such an identification) as a “”wizard”” through witch-finding;
2. to prevent that this identified person (“wizard”) be harmed (threatened, terrorised, victimised or even murdered) in any way by the “witch-finder” or the community; and
3. to prevent a person to call himself a “wizard” by prohibiting such self-naming / declaration as a crime, with the sole aim of safeguarding him from harm through his own misdemeanour or self-description, to be identified as a “wizard” by the “witch-finder” and the community.

Various outcomes were identified to conclude that the Act is achieving its aims and therefore must be kept for the near future. Especially the statistics of the 2006 report of the South African Parliament are used in this context. Specifically the rise in convictions from 1994 to 2004 is stated as evidence of the Act’s effectiveness. The report reflected that in 1994 only 13 persons were convicted on the accusation of identifying 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 necessitated the use of limited studies (like the 2006 report of Parliament)].

The rise in the total number of cases investigated and prosecuted (including withdrawals and acquittals) is also viewed as a re-affirmation that the Act has been effecitve, both in the past and in the present, in its aims to combat the illicit activities of “witch-finders” and to safeguard the innocent from harm in witch-hunting. In this respect the 2006 report shows that in 1994 only 10 cases of withdrawals, with nil acquittals, occurred; in 2004 there were as many 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%).

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 zero 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), may be seen as a motion of confidence by the SAPS and 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, confirm that Act No 3 (1957) is still active and in use.[25], [26], [27], [28]

The opinion is further that Act No 3 (1957) is not aimed to cause 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 criminally-intended individual 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 specifically 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 a person harm in one way or another.[29], [30], [31], [32], [33]

The opinion is 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)’s regulations are thus only partially executed to make prosecutions. To determine the true impact of this assumed execution of Section 1(a) to 1(f), is very difficult, given that governmental agencies do not refer specifically to witchcraft-related crime statistics or other research outcomes. The only guide to reviewing the use of Act No 3 (1957) is mainly 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, shortcomings, etc.[34], [35], [36], [37], [38], [39]

In Table 1 below[40] 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 in the 2006 parliamentary report for the period 1994 to 2004.[41], [42], [43] 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:[44], [45], [46]

Description of Offences	Types of 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	Conviction
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	Conviction
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 shows that on three of the six types of offences (reflected by Section 1 as law-breaking), convictions occurred. This underlines that not more than 50% of the prescribed offences are activated to prosecute and thus that the opinion that Act No 3 (1957) is indeed only in part implemented, seems to be correct.

The outcomes of Table 1 are vague and not fully informative as to the alleged “in part prosecution approach” of the law-enforcement agencies. A more detailed analysis is needed. In this respect it must be noted that the six offences, reflected in Section 1, are compiled and described by incorporating different offence descriptions, to obtain the six descriptions. These incorporated descriptions can lead to an over-simplification of the interpretation of the partial or full execution approach of Act No 3 (1957).[47], [48], [49]

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 clearly unrelated to each other in terms of legal meaning. The offences were re-written to reflect specific (single) offences only. With this focus approach 14 single offences, relating to the practice of witchcraft, were identified and described. In Table 2 the 14 offences relating to witchcraft, were compared with the witchcraft statistics of the 2006 parliamentary report for the period 1994 to 2004.[50], [51], [52], [53], [54]1,4,10,14,16,18

Table 2: Fourteen offences relating to witchcraft versus types of witchcraft-related convictions for the period 1994 to 2004:[55], [56], [57]

Description of Offences	**Types of 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	Conviction

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 use any supernatural power, witchcraft, sorcery, enchantment or conjuration;	None
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;	Conviction
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	Conviction
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
Any person who for gain pretends to exercise or use any supernatural power, witchcraft, sorcery, enchantment or conjuration	None
Any person who for gain undertakes to tell fortunes	None
Any person who for gain pretends from his skill in or knowledge of any occult science to discover where and in what manner	None

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 alleges that Act No 3 (1957) is only partially applied to make prosecutions and to obtain convictions. [58], [59]

It seems from the outcomes of this subdivision 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 are not transgressed. These outcomes seem to reveal why the SALRC and the government itself are hesitant to repeal it, seeing that the Act fulfils its main aims to protect the individual.

