



Lokwalo la Puisano 139

**THADISO YA MOLAO WA KGATELELO YA BOLOI
(MOLAO 3 WA 1957)**

Porojeke 135

Letha la bofelo la tshwaelo: 30 Moranang 2016

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MATSENO

Khomišene ya Molao ya Aforikaborwa e tlhomilwe ke *South African Law Commission Act*, 1973 (Molao 19 wa 1973).

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Komitikgakololo mabapi le thadiso ya Molao wa Kgatelelo ya Boloji e ne e rwala maikarabelo a porojeke eno. Moeteledipele wa porojeke yo o rwalang maikarabelo a porojeke eno ke Moporofesara Marita Carnelley (Unibesithi ya KwaZulu Natal), Mokhomišenara wa SALRC. Maloko a komiti ke:

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Moporofesara Theodore Petrus (Unibesithi ya Fort hare)

Mmatlisisi yo o abetsweng porojeke eno, yo go ka ikgolaganngwang le ena mabapi le tshedimosetso e nngwe, ke Moh Jennifer Joni.

KETAPELE

Lokwalo leno la puisano le baakantswe go dira jaaka motheo wa dipuisano tsa Khomišene, go anya ditsibogelo le ditshitsinyo go tswa mo batsayakarolong ba ba maleba, le go phatlalatsa tshedimose tso ka ga thadiso ya Molao wa Kgatelelo ya Boloji kwa setšhabeng ka kakaretso. Ka go newa ga maitlhomano, lokwalo leno ga le na dikatlanegiso tse di tlhalositsweng sentle tsa ntšhwafatso ya molao. Dikakanyo, dikonotelelo le dikatlanegiso mo lokwalong leno ka tlhomamo ga di a tshwanela go tsewa jaaka dikakanyo tsa bofelo tsa Khomišene. Lokwalo la puisano le phasaladitswe ka botlalo gore go tlamelwe batho le mekgatlho e e eletsang go tshwaela kgotsa go dira ditshitsinyo mabapi le ntšhwafatso ya lekala leno la molao ka tshedimose tso ya maitshetlego e e lekaneng go ba kgontsha go dira ditlhagiso tse di maleba fa pele ga Khomišene.

Baikarabedi ba lopiwa go gorosa ditshwaelo **tse di kwetsweng**, dikemedi kgotsa dikopo go Khomišene ka di **30 Moranang 2016** kwa atereseng e e tlhagelelang mo tsebeng e e fa pele. Mmatlisisi o tla leka go go thusa ka mathata a a rileng a o ka a itemogelang. Tshwaelo e e setseng e rometswe kwa Khomišeneng ga e a tshwanela go boeletswa; mo lebakeng leo baikarabedi ba tshwanetse go bontsha gore ba ikamanya le tshwaelo ya bona ya pele, fa seno e le maemo.

Khomišene e tla tseela gore baikarabedi ba dumalana le Khomišene fa e nopopla go tswa mo kgotsa e kaela go ditshwaelo le go nyalanya ditshwaelo le baikarabedi, ntle le fa dikemedi di tshwaile “Khupamarama”. Baikarabedi ba tshwanetse go lemoga gore Khomišene e ka nako nngwe le nngwe tlhokega, ka fa tlase ga *Promotion of Access to Information Act 2* ya 2000, go golola tshedimose tso e e mo dikemeding.

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Khomišene ya Ntšhwafatso ya Molao ya Aforikaborwa

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PEOMOLAO

Adjustment of Fines Act 101 of 1991

Constitution of the Republic of South Africa Act, 1996

Criminal Law (Sentencing) Amendment Act 38 of 2007

Human Tissue Act 65 of 1983

Mpumalanga Witchcraft Suppression Bill 2007

Traditional Health Practitioners Act 22 of 2007

Witchcraft Suppression Act 3 of 1957

Witchcraft Suppression Amendment Act 50 of 1970

Witchcraft Suppression Amendment Act 33 of 1997

DITUMALANO

Convention on Civil and Political Rights (1966)

Universal Declaration of Human Rights (1948)

LENANE LA BAIKARABEDI:

1. Semphato sa Ditshwanelo tsa Badumedi Basele ba Aforikaborwa;
2. Mokgatlho wa Baalafi ba Setso;
3. Khansele ya Badumedi Basele;
4. Khomišene ya Tekatekano ya Bong;
5. Ngaka Wallace wa Unibesithi ya KwaZulu Natal;
6. Senthara ya Molao ya Basadi; le
7. Ditirelo tsa Sepodisi tsa Aforikaborwa.

KGAOLO 1

MATSENO

1.1 Lokwalo leno la dipuisano le latela phasalatso mabapi le tshwaelo, ka di 9 Lwetse 2014, ya lokwalo la morero,¹ leo le ikaeletseng go itsise patlisiso go setšhaba, e e simololang kganetsano, le go tthalosa ntšhwafatso ya molao e e tlokegang. Khomišene ya Ntšhwafatso ya Molao ya Aforikaborwa (SALRC kgotsa Khomišene) e tsaya tšhono eno go leboga bao ba tsibogetseng kgoeletso ya ditshwaelo le go tlamela ka tshedimosetso e e maleba mabapi le tlihabololo ya lokwalo leono la dipuisano.

1.2 Lokwalo la dipuisano le tseela patlisiso pele ka go tlamela ka boikgethelo jo bongwe mabapi le ntšhwafatso ya molao jo ka gongwe bo tla isang kwa katlanegisong ya nnete mo thadisong e e tshitsintsweng ya Molao wa Kgatelelo ya Boloji (Molao kgotsa WSA).² Lokwalo le tthalosa ka botlalo tlokego ya ntšhwafatso, dithomelo mabapi le dikonotelelo tsa tshwaelo ya setšhaba tse di fitlheletsweng ke Khomišene, le go tliatlhoba kakanyo ya setšhaba ka ga ditharabololo tse di supilweng ke Khomišene.

1.3 Khomišene e ineetse mo go rerisaneng le batsayakarolo botlhe ba ba maleba. Mo godimo ga phasalatso ya lokwalo leno la dipuisano mabapi le tshwaelo ya setšhaba, re rulaganya go ikgolaganya le batsayakarolo ba ba farologaneng ba ba angwang ke tiragatso ya boloi. Morago ga kgato eno, Khomišene e tla baakanya pegelo, eo e tla tsenyeletsang dikatlanegiso tsa yona tsa bofelo le molawana o o phepafaditsweng fa go tlokega. Pegelo e tla romelwa kwa go Tona ya Bosiamisi le Ditirelo tsa Kgopololo, yo o tla tsenyang mo tirisong dikatlanegiso tsa Khomišene ka go itsise molaokakangwa o o tshitsintsweng kwa Palamenteng.

¹ South African Law Reform Commission, Issue Paper 29, 9 September 2014.

² Act 3 of 1957.

A Tshimologo le maitshetlego a patlisiso

1.4 Ka Tlhakole 2007, SALRC e amogetse kopo go tswa go Semphato sa Ditshwanelo tsa Badumedi Basele ba Aforikaborwa (SAPRA) go dira patlisiso ka ga bosemolaotheo jwa Molao le Molaotlhommo wa Kgatelelo ya Boloji wa Mpumalanga o o tshitsintsweng o o neng wa phasalatswa ka 2007.³

1.5 Magareng ga Seetebosigo kgotsa Phukwi 2007, morago ga kamogelo ya kopo e e kailweng fa godimo go tswa go SAPRA, mekgatlho e mengwe jaaka Mekgatlho wa Baalafi ba Setso (THO) le Khansele ya Badumedi Basele ba Aforikaborwa (SAPC) e ne ya rotloetswa go nna karolo le go tshegetsa thadiso. Thadiso e ne e akaretsa *Mpumalanga Witchcraft Suppression Bill* e e tshitsintsweng sešwa. Mekgatlho yotlhe ka boraro e ne ya dira ditlhagiso go SALRC mabapi le tshekatsheko mo thadisong ya Molao.

1.6 SALRC e ne ya bitsa kopano ya batsayakarolo ka di 4 Lwetse 2008, e mo go yona ditlhagiso di ne tsa sekasekwa.⁴ Go latela kopano eno, ka di 14 Ngwanatsele 2008, Khomišene e ne ya amogela tlhagiso e e boeleditsweng go tswa go SAPC le tlhagiso go tswa go (THO), ka bobedi ba kopa go tsenyeletswa ga patlisiso mo lenaneong la SALRC.

1.7 Mo ditlhagisong tsa yona, SAPRA e tshitsinya go phimolwa ga Molao ka mabaka a gore e tsaya boloi jaaka bosenyi le go baloi ba ba ipitsang baloi jaaka Badumedi Basele. Ba tshitsinya gape gore go se nne le molao o o laolang boloi, le gore go diriswa botlhaswa ga boloi go sekasekwe go ya ka molao wa tlwaelo. Tshitsinyo e ikaegile mo goreng boloi ke karolo ya thulaganyo ya bona e e amogelesegang ya tumelo le bodumedi. Tlhagiso ya SAPRA e etse tlhoko gore Molao o na le mathata ga jaaka o sa tlamele ka tlhaloso ya “moloji” kgotsa “boloi”. SAPRA e amogela gore bogologolo le mo bokaong jwa Aforikaborwa, mafoko “moloji” le “boloi” a dirisitswe go tlhalosa bosula kgotsa ditiragatso

³ In about March 2014, subsequent to the release of the issue paper to a closed list of stakeholders, the SALRC received communication from the SAPRA pointing out some factual inaccuracies regarding the background to the investigation. These factual inaccuracies relate to the originator of the investigation and the identification of the issues that were brought to the fore and by which organisation. The SALRC is indebted to SAPRA for bringing to its attention the said inaccuracies and ensuring that the issues around the origin of the investigation are completely accurate.

⁴ The SAPRA, the SAPC (represented by Lawyers for Human Rights (LHR)), and the THO attended the meeting. The invitation to the THO was extended by the SAPC.

tša bosenyi tše di amanngwang le dipolao tša diretlo le bomadimabe ka kakaretso. Ba ngangisana ka gore maloko a SAPRA a ipitsa baloi e bile a na le bopaki jwa go nna teng ga boloi, mme ga ba bosula e bile ga se basenyi. Ba ngangisana go ya pele ka gore tiragatso ya boloi, bommagalai, le ditso tše dintsi tše di amanang le ditiragatso ke tšhagiso ya bodumedi jwa bona e bile di wela sentle ka fa tlase ga setlhophha sa “Mmele, Tšhaloganyo le Mowa” kgotsa “Bofitlha” mo mabenkeleng a a kwa godimo a dibuka. Ba akanya gore go ya ka bogolo jo Molao o tšamelang ka kgatelelo ya, tšhagiso ya tumelo ya bona, o ganetsana le dikabelo tše di mmalwa tše di mo Kgaolong 2 ya Molaotheo.⁵ Ka go tšibela tiragatso ya boloi, melao eo e ganela baagi ditšhwanelo tša bona tša semolaotheo go kgololosego ya bodumedi (karolo 15); tšhwanelo ya tšhagisomaikutlo e e gololesegileng (karolo 16); tekatekano (karolo 9); seriti sa botho (karolong 10); kgololosego le tšhireletsego ya motho (karolo 12); le tšhwanelo ya go itlhophelela kgwebo ya bona, tiro kgotsa boithutelo ka kgololosego mo gare ga Aforikaborwa (karolo 22).

1.8 Mo tšhagisong ya yona, SAPC e tšhagisa gore khonferense ya bona ya bosetšhaba (e e neng e tšhwerwe ka 2007) e boutetse khutliso ya Molao wa Boloi wa 1957, le gore SAPC e ema kgatlhanong le meono e e tšhalositsweng mo Molaong. Kwa khonferenseng ya yona ya bosetšhaba ka 2007 mokgatlho o ntšheditse pele seo morago ga moo se kailweng jaaka “*Melville mandate*”. Tšhegetso mabapi le meono e go dumalanweng ka yona kwa khonferenseng e ikaegile mo tšhireletsong e e neilweng bonnye jwa badumedi ke Molaotheo.

1.9 *Melville mandate* e leka go busetsa mareo “moloji” le “boloi” gore a tšhaloganngwe mo bokaong jwa segompjeno jwa Badumedi ba Sele. Motheo wa pego eno ke kamogelo ya gore mo Aforikaborwa “moloji” le “boloi” di dirisitswe go tšhalosa “bosula kgotsa ditiragatso tša bosenyi tše di amanngwang le dipolao tša diretlo, go retlwa ga batho le bomadimabe ka kakaretso”.⁶ Taolelo e leka gape go simolola kgato ya semolao e e tša

⁵ Constitution of the Republic of South Africa, 1996.

⁶ The assertion by SAPRA is supported by the definition of witchcraft that was provided by the Ralushai Commission and the definition contained in the Mpumalanga Witchcraft Suppression Bill. In the Ralushai Commission report, which is referred to in the issue paper, a “witch” is defined as a person who “through sheer malice, either consciously or subconsciously, employs magical means to inflict all manner of evil on their fellow human beings. They destroy property, bring disease or misfortune and cause death, often entirely without provocation to satisfy their inherent craving for evil doing.” The Mpumalanga Witchcraft Suppression Bill defines “witchcraft”

thibelang go tswelela kgotsa kgonagalo ya go nna teng ga kgethololo e e sa lolamang le kgobebelelo kgatlhanong le Badumedi Basele bao ba ipitsang jalo.

1.10 SAPRA le SAPC ba latofatsa gore Molao o thibela Badumedi Basele go diragatsa tumelo ya bona, ka go tlamela ka gore mongwe le mongwe yo o (magareng ga tse dingwe) begang gore o dirisa thata ya motlholo, kgotsa boloi, kgotsa o bega ka kitso ya boloi, o tla bonwa molato. Ba bega gore thibelo mo Molaong, jaaka e amana le Badumedi Basele, e gataka “ditshwanelo tsa bona tsa semolaotheo kgololosego ya bodumedi, tlhagisomaikutlo, tekatekano, kgololosego, seriti, tshireletsego le tshwanelo ya bona ya go tlhophha le go diragatsa tiro ya bona mo gare ga Aforikaborwa.”

1.11 SAPRA le SAPC ba ngongorega ka ditlhaloso tse di tlametsweng mabapi le boloi le baloi, tseo ba begang gore ke ditlhaloso tse di gobeletang. Ditlhaloso tseno di amanya boloi le baloi le sengwe se se bosula kgotsa di amanngwa le dipolao tsa diretlo, go retlwa ga batho le bomadimabe. Ditlhaloso tseo, ba bega gore, di diga seriti sa baloi ba ba ipitsang jalo.

1.12 SAPRA e netefatsa go nna teng ga boloi le baloi, tseo ba ngangisanang gore ga di bosula e bile ga se tsa bosenyi. Ba tleleima tshwanelo ya bona go kgololosego ya tumelo le bodumedi.

1.13 Mo tlhagisong ya bona, SAPRA e kaela go lokwalo le le tlhabolotsweng ke SAPC le go kwalwa ke Ngaka Dale Wallace, moithuti kgotsa *Comparative Religions*. Ngaka Wallace o kaya gore Molao o simologile ka tsamaiso le batsamaisi ba sekoloni. Kgatelelelo e a dirwa ya gore maikaelelo a Molao e ne e le go gatelela tumelo mo boloing.

1.14 Go sa nneng teng ga tlhaloso ya “boloi” mo Molaong, go go tlisitseng kamano ya boloi le ditiragatso tse di setlhogo tsa jaaka magatwe a go lwatsa, bomadimabe le loso, mmogo le boitshwaro bongwe jo bo kganetsweng ke Molao, go supilwe jaaka ntlha ya kelotlhoko. Dikabelo mo dikarolotlaleletsong (d) le (f) tsa karolo 1 ya Molao, tse di dirang boitshwaro jwa motho yo o begang gore o na le kitso ya boloi le yo, mabapi le go boelwa, a dirang e kete o diragatsa kgotsa o dirisa thata ya motlholo, di na le bothata jaaka fa di itebagantse le ditiragatso tsa tlhologo le badiragatsi.

as “...the secret use of muti, zombies, spells, spirits, magic powers, water, mixtures, etc, by any person with the purpose of causing harm, damage, sickness to others or their property.”

1.15 SAPC e amogela tlholego e e namileng ya boloi mo baaging ba Aforika le tshenyo e bo e tlisitseng mo gare ga baagi bao. Ba ngangisana ka gore dikakakanyo ka ga boloi di ntse di fetoga go tloga ka dinako tsa pele ga bokoloniale, le go tsewelela go fetoga.

1.16 SAPC e gatelela ntlha ya gore ka nako ya morago ga puso ya kgatelelo mo Aforikaborwa, boitshwaro jo bo thibelwang mo Molaong wa Kgatelelo ya Boloi bo tshwanetse go lejwa ka leitlho la Molaotheo, o o lopang ditumelo tsotlhe go tsholwa ka tekatekano. Tlhagiso ya SAPC e kaya fa bommagalai le tiriso ya ditšhamo, e e thibetsweng mo dikarotlaleletsong (d) le (f), e diragatswa ke ditumelo tse dingwe tse di farologaneng, go akaretsa mme go sa lekanyetswa go seHindu. Go lekanyetsa kgotsa go tsaya ditiragalo tseo jaaka bosenyi go ka tlisa kgethololo kgotsa go tseelwa gore di a gobelela.