General opposing views on Act No 3 (1957)

There is also strong opposition in general to the future existence of Act No 3 (1957) as a criminal law. Opinions, viewpoints, meanings, statements and arguments vary from the Act being ineffective, undefined and un-African, to specifically violating the Constitution.

Act No 3 (1957) is an Undefined Act

The opinion is put forward that the Act's definitions of whom a "wizard" really is and what "witchcraft" really means are incomplete and poorly formulated. This, it is argued, creates serious legal-interpretation problems for the SAPS to register a charge and the NPA to prosecute such a charge. Its exclusive focus on "pretence" and "accusations" of "witchcrafts" led to the failure to acknowledge the existence of "real, true witchcraft" and thus to criminalize such assumed witchcraft practices effectively. In this context the only description that is allocated to the "wizard" is that he/she is an unspecified misdemeanant, a person that practises unspecified activities called "witchcrafts". [60], [61]

The name "wizard", the identity under whom a person can be prosecuted in terms of Act No 3 (1957), also implicates the names of "witchdoctor", "witch-finder", "occult-scientist", "fortune-teller" and "witch". It seems that the word "witch" is the most used name in South African literature and by the public. It was used as an alternative to "wizard" in this research.[62]

Legal uncertainties in the Act's definitions, it is argued, may lead to a person being seen as transgressing the law through thoughtless and ill-considered use of the name "wizard" or actions/deeds that may be associated with "witchcraft" but who is not really guilty of practising witchcraft. As such he/she can, in terms of "pretence" and "accusation", be convicted and sentenced. This is indeed evidence for instance in the listed offences in Subsection 1(f) of the Act, as quoted beneath, and such a person becomes an offender with a stiff sentence for harmful practices or pretence thereof, namely:[63]

"To gain, pretend, to exercise or use any supernatural power, witchcraft, sorcery, enchantment or conjugation, or knowledge of any occult science to discover where and in which manner anything supposed to have been stolen or lost may be found".

The above unjust criminalisation of innocent people, simply because Act No 3 (1957) fails to distinguish successfully between true or false accusations, and thus to evaluate accusations in their true context, make it easy for a false "victim" to successfully frame an innocent person of being the practitioner of witchcraft and/or related practices; even to label that person as delinquent and to obtain a conviction against such an innocent person.[64]

The findings of ritual/muthi murders are escalating. From 2010 to 2012 there were 50 recorded murders in this context. This supports the opinion that the Act fails to safeguard the lives of the innocent against witch sniffing and hunting, and thus fails in its aims.[65], [66], [67]

The opinion that the Act can falsely criminalise the innocent, is strengthened by the dramatic rise in the cases of withdrawals and acquittals between 1994 and 2004. For instance in 1994 only ten cases were withdrawn, but in 2004 this number increased to 567. This rise is not seen as a result of better policing, but as a direct negative outcome of the opportunity that the Act offers for false "victims" to misuse it for their sole, own benefits. From 1994 to 2004 the acquittals also rose from zero to 141. Again, as in the cases of withdrawals, the view is that it results because of the injustice of the Act, with its inability to discriminate effectively in terms of the law between innocent persons and delinquents.[68], [69]

The intense inability of the Act to draw the line between rightful and wrongful conduct is also argued when it comes to the ratio between the dismissals of cases and convictions. For instance in 2004, 567 cases were withdrawn and 141 acquitted against 345 convictions. This reflects an outcome ratio of possible false/unsubstantiated accusations against convictions, of 2:1, meaning that for every two cases reported,

as much as one was dismissed outright.[70], [71]

The outright dismissal ratio is much worse when the total statistics for 1994 to 2004 are calculated: a total of 2 976 cases were withdrawn, 1 303 cases convicted and 946 cases were acquitted. When these withdrawals and acquitted cases are compared against the convictions, the ratio is as high as 3: 1 (3 992: 1 303), meaning that for every three cases charged by the SAPS, only one is convicted. Here it must be mentioned that there is an opposing opinion about this "two out of three victims who are falsely accused", namely that most of them are guilty but escape conviction because of incompetent investigations by the SAPS and poor NPA prosecutions.[72], [73]

The view that the innocent is at risk to be identified or falsely accused as a witch and for witchcraft-related crime, because of Act No 3 (1957)'s incomplete and insufficiently formulated definitions, seems to hold some substance.

Act No 3 (1957) is an ineffective Act

It is argued that the 2006 report to Parliament, as used by the backers of Act No 3 (1957) as a positive outcome of the Act, reflects just the opposite of what is alleged. The true fact is that witchcraft-related murders are still rampant, as the online archive of the SAPRA confirms the murder of at least 50 innocent persons killed as "witches" between 2010 and 2012. (This number excludes muthi or ritual murders.) Research shows the above numbers are a total underestimation and that the yearly number can be more than 300.[74], [75], [76]

The fact that various counter-interventions also had to be made between 1996 and 2014 to combat witchcraft-related crime, like the Commission of Enquiry into Witchcraft Violence and Ritual Murders (Ralushai Commission of 1996), the Commission for Gender Equality's National Conference on Witchcraft Violence (1998), the Thohoyandou Declaration on Ending Witchcraft Violence (1998) and the Mpumalanga Witchcraft Suppression Bill (2007), as well as three Ritual Murder Summits between 2000 and 2014, strengthens the opinion of the ineffectiveness and failure of Act No 3 (1957) in achieving its main aims.[77], [78], [79], [80], [81]

Another point of difference is that of the so-called noble intention that the Act is only partially implemented to prosecute hard-core crimes related to witchcraft. Here the question is asked that if merely three of the offences as described by Section 1 of the Act are activated, why are the 11 so-called "dead law" regulations of the Act still being kept on the statute books (See Tables 1 and 2).

The view is that the Act is still left with the power to be fully implemented, and if the other 11 offences are prosecuted it could serve to misuse the Act in doing injustice and harm to the falsely accused and innocent victims. Specifically the neo-pagan, whose practice rituals can flow into the transgressions of the 14 offences, is at risk.[82], [83], [84], [85], [86]

Un-African inclinations of Act No 3 (1957)

A prominent viewpoint of Act No 3 (1957) is that it is extremely hostile to and destructive of the indigenous African culture and religion. The opinion is that the colonial and pre-1994 regimes had the aim to terminate all uniquely African habits, customs and lifestyles with the Act and that it, as one of the last remnants of apartheid, must be repealed.[87], [88], [89], [90]

The contrary to this viewpoint seems to be true. The African post-1994 government could already in 1994 have repealed it, because they are the outright rulers in South Africa. They did not do so because it is not a politically orientated law, as is argued. It is a true African law, a successful legal instrument to prevent ritual, muthi and so-called "witch" murders and crimes, and to save the lives of innocent and vulnerable

people who are often harmed or murdered for various reasons under the pretence of “witchcraft” and “witch” murders.[91], [92]

The present activities by the South African Police Service (SAPS) to appoint 40 members specifically to deal with so-called witchcraft, reaffirms the need for laws like Act No 3 (1957). This SAPS-intention to combat so-called masked supernaturally-related crimes is also echoed by various governmental agencies, ministers from the cabinet, and even the South African Teachers Union (SADTU) for instance.[93], [94]

Furthermore, it seems that arguments of a uniquely African culture and religion in which the traditional healer as a witch-finder and witchcraft-related conduct may play a role, do not hold any value in the modern South Africa. For instance, indigenous and/or traditional African religions represent only 0.35% of the total Black population. This evidence contradicts the alleged exclusive existence of an African “religious” culture.[95]

To address abhorrent behaviour, like witchcraft-crimes reflected by the underdeveloped section of society effectively with Act No 3 (1957), is not un-African. It is needed to safeguard the community against malevolent individuals.[96], [97], [98], [99], [100], [101], [102], [103], [104], [105]