1.17 SAPC e supetsa kwa go tlhologeng ga molao o o gatelelang boloi go fedisa tumelo mo boloing le tirisodikgoka e e amanang mo dinageng tsa morago ga koloniale tsa Aforika. Go kailwe gape ka ga dinaga tsa Aforika tse di buseditseng molawana wa boloi wa paka ya koloniale mme ga di ise di bone tsewelelopele e e amanngwang le molawana oo. SAPC e tshwaela ka la gore mabaka a mangwe a tshwanetse go tsewa tsia fa go sekasekwa tirosodikgoka e e amanang le boloi, mo godimo ga molawana o o gatelelang boloi. Dikarolo tse di tsewang ke batsayakarolo ba bangwe di botlhokwa.

1.18 Kakanyo ya THO ke gore Molao wa Kgatelelo ya Boloi o tshwanetse go fediswa le go tsenngwa boemong jwa ona ga Molao o mošwa. Tlhagiso ya THO e ngangisana ka gore Molao o mošwa o tshwanetse go samagana le bothata jwa tirisodikgoka e e amanang le boloi, le go tlamela ka tihaloso ya "*busakatsi*" kgotsa boloi. THO e tshitsinya gore "*busakatsi*" bo kaya boloi mo bokaong jwa Aforika, le go akaretsa tiriso ya ditlhare tse di kotsi; bommagalai jo bo kotsi; le ditlamaganyo tse dingwe tse di ka tiholang malwetse, bomadimabe kgotsa loso la motho, kgotsa tshenyo ya thoto. THO e ngangisana go ya pele ka la gore go tlhokega molawana o o tla supang le go laola ditiragatso tsa busakatsi. Seno se tla kgontsha dikgotlatshekelo go sireletsa e seng fela maphelo a batho ba ba senang molato bao ba latofatswang ke ba ba bangwe ka busakatsi, mme gape le go otlhaya batho ba ba bonwang molato wa go diragatsa busakatsi.

1.19 THO e tshegetsisa ntlha ya SAPRA le SAPC ya gore Molao o tshwanetse go fediswa. Mme fela, THO e tswela pele go tshitsinya gore Molao wa ga jaana o emisetswe ka molao o mongwe o mošwa, o o tla samaganang le mathata a a amanang le tirisodikgoka e e amanang le boloi le go tlamela ka tlhaloso mabapi le bokao jwa boloi. THO e lopa gore go nne le tekano magareng ga go go sireletsa batswasetlhabelo ba ba latofatswang ka boloi, le kotlhao ya bao ba bonweng molato wa go diragatsa boloi.

1.20 THO e amogela gore ditshwanelo tsa botho di na le karolo e di e tsayang mo mokgweng o motho a samaganang le ditumelo tsa setlhopho se se rileng sa batho. Ba tshitsinya gore Molao o mošwa o se diriswe go laola ditumelo le maitsholo a batho.

1.21 THO e tsibosa kgatlhanong le tiriso ya teomainsa e e neng e diriswa mo malobeng go tlhalosa boloi, jaaka “ngaka ya moloji”, “moloji”, “mantswitswidi”, “boloi”, “*muti*”, “thata ya motlholo” le a mangwe, ka ntlha ya fa mainsa ano a ka timetsa.

1.22 THO e tshitsinya gore boloi bo tsewe jaaka bosenyi bongwe le bongwe le gore *umsakatsi* a tsewe jaaka mosenyi. Ba neetse sekao sa motho yo o fitlhetsweng a tshotse serwe sa motho, le go kaya gore motho yoo o tshwanetse go tshwarwa go ya ka *Human Tissue Act* ya 1983.

1.23 THO e tshitsinya gape gore tiriso ya melao e e senyang batho mainsa kgatlhanong le batho ba ba, ntle le bopaki jo bo lekaneng, latofatsang ba bangwe ka go nna baloi. Ba tshitsinya gape botsereganyi mo dikgetsing tseo go senang mabaka a semolao go tswela pele ka tatofatso ya boloi.

1.24 Mekgatlho e meraro e ditlhagiso tsa yona go SALRC e leng motheo wa patlisiso ya ga jaana e tshegetsisa dintlha tse di ganetsanang tsa mokgwa o tiragatso ya boloi e ka sekasekwang. Mo letlhakoreng le lengwe, SAPRA le SAPC di ganetsana kgatlhanong le kgatelelo ya tiragatso ya boloi, le kgatlhanong le taolo ya kgoreletso ya puso. Mo letlhakoreng le lengwe, THO e ngangisana mabapi le taolo ka ntlha ya ditshotlakako tse di amanang le tiragatso ya boloi.

B Tsenyeletso ya patlisiso mo lenaneong la SALRC

1.25 Go latela kopano e e kailweng fa godimo (lebelela temana 1.6) le SAPRA, SAPC (e emetswe ke LHR) le THO; le morago ga go amogela dilhagiso tse di boeleditsweng go tswa go mekgathlo eno, SALRC e dirile patlisiso ya pele go lekanyetsa kgonego ya go tsenyeletsa patlisiso mo lenaneong la bona.

1.26 Kwa kopanong ka di 1 Phatwe 2009, Khomišene e rebotse dikatlanegiso tse di mo lokwalong la tshitsinyo, tsa gore thadiso ya Molao wa Boloji e tshwanetse go tsenyeletswa mo lenaneong la Khomišene. Dikatlanegiso le dintlha tse di tshitsintsweng mo mabakeng a dipeelo a a dirilweng mo lokwalong la tshitsinyo la patlisiso di tseetswe tsia mabapi le maitlhamo a go tlhabolola lokwalo la puisano.

1.27 Ka di 15 Ferikgong 2010, SALRC e ne ya romela memorantamo kwa go Tona ya Bosiamisi le Tlhabololo ya Molaotheo wa go lopa thebolo mabapi le dikatlanegiso tsa Khomišene (tse di dirilweng ka di 1 Phatwe 2009) go tsenyeletsa thadiso ya Molao wa Kgatelelo ya Boloji mo lenaneong la SALRC.

1.28 Ka Motsheganong 2011, morago ga go tsenyeletswa ga patlisiso mo lenaneong la SALRC, patlisiso e ne e abetswe mmatlisisi wa SALRC. Moragonyana ga seno, SALRC e ne ya amogela lekwalo (la letlha la 12 Diphilane 2011) go tswa go Tona ya Basadi, Bana le Batho ba ba Golafetseng, leo le neng le lopa patlisiso malebana le dipolao tsa *muthi*. Kopo ya Tona e ne ya tshegetswa ke dikgetsi tse di botlhokwa tse di neng tsa begwa mo tlhaeletsanong, e e amang bana ba go begwang gore ba bolaetswe dirwe tsa bona tsa mmele.⁷

1.29 Kwa kopanong ya Khomišene ka di 22 Diphilane 2011, go atlenegisitswe gore kopo ya Tona ya Basadi, Bana le Batho ba ba Golafetseng e tshwanetse go tsenyeletswa mo patlisisong ya ga jaana. Ka di 24 Diphilane 2011, SALRC e ne ya romela go Tona e mo gakolola gore kopo ya gagwe ya patlisiso ka ga dipolao tsa *muthi* e tla tsenyeletswa

⁷ The cases that Minister Xingwana referred to involved the killing of a 10-year-old girl in Soshanguve, Gauteng, who was abducted and murdered on 31 December 2009 and her body parts removed. The other case involved a 3-year-old boy from Gugulethu in the Western Cape whose body was found in a suitcase with his throat slit.

mo Porojeke 135 ya lenaneo la SALRC. Porojeke 135 ke patlisiso ya ga jaana e e ka ga thadiso ya Molao wa Kgatelelo ya Boloji.

1.30 Lokwalo la morero ka ga thadiso ya Molao wa Kgatelelo ya Boloji le rebotswe ke Khomišene kwa kopanong ya yona e e neng e tshwerwe ka di 11 Motsheganong 2014. Lokwalo le ne la phasalatswa mabapi le gore setšhaba se tshwaele ka di 9 Lwetse 2014. Letlha la bofelo la kamogelo ya ditshwaelo e ne e le ka di 31 Diphilane 2014.

C *Bolekanyetso jwa patlisiso*

1.31 Patlisiso ya Khomišene ka ga thadiso ya Molao e mabapi le dintlha tse di rometsweng fa pele ga yona ke mekgatlho e e kailweng fa godimo, e leng SAPRA, SAPC, le THO. Patlisiso ya Khomišene e tla sekaseka gape dintlha tse Tona ya pele ya Basadi, Bana le Batho ba ba Golafetseng o di tlisitsweng fa pele ga yona (jaaka go kailwe fa godimo), e bile e tla dira dikatlanegiso ka ga mokgwa o merero ka ga dipolao tsa *muthi* e ka sekasekwang ka teng mo kगतong ya go samagana le ditiragatso tse di amanang le boloi.

KGAOLO 2

DITSIBOGO TSA SETŠHABA GO LOKWALO LA MORERO

2.1 Morago ga phasalatso ya lokwalo la morero ka Lwetse 2015, SALRC e amogetse go tswa go batsayakarolo ba ba nang le kगतlhego ditlhagiso di le mmalwa tsa go tsibogela dintlha tse di tlhagisitsweng mo lokwalong la morero.⁸ Ditlhagiso tseno di tla sobokanngwa mo karolong eno ya lokwalo la puisano le go sekwasekwa moragonyana mo dikarolong tse di maleba fa tlase. Ditshobokanyo tsa ditlhagiso fa tlase ga di a rulaganngwa ka tatelano e e rileng, e bile di tlhagisitswe ka mokgwa wa tatelano o di amogetsweng ka ona ke SALRC.

2.2 Semphato sa Ditshwanelo tsa Badumedi Basele ba Aforikaborwa (SAPRA) le Mokgatlho wa Baalafi ba Setso (THO) ga di a dira ditlhagiso dipe tse dikgolo mo go tsibogeleng dintlha tse di tlhagisitsweng mo lokwalong la morero. Tshwaelo ya SAPRA e amantswe le tthamalalo ya maitshetlego a hisetori a patlisiso, jaaka go kailwe mo kaelong 3 e e fa godimo. THO, mo tsibogong ya yona ya kopo ya ditlhagiso go lokwalo la morero, e netefaditse maemo a yona a pele jaaka a fitlhelwa mo tlhagisong ya tshimologo ya THO e e dirilweng kwa tshimologong ya patlisiso.

2.3. Ditshwaelo di bonwe gape go tswa go SAPC.⁹ SAPC e simolola ka go amogela maemo mo Aforikaborwa, kwa merero e e mabapi le boloi e leng marara. Ba amogela gape ditlamorago tse di masisi tse di amanang le tiragatso ya boloi, mo lebakeng leno tirisodikgoka e e amanngwang le boloi, mmogo le dikakanyo tse di renang tse di ganetsanang tse di ka ga go nna teng ga mefuta e mengwe ya boloi. Ba ikuela mabapi le kamogelo ya pharologano magareng ga boloi jaaka tiragatso e e kotsi le boloi jaaka mokgwa wa tiragatso ya sedumedi ka baloi ba ba ipitsang jalo.

⁸ Collectively, submissions were received from SA Pagan Rights Alliance, Traditional Healers Association, SA Pagan Council, the Commission for Gender Equality, Dr Wallace of the University of KwaZulu Natal, the Women's Legal Centre, and the South African Police Service.

⁹ Comments from the SAPC are authored by Rev Morgause Fonteleve, Convenor and Registrar for the SAPC, and were received by the SALRC on 25 May 2014.

2.4 SAPC e dira ditlhagiso tse di tshwanang le tse e di dirileng fa patlisiso e simolola, tseo e leng gore go se nne le taolo ya boloi. Tiragatso ya bona ya boloi e sireleditswe ke Molaotheo wa Rephaboliki, o o sireletsang ditshwanelo tsa bodumedi. Ba na le mogopolo wa gore molao wa tlwaelo o tshwanetse go diriswa go samagana le tlolomolao e batho ka esi ba e latolofaetswang. Mo lebakeng leno, ba tshitsinya gore fa go dirilweng tlolomolao, jaaka bosenyi jo bo amanang (mo gare ga tse dingwe) le tseelo ya madi, tsietso, petelelo, polao, kgotsa kgwebo e e seng mo molaong ya dirwe tsa mmele, batlolamolao bao ba tshwanetse go sekiswa go ya ka molao o o leng teng.

2.5 SAPC e dumela gore taolo ya boloi e ka oketsa kemo ya bosenyi le tirisodikgoka e e amanngwang le boloi, e bile e tla tlhotlheletsa ditiro tse di jaaka pelaelo, go se tshepe, keletso, lefufa, le kgobelelo kgatlhanong le batho ba ba diragatsang boloi. SAPC e dumela gore sediriswa sa molao sa kemisetso se ka, ka kgatelelo, laola tiro e e rileng e e ka se pakiweng, fa ka nako e le esi se otlhaya e se ka maikaelelo tiro eo yotlhe.

2.6 Taolo e ka nna le ditlamorago mo go rotloetseng ditatofatso le tirisodikgoka, tseo gantsi di ikaegileng mo lefufeng, kemokgatlanong, pelaelong, letshogong, le ditshebong. Ditiragalo tseo di ka tliša dipatlisiso tse di tlhotlha godimo. Tlamorago e kgolo ke gore pontsho eno e ka dira gore batho ba itseele molao mo matsogong, seo se tlišang koketsego ya bosenyi le pogiso ya batswasetlhabelo ba ba senang molato bao ba latofatswang ka go fosagala.

2.7 SAPC e tsibosa kgatlhanong le tiriso ya mareo a a rileng jaaka “mmolai wa muthi” le “tirisodikgoka ya boloi”. Ba tlhalosa gore polao ke polao, le gore tirisodikgoka ke seo e leng sona, ntle le go di taya maina ka go di amanya le muthi kgotsa boloi. SAPC ga e tshegetse ntlha ya gore boloi ka bo bona ke bosenyi, segolosegolo ka ntlha ya gore batho ba ba latofatswang ka bosenyi jo bo amanngwang le boloi ga ba ipolele gore ke baloi. Seno se ganetsana le baloi ba ba ipitsang jalo, bao ba tsayang tiragatso ya bona jaaka tumelo fa go bapiswa le yona e le tiro ya bosenyi.

2.8 SAPC e dira ditshitsinyo tse di mmalwa mo tlhagisong ya bona, tse di patagantsweng le lebaka la go di dira. Tlhagiso e tlhalosa gape merero e mokgatlho o leng kgatlhanong le yona, le seo kemokgatlanong eo e ikaegileng ka sona.

2.9 Mabapi le merero e SAPC e leng kgatlhanong le yona, tseno ke dintlha tse ba di gatelelang:

2.9.1 Sa ntlha, ba kgatlhanong le tiriso ya ditumelo tsa sedumedi kgotsa setso tse di ka ga bosenyi jo bo amang boloi. Ntlhakemo ya bona ke gore bodumedi le setso di se diriswe jaaka mabaka a go gakatsa kgotsa go fokotsa mo dikgetsing tse di mabapi le boloi. Ba baya ngangisano ya bona mo ntlheng ya gore batho ba ba latofatswang ka bosenyi jo bo amanang le boloi ga ba bontshe jaaka baloi. Ba khutlisa ka gore ditlolomolao tseo di tshwanetse go tsewa jaaka ditiro tsa tirisodikgoka kgotsa bosenyi. Ba dumela gore tiriso ya tshireletso ya tumelo ya setso e tla fokotsa bogolo jwa kotlhao mme e tla tlhotlheletsa go supana ka monwana.

2.9.2 Sa bobedi, ba ngangisana ka gore dikgotlatshekelo tsa setso di se samagane le dikgetsi tse di ka ga ditiragatso tse di kotsi. Ntlhakemo ya bona ke gore ditlolomolao tse di amanngwang le boloi di tshwanetse go batlisiswa ke baitseanape ba ba maleba le go sekasekwa go ya ka molao wa naga. Ba akanya gore dikgotlatshekelo tsa setso di dira jaaka “dikgotlatshekelo tse e seng tsa bosiamisi” e bile di tsewa jaaka mafelo a batho ba ba senang molato ba bonwang molato le go atlholwa ka setlhogo. SAPC e atlanegisa gore fa merero e e mabapi le ditlolomolao tse di amanngwang le boloi e tliswa fa pele ga dikgotlatshekelo tsa setso, ba tshwanetse go e romela go dikgotlatshekelo tsa molao.

2.10 SAPC e dira gape ditshitsinyo tse di latelang tse di tsepameng mo ditlhagisong tsa bona:

2.10.1 Sa ntlha, ba tshitsinya gore dingaka tsa setso di tshwanetse go nna le Khoutu ya Boitshwaro e e laolang boitshwaro jwa bona, “go rotloetsa tiro ya maikarabelo le boikarabelo.” Kemontlha ya bona ke gore Khoutu eno ga e a tshwanela go nna karolo ya molao, ka ntlha ya fa molao wa tlwaelo le melao e mengwe e setse e le teng.

2.10.2 Sa bobedi, ba tshitsinya gore go nne le tsereganyo e e seng ya molao, e leng mananeo a thuto a a diretsweng go fatlhosa setšhaba ka kakaretso ka ga matlhakore otlhe a boloi.

2.11 SAPC ga e a sekaseka dingwe tsa dipotso tse di boditsweng mo lokwalong la morero, segolosegolo merero mabapi le tlhaloso ya boloi le gore a tiragatso e tshwanetse go tlhaloswa.

2.12. Khomišene ya Tekatekano ya Bong (CGE) e dirile tlhagiso go SALRC ka ofisi ya bona ya palamente.¹⁰ CGE e tlhalosa gore e ntse e tsaya karolo mo mererong e e ka ga tirisodikgoka ya boloi sebaka se se leele, go simolola ka 1998 fa e ne e tshwere Khonferense ya Bosetšhaba ka ga Tirisodikgoka ya Boloi. Seno e ne e le tsibogelo go kopo mabapi le mokgwa o ponagalo e e umakilweng e amang ka go tlhoka tekatekano basadi, bana, digole, le batho ba ba tsofetseng. CGE e tseela gore tirisodikgoka ya boloi e gobelela bong jo bo rileng, le go lopa tsibogo e e ntshetsang pele le go sireletsa tekatekano ya bong. Seo se gatelelwang mo tlhagisong ya CGE ke ngangisano ya gore boloi ke tirisodikgoka e e ikaegileng mo bong, e bile fa go sekasekwa tirisodikgoka e e amanang le boloi, ntlha eno e tshwanetse go tsewa tsia.

2.13 Tlhagiso e samagana le merero e mmalwa, go akaretsa le eo e gatelelwang mo lokwalong la morero. E dirile gape dikatlanegiso ka ga seo se tshwanetsweng go elwa tlhoko fa go sekasekwa boloi le tirisodikgoka e e amanang le jona.

2.14 Mo ntlheng ya boloi jaaka tumelo, CGE e amogela kamogelo ya kgololosego ya bodumedi (karolo 15) le kgololosego ya tlhagisomaikutlo (karolo 16) mo Molaotheong, le tlhokego ya go naya batho ba ba diragatsang boloi jaaka tumelo ya bona tshireletso. Mabapi le seno, ba akanya gore bao ba dirang seno ba tshwanetse go tsewa tsia, fa fela go na le karologanyo e e maleba, go etswe tlhoko go nna teng ga ditumelo tse dingwe tse dikgolo le tlhokego ya go ntshetsa pele kutlwano mo setšhabeng.

2.15 Mo potsong ya gore a molao o tshwanetse go diriswa go samagana le tirisodikgoka e e amanang le boloi, CGE e dumela gore ga go a dirwa patlisiso le tshekatsheko tse di lekaneng go ka tlhomamisa ntle le pelaelo. Fela, ba tshitsinya gore go tlhatlhojwe ka botlalo tirisodikgoka e e amanang le boloi mo bokaong jwa tirisodikgoka e e ikaegileng ka boloi. E kete ba tshitsinya gore tsereganyo e ka nna ya loago kgotsa sepolotiki, mme ga ba tlhomamise gore ditseraganyo tsa semolao di ka tlhokega.

¹⁰ The comments from the CGE are authored by Ms Kamraj Anirudhra, Parliamentary Officer, Western Cape Office; the comments were received by the SALRC on 2 June 2014.

2.16 CGE e tlhagisa mangwe a mathata a a amanngwang le go nna le molao o o laolang boloi. Sa ntlha, ba ngangisana ka gore fa boloi bo dirwa bosenyi, go ka nna le dikgwetlho, jaaka go tlhagisa dipopi tsa bosenyi. Sa bobedi, e tlhagisa dikgwetlho tse di mabapi le go athola ditlolomolao tse di amanang le boloi. E ngangisana gore ga jaana batho ba ba otlhailweng ke badiragatsi ba tirisodikgoka ya boloi, fela eseng badirisitota ba “muthi” o o dirilweng go tswa mo dirweng tsa batho. Ba akanya gore molao o tshwanetse go otlhaya le badirisitota. Sa boraro, CGE e kगतलhanong le tiriso ka kakaretso ya tshireletso ya setso mo ditlolomolaong tse di amanang le boloi. Ba ngangisana ka gore go diriswa ga tshireletso eo go tshwanetse go tsamaelana le Molaotheo. Sa bone, CGE e ngangisana ka gore kगतलtshekelo e e tshwanetseng go nna le taolo ya go sekaseka dikgetsi tse di amanang le tirisodikgoka ya boloi e tshwanetse go nna Kगतलtshekelokgolo, e seng dikगतलtshekelo tse di potlana jaaka e le maemo ga jaana. Thomelo ya dikgetsi kwa Kगतलtshekelokgolong go tshwanetse go etwa pele ke botsereganyi jwa setso. Maitlomo a botsereganyi e tla nna go tlhatlhoba ditiragalo tse di mabapi le ditatofatso, ka kakanyo ya go rarabolola mathata a a leng teng a loago.

2.17 Mo ntlheng ya tlhaloso ya boloi, CGE ga e tlamele ka tlhaloso e e feleletseng, mme e tshitsinya gore tlhaloso e tshwanetse go farologanya magareng ga boloi jo bo siameng le jo bo bosula.

2.18 Mabapi le dingaka tsa setso, CGE e ngangisana ka gore ba tshwanetse go laolwa. Seno se tla laola tiriso ya dirwe tsa batho le bothole jo bongwe jo bo dirisitsweng mo ditlhareng tsa setso.

2.19 CGE e tlamela ka lenane la dikatlanegiso tseo e batlang gore SALRC e di ele tlhoko mo patlisisong tsa yona. Dikatlanegiso ke tse di latelang:

2.19.1 Gore Molao wa ga jaana wa Kगतलेलो ya Boloi o tshwanetse go fediswa. Seno ke ka ntlha ya gore ga o ise o nonofe mo go fokotseng tumelo mo bololing kgotsa tirisodikgokeng ya boloi.

2.19.2 E tsibosa kगतलhanong le tiriso ya mareo a a rileng, segolosegolo mo go tlhaloseng boloi. E tlhagisa gore pharologano e tshwanetse go dirwa magareng ga badumedi ba sele, dingaka tsa setso, le *busakatsi*. E

ngangisana ka la gore dipharologantsho tseno di botlhokwa, ka ntlha ya gore le fa badiragatsi botlhe ba dirisa dithata tsa motlholo, ba dira seno go fitlhelela “maikaelelo a pharologano ya motheo.”

2.19.3 E tshitsinya gape gore patlisiso e dirwe go tlhomamisa gore ditatofatso tsa boloi di emela pheketso ya banna mo basading. Maemo a loago a dirile CGE gore e dumele gore ditsereganyo tsa loago le sepolotiki di a tlhokega gore go samaganwe le mathata, go na le didiriswa tsa molao.

2.19.4 Ka ntlha ya mathata a loago ao a ka nnang motswedi wa tirisodikgoka e e amanngwang le boloi, e tshitsinya botsereganyi le tharabololo ya kgotlhang ka fa tlase ga kaelo ya boeteledipele jwa setso.

2.19.5 Ka kgolagano le katlanegiso e e fa godimo, CGE e tshitsinya gape gore go nne le phetogo ya boeteledipele jwa setso go netefatsa gore dibopego tsa setso di emelela bong le go ntshetsa pele tekatekano ya bong.

2.19.6 CGE e tshitsinya gore go nne le taolo ya dingaka tsa setso. Seno, e ngangisana ka gore, se tla netefatsa ditiro tsa tlanelo kgotsa ditiragatso di elwa tlhoko e bile ba thibelwa go dirisa dirwe tsa botho mo ditlhareng tsa setso. E tshitsinya gape gore tlhabololo ya letlhomeso la bolaodi e dirwe ka therisano le dingaka tsa setso, baeteledipele ba setso, maphata a a maleba a puso, le setšhaba ka bophara.

2.20 Ngaka Wallace o dirile tlhagiso ka boena, e e ikaegileng mo dithutong tse a di dirileng ka ga boloi mo Aforikaborwa.¹¹ Ke moithuti wa morago wa bongaka yo lefelo la patlisiso la gagwe le ikaegileng mo puisanong ka ga boloi mo Aforikaborwa. Ditlhagiso tsa gagwe di tsibogela dipotso tse di boditsweng mo lokwalong la morero, e bile di tla sekasekwa ka tatelano e di tlhagelelang ka yona mo tlhagisong ya gagwe.

¹¹ Dr Wallace is a post-doctoral fellow at the University of KwaZulu Natal and is a scholar of Comparative Religious Studies: Religion and Social Transformation. She is currently researching Witchcraft Discourses in South Africa. Her comments were received by the SALRC on 31 October 2014.

2.21 Mabapi le tthaloso ya boloi, Ngaka Wallace o gatelela kgwetlho mo go tlameleng ka tthaloso ya tiragatso e e nang le bokao jo bo farologaneng go baagi ba ba farologaneng. O bega gore le fa tota go na le bokao jo bo tshwanang magareng ga “boloi” le mareo a Senguni a a tthalosang tiragatso ya boloi, mathata ano a tthaloso a magolo ka ntlha ya phetogo ya maemo a loago, ikonomi le sepolotiki mo setšhabeng. O ngangisana ka gore tthaloso e e tlametsweng mo *Mpumalanga Witchcraft Bill* e ka tthaloswa ka mekgwa e e farologaneng.¹² O tsibosa gore go tthalosa lereo, go na le kotsi ya gore tthaloso eo e ka amanngwa le manaanetema a a tsepameng a sedumedi kgotsa sepolotiki, e bile e ka golagangwa le ditthaloso tse di farologaneng.

2.22 Mabapi le taolo ya tiragatso ya boloi, Ngaka Wallace o ngangisana ka gore mo nakong e e fetileng, taolo e paletswe ke go samagana le mathata a a amanngwang le tiragatso, mme e godisitse tirisodikgoka e e tlogetseng batswasetlhabelo ba sena ditlamelo tse ba ka di dirisang. O tthalosa gore boloi ke tiori ya ngwao e e ka se kgapelweng thoko. O ngangisana ka gore dikotsi tsa go laola boloi di feta dikunomolemo tse di tla tsamaisanang le go laola tiragatso. O ipotsa gore a molawana oo o ka kgonagala mabapi le thulaganyo ya boatlhodi, go lebeleletse ditekanyetso tse o lebaganeng le tsona ga jaana.

2.23 Mabapi le potso eo ka yona dintlha tsa tiragatso di tshwanetseng go thibelwa, o ngangisana ka gore jaaka fa tiragatso e tshegeditswe ke dintlha tsa sedumedi le setso, go ka se nne go ya ka Molaotheo go dira tiragatso tloamolao. Le fa a tthaloganyana gore sengwe le sengwe se dirilwe ka fa tlase ga go diragatsa tumelo kgotsa setso sa motho yoo ka maikaelelo a setho, o ngangisana ka gore go tla nna boima mo molaong go gatisa maikaelelo ao a setho.

2.24 Mabapi le potso ya gore a go na le dithefosano go taolo, Ngaka Wallace o ngangisana ka gore molao jaaka o ntse ga jaana o thibela ditiro tse di rileng tsa batho, jaaka polao, tthaselo, le tshenyo ya leina; e bile tseo di tshwanetse go laolwa. O ngangisana ka gore ga go dithefosano dipe tsa go laola boloi.

¹² The Mpumalanga Witchcraft Bill of 2007 states that “Witchcraft means the secret use of muti, zombies, sells, spirits, magic powders, water, mixtures, etc, by any person with the purpose of causing harm, damage, sickness to others or their property.”

2.25 Ngaka Wallace o dira ntlha ya gore ditiragatso tsa boloi di seka tsa tseelwa fela gore di bosula, ka ntlha ya gore tiragatso e ka dirwa ka maitlhomong a a siameng.

2.26 Kwa bokhutlong, o tlhalosa tiragatso ya boloi mo gare ga lephata la Badumedi Basele, le go ngangisana gore ga se Badumedi Basele botlhe ba ba diragatsang boloi. O kaile gore maemo ano a tla dira gore go nne thata go tlotlholola Badumedi Basele mo molaong o o laolang boloi.

2.27 Senthara ya Molao ya Basadi (WLC) e dirile tlhagiso ka ntlha ya boitseanape jwa bona mo mererong e e amang basadi.¹³ WLC ke mokgatlo o eseng wa puso (NGO) o o samaganang le merero e e amang basadi, e bile o dirile diporojeke tse di lebaganeng le ditlamorago tsa molao wa tlwaelo wa seAforika mo basading le baneng. Ka tsepamo, e lebeletse ditiragatso tsa setso tseo di leng kotsi mo basading, jaaka go tsongwa ga baloi.

2.28 Mo tirong ya yona, e amogela ditshwanelo tsotlhe tse di mo Molaotheo tse di letlang baagi go diragatsa ditso tsa bona. E amogela gape gore tshwanelo ya go diragatsa setso sa motho e tshwanetse go amogelwa go tsamaelana le Molaotheo, le gore tiragatso eo ga e a tshwanela go gatakaka tshwanelo ya tekatekano magareng ga banna le basadi.

2.29 Tlhagiso ya WLC e bolela ka ga maitemogelo a yona ka tsomo ya baloi mo baaging ba ba dirang le bona, le ditlamorago tse dikgolo tsa basadi – segolosegolo basadi ba bagolo – bao ba latofatswang ka go diragatsa boloi. E tlhalosa ka ga ditlamorago tse di itemogelwang ke basadi bao “go dupelelwang” gore ke baloi. Batswasetlhabelo ba ditatofatso tseo tsa boloi gantsi ba a fiswa, kgobotletswa ka matlapa, kgotsa ba lobelwa dintshi.

2.30 Kwa bokhutlong, ditshwaelo di amogetswe go tswa go Tirelo ya Sepodisi ya Aforikaborwa (SAPS), ka tsepamo go tswa go lekala la Ditiro tsa Bosenyi mo gare ga SAPS.¹⁴ Tlhagiso e amogela dintlha tse pedi tse di farologaneng tse di tlhagisitsweng mo lokwalong la morero, e leng, ntlha ya gore thibelo kgatlhanong le boloi e gatakaka

¹³ Comments from the Women’s Legal Centre are authored by Ms Hoodah Abrahams-Fayker and were received by the SALRC on 31 October 2014.

¹⁴ Comments from the South African Police Service are authored by Lieutenant General JT Molefe, Executive Legal Officer, and were received by the SALRC on 8 April 2015.

ditshwanelo tse di sireleditsweng semolaotheo mo letlhakoreng le lengwe, le ntlha e nngwe e e tshitsinyang phediso ya Molao le kemisetso ya ona ka Molao o mošwa.

2.31 SAPS e akanya gore jaaka fa melao e sa nna le tshusumetso epe mo go laoleng kgotsa go sekasekeng boloi le tirisodikgoka e e amanang, Molao o tshwanetse go fediswa. Ga e tshegetse kemisetso ya Molao ka molawana o mongwe. E dumela gore tirisodikgoka e e amanngwang le boloi e tshwanetse go sekasekwa ka tiriso ya mlao o o leng teng, mo lebakeng leno molawana o o leng teng le molao wa tiwaelo. Ngangisano ya yona e itshetlegile ka gore boloi le *muthi* ke tsona mabaka a ditlolomolao, le gore mabaka ao a tshwanetse go tsewa tsia fa go sekasekwa katlholo.

KGAOLO 3

TSHOBOKANYO YA TIRAGATSO YA BOLOI

A Matseno

3.1 Boloji bo ntse bo diragatswa mo baaging ba ba farologaneng go ralala lefatshe. Mo metlheng ya kgale, tiragatso e ne e amanngwa le bosula, e bile e ne e tsewa jaaka kemokgatlanong le Modimo kgotsa go se amogelwe ga tumelo ya Sekeresete.

3.2 Karolo eno ya lokwalo e tla sekaseka bokao jwa hisetori jwa tiragatso, go tthalosa ka moo boloi bo neng bo le ka teng mo malobeng le seo se setseng go tswa mo tiragatsong eo mo lefatsheng la segompiano. Seno se tla akaretsa le tshekatsheko ya ditshimologo tsa boloi kwa Yuropa le Aforika go ngoka kgatlhegelo go merero e e masisi ya ditiragatso. Ntlhakemo ya segompiano ya boloi e tla tlhatlhojwa go farologanya dintlha tse di mathata tsa tiragatso. Mathata a a aparetseng tthaloso ya boloi a tla sekasekwa, gore go tlhomamiswe mokgwa o o maleba wa go tthalosa tiragatso go tsamaelana le dikgwetlho tse di kailweng ke Badumedi Basele. Tlhatlhobo eno ya merero e e maleba e e amanang le boloi e botlhokwa, ka ntlha ya fa e tla kaela Khomišene ka seo se tshwanetseng go tsewa tsia mo go tlahabololeng mekgwa e mengwe ya go samagana le dikgwetlho tse di nnang di le teng – dingwagangwaga morago ga go tsenngwa tirisong ga melao ya sekoloniale.

B Bokao jwa hisetori jwa tiragatso ya boloi

1 Ditshimologo tsa boloi kwa Yuropa le Aforika

3.3 Karolo eno e tlamela ka puisano ka ga bokao jwa hisetori jwa boloi. E tla tthalosa ditshimologo tsa boloi go ya ka ponalo ya seYuropa le seAmerika, le go bapisa seo le ditshimologo tsa boloi go ya ka ponalo ya seAforika le seAforikaborwa. Le fa tsepamiso ya bokao ya puisano e tla tlhongwa segolo go Aforikaborwa, go botlhokwa go tthaloganya

bokao jwa sekontinente le lefatshe ka kakaretso jwa ditumelo tsa boloi le ditiragatso, jaaka fa bokao ka bophara bo ka tlisa lesedi mo bokaong jwa selegae.

3.4 Go tshwanetse go tsholwa mo megopolong kwa tshimologong gore puisano e ka se tsepamiswe mo ditiragatsong le ditumelong tsa boloi jaaka ponagalo ya ontholoji ya boitebo, mme e leka go tthagisa bokao jwa ditumelo le ditiragalo tseno ka tsela ya bonetetshi le kwa ntle ga boitebo. Fela, ponagalo ya anteropoloji e e bopang puisano eno e tletse ka dipharologantsho le dithaarano tse di amang ka tlhamalalo kgotsa e seng ka tlhamalalo mokgwa o dintlha tsa “bonetetshi” le “kwa ntle ga boitebo” di tshwanetseng go tlhologanngwa ka teng. Ga go mo bolekanetsong jwa puisano eno go sekaseka ka botlalo dipharologantsho le ditharaano tsotlhe tseno.

3.5 Setlhogo se tla sekasekwa go ya ka mekgwa e mebedi, e leng mokgwa wa tshwantshanyo wa magareng ga ditso le mokgwa o o tseneletseng wa etenokerafi. Mokgwa wa ntlha o tlamela ka bokao jo bo bulegileng jwa boloi, ka go golaganya maemo a selegae le dikemo tsa kontinente le lefatshe ka bophara. Tshwantshanyo ya magareng ga ditso e ikaegile mo go supeng le go tlhaloseng tse di tshwanang le dipharologano mabapi le ditumelo le ditiragatso magareng le mo gare ga ditšhaba le ditso tse di farologaneng. Ka kganetsano, mokgwa o o tseneletseng wa etenokerafi o tlhabolola kgotsa gatisa tshedimosetso go tswa mo gare ga setlhophapha se se rileng sa setso kgotsa setšhaba.

a) Maitshetlego go thuto ya boloi: dintlha tse di botlhokwa tse di tshwanetseng go tsewa tsia

3.6 Thuto ya seanteropoloji ya boloi kgale e amantswe le thuto ya seanteropoloji ya bodumedi, seo se lerileng ntlha ya gore dithuto tsa etenokerafi tsa boloi di lekile go baya ponagalo eno mo teng ga ditumelo tsa “setso” le sedumedi.”¹⁵ Dikwalo tsa Anteropoloji ka ga boloi di kgaogantswe mo nakong e e fetileng ka dikolo tse pedi. Sa ntlha se lateletse mokgwa wa tlwaelo wa etenokerafi, o o tsepamisitsweng mo popegong le mo go direng ga

¹⁵ Petrus (2006); Evans-Pritchard (1937); Leslie (1960); Middleton and Winter (1963); Mbiti (1970); and Pauw (1975).

ditumelo le ditiragatso tsa boloi jaaka dikarolo tsa dipopego tsa loago tsa setšhaba. Seno e ne e le sekolo se se maatla mo dithutong tsa pele tsa boloi, ka tsepamo ka paka ya sekoloni, ka ntlha ya fa baanteropoloji go tswa Borithane le dithata tse dingwe tsa sekoloni tsa seYuropana di ne di dira mo gare ga ditso tsa tlhologo tsa Aforika. Sekolo sa bobedi, se se nnileng teng morago ga go ya bokhutlong ga bokoloniale le tshimologo ya bokao jwa morago ga bokoloniale, ba sutiseditse tsepamiso go karolo e e tsewang ke boloi mo ditšhabeng tsa seAforika jaaka mokgwa wa go ikamanya le diphetogo mo lefatsheng ka bophara tsa sepolotiki, ikonomi le loago tse di diragetseng ka ntlha ya tloso ya bokoloniale.

3.7 Boloi bo akantswe go ya ka ditlamorago tsa jona mo dikamanong tsa thata mo dikemong tsa sepolotiki, ikonomi, loago, le setso. Bo sekasekilwe gape go ya ka mekgwa e bo neng bo diriswa le go diragatswa jaaka tsibogelo ke batho ba Aforika go ditopo le dikgatelelo tsa morago ga sekoloniale le segompiano.¹⁶ Dithuto tse di dirilweng mo bogautshwaneng tsa boloi, tseo di beilweng mo sekolong sa morago ga bokoloniale, di gatelela tshameko e e marara magareng ga ditumelo le ditiragatso tsa selegae le thata ya puso, segolosegolo mo Aforika. Mabapi le seno, baithuti ba kgatlhwa segolo ke kamano magareng ga ditumelo tsa selegae, mo letlhakoreng le lengwe, le mo letlhakoreng le lengwe, dieijensi tsa puso le ditheo jaaka (sekai) dibopego tsa kgatelelo ya molao le dikgotlhatshekelo.

b) Ditshimologo tsa boloi: diponagalo le ditlhaloganyo

i) Boloi jwa Yuropa

3.8 Potso ya gore boloi bo simologile kae ga e na karabo e e bonolo. Mabaka a mantsintsi a tlhotlheletsa diponagalo le ditlhaloso tsa ditshimologo tsa boloi – a mantsi gore a ka tlhaloswa ka botlalo fano. Go ya ka ponagalo ya seanteropoloji, tshimologo ya boloi ke ntlha e ka gongwe e nang le ditlhaloso tse dintsi jaaka go na le ditso mo Lefatsheng. Mo godimo ga moo, yona ntlha ya boloi e farafarwe ke ditharaano. Tumelo mo dithateng tsa motlholo le ditiragalo tse di amanang le yona ke ya bogologolo fela jaaka batho ka bobona. Batho, jaaka e le batho ba matlhakoremantsi a a raraaneng, kgale ba na

¹⁶ Comaroff and Comaroff (1993); Geschiere (1997); Bond and Ciekawy (2001) and Niehaus (2001).

le letlhakore la semowa mo go nneng teng ga bona, seo se tlhotlheleditseng go batla bokao jo bo tseneletseng mo bophelong.

3.9 Mo ditsong tsa pele, patlo eno ya bokao jo bo tseneletseng le jwa semowa e tlhodilwe mo go nneng teng ga ditumelo mo ditheong tse di nnileng teng mo lefatsheng la tlhologo. Moragonyana, ditumelo tseno di ne tsa simolola go rulagana, le batho ba simolola go tlabolola ditsamaiso tsa bodumedi mabapi le ditumelo tsa bona. Mo mabakeng a le mantsi, ditumelo tseno di ikaegile thata mo ditheong tsa motlholo tseo di tsayang dibopego tse dintsi tse di farologaneng, gape go ne go dumelwa gore di tlhotlheletsa matshelo a batho ka mekgwa e mentsi.

3.10 Le fa ditumelo le ditiragatso tseno di fetogile mo tsamaong ya nako, batho ba buseditse tumelo mo dithateng tsa motlholo le/kgotsa bommagalai, ka mekgwa mongwe le mongwe o di ka o tsayang. Ntlha e e botlhokwa e e tshwanetseng go elwa tlhoko ke boleng jwa dikatholo tsa gore ditumelo le ditiragatso tsa molemo kgotsa bosula di tlhotlheletswa ke bokao jwa setso sa magareng. Ka mantswe a mangwe, boetenosenteriki jwa tlhologo jwa batho bo kaya gore mo go tsamaeng ga paka ya nako le mo mafelong a a farologaneng, setso sengwe le sengwe se atlhotse ka go sa siamang ditumelo le ditiragatso tsa ba bangwe, fa bo ntse bo lekanyetsa ditumelo le ditiragatso tsa bona ka mokwa o o siameng. Mabapi le ditlamorago, fa re lebelela dikao tse di tshwanang le ditlhabologo tsa segologolo tsa Maroma le Magerika a Bakeresete ba pele, mmogo le Maegepeto, mekgatlho eno ya polisetetiki e ne e na le ditumelo le ditiragatso tse batho ba bantsi gompiano ba ka di amanyang le bookhalete, Bodumedi bosele, kgotsa le jona Bosatane. Mo lefatsheng la segompiano, thadisasemorafe ya bodumedi ga e a ya tlase. Go na le dikai tse dintsi tsa ditumelo le ditiragatso tse di sa tseyeng sebopego sa tsela ya sedumedi e e kgolo kgotsa e e tlwaelegileng, le tseo di tsewang di le bosula, le – mo mabakeng a a feteletseng – di tlositswe ka tirisodikgoko.

3.11 Ditshimologo tse di marara tsa boloi tse di fitlhelwang mo bokaong jo bo tlhalositsweng fa godimo. Mo gare ga mekgatlho ya bogologolo le ditlhabologo, le fa go ne go na le ditumelo e kgolo ya ditheo tsa thata ya motlholo, go ne go sena lereo la “moloji” kgotsa “boloi”. Mareo ano a simologile kwa Yuropa, le go fitlha mo Aforika le kwa ditšhabeng tse dingwe tsa Bophirima tse eseng tsa Yuropa ka bokoloniale. Se se latelang

ke nopo go tswa go *Online Etymology Dictionary*, e e tshalosang bokao le etimoloji ya lereo “moloji”:

[Go tswa go] Tlhaloso ya kgale ya Sesimane [bokao] “mmagalai wa mosadi, moloji”, mo tirisong ya morago segolosegolo “mosadi o tshwanetse go dirisana le satane kgotsa mewa e e maswe le ka tirasonommogo le bona go kgona go dira ditiro tsa motlholo,” feme. Ya wika ya Kgale ya Seesimane [bokao] “moloji, Moloji wa monna yo o diragatsang boloi kgotsa bommagalai”...

Mo phetolelong ya a c.1250 ya [buka ya beibele ya] “Ekesoda” baloi ba dirisitswe go kaya babelegisi ba Maegepeto bao ba sireletsang masea a basimane a Bahebera...Temosi e e atolotsweng ya “mosadi yo o tsofetseng, maswe, wa maitsholo a a maswe le botlhole” e tswa go 15c tsa pele...Ngaka ya Moloji e [dirisitswe] go simolola ka 1718; diriswa go bommagalai ba Maforika go simolola ka 1836.¹⁷

3.12 Go tswa mo tshedimosetsong e e fa godimo, re ka khutlisa ka gore mareo “wika” le “moloji” a na le dikamano tse di amantseng batho bao go neng go dumelwa gore ba na le dithata tsa go tshwara dithata tsa motlholo tsa maikaelelo a a maswe. Seno se bontsha ditshimologo tsa bothata jwa ga jaana jo badiragatsi ba Wika ya segompiano ba lebaganeng nabo. Leina Bawika le diriswa go tlhalosa le tumelo ya bona e na le historiyi ya kgale ya go amanngwa le ditiragatso tse di bosula, historiyi e e simolotsweng kwa Yuropa mme ya anama kwa mafelong mangwe. Go tlhagelela ga lereo “boloi” go diragetse ka nako e le nngwe le seno go tlhalosa ditiragatso le ditumelo tse di neng di tlhotlheleditswe ke batho ba ba amanang le ditheo tsa motlholo go dira ditiro tse di bosula. Ke ka moo, boloi ka moo bo tlhalogantsweng ka teng bo ne bo diriswa mo bokaong jwa Seaforika ke bakoloniale le barongwa, bao ba lerileng tlhaloganyo ya bona ya boloi jaaka “tirisanommogo le matimone le Satane” go ditumelo le ditiragatso tse ba di itemogetseng mo baaging ba tlholego.

3.13 Megopolo ya pele ya Mayuropa le Maamerika a koloniale ka ga boloi e leka go bo tlhalosa mo bokaong jwa Bokeresete jwa Puritane, moo e leng gore boloi bo ne bo tsewa jaaka “thata ya ga diabolose”.¹⁸ Go tlhalositswe mo letlhomesong la ditumelo tsa Sekeresete sa *Judaeo-Christian* mabapi le molemo le bosula. Ka jalo, go diragatsa boloi e

¹⁷ Online Etymology Dictionary (OED 2015)

¹⁸ Parrinder (1963) at 11.

ne e le go dira kgolagano le Satane, gore modiragatsi a kgone go fitlhelela taolo mo godimo ga dithata tsa motlholo le ditheo ka thefosano ya go abelana ka mowa wa gagwe. Seno se ne sa dira gore boloi bo lekannngwe le Bosatane le ditiratso tse di amanang. Bao ba neng ba tsewa jaaka baloi ba ne ba latofatswa ka, le go otlhaelwa, go tihanola thulaganyo ya maitsholo a Sekeresete. Ditlamorago e ne ya nna tiragatso ya boloi e e neng ya anama mo Yuropa le morago go ralala Amerika ya koloniale, e e neng e faraferwe ke dipatlo tsa baloi, ditshotlakako, le dipolao tse di setlhogo tsa bao ba neng ba belaelwa gore ke baloi. Ditiro tseno tsotlhe di ne di tlhotlheleditswe ke sekwalwa sa ga Kramer le Sprenger, *Malleus Maleficarum*.¹⁹

3.14 Paka ya dingwa tsa magareng e bidiwa gantsi “Dingwaga tse di Masisi” ka ntlha ya fa e ne e faraferwe ke tumelwana le letshogo, tseo di neng di tshwerwe ke Kereke jaaka bothati jo bogolo jwa paka eo. Mme fela, ka Tsosoloso le Phatlhoso, tumelwana ya emisetswa ke lebaka le kitso ya bonetetshi. Boloi bo amantswe le tumelwana e e kwa morago e e seng ya tswelolepele e e neng e ganetsa ka tlhamalalo maikaelelo a a tlhagelelang a ntšhwafatso le tswelolepele. Ka fa tlase ga tshusumetso ya kakanyo ya Phatlhoso, bakoloniale ba Yuropa bao ba itemogetseng ditso, ditumelo, le ditiragatso tsa ditlhopho tsa tlhologo tsa Maaforika ba na le mogopolo wa seetenosentiriki wa gore ditumelo le ditiragatso tsa ditso tsa Aforika di ne di tshwana le ditumelo tsa kgale tsa Seyurope mo boloi. Mmogo le tshusumetso ya barongwa ba Sekeresete, bao ka bonako ba fetotseng ditumelo tsa tlhologo tsa Seaforika tsa botimone, kamanyo ya ditumelo tseo le bosula e lerile tiriso ya lereo “boloi”, le bokao jotlhe jwa tlhologo jwa lona, go baagi ba Maaforika. Tsamaiso eno e ne ya gatelelwa fa bakoloniale ba ithuta gore Maaforika a mantsi a na le tumelo e e rileng ka batho ba ba kgonang go tshwara dithata tsa motlholo – tumelo e e tshwanang le e e theileng ditumelo tsa boloi tsa Yuropa wa paka ya dingwaga tsa magareng.

3.15 Mo lefatsheng la sešweng, Wika e tsere bokao jo bo tsepameng go badiragatsi jwa yona, bao ba ikaelelang go dirolola dikgobeletso le megopolo kgatlanong le thulaganyo ya bona ya tumelo. Stein le Stein ba tlhalosa Wika jaaka “bodumedi jwa Tumelo Esele ya Sešweng, se se tlhalosang gore e tsewa jaaka tsosoloso ya ditiragatso tsa sedumedi tsa

¹⁹ *The Witch's Hammer*, published in 1487.

Bakeresete ba pele”.²⁰ Mokgatlho wa sešweng wa Wika o simolotse ka dingwaga tsa 1950, ka tlhotlheletso ya moanteropoloji Gerald Gardner, yo o ngangisaneng ka gore kwa Borithane, seo se neng se tsewa jaaka boloi e ne e le tumelo ya pele ya Sekeresete. Morago ga go bona setlhopha sa baloi (baWika), Gardner o ne a kopana le bona a ba a nna Moloi le ena. O dumetse gore setlhopha seo e ne e le sengwe sa masalela a bofelo a tumelo ya bogologolo.²¹

3.16 Bawika ba ganetsana ka gore tumelo ya bona ga e amane ka gope le kobamelo ya ga satane kgotsa Bosatane. Ga ba dirise bommagalai mabapi le maitlhommo a bosula, mme ba buelela ka kganetso – gore mmagalai o tshwanetse go dirisetswa fela tshiamo. Wika e “e golagane ka tumalano le tlhago” le go tsepama mo go seo se bidiwang animisimi, tumelo ya gore maatla kgotsa thata e teng mo sengweng le sengweng.²² Ka mokgwa oo, badiragatsi ba dirisa tlwaelomediro e e akaretsang mmimo, go bina, popo ya tshwantshokgopolo, le didiriswa go tshwara le go laola dithata tsa boanimisimi. Maikaelelo a mmagalai oo “gantsi a diragatswa le gore [o] ikaeletse go thusa mo dikgwetlhong tsa letsatsi le letsatsi jaaka dikamano, maphelo, tshireletso, tšhelete le tiro”.²³

3.17 Wika e teng lefatshe ka bophara, segolosegolo kwa Yuropa, Amerika Bokone, le Aforikaborwa. Mo Aforikaborwa ke tumelo e e sa tlwaelegang ka ntlha ya fa e wela kwa ntle ga ditumelo tse di tumileng tse dikgolo. Bontsi jwa balatedi ba tsaya Wika jaaka tumelo ya nakwana e e welang sentle ka fa tlase ga bokao le dikamego tsa morago ga segompieno. E kgatlhegelwa gantsi ke basadi ka ntlha ya “go tlhokega ga ditumelo le dikgethololo tsa bong ka kakaretso” mo go yona.²⁴ Mme fela, ntle le kgolo ya go itsagala ga Wika le kamogelo semmuso ga yona mo mafelong a mangwe, badiragatsi ba santse ba tswela go tsholwa makgwakgwa.

3.18 Bothata jo Bawika ba lebaganeng najo bo gabedi. Sa ntlha, ba tshwanetse go samagana le letlotlo la kgale la hisitori la go amanngwa le “boloit” (*lit. wicca-craft*) le ditiragatso tse di bosula, jaaka di tlhalositswe fa godimo. Bawika ba bantsi ba rata go ipitsa baloi, ka ntlha ya fa lereo la pele le na le bokao le kamanyo e e farologaneng mme e le

²⁰ Stein and Stein (2011) at 147.

²¹ Ibid at 242.

²² Ibid at 147, 242

²³ Ibid at 147.

²⁴ Ibid at 243.

botlhokwa. Mo go bona, 'moloji' e ne e le lereo le le sa diriswang ka tolamo go badumedi basele, dingaka le batho ba ba diragaditseng setso sa nako ya bogologolo sa bommagalai. Go ipitsa baloi go tsewa jaaka go busetsa lereo leo le go gatelela ngwao ya bona.²⁵

3.19 Sa bobedi, Bawika ba tshwanetse gape go lebagana le kgoaganano e e dirwang ke batho bangwe ba ba senang tshedimosetso magareng ga Bowika le Bosatane. Kamanyo eno e ka nna ka ntlha ya ditshwano tse di gopolwang magareng ga dingwe tsa ditiragatso tsa Bowika le Bosatane. Go ya ka Stein le Stein, "Tiriso ya mmagalai mo Bosataneng e bontsha ka mokgwa mongwe ditiragatso tsa mmagalai tsa Bowika. Mme fela, Badumedi ba Bosatane ba akanya gore Bawika ga ba na nnete ka ntlha ya fa ba lekanyetsa mmagalai wa bona go ditiriso tse di siameng."²⁶ Ke ka moo, le fa ditiragatso tse di rileng di ka tshwana, mabaka kgotsa maitlomo a a tshageditseng ditiragalo tseo a farologanya Bowika mo Bosataneng. Mme fela, ntle le kitso ya ka fa gare ya dithulaganyo tse tsa bodumedi ka bobedi, batho kwa ntle ba na le go di thulanya ka bobedi le di tsaya jaaka e kete di a tshwana. Ke ka moo Bawika ba lebaganang le dikgwetlho kgapetsakgapetsa mo go susumetseng setšhaba ka bophara gore ga ba amege mo ditiragatsong tse di bosula. Ntlha eno e na le go dira Bawika gore ba kgopisege bonolo mabapi le dikgobebelelo tse di bonwang le tsholo e e sa lolamang kgatlhanong le bona.

ii) **Boloi jwa Seaforika**

3.20 Ditumelo le ditiragatso tse di amanngwang le bommagalai le motlholo di nnile teng mo setšhabeng sa Maforika mo masikeng. Seno se akaretsa ditumelo le ditiragatso tse di amanngwang le tiriso ya bommagalai le motlholo go tlhagisetsa batho ba bangwe kotsi. Mme fela, lereo "boloi" ka gongwe le simolotse go diriswa ka ntlha ya tshusumetso ya koloniale.

3.21 Jaaka go sekasekilwe fa godimo, mareo "moloji", "boloi" le "ngaka ya moloji" a simologile mo Seesimaneng sa Kgale, le go tsaya bokao jo bo rileng mo bokaong jwa Yuropa. Mabapi le bokoloniale, mareo ano le bokao jwa ona jwa Seyuroopa a buseditsewe

²⁵ Ibid at 243.

²⁶ Ibid at 226.

go bokao jwa Seaforika, ka kelotlhoko ya bakoloniale ba Yuropa ya ditumelo le ditiragatso tsa setšhaba sa tlhologo sa Seaforika. Se se bakileng mathata a semolao le a mangwe a tlhaloso ya tiriso ya mareo a Seesimane go kaya ditumelo le ditiragatso tsa tlhologo tsa Seaforika.

3.22 Ka moo, mathata a ga jaana a go akanya ka ga se se bidiwang “boloi” a bonwe go tswa mo koloniale ya segologolo (Seesimane) ditlhaloso le dikakanyo. Le fa go sena mokgwa o o sa tseyeng letlhakore le wa bonetetshi wa go tlhatlhoba ditumelo le ditiragatso tsa motlholo tsa Seaforika jaaka go kailwe, dikwalo tsa anteropoloji di abelana ka tlhaloso ya seetenokerafi le maareng ga ditso ya ditumelo le ditiragatso. Dikwalo tseno di thusa go sedimosa ka ga ka moo mekgwa eo e tlhalogannngwang mo bokaong jwa Aforikaborwa.

3.23 Moribolodi yo o itsegeng wa dithuto tsa boloi mo Aforika e ne e le Evans-Pritchard, yo tiro ya gagwe e e nang le tlhotlheletso e kgolo e neng e le tlhaloso ya boloi magareng ga Maazande a kwa Sudane. Tiro ya ga Evans-Pritchard e tlhotlheletse ka tshika e e latetseng ya baanteropoloji ba Maaforika, ba ba thusitseng go tlhoma dithuto tsa boloi mo patlisisong ya anteropoloji. Bothata jwa go dirisa mareo a Seyurope le dikakanyo tsa bokao jwa Seaforika bo sedimogile malobanyana, jaaka fa dikakanyo tsa baithuti ka ga “boloi” di ne di thulana – segolo ka ntlha ya bokao jo bo farologanang jwa setso, jo bo kaetseng dikakanyo tse di farologaneng. Evans-Pritchard, jaaka sekai, o fitlhetse gore Maazande ba farologanya magareng ga seo a se tsayang jaaka boloi le tiriso ya ditlhare. Le fa ka bobedi di na le karolo mo bololing ka kakaretso, pharologanyo e ne e le gore le fa boloi bo ne bo nwa jaaka boswa mo mothong ka esi, tiriso ya ditlhare e ne e se jalo. Boloi bo ne bo tseelwa gore bo tswa mo mpeng ya motho, bo tlhodilwe ke “sere sa boloi” se se amogetsweng jaaka boswa go tswa mo tshikatshikeng. E ne e le sere seno se se neng se naya moloji thata ya gagwe. Thata e ne e le segolo ya bosaekhikhi ka tlhologo, le go akaretsa bokgoni jwa go “ja mowa” wa motswasetlhabelo.²⁷ Tiriso ya ditlhare, ka kganetso, e ne e laolwa ke dilo tsa kwa ntle le go diragatswa. E ne e le bogolo tiro e e akantsweng e e akaretsang tiriso le tshwaro ya dire tsa tlhologo, jaaka ditlhare kgotsa botlhole, tseo di neng di amangwa gantsi le tiriso ya kobamelo le boloi. Jaaka fa Evans-Pritchard a tlhalositse:

²⁷ Evans-Pritchard (1937); Parrinder (1963) at 133.

Baazande ba dumela gore batho ba bangwe ke baloi e bile ba ka ba gobatsa mabapi le boleng jo bo bonwang jaaka boswa. Moloji ga a dire tirelo epe, ga a neelele ope, e bile ga a tshole ditlhare. Tiro ya boloi ke tiro ya bosaekhiki. Ba [Baazande] dumela gore badirisi ba ditlhare b aka ba lwatsa ka go dira ditirelo tsa bommagalai ka ditlhare. Baazande ba farologanya ka tlhamalalo magareng ga baloi le badirisi ba ditlhare.²⁸

3.24 Go tswa mo tlhalosong e e fa godimo, motho o ka gakanngwa ke tiriso ya mareo. Mo bokaong jwa tlhaloso ya ga Evans-Pritchard, lereo “boloi” le na le bokao jo bontsi. Ke lereo la kakaretso le le kayang ka bobedi tiro ya bosaekhiki ya go jewa ga mowa mmogo le go tlhagisetsa batho kotsi ka tiriso ya ditlhare. Mme fela, go ya ka tlhaloso ya ga Evans-Pritchard ka boena, Baazande ba farologanya magareng ga Moloji le modirisi wa ditlhare. Ke ka moo, tiriso ya lereo “boloi” ka kakaretso e fosagetseng, ka ntlha ya fa e sa neelane ka pharologano e e tlhapileng.

3.25 Reynolds o lemogile mathata a a iponetsweng mo lereong mo tirisong ya “boloi” kgotsa “moloji” fa a tshwantshanya bokao jwa mareo a Seesimane le a diteme tsa selegae magareng ga Barotse ba Bokone jwa Rhodesia pele (ga jaana ke Zambia).²⁹ Go ya ka Reynolds:

Lereo moloji [pl. baloi] le fetolelwa ka tlwaelo...jaaka “moloji”. Seno se a timetsa, ka ntlha ya mareo a diteme tsa selegae a akaretsa ka bobedi “moloji” le “modirisi wa ditlhare”. Ka bobedi go dumelwa gore a na le bokgono jwa go utlwise ba bangwe botlhoko ka tiriso ya bommagalai mme, le fa la pele le na le maatla a a bonweng ka boswa a bosula...la bofelo le dirisa dithata tse le di fitlheletseng, neelelo, tirelo kgotsa ditlhare...³⁰

3.26 Kwa Borweng jwa Rhodesia jwa pele (e ga jaana e leng Zimbabwe), Crawford o fitlhetse bokao jo bo farologaneng go le gonnye jwa boloi magareng ga Bashona. Go ya ka Crawford, “Tumelo mo boloing ke maiteko a motho a go tlhalosa le go tlhaloganya dithata tse di setlhogo tsa tlhago le bomadimabe jwa botshelo. Ka tebo ya ntlha pharologantsho eno magareng ga boloi le tiriso ya ditlhare ga e diragatswe mo tumelong ya Bashona...”³¹ Bashona ba akanya gore baloi ba kgona go dira ka bobedi boloi jwa saekhiki le boloi ka

²⁸ Evans-Pritchard (1937) at 21.

²⁹ Reynolds (1963) at 14.

³⁰ Reynolds (1963) at 14.

³¹ Crawford (1967) at 73.

ditlhare. Mme fela, Bashona ba farologanya magareng ga Moloi wa “nnete” le baloi ba bangwe ba ba farologaneng: “Ke fela moloi “wa nnete” a ka kgonang ditiro tsa saekhiki... [e bile o tlhaloswa jaaka]...motho yo o tsenweng ke mowa o o bosula wa badimo (mudzimu) kgotsa mowa o o bosula...o o tserweng go tswa kwa ntle ga sedikwe sa lelapa (*shave spirit*)”.³² Go ya ka Crawford, ntlhakemo ya Bashona e farologana le e e tlhalositsweng ke Middleton le Winter, bao ba ngangisaneng gore le fa “boloi” bo tlhalosa bomadimabe jo bo akareditsweng, “tiriso ya ditlhare” e tlhalosa bomadimabe jo bo tsepameng.³³ Crawford o tlhalositse gore Bashona ba ne ba dumela gore boloi bo tlhotse ka bobedi bomadimabe jo bo akaretsang le jo bo tsepameng, ke ka moo ba senang kakanyo ka ga tiriso ya boloi.³⁴ Batho ba ba lekileng go utlwiswa ba bangwe botlhoko ka tiriso ya ditlhare ba ne ba sa tswewe jaaka baloiba “nnete”, go sa tshwane le bao go neng go gopolwa gore ba na le bokgoni jwa saekhiki.

3.27 Kwa Borweng jwa Aforika, baanteropoloji ba fitlhetse gape ditlhaloso tse di farologanang tsa seo ba se bitsang gore ke boloi mo ditlhopheng tse di farologaneng. Kwa Bechuanaland jwa pele, Schapera o dirile pharologantsho magareng ga baloi ba bosigo le badirisi ba ditlhare ba motshegare, seo se tshwanang le se se fitlhetsweng magareng ga Maazande.³⁵ Ashton o farologantse gape magareng ga baloi le badirisi ba ditlhare mo Basutong – le fa mo go bona, baloi ba ne ba tshosa ka mokgwa o o kgethegileng ka ntlha ya tumelo ya gore ba ne ba kgona go tshwara mewa ya batho ba ba suleng le go e fetolela go dipoko.³⁶ Balobedu ba kwa Porofenseng ya Limpopo ba ne ba itsege ka go bitsa baloi le badirisi ba ditlhare ka lereo lona leo (*vuloi*), e le tshitsinyo ya gore ga go pharologano magareng ga tsona ka bobedi. Fela, Balobedu ba dirisitse mareo a a tlaolang go bontsha fa ba ne ba kaya boloi jwa bosigo (jo bo tsamaelanang le pharologantsho ya saekhiki), le boloi jwa motshegare (jo bo tsamaelanang le tiriso ya ditlhare), lereo la bofelo le akaretsa tiriso ya ditlhare go utlwiswa botlhoko. Baloi ba bosigo ba tsere dithata tsa bona mo bommeng ba bone, fa baloi ba bosigo ba fitlhetse kitso e e kgethegileng ya boloi jwa bona. Baloi ba Balobedu ba ne ba farologana le Baazande; mo bokaong jwa Balobedu, baloi ba ne ba sena sere sepe sa boloi.³⁷

³² Ibid at 74.

³³ Middleton and Winter (1963) at pages 2-3.

³⁴ Crawford (1967) at 75.

³⁵ Schapera (1937).

³⁶ Ashton (1952).

³⁷ Krige and Krige (1943).

c) Ponalo ya tshwantshanyo ka ga boloi jwa Yuro-Amerika (Bophirima) le boloi jwa Aforika

3.28 Puisano e e fa godimo e bontsha gore ditumelo le ditiragatso tse di amanngwang le bommagalai le motlholo kgale di le karolo ya ditso tsa ka bobedi ditšhaba tsa Bophirima le Aforika. Fela, ponagalo e e itsegeng ka “boloi” e na le ditshwano le dipharologantsho, fa motho a bapisa diponagalo tseno magareng ga bokao jwa Bophirima le jwa Aforika.

3.29 Tshwano e le esi ya botlhokwa magareng ga ditšhaba tsa Bophirima le Aforika ke gore le mo pakeng ya ga jaana, ditumelo le ditiragatso tse di amanngwang le boloi di santse di le teng mo bokaong ka bobedi. Fela, mabaka a hisetori le a sešweng a tlhotlheeditse dithulaganyo tseo tsa ditumelo ka go farologana. Mo bokaong jwa Bophirima, boloi bo, go tloga mo metlheng ya kgale, golagantswe le batho ba go neng go dumelwa gore ba na le bokgoni jwa go tshwara dithata tsa tlholego kgotsa motlholo, gantsi ka maitlhommo a a bosula. Fela, go gola ga ntšhwafatso le go naya mabaka go lerile kwelotlase mo ditumelong tsa boloi, seo se tsewang jaaka tumelwana e e kwa morago le sekgoreletsi go tswelelopele. Go sa tlhokomologwe seno, ditumelo tsa boloi di tsweletse go nna mo ditšhabeng tsa Bophirima le go ithagisa mo segompnenong mo thulaganyong ya tumelo e e bidiwang Wika.

3.30 Mo bokaong jwa segompnenong, Wika e emela tumelo e e sa tumang ya Bodumedi Bosele e e ka akaretswang mo go se se bidiwang mokgatlho wa Ngwaga wa Sešweng. Jaaka go tlhalositswe pele, nngwe ya maikaelelomagolo a Wika ke go tlosa kamano e e sa siamang ya hisetori ya tumelo eno le Bosatane, ka go gatelela kobamelo ya tlhago, le go tlwaetsa ditumelo tseno bokao jwa motlha wa sešweng. Mo ditšhabeng tse dintsi tsa Bophirima, le mo go tse di tlabologang jaaka Aforikaborwa, Wika e diragatswa ke bonnye jwa balatedi.

3.31 Jaaka fa Wika e tsewa jaaka tumelo ya bonnye, mo bokaong jwa Aforika, ditumelo le ditiragatso tse di ntseng di bidiwa “boloi” di bopa karolo ya tlhago ya sekosemoloji le

dithulaganyo tsa tumelo ya ditso tsotlhe. Seno e ne e le maemo mo malobeng³⁸ gape e santse e le nnete mo bokaong jwa ga jaana jwa morago ga koloniale.³⁹ Mo ditšhabeng tseno, boloi ke ntlha e e sa tilegeng ya botshelo, e bile batho ka esi le ba lelapa ba tsaya dikgato ka kelotlhoko mo ditheong tse di dumeletsweng go ya ka setso go tla go nna batswasetlhabelo bao go dumelwang gore ba dirisa mmagalai go utlwise botlhoko. Boloi ka jalo ga bo tsewe jaaka tumelwana kgotsa sekatumelo, mme bo tsewa jaaka matshosetsi a nnete le motlhodi wa bomadimabe jo bo sa tlhalosegeng, malwetsi, kgotsa loso. Jaaka mo ditšhabeng tsa pele tsa Bophirima, ditšhaba tsa Seaforika di dumela gore batho ba ba bidiwang “baloi” kgotsa “badirisi ba ditlhare” (go ya ka bokao) ba ka utlwise ba bangwe botlhoko ka tiriso ya bosula kgotsa seo se itsegeng jaaka mmagalai o montsho, kgotsa ka tiriso ya ditlhare. Ya pele e amana le tiriso ya diagente tsa boloi kgotsa difamiliara tseo moloi yo o latofatswang a ka di romelang go ya go utlwise batswasetlhabelo botlhoko. Ya bofelo (ditlhare) e ka diriswa go tshela dijo kgotsa seno sa motswasetlhabelo ka botlhole.⁴⁰ Le fa tseno e le dikakanyo ka bophara, go dipharologantsho tse di potlana e bile di bonagala mo ditumelong magareng ga ditlhopha tsa setso tse di farologaneng.

3.32 Boloi bo akantswe sehisetori mo letlhomesong la tumelo ya Sekeresete sa Judaeo kwa Yuropa wa pele ga motlha. Go ne go se jalo go fitlhela go goroga ga Sekeresete mo Aforika gore ditumelo tsa motlholo tsa Seaforika di ne di tsewa jaaka boloi, le sa bobedi di akantswe mo letlhomesong la Sekeresete. Ka kgolo ya Dikereke tse di Ikemetseng tsa Aforika (AICs), baloi ba ne ba golagangwa le Bosatane ka mokgwa o o tshwanang le seo se diragetseng kwa Yuropeng wa pelenyana le Amerika wa koloniale. Dikereke tse di itsegeng tsa Sekeresete tsa Yuropa mo Aforika di lekile go tlosa ditumelo tsa boloi – jaaka di tlhalositswe ke barongwa ba Sekeresete – ka go di bitsa tumelwana fela, segolo ka tiriso ya thuto ya Bophirima ya koloniale. Fela, diAIC di rotloeditse ditumelo tsa boloi ka go di tsenyeletsa mo bokaong jwa Sekeresete, le ka go abelana ka mekgwa ya Sekeresete ya go di sekaseka.⁴¹ Dikereke tse di itsegeng tsa barongwa di ne tsa latelela mokgwa o o tlhotlheleditsweng ke ntlhakemo ya thadisosemorafe ya koloniale ya boloi jwa Seaforika jaaka e sa tlabologa e bile e le kwa morago. Morago ga moo, ntlhakemo eno e e

³⁸ See for example Evans-Pritchard (1937); Parrinder (1963); Middleton and Winter (1963); Pauw (1975).

³⁹ See Bond and Ciekawy (2001); Geschiere (1997); Niehaus (1997) ; Petrus (2009)

⁴⁰ Petrus (2009) at 130.

⁴¹ Osei (2003); Petrus (2009) at 131.

fekeetsang e ne ya tsenyeletswa mo molawaneng wa koloniale mo dikoloning tse dintsi tsa Aforika, e bile e santse e tswela pele go tlhotlheletsa go akanngwa ga semolao ga boloi le mo nakong ya segompieno.

2 Tlhaloso ya boloi

3.33 Karolo eno e tla sekaseka le go buisana ka ga ditlhaloso tse di leng teng tsa boloi, go bontsha ka moo bokao jo bo tsepameng jo boloi bo tlhalogangwang ka jona bo ka amang tlhaloganyo le tlhaloso ya ponagalo.

3.34 Jaaka go bonwe mo puisanong e e fa godimo ya bokao jwa hisetori, ditshimologo tsa tiriso ya lereo “boloi” mo bokaong jwa Seaforika di tlametse mabaka a mathata a dikakanyo a a fitlhelwang mo kakanyong, ao a lerileng tlhokego ya go thadisa molawana wa ga jaana. Gore go tlhomamiswe ditharaano tseo, go botlhokwa go lebelela ka moo molawana wa koloniale o tlhalosang boloi le ditlamorago tsa ditlhaloso tseo.

3.35 Maiteko a koloniale a go pateletsa ditlhaloganyo tsa Seyuropa tsa boloi mo setšhabeng sa Seaforika a lerile tlhabololo ya molawana o o ikaeletseng go gatelela le go tlosa ditumelo le ditiragatso tse bothati jwa koloniale le badiri ba molao ba di amantseng le boloi. Tlhotlheletso ya phatlhoso e tseneletse mo filosofing e e theileng molawana ono, jaaka go bonwe gore ditumelo tsa Seaforika mo boloing di ne di tlhoka mabaka. Go ya ka Reynolds,⁴² “Ka Bayuropa, boloi [e ne e le] ka kakaretso bo ne bo tsewa jaaka tumelwana fela... [le...e ne e] sa tlhomphege.” Morago ga moo, fa Bayuropa ba fitlhela gore batho ba Aforika ba tsaya gore boloi ke nnete le gore ba ne ba ikemiseditse go tsaya dikgato tse di farologaneng go itshereletsa kgatllhanong le matshosetsi a kemedi ya boloi, bakoloniale ba sweditse go gatelela le go tlosa ditumelo tseno tsa “kgale”. Ke ka moo, melao e e farologaneng e ne ya tlhangwa go gatelela ditumelo tsa boloi. Gore go “tlhabololwe” dikoloni tse dintšhwa ka mokgwa o go diragetseng ka teng kwa Yuropa, Bakoloniale ba ne ba dumela gore go ne go tlhokega go tlosa ka thulaganyo le go se rotloetse ditumelo le ditiragatso tseo “tse di senang mabaka”. Ke ka moo, mesola le dikakanyo tsa yurosenthiriki e e theileng go fetolela ditumelo le ditiragatso tsa tlhologo tsa Seaforika bosenyi. Ka botlhokakitso le go sa tlhaloganye, bothati jwa koloniale bo ikaelela go tlosa

⁴² Reynolds (1963) at xi.

tumelo kgotsa tiragatso nngwe le nngwe e e ka ga tiragatso ya motlholo. Go thusa kgato eno, barongwa ba koloniale ba ne ba solofetswe gore bat la fetolela batho ba tlholego go Sekeresete le go ba tlhotlheletsa go ikamanya le bontsi, fa e se tsotlhe, jwa ditumelo tsa bona tsa setso sa Seaforika. Gantsi thulaganyo ya tumelo ya Seaforika e tseneletse go feta boloi le go akaretsa dintlha tse dingwe tsa botlhokwa, jaaka kobamelo ya modingwana le therisano le le dingaka tsa setso.

3.36 Molawana wa boloi mo Aforikaborwa le Bokone jwa Rhodesia jwa kgale o bontshitse ditshwano tse di tshwailweng go akanngwa ga semolao kwa Yuropa ga boloi, le seo Bayuropa ba se tsayang jaaka ditlolomolao tse di amanang le boloi. Karolo 1 (d) ya WSA⁴³ e tlagisa gore “Motho mongwe le mongwe yo o... tlhomamisang kitso ya boloi, kgotsa tiriso ya dikgogedi... o tla bonwa molato wa tlolomolao e bile o tshwanetswe ke katlholo... fa molatofatswa a supilwe gore ka tlwaelo kgotsa maemo ke ngaka ya moloi kgotsa mmatli wa moloi...”. Peo eno ya mafoko e tshwana le e fitlhetsweng mo *Northern Rhodesia Witchcraft Ordinance*,⁴⁴ eo e tlhalositseng “Mongwe le mongwe yo go tla pakwang gore ka tlwaelo kgotsa tiro ke ngaka ya moloi kgotsa mmatli wa moloi o tla otlhaiwa ka tuediso fa a bonwe molato...”.⁴⁵ Bothata ke gore mo dipapetlaneng tse pedi tsa molawana, ga go pharologanyo e e dirilweng magareng ga badiragatsi ba mmagaai “o o siameng” (baitshepi, bahebalisi, le dingaka tsa setso ka kakaretso) le bao ba dumetseng go diragatsa seo se itsegeng jaaka bommagalai jo bontsho kgotsa bosula (bao Bayuropa ba ba bitsang baloi). Babayamolao ba koloniale ba biditse mongwe le mongwe yo o tlhomamisiitseng kitso ya tiriso ya motlholo kgotsa bommagalai jaaka modiragatsi wa boloi. Go feta moo, ka bobedi WSA le *Witchcraft Ordinance* di tlositse tiragatso ya therisano le dingaka tsa setso, bao bakoloniale ba ba biditseng ka phoso dingaka tsa baloi kgotsa babatli ba baloi. Karolo 1 (c) ya WSA e kaya gore “Motho mongwe le mongwe yo o... thapang kgotsa yo o le kang go fitlhelela ngaka nngwe le nngwe ya moloi, mmatli wa moloi kgotsa motho mongwe le mongwe yo o bitsang kgotsa supang motho mongwe le mongwe jaaka moloi... o tla bonwa molato wa tlolomolao...”. Fela jalo, *Witchcraft Ordinance* e kaya gore “Mongwe le mongwe yo o thapang kgotsa yo o le kang go fitlhelela motho mongwe le mongwe go mmita kgotsa supa jaaka moloi [kgotsa] go mo gakolola ka ga morero mongwe le mongwe... ka tiriso ya boloi kgotsa mokgwa o eseng wa tlholego o tla [bonwa]

⁴³ The provisions of the Act are dealt with in detail in Chapter 4 below.

⁴⁴ No 31 of 1952.

⁴⁵ Reynolds (1963) at 166.

molato...”.⁴⁶ Ke ka moo e nnileng tlolomolao ya bosenyi mo bathong ba Aforika go dirisa mekgwa ya bona ya tlwaelo ya setso go batla ditlhaloso mabapi le bomadimabe, bolwetsi, kgotsa loso.

3.37 Tlhaloganyo ya Seyurosenthiriki ya boloi mo WSA e nnile le ditlamorago tse di sa siamang mo merafeng ya Seaforika, tseo bontsi jwa tsona e nnileng koketsego mo ditlolomolaong tse di amanang le boloi mo nageng. Phetolelo ya dingaka tsa setso le therisano le bona go tlolomolao go timile batho ba Aforika mokgwa o o botlhokwa wa go bona thuso, le go itlhokomolosa karolo e e botlhokwa ya setheo sa phekolo ya setso mo ditšhabeng tsa tlholego.

3.38 Gape, tiriso ya lereo “ngaka ya moloji” e mathata. Dingaka tsa setso ga di samagane fela le balwetsi bao go dumelwang ba tshwenngwang ke bommagalai jo bo bosula, mme gape di lemoga le go alafa balwetsi mabapi le tseo di tiholang malwetsi le bomadimabe. Go bitsa dingaka tsa setso “dingaka tsa baloi” ke go itlhokomolosa mefuta ya ditirelo le ditiro tse ngaka e di dirang mo setšhabeng sa yona. Molao o paletswe ke go amogela karolo e e siameng e e tserweng ke basiami le bahebalisi, e seng fela jaaka basireletsi ba merafe ya bona mme gape jaaka batsereganyi magareng ga lefatshe la semowa le lefatshe la batho. Phetolo ya therisano le ngaka ya setso go tlolomolao go thibela batho ba Aforika mo go diriseng mokgwa wa setso o o rebotsweng kgale wa go samagana le bomadimabe. E lerile gape le tlhaloso ya gore molawana o ne o, ka nnete, sireletsa badiragatsi ba mmagalai o o bosula. Jaaka setlamorago, batho ba le bantsi ba ne ba simolola go samagana le bao ba belaelwang gore ba diragatsa mmagalai o o bosula ka tlhamalalo. Seno se lerile go koketsego ya tirisodikgoka kgatthanong le bao ba bidiwang baloi ba ba belaelwang mo merafeng e mentsi.

3.39 Ntliha e e tlhotlheletsang mo mathateng a a akanngwang mo WSA ke mogopolo wa go tlhoka nnete ka ga bommagalai le dithata tse di amanang le jona. Mo bokaong jwa batho ba ba buang Sexhosa ba kwa Eastern Cape, jaaka sekai, maikutlo a a farologaneng a dithata tsa bommagalai a supa bothata jo bo fitlhelwang mo go tlhaloseng gore motho ke modiragatsi wa bommagalai jo bo “siameng” kgotsa “bosula”. *Isangoma* (mosiami) le *ixhwele* (mohebalisi) ba tsewa ka tlwaelo jaaka badiragatsi ba ba “siameng”, ka kganetso

⁴⁶ Reynolds (1963) at 167.

go *igqwirha* kgotsa *umthakhathi* (e tlhalositswe jaaka “moloji”). Mme fela, Maxhosa ba amogela gore basiami le bahebalisi ba ka laola dithata tsa motlholo le kitso jaaka tse di diriswang ke badiragatsi ba bommagalai jo bo bosula. Ka jalo kakanyo mo Maxhoseng ke gore fa motho a na le kitso ya mmagalai, o ka tsaya karolo mo tiragatsong ya mmagalai. Ka mantswe mangwe, dingaka tsa setso di ka nna kgatlhanong fela le ditlamorago tsa mmagalai yo o bosula fa le bona ka bobona ba na le kitso e e tseneletseng ka ga jona. Ke ka moo, dingaka tsa setso, jaaka ba le botlhokwa mo merafeng ya rona, e leng batho bao ba senang bonnete thata. Mo nneteng, pharologano magareng ga badiragatsi ba mmagalai o o siameng le o o bosula e mo maitlhomong le maikaelelong a modiragatsi. Bao ba dirisang kitso ya bona ya mmagalai go thusa kgotsa go alafa ba tsewa gantsi jaaka dingaka tsa setso, fa bao ba dirisang kitso eno go utlwisisa botlhoko ba tsewa jaaka badiragatsi ba mmagalai o o bosula. Mmagalai ka bo ona o momagareng, e bile o tshwarwa ke batho mabapi le go una molemo kgotsa mabaka a a bosula. Dipharologano tseo, le maemo a go tlhoka bonnete a dingaka tsa setso, di ne di sa tseelwa tsia ka mokgwa wa go sa kgathaleng o ka ona “boloi” bo tlhalositsweng mo molawaneng wa koloniale.⁴⁷

3.40 Bothata jo bongwe gape jwa tlhaloso bo tlhagelela mo WSA mabapi le bothata jwa go tlhomamisa gore tota ke mang “moloji”, segolosegolo mo mabakeng a go nang le ditatofatso le ditatofatsokganetso tsa boloi. Jaaka sekai, mo dikgetsing tse dingwe modirelwa yo o itsayang jaaka motswasetlhabelo wa boloi jwa motho yo mongwe o ka kopa ngaka ya setso go dira mmagalai wa tshireletso go thibela mmagalai wa moloji yo o latofatswang. Fa moloji wa ntlha yo o latofatswang a ka lwala kgotsa a tlhokafala, go na le kgonego ya gore mongwe wa losika la yo o tlhokafetseng o ka latofatsa ngaka ya setso, le modirelwa, ka boloi. Wa losika la moswi, ka tsibogo, o kay a kwa ngakeng ya bona ya setso go thibela boloi jwa modirelwa wa ntlha. Magareng ga Maxhosa a Mpondoland, tirisodikgoka ya tsibogelo e e amanngwang le ditatofatso le ditatofatsokganetso tsa boloi le dipolao tsa baloi e ne e le tiragalo e e tlwaelegileng ka dingwaga tsa magareng tsa 1990. Patlisiso kwa Mpondoland e bontshitse gore mafelo a a jaaka Tsolo a ne a arogantswe ke tirisodikgoka ya dikarolo, eo e neng e tlhodilwe ke kutso ya leruo le ditatofatso le

⁴⁷ A case in point is the provision in section 1 (d) of the WSA which criminalises traditional healing. The prohibition on traditional healing does not take into account the value that these healers add to their communities, especially because they deal with a variety of issues other than just witchcraft.

ditatofatsokganetso tsa boloi. Mo mabakeng ao, motho o ka tlhalosa jang se “boloi” e leng sona? Bokaobontsi joo bo ka bo bo lerile koketsego ya dikakaretso tse di tlhagelelang mo WSA, mme dikakaretso ka botsona di bakile mathata a le mantsi go na le a a rarabolotsweng.⁴⁸ Ka moo, botlhokwa jwa tlhokego ya tlhaloso ya semolao e e tlhapileng ya boloi e gateletswe mo go samaganeng le bothata jo bo amanang jwa go tlhalosa yoo e leng “mosenyi”.

3.41 Go kaya, ka 2007 kwa Mpumalanga, mosadi wa dingwaga tse masomeamarataro o ne a latofatswa ka go loya mošwa yo o neng a ipolaile. Mapodisi a ne a tshwara le go latofatsa basadi ba babedi, go ya ka WSA, mabapi le go latofatsa mosadimogolo. Fela, “mmelaelwa” yo mogolo o ne a dumela gore o dirisitse boloi go tlhola loso la mošwa. Tharaano ya go tlhomamisa gore mosenyi ke mang mo tlhagisong eno e bonagetse mo ditshwaelong tse di dirilweng ke mongwe wa mapodisi a a golegang:

[R]e tshwere basadi ba le babedi mabapi le go dira ditatofatso tse di senang bopaki. Go ne ga fitlhelwa gore basadi ba ba tshwerweng ga ba na molato ope. Re tlile go sekisa jang mosadi wa dingwaga tse 60? Re mo latofatsa ka eng? Mapodisi a tshwanetse go [mo] sireletsa. Re ka se letle ope go itseela molao mo matsogong.⁴⁹

3.42 Koketsego mo tirisodikgokeng e e amanang le boloi ka dingwaga tsa bo1990 e ka tsewa jaaka tsibogo ke merafe ya Seaforika go gwetlha WSA. Go tswa mo ponalong ya Seaforika, WSA e dirisitse ditlhaloso tsa koloniale – le morago ka paka ya tlhaolelele – ditlhaloso tsa “boloi” tse di ganeditseng go nna teng ga maemo a tlhaloso ya Seaforika ya boloi. Ke ka moo go ka ngangisanwang gore tirisodikgoka kgatlhanong le babelaelwa ba “baloi”, mo malobeng le gompieno, ke bonnye tsibogelo go mokgwa o o marara o ka ona go samaganwang le boloi.

3.43 Ntle le maiteko a pele a go sekaseka mathata a tlhaloso mo molawaneng, jaaka a a tshitsintsweng ke puso ya porofense ya Mpumalanga ka 2007, dikgwetlho tsa go akanya di sa ntse di le teng. Puso ya Mpumalanga e tshitsintse Molaotlomo wa Kgatelelo ya Boloi ka maiteko a go fokotsa tirisodikgoka e e amanang le boloi mo porofenseng. Fela,

⁴⁸ Petrus (2009) at 134-135.

⁴⁹ Petrus (2009) at 135.

morago ga tshitsinyo ya Molaotlhommo, SAPRA e tthagisitse go sa kgotsafalang ga yona ka mabaka a gore Molaotlhommo o ne o kgetholola kgatlhanong le baloi ba ba ipitsang jalo. Jaaka Damon Leff a tshwaetse mo phatlaletseng, “Molaotlhommo wa [Mpumalanga wa Boloi] o leka go gatelela boloi le go golega baloi ba ba ipitsang jalo ka tsholofelo ya go itseela tshwetso ka ga tlolomolao.”⁵⁰ Ka tsibogelo go ditshwaelo tsa ga Leff, Petrus (2007) o tlhalosa mo lokwalodikgannyeng la *The Herald* gore –

Lereo “boloi” le kaya dilo tse di farologaneng go batho ba ba farologaneng. Dipharologano mo kakanyong ya boloi di ikaegile thata mo dipharologanong tsa bokao. Mo bokaong jwa Wika, boloi bo tsewa jaaka sengwe se se siameng jaaka baloi e le badiragatsi ba “bosweu” kgotsa mmagalai o o siameng...[Fela], mo bokaong jwa Aforika, boloi bo tsewa ka tsela e e sa siamang jaaka baloi ba tsewa jaaka badiragatsi ba “bontsho” kgotsa mmagalai o o bosula...⁵¹

Ka mantswe a mangwe, go ya ka kemo ya SAPRA, Molaotlhommo e ne e le tshenolo e nngwe ya bothata jwa dingwagakgolo jo bo itemogetsweng ke badiragatsi ba Wika (jaaka go tlhalositswe pelenyana). Fela, mo bokaong jwa Aforikaborwa, ga se fela maemo a Wika a a tshwanetseng go elwa tlhoko, jaaka fa ntlhakemo ya Seaforika e tsaya kemo e e farologaneng fa go tliwa mo “boloing”, e bile go botlhokwa go ela seo tlhoko.

3.44 Ntle le maiteko a go tlhalosa “boloi” a a sekasekilweng fa godimo, bangwe gape ba tsene mo lefelong leno. Tebbe o tshitsinya gore “boloi” ke tiragatso ya go dirisa dithata tsa motlholo mabapi le bosula, gore go utlwiswe ba bangwe botlhoko kgotsa go ithusa ka tiriso ya ba bangwe.”⁵² Mokwadi yono o tswela pele go tlhalosa “moloji”, mo a tlhalosang ka gore “ke motho yo o dirisang thata ya motlholo mabapi le maitlhommo a a bosula.”⁵³ Mo kgatisong e nngwe, mokwadi yoo o tlhalosa boloi jaaka “tiragatso ya tiriso ya sephiri ya thata ya motlholo mabapi le bosula – go utlwiswa ba bangwe botlhoko kgotsa go ithusa ka tiriso ya ba bangwe.”⁵⁴

⁵⁰ Quoted in Petrus (2009) at 137.

⁵¹ Quoted in Petrus (2009) at 137.

⁵² Tebbe in Bennett *Traditional African Religions* 160-161.

⁵³ Ibid

⁵⁴ Tebbe ‘Witchcraft and Statecraft’ (2007), 190.

3.45 Ga go ope wa batsayakarolo ba ba rometseng ditsibogo go lokwalo la morero yo o dirileng ditshitsinyo tse di tshwanetseng go elwa tlhoko ka ga ka moo boloi bo tshwanetseng go tlhaloswa ka teng. Bangwe ga ba naya mabaka ape a go sa batleng go tshitsinya tlhaloso. Bangwe ba tlametse mabaka a gore goreng go sa tshwanela go nna le tlhaloso ya boloi. CGE, fa e ne e sa leke go tlhalosa boloi, e tshitsintse gore tlhaloso ya boloi e tshwanetse go farologanya magareng ga boloi jo bo thusang le jo bo bosula. Ngaka Wallace o tshitsinya gore go ka se nne le tlhaloso ya boloi, ka ntlha ya fa bo na le bokao jo bo farologaneng mo merafeng e e farologaneng.

C Boloi mo Aforikaborweng wa metlheng eno

3.46 Jaaka go sekasekilwe mo karolong e e fa godimo ka ga bokao jwa hisetori, ditiragatso tsa boloi di aparetse merafe le setšhaba ka bophara mo dingwagasomeng. Dikgwetlho tse di amanang le ditumelo tsa boloi kgotsa tiragatso ya boloi, jaaka fa di itemogetswe ke ditšhaba mo malobeng, di santse di itemogelwa le mo Aforikaborweng wa segompieno.

3.47 Kopo ya patlisiso ya ga jaana le ditlhagiso tse di dirilweng ke mekgatlho e e farologaneng e re gopotsa gore merero e e ka ga boloi le/kgotsa ditiragatso tse di kotsi tsa boloi e sala go nna teng mo setšhabeng. Go tlhamaletse gape go tswa mo ditlhagisong tse di dirilweng go SALRC, ka bobedi ke bakopi ba patlisiso le go tswa kwa ntle ga batsayakarolo, gore go na le bokao jo bo farologaneng jo go ya ka jona boloi bo tshwanetseng go tlhaloganngwa, le ditsholofelo tse di farologaneng tse ditlhopha di na leng tsona mabapi le dipoelo tsa patlisiso eno. Seo se leng botlhokwa go SALRC ke go se timelelwe ke batho ba ba amilweng segolo ke bothata, e leng basadi le bana mo merafeng.

3.48 Lokwalo la morero le sekasekile dikgetsi tse dingwe tsa semolao tseo mo go tsona go tlhagisitsweng ditiragatso tsa boloi jo bo bosula, le ka moo dikgotlatshekelo di samaganeng le dikgetsi tseo. Lokwalo la morero le tshwantshitse gape setshwantsho sa dikgang, go tswa mo makwalodikgannyeng a letsatsi le letsatsi, ka ga ditiragalo tse di kotsi tse di amanang le boloi. Tseno ga di a fokotsega; go simolola ka khutliso ya lokwalo la morero, dikgang tse di amanang le boloi di ntse di tswela pele go nna kwa setlhoeng mo

diphasalatsong. Ditiragalo tse di amanang le boloi tse di begilweng mo diphasalatsong ga se gore di mo dikgaolong tsa mafelo tse di tsepamisitsweng, mme di diragalo go ralala bontsi jwa diporofense mo Aforikaborwa.

3.49 Ka 2013 go ne go le dipegelo tse di mmalwa tsa diphasalatso tse di ka ga dikgetse tse di amanang le boloi tseo dikgotlatshekelo mo diporofenseng tse di farologaneng di neng di tshwanetse go samagana le tsona. Kwa Kapa Botlhaba, Kgotslatshekelo ya Sedika kwa Willowvale e atlholetse molatofatswa dingwaga di le 15 kwa kgolegolong. O ne a latofatswa ka go lobela mosadi wa dingwaga tse 44 dintshi yoo a neng a mo latofatsa ka boloi, ka go mo itaya ka thobane go fitlhela a neela mowa.⁵⁵ Kwa Mpumalanga, kgotslatshekelo kwa Nelspruit e samagane le kgetsi e mo go yona molatofatswa o neng a sekisetswa polao, moo moswi a neng a tsewa ka dikgoka kwa thaveneng (bareng) mo mosong o mogolo. Go begwa gore moswi o bolaetswe mo koloing e a neng a gapetswe ka dikgoka mo go yona, le le lengwe la marete, tlhoko ya letsele, karolo ya boboko, le maoto di ne di kgaotswe. Seno go kaiwa gore se ne se dirilwe go tiisa kgwebo ya yo mongwe wa balatofatswa.⁵⁶ Kwa Limpopo, Kgotslatshekelo kgolo e ne ya atlholela banna ba ba bedi bao ba neng ba latofatswa dipolao tsa muthi botshelo jotlhe kwa kgolegolong. Balatofatswa ba ne ba latofatswa polao ya lekawana, le le neng le kgaotswe mapele. Go begwa fa ba ne ba leka go rekisetsa sangoma dikarolo tseo tsa mmele, yo o neng a gana mme a begela mapodisi.⁵⁷ Kwa KwaZulu Natal, Kgotslatshekelo kgolo kwa Pietermaritzburg e ne ya mekamekana le kgetsi eo mo go yona banna ba bararo ba neng ba iteile basadi ba ba bedi go fitlha ba neela mowa ka ntlha ya fa ba ne ba ba latofatsa ka tiragatso ya boloi. Basadi ba ne ba bone dikgobalo tse di masisi: ditlhogo tsa bona di ne di iteilwe ka hamore e e neng ya thuba magata a bona, fa dikgobalo tse dingwe di ne di tlhodilwe ka go tlhabiwa ka thobane ya tshipi le lerumo. Go begilwe fa kgotslatshekelo e ne ya naya mongwe le mongwe wa balatofatswa katlholo ya dingwaga tse 20. Moatlhodi mo kgetsing eo o ne a ngangisana ka gore mo Aforikaborweng wa metlheng, tumelo ya motho ka boena mo bololing ga e neye mabaka a a lolameng a go bolaya.⁵⁸

⁵⁵ News24 "Man sentenced 15 years for murder." 15 January 2015. Web

⁵⁶ Independent online 'Four in the dock for 2009 muti murder.' 14 August 2014. Web

⁵⁷ Independent Online "Life terms for Limpopo Muti Killers." 14 August 2013. Web

⁵⁸ Independent Online "Witch' killers get 20 year jail terms.' 17 October 2013. Web

3.50 Ka 2014, dipegelo tsa diphasalatso di tswetse pele go tlhagisa ditiragalo tsa tirisodikgoka ya boloi le dikgetsi tse di amanang le boloi mo diporofenseng tse di farologaneng. Kwa Mpumalanga, mosetsanyana wa dingwaga tse thataro o begwa a bolailwe ke mosadi yo mmaagwe mosetsanyana a neng a mo tlogetse mo tlhokomelong ya gagwe. Fa mmaagwe a boa morago ga go dira se a neng a se dira, motlhokomedi wa ngwana o ne a itsise mmaagwe ngwana fa a sa itse kwa ngwana a leng teng, le gore o itheile a re ngwana o na le rraagwe fa a sa mmone. Fa bothata bo begelwa kgosana mme kgosana ya botsolotso motlhokomedi wa ngwana gore ngwana o kae, o arabile ka gore ga a bolaya ngwana. Setopo sa mosetsanyana se ne sa fitlhelwa ke baagi ba selegae kwa nokeng e e gaufi, mmele wa gagwe o retlilwe. Go ne ga latofatswa gore maikaelelo a polao e ne e le go dirisa dirwe tsa gagwe tsa mmele mabapi le muthi. Kgotlatshekelo e ne ya atlholela molatofatswa botshelo jotlehe kwa kgolegelong.⁵⁹ Kwa Gauteng, kwa Mamelodi (motsesetoropo kwa ntle ga Pretoria), monna o ne a latofatswa ka go bolaya mosadi wa gagwe ka ntlha go na le magatwe a gore o ne a fetogela go nna noga e kgolo jaaka dingwe e e neng e ipaakanyeditse go mo tlhasela. Moatlhodi yo o neng a reeditse kgetsi o ne a se amogele boitshireletso jwa gagwe; o mmone molato wa polao le go mo atlholela botshelo jotlehe kwa kgotlatshekelong ga raro. Moatlhodi o tsholotse bopaki jwa molatofatswa jwa gore lebaka la gagwe la bosenyi ke boloi.⁶⁰ Kwa Kapa Bophirima, Kgotlatshekelokgolo e samagane le tlhalano e e amang Tona ya Kabinete yo o latofaditseng mosadi wa gagwe ka boloi. O ngangisana ka gore o ne a ratana kwa thoko le mosadi yo mongwe, ka ntlha ya gore morago ga dingwaga tse robongwe ba nyalane mosadi wa gagwe o ne a ikamanya le boloi le go tshwarela meletlo ya kobamelo ya boloi kwa lelapeng la gagwe. O latofaditse mosadi wa gagwe ka go tsaya dingwe tsa diaparo tsa gagwe a di isa kwa go sangoma le go kopa motlhokomedi wa ngwana go tshela sere mo dijong tsa gagwe. Go sa kgathalasege ditatofatso tsa boloi, kgotlatshekelo e neelane ka tlhalo.⁶¹

3.51 Ka 2015, go nnile le dikgang tse dingwe tse di amanang le boloi mo diphasalatsong. Kwa porofenseng ya Bokone Bophirima, thuso ya sepodisi e ne ya tlhokwa fa maloko a baagi a ne a fisa ntlo ya ngaka ya setso ka ntlha ya fa a ne a

⁵⁹ Independent online 'Child's muti killers get life sentences.' 7 March 2014. Web.

⁶⁰ Independent online "Father who killed 'witch' wife gets life. 9 April 2014. Web.

⁶¹ TimesLive 'Senior Cabinet Minister granted divorce, accuses ex-wife of using witchcraft.' 2 June 2014. Web.

latofatswa ka gore o ne a dirisana le le basadi ba ba bedi bao ba latofatswang ka go diragatsa boloi. Basadi ka bobedi, yo mongwe wa bona o ne a amana le ngaka ya setso, ba ne ba utswitse lesele la kgwedi kwa legaeing la lona. Kgetsi kgatlhanong le basadi ba ba bedi e ne ya gogelwa morago ka ntlha ya fa ba busitse lesele. Dipatlisiso mo kgetsing eno di ne tsa tswelala, fa kgotlatshekelo e tswelletse ka kgetsi ya go tshuba le go tlhasela ka maikaelelo a kgobatso e e setlhogo ya mmele.⁶²

1 Boloi le merafe ya tlhologo

3.52 Dipegelo tsa diphasalatso tse di kailweng mo karolong e e fa godimo di bontsha tiragatso le tlhaloganyo ya boloi magareng ga baagi ba tlhologo mo Aforikaborwa. Dipegelo tsa diphasalatso di bontsha gape kamano magareng ga boloi le bokgoni jwa go dira dithata tsa motlholo di bake kotsi mo bathong le dithoto tsa bona. Ntle le dipegelo tsa diphasalatso, ntlha e e tlhagelelang thata kwa tlase ke gore batho bao gantsi ba latofatswang ka boloi ke basadi ba bagolo,⁶³ fa badiri ba tirisodikgoka e e amanang le boloi ke gantsi makawana. Go dumelwa gore batho ba dira boloi ka ntlha ya lefufa le go gala.⁶⁴

3.53 Batho ba ba latofatswang ka go diragatsa boloi ke gantsi batho ba bagolwane (segolosegolo basadi), le fa mo mabakeng a mangwe o fitlhele bašwa ba latofatswa.⁶⁵ Batho ba latofatswa gantsi ka ntlha ya fa go akanngwa gore ba dirisitse boloi go tokafatsa maemo a bona.⁶⁶

3.54 Fa ba gwetlhwa ka boloi, batho gantsi ba rerisana le badiragatsi jaaka bahebalisi, basiami, le dingaka tsa setso, gore ba ganetse bomadimabe kgotsa ka gongwe go dirolola

⁶² Independent online 'North West witchcraft case withdrawn.' 2 April 2015. Web.

⁶³ Van Wyk 2004 HTS 1210.

⁶⁴ Van Wyk 2004 HTS 1215.

⁶⁵ Tebbe in Bennett *Traditional African Religions* 163.

⁶⁶ Ibid 164.

dikgaba le go fedisa boloi.⁶⁷ Mokgwa o mongwe o baagi ba tsibogelang boloi ka ona ke go itseela molao mo matsogong. Mo mabakeng ano, batho ba ba amilweng ke kotsi e e dirilweng ke bao ba latofatswang ka boloi ba ka ipusolosetsa, ka bobona ka nosi kgotsa jaaka morafe, ka go bolaya kgotsa go tshuba bao ba latofatswang ka boloi kgotsa go ba leleka mo metseng ya bona. Patlisiso e e dirilweng ka 2009 e bontsha gore mokgwa o o tlwaelegileng wa tirisodikgoka kgatlhanong le bao ba latofatswang ka boloi e ne e le tshenyo ya dithoto, go latele khuduso ya pateletso go tswa mo motseng o o rileng go ya go o mongwe.⁶⁸

3.55 Ponagalo e nngwe e e atileng mo merafeng ya tlholego ke dipolao tsa muthi. Seno se tlhotlheletse Lefapha la Basadi, Bana le Batho ba ba Golafetseng go kopa Khomišene go batlisisa dipolao tseo. Dipolao tsa muthi di akaretsa polao ya motswasetlhabelo, morago ga moo dirwe tsa mmele tsa gagwe di dirisetswa go dira ditlhare tsa setso, tseo di itsegeng jaaka muthi. Dipegelo tsa diphasalatso tse di kailweng mo lokwalong leno le dikgetsi tsa molao di gatelela mabaka ao batswasetlhabelo ba bolawang le dirwe tsa bona tsa mmele di rekisetswang batho ba ba dirang muthi wa go alafa balwetsi ba bona.

3.56 Lokwalo la morero le sekaseka ka botlalo ka moo puso ya temokerasi e lekileng go samagana le tirisodikgoka ya boloi ka teng. Kaelo e dirilwe mo lokwalong la morero mo go thapiweng ga Khomišene ya Dipatlisiso ka 1995 go lebelela tirisodikgoka ya boloi le dipolao tsa kobamelo kwa Porofenseng ya (ga jaana e bidiwa Limpopo).⁶⁹ Le fa dikatlanegiso tsa Khomišene ya Ralushai e le motheo mabapi le go tlhaloganya boloi le tirisodikgoka e e amanang mo bokaong jwa Aforikaborwa.⁷⁰

3.57 Maiteko a mangwe a puso a go samagana le bothata jwa boloi le tirisodikgoka e e amanang le boloi e ne e le go tlabelolwa ga Molaotlhommo wa Boloi wa Mpumalanga. Molaotlhommo ono e ne e le maiteko ka puso ya porofense a go samagana le boloi, jo bo

⁶⁷ Van Wyk 2004 HTS 1217.

⁶⁸ Yaseen A *Witch hunts in modern South Africa: An under-represented facet of gender-based violence*, Fact Sheet, June 2009, Medical Research Council.

⁶⁹ Issue Paper 29 paras 2.100 to 2.113.

⁷⁰ Ralushai Commission of Inquiry (Chairperson Professor NV Ralushai) *Report of the Commission of Inquiry into Witchcraft Violence and Ritual Murders in the Northern Province of the Republic of South Africa* 1996. This paper refers to the Commission as 'the Ralushai Commission' and its report as 'the Ralushai Commission Report'

neng bo gaketse kwa porofenseng eo. Tsamaiso e ne ya kgaotswa mme Molaotlhommo o ne wa se tsenngwe mo molaong.

3.58 Boloji mo merafeng ya tlhologo bo tshwanetse go tlhaloganngwa fela go tswa mo ponalong ya tumelo ya setso, mme gape le ka kanaanelo ya gore ditumelo tsa bodumedi di tshameka karolo e e botlhokwa mo mokgweng o boloi bo tsewang ka ona. Olupona o tlhagisitse gore “maitemogelo a semowa a Seaforika ke ona a ka ona ‘moitshepi’ kgotsa lefelo le le boitshepo le tsenelelang mo maitemogelong a letsatsi le letsatsi a motho wa botho ka tsenelelo e kgolo ya gore bodumedi, setso, le setšhaba di amana segolo.” Go ya ka Ellis le Ter Haar,

Go bopaki ka bophara jwa gore Maaforika a le mantsi gompiano ba tswela go tshola ditumelo tse di ntshitsweng mo dikhosemoloking tsa setso tseo ba di dirisang mo ditirong tsa bona tsa letsatsi le letsatsi, le fa ba dula kwa ditoropong le go itirela botshelo go tswa mo ditirong tsa ditirelo tsa baagi kgotsa lefapha la sešweng la ekonomi.⁷¹

Polelo eno e bontsha gore dikakanyo tsa setso tsa nnete di santse di tshameka karolo e kgolo mo matshelong a Maaforika a sešweng.

3.59 Metlae e teng e e tlhalosang ka moo lephata la sedumedi le tsibogetseng ntlha ya boloi. Ditsibogo di tswa mo Dikerekeng tsa Tlhologo tsa Aforika (AICs), dikereke tsa barongwa, dikereke tsa Pentekosete, le badiragatsi ba setso ka tatelano. Mo diAIC go na le tumelo e kgolo mo go nneng teng ga bosula. Bosula joo bo tsewa jaaka boloi. Kakanyo eno ka ga bosula ke karolo ya puisano e e raraneng mo thutobomodimong, e bile e kaiwa gantsi mo ditherong le mekgwa e mengwe ya tlhaeletsano. Kgatelelo mo boruting e mo go sedimosetseng le go sireletseng maloko kgatlhanong le ditlamoragotsa jona. Maloko a kgothaletswa go dirisa maano otlhe a a tlhamilweng ke kereke, go itshireletsa kgatlhanong le ditlamorago tsa bosula jo, thata e e kgatlhanong le botshelo. Fa motho a santse a amegile – ka ntlha ya fa dithata tseno di sa tshepagale – go dikobamelo tse dingwe tse di marara le ditsamaiso tsa go tlhapiswa le go busetsa batho mo botlalong jwa botshelo. Kgato ya go alafa ga e samagane fela le motho ka esi mme gape le tikologo e motho a nnang mo go yona.

⁷¹ Ellis S and Ter Haar G *Religion and politics in sub-Saharan Africa* (1998) at 177.

3.60 Mo dikerekeng tsa barongwa, go akaretsa jaaka sekai kereke ya Wesele, go na le tumelo e anameng mo boloing. Bontsi jwa batho ba dumela mo go nneng teng ga boloi fela bangwe ba santse ba belaela. Fela, ga go kaelo ya semmuso go yona mo ditherong le ditlhaeletsanong tsa semmuso ka kereke. Go tumelo e e anameng ya gore baphuthegi bangwe ke Mawesele a a siameng motshegare mme fa go nna bosigo ba nna Masiona. Polelo eno e supetsa go mokgwa wa tlwaelo wa batho ba bangwe mo dikerekeng tse dikgolo wa go etela ka sephiri dikereke tsa Sione mabapi le dikobamelo tsa kalafi. Thutatumelo ya semmuso ya kereke ke gore bosula bo ka tlhaloswa go ya ka diabolo (Satane) le ditlhaselo tsa setimone, le gore thapelo ke yona fela e ka alafang ditlhaselo tseo. Fela, fa e sale bontsi jwa batho ba ba tsenang dikereke tseno ba godisitswe mo maemong ao boloi bo leng bontsi, go na le gore go iwe kwa dingakeng tsa setso (tse ka dinako dingwe di tsewang fore di emelela “mmaba”), ba swetsa ka go etela diAIC, segolosegolo dikereke tsa Sione. Diketelo tseo go AIC le dingaka tsa setso di dirwa gantsi mo sephiring.

3.61 Mabapi le dikereke tsa Pentekosete, ditumelo di tshwana fela le tsa diAIC. Dikereke tsa metlholo ya kalafo, jaaka tsa Baruti PFP Motsoeneng (Mboro),⁷² Lesego Daniel,⁷³ Chris Oyakhilome⁷⁴ le tse dintsi tse dingwe di gatelela tumelo mo boloing. Bangwe ba batho ba ba yang kerekeng ba bolelelwa gore ba na le mefuta ya diphologolo mo dimpeng tsa bona, segolosegolo dinoga. Go nna teng ga diphologolo tseo mo maleng a batho ke ditlamorago tsa tiro ya baloi. Mo mabakeng a le mantsi boitshupo jwa baloi ga bo tthagiswe. Mo dikerekeng tse di jaaka tseno, batho gantsi ba tshepiswa tshireletso kgatlanong le mefuta yotlhe ya bosula go akaretsa le boloi.

3.62 Go na gape le metlae ka ga ditsibogo go ditumelo tse di kailweng fa godimo ka batho ba setso, ba ba dumelang mo go nneng teng ga boloi, jo bo tshabegang. Setlhophana seno se tsaya boloi jaaka lelatodi la bosiami, itsheko, le boagisani jo bo siameng. Bontsi jwa dikgetsi tse di sekasekilweng ke dingaka tsa setso di ka ga boloi. Dingaka tsa setso, ka tiriso ya dikobamelo tsa teleko, di thusa balwetse ba tsona go fola go tswa mo ditlamoragong tsa boloi. Dingaka tse dingwe tsa setso le baitseanape ba setso ba gatelela gore go na le kamano e e tlhapileng magareng ga boloi le *ukuthakatha*, e bile ya morago e

⁷² Incredible Happenings Church.

⁷³ Rabbini Center Ministries.

⁷⁴ Christ Embassy.

amanngwa le bosula. Dingaka tse dingwe tsa setso di bolela gore jaaka dingaka, ga ba amane ka gope le dipolao tsa muthi kgotsa thekiso ya dirwe tsa mmele wa motho. Ba tsaya tiro ya bona jaaka pusetso ya mmele wa motho, le tiriso ya dirwe tsa mmele wa motho e tla nna kgatlhanong le tiro eno.

2 Boloji jaaka tlhagiso ya bodumedi

3.63 Tlhagiso ka SAPRA le SAPC e gatelela go nna teng ga ditiragatso tse di amanngwang le dithata tsa motlholo, go feta ditšhaba tsa Aforika. Batho ba ba diragatsang boloi mo bokaong jono ba bo amanya le tlhagiso ya tumelo ya bona. Badumedi Basele ba tleleima tshireletsego ka fa tlase ga Molaotheo, le kamogelo jaaka setlhotswana sa bodumedi.⁷⁵ Badumedi Basele ba tlhalosa tumelo ya bona jaaka tumelo e e tlhomphang tlhago e e dumelang gore Lefatshe le dibopiwa tsa lona di boitshepo. Ba amogela temoso ya tikologo le tshomarelo, le kobamelo ya Bomodimo ka mefuta ya jona.⁷⁶

3.64 Ka Lwetse 2007, Badumedi Basele mo Aforikaborwa ba ne ba kopana go busetsa mareo “moloji” le “boloi” mo bokaong jwa Tumelo esele. Maitlhommo a pusetso eno ka baloi ba ba ipitsang jalo e ne e le go tlhoma ditshwanelo tsa bona tse di sireleditsweng semolaotheo le go lopa go phimolwa ga Molao, o o tseelelang tiragatso ya boloi mo Aforikaborwa jaaka tlolomolao. Kgato e e tserweng ke Badumedi Basele e amogela kakanyo ya kganetso ka kakaretso ya boloi mo Aforikaborwa moo lereo le amanngwang ka bophara le bosenyi kgotsa ditiragatso tse di bosula.⁷⁷

3.65 Badumedi Basele ba amogela mathata a a amanngwang le tlhokego ya tlhaloso ya Molao, le ditharabololo tse di neng di neetswe ke Khomišene ya Ralushai mo pegelong ya yona, le tseo di fitlhelwang mo *Mpumalanga Witchcraft Bill*. Ba ganetsana ka gore ditlhaloso di bothata ka ntlha ya fa di leba boloi ka leitlho lesele.

⁷⁵ Leff D, Fontleve M and Martin L A *Pagan Witches Touchstone Witchcraft and Witch hunts in South Africa* 5.

⁷⁶ Ibid at 52.

⁷⁷ See paras 1.8 to 1.9 above. It is alleged that in 2008 the Department of Home Affairs approved the designation of Pagans as a religious organisation in accordance with the Civil Rights Union Act.

3.66 Badumedi Basele ba dumela gore jaaka badiragatsi ba tumelo, le/kgotsa baloi ba ba ipitsang jalo, ba tshwanetse go rwala maikarabelo a go tlhalosa mareo “boloi” le “baloi”. Ka jalo, tlhaloso e ba e nayang tiragatso ya bona ke e e latelang:

Boloi ke thekeniki ya sedumedi-mmagalai ya bogologolo le tumelo esele ya semowa ya metlheng e e nang le tiriso ya bomodimo, mmagalai wa boutlwebotlhoko le ditiragatso tsa kobamelo tsa tumelo esele.

3.67 Tshitsinyo e e dirilweng ke Badumedi Basele ke ya gore go se tlhabololwe molao ope go samagana le boloi; mme fela, ditiragatso tse di kotsi tse di amanngwang le boloi di tla sekasekwa ka fa tlase ga molao wa tlwaelo.

D Tekanyetso le dikatlanegiso

3.68 Ditlhagiso tse di amogetsweng ke SALRC go simolola patlisiso e e latelang, ditlhagiso tse di amogetsweng go tsibogela dintlha tse di tlhagisitsweng mo lokwalong la morero, le patlisiso e e dirilweng mo go batleng go tlhaloganyeng ponagalo ya boloi di ribolotse go le gontsi. Sa ntlha, dikgato tseno di di bontsha bogolo jwa tumelo ka batho go ralala lefatshe mo dithateng tsa motlholo le ditiragatso tse di amanngwang. Potso ya gore a ditumelo tseo mo dithateng tsa motlholo di molemo kgotsa bosula e ikaegile mo bokaong jo bo farologaneng jwa setso. Bokao jo bo tlametsweng ke Badumedi Basele ke jwa gore boloi jo ba bo diragatsang ga bo amanngwe le bosula bope. Mo letlhakoreng le lengwe, ditlhagiso di dirilwe tse di tshitsinyang gore mo bokaong jwa Aforikaborwa, boloi bo amanngwa le tsotlhe tse di bosula – kgotsa bonnye seo se ikaeletswe gore se utlwise botlhoko.

3.69 Ditlhagiso tse di neetsweng Khomišene di gatelela gape tlhokego ya go aroganya tiragatso ya boloi jwa Badumedi Basele mo ditiragatsong tse di amanngwang le boloi jo bo kotsi. Karoganyo eno e botlhokwa go tlhomamisa gore go a kgonega go bona tiragatso ya boloi e tsewa ka tshwanelo ya yona, mme e seng go e akaretsa le ditiragatso tse di kotsi tse ka dinako dingwe e amanngwang le tsona.

3.70 Mo bogareng jwa patlisiso eno, e e goeletsang popo sešwa ya WSA, go dipolelo tse di ikaegileng mo go diragatseng ditshwanelo tsa sedumedi tse di sireleditsweng mo

Molaotheong. Mo letlhakoreng le lengwe, go na le tlhokego ya go amogela ditshwanelo tsa batho ba ba bayang tiragatso ya bona kgotsa tumelo mo boloing mo lefelong la “tumelo ya setso sa Aforika” kgotsa tlhagiso ya setso sa bona, tseo ka bobedi di sireleditsweng ke Molaotheo.

3.71 Fa SALRC e amogela tlhokego ya go aroganya ditiragatso tsa boloi jaaka go tlhokega, e ka se ikgatholose dinnete tse di diragalang tsa bontsi jwa Maaforikaborwa bao ba amilweng ka go sa siamang ke ditiragatso tse di bosula tse di amanngwang le boloi. Ditlhagiso ka bontsi jwa bannaleseabe di tlhomamisitse gore boloi bo senya matshelo a batho ba le bantsi ba ba senang molato go ralala naga. Dingaka tsa setso, ka tlhagiso ya bona e e dirilweng ke THO, di tlhomamisitse tlhokego e e tiileng ya go samagana le tirisodikgoka e e amanngwang le boloi. Dipegelo tsa diphasalatso, jaaka go kailwe mo lokwalong leno, di tswelela go gatelela dikgang tse di tshosang tsa tirisodikgoka ya boloi e merafe e lebaganeng le yona. Tirisodikgoka e e amanang le boloi e itemogelwa ke baagi kwa ditikologong tsa setoropo le metsemagae ka bobedi. Dipegelo tsa diphasalatso le bopaki jo bo tlhagisitsweng go SALRC di bontsha gore batho ba ba latofatswang ka boloi, kgotsa ba ba ka fa tlase ga tirisodikgoka ya boloi, ba feleletsa matlo a bona a fisitswe, kgotsa ba a tlaselwa kgotsa bolawa, e bile mebele ya bona e a retlwa le dikarolo tsa mmele di a kgaolwa gore go dirwe muthi.

3.72 Batho ka nosi ba ba angwang segolo ke ditiragatso tse di amanngwang le boloi jo bo kotsi ga ba sireletsega e bile ba tlhoka go sireletswa. Patlisiso e e dirilweng le ditlhagiso tse di dirilweng go Khomišene di bontsha gore bana le basadi ke bona ba amilweng segolo ke tirisodikgoka ya boloi, bana ba bolailwe mme mebele ya bona e retlilwe ka maitlomo a go dira muthi. Basadi le batsofe ke bona gantsi ba latofatswang ka go diragatsa boloi, mme seno se lerile gore ba tlaselwe, bolawe, kgotsa kojwe mo merafeng ya bona.

3.73 SALRC e ela tlhoko dikakanyo tse di farologaneng tse di tlhagisitsweng ke bao ba dirileng ditlhagiso mabapi le gore a go nne le molawana o o laolang ditiragalo tse di kotsi tse di amanngwang le boloi kgotsa nnyaa. Re na le kitso ya gore fa bannaleseabe ba bangwe, jaaka THO, ba nongorega ka go se nne teng ga molawana o o sireletsang batho ba ba senang molato ba ba latofaetswang boloi le go otlhaya bao ba bonweng molato wa go diragatsa boloi, ba bangwe – jaaka SAPRA, SAPC le eseng ka gotlhe CGE – ba

ngangisana ka gore go se nne le molao ope o o samaganang le boloi ka tsepamo. Mo setlhopheng sa bofelo, bangwe ba akanya gore melao e setse e le teng ya go samagana le tirisodikgoka jaaka polao, tlhaselo, le tshubo. Bangwe, jaaka CGE, ba akanya gore fa boloi bo ka dirwa bosenyi, go ka nna thata go supa dielemente tsa bosenyi joo.

3.74 Go nepagetse gore molao wa tlwaelo le melawana e mengwe di teng go samagana le ditiragatso tse di rileng tse di kotsi tse di amanang le boloi. Fela, potso ke gore a tseo di lekane go samagana le bothata jo e saleng bo farafere batho mo dingwagakgolong. Ntlha e Khomišene e tshwanetseng go e tsaya tsia le go dira dikatlanegiso mo go yona mo patlisisong eno ke gore a seo se lekane go ka samagana le mathata a a sekasekilweng mo lokwalong leno.

3.75 Mo motheong wa yona, molao ga o a thusa setšhaba mo go thibeleng tirisodikgoka e e amanngwang le tiragatso e e kotsi ya boloi. Seno se tlhoka go lebelelwa, go akanya ka moo molao o ka thusang go tokafatsa seno.

3.76 Nngwe ya mathata a go tshwanetsweng go samaganwa le ona mo kगतong ya taolo, fa seno e ka nna tsela e e tshwanetseng go latelwa, ke go tlhalosa “boloi” kgotsa “boloi jo bo kotsi”. Eno ke ntlha e patlisiso e tla tsepamang mo go yona. Go tlhalosa boloi go ka se ikgatholoswe, ka ntlha ya fa go le botlhokwa go tlhoma maemo a le mangwe ao bannaleseabe ba ba amegang ba tla a tsayang. Khomišene e setse e anaanela bothata jo bo