The viewpoint that witchcraft crimes must be handled by tribal leaders because the community is “African”, is inapplicable and insignificant to combat witchcraft crime. The South African legal system is more than competent enough to handle witchcraft-related crimes. The Constitution does not allow any transfer of its legal powers to quasi-courts to make criminal convictions. South Africa’s experience of street and bundu law and the barbaric kangaroo courts of townships in the 1960s is more than enough evidence that tribal or community courts do not have a place in the legal system. It cannot replace Act No 3 (1957) at all, as alleged.[106], [107], [108]

Individual-rights viewpoint

Individual objections are based on the viewpoint that every South African citizen should be totally free in terms of the Constitution and its Bill of Rights and Sections 5(1) and 5(2) of the Civil Union Act No 17 of 2006 to believe, to choose and to practice his culture and religion unobstructed.[109] The view is that the State does not have the right to discriminate against or to criminalise an embedded cultural and religious belief and practice system, as it is argued that Section 1 of Act No 3 of 1957 does that specifically. The opinion is that Section 1 places an ipso facto assumption of criminality upon the individual, which can affect his ethnic status, his cultural grouping and limit his right to equality, freedom of association, choice of occupation or profession, and as already mentioned, his freedom to choose and to practise a religion or culture falling outside the mainstream.

This discrimination in terms of Act No 3 (1957) has been alluded to in more than 11 clauses of Chapter 2 of the Constitution and its Bill of Rights (as well as Section 5 of the Civil Union Act of 2006). The opinion is that Act No 3 (1957) in this context bears a negative classification because of official stereotyping and stigmatising. This means an innocent person can be projected as malevolent in the eyes of the public, purely on grounds of his religion, culture or lifestyle.[110], [111], [112], [113]

With reference to religious inheritance, the opinion is argued that Section 1 strikes into the heart of the individual Hindu believer’s, traditional healer’s and neo-pagan’s practices of divinations, charms and fortune-telling.[114]

The above belief in the supernatural and superstition (as defined by Section 1 of Act No 3 of 1957 as a legal transgression), is clearly also fully applicable to the other traditional South African religions, Christians (main South African religious group), as well as the Muslim and Jewish groups. This truth is well-confirmed by the following comment:[115], response 5:

“If you can believe in an invisible man in the sky that will burn you if you do bad things, then I say you can believe in witchcraft. I find witchcraft no more ludicrous than Christian, Jewish or Muslim beliefs and if you outlaw the one, you may as well outlaw the lot.”

Therefore to identify a single culprit practising the supernatural or to prosecute only the “witch”, the neo-pagan or the religious dissident, as Act No 3 (1957) initially undoubtedly intended in 1957 to do, will be an injustice. If the neo-pagan and the “witch” are prosecuted, the same must be done with the Christian, the Muslim, the Jew (for all of them the universal basis is the afterlife and its corollaries with the living). The rigid opinion held is that it is impossible to meaningfully outlaw the supernatural and superstition. This seems to be confirmed by the unofficial inclination of the South African criminal justice system and law-enforcing agencies to uphold only in part Act No 3 (1957) regulations to fight witchcraft and related crimes (and other occult crimes reflected as witchcraft) like murder.[116]

In studying Section 1 of the Act’s interpretations and description of the supernatural, the impression is left of it as real (concrete) behaviour that can be scientifically tested (the same for instance, as occult science). The SAPS’s own admittance that they believe there is something “real” that is supernatural – or as they describe it as “handlings and activities of a spiritual nature – things outside the physical sphere” (bedrywighede of aktiwiteite van spirituele aard – dinge buite die fisieke sfeer),[117], brings only further confusion for the individual.

It forces to the foreground possible discrimination of his civil right to believe in a specific culture or religion and to practise it, notwithstanding that he is a neo-pagan, Christian, Muslim or Jew. In this context of conflict and confusion, the opinion is that the individual is more than enough justified to doubt the legality of Section 1 of Act No 3 of 1957 in terms of the Constitution.[118], [119], [120], [121], [122], [123]

In contrast to the belief by individuals in their total freedom of behaviour that they demand in terms of the Constitution (as can be reflected by the above), it is important to note that the Constitution is designed and enacted to safeguard also the individual rights of other citizens, not only that of the alleged deprived individual, a neo-pagan, a traditional healer, a Hindu-believer, a Christian or a Muslim. The Constitution clauses as a whole guarantees that it will not be misused by individuals or groups to serve selfish and sometimes, masked dangerous needs and aims.

In terms of the Constitution only rights will be bestowed on an individual when his newly demanded or deprived former rights do not infringe on the rights of other individuals (and of cause the state per se). This is the reason why the Constitution was not activated and not used to interfere for instance between 1994 and 2004 with Act No 3 (1957) actions when more than 1 300 cases of witch-sniffing and -hunting were successfully prosecuted (and, surely many witch murders prevented). It allowed that 2 976 cases were initially registered for criminal activities but dismissed and a further 946 cases were acquitted for the period 1994 to 2004; this confirms the trust in Act No 3 (1957) and that it is not unconstitutional as certain sectors in society alleged.[124], [125]

Discussion

With reference to the legal status of Act No 3 (1957) as a law, the opinion cannot be ignored that although no one can doubt that South Africa has one of the most progressive Constitutions in the world and possesses a complex democratic machinery to manage its legal system, it still has three levels of social development: a developed, a developing and underdeveloped sectors of civil society. It is especially the underdeveloped level that still believes in witchcraft and is guided in daily life and decision-making by it. In this tier of underdevelopment there still exists a kind of primitive savagery reminiscent of medieval times; a paradigm where culture and religion are misused to mask needs (but also as an excuse) and to express and live out abhorrent behaviour, such as ritual and muthi murders and personal revenge.[126], [127], [128], [129]

South Africans are at the moment still just too unequal for the Constitution to fit and to fix the rights of everyone; other pieces of legislation, like Act No 3, are needed to safeguard and to execute these rights, together with the Constitution.[130], [131], [132], [133]

Act No 3 (1957) can surely be described as a medieval throwback to the Dark Ages, but at present it excellently serves the innocent individual (victim) against the criminal behaviour of the witch-sniffer and witch-hunter, as well as against the evil-inclined community of whom he may be a member. The SALRC's various refusals since 1994 to have Act No 3 of 1957 repealed, confirms the opinion of the benefits of the Act on the one hand.[134], [135], [136], [137], [138]

On the other hand it also reflects the Constitution's guarantee that law-abiding behaviour must be kept up by the prosecution of any wrongdoer. Both the pre-1994 apartheid and the post-1994 anti-apartheid regimes have kept Act No 3 (1957) undisturbed now for a period of six decades because it serves the Constitution and the country's citizens in an exemplary fashion.[139], [140], [141]

The finding in principle by the SALRC more recently, after years of constant appeals by the traditional healers and other objectors that certain sections of the Act can be unconstitutional, does not mean that it is going to be repealed or be changed immediately.[142]The Parliament and its lawmakers must first consider the matter.[143]

Strength and limitations

This study offers a strong argument, based on sound research findings, for the indefinite keeping of Act No 3 to counter witchcraft-related behaviour. It seems at the moment to be the only legal instrument left to oppose the future wrongdoings of the traditional health practitioner and the potential excesses of the Traditional Health Practitioners Act (Act No 22, 2007).

In the present climate of political correctness that sanctions and exaggerates the individual's rights, notwithstanding that his behaviour may be criminal like that of the traditional healer, the positive arguments and findings of this study may be controversial or may even be minimised.

Conclusions

Notwithstanding the opinion against it, there is no evidence that the Act discriminates in criminalising the law-abiding citizen who declared himself a "witch", even after making such a foolish confession in public. Nor does it interfere with the lifestyles of the individual engaged in supernatural practices, as long as he does not contravene a focussed criminal law and/or endanger or threaten the life of other people in terms of subsection 1(a), (c) and 1(e).[144], [145], [146], [147], [148]

The opinion that Act No 3 (1957) is only partly implemented to fight witchcraft-related crimes, seems to be correct. The aim of the Act, as indicated, is not blind prosecution, but only the prevention of well-identified, specifically dangerous witchcraft crimes and actions. The Act is thus not a medieval throwback to the Dark Middle Ages. It follows that we should think again before repealing the Act at this stage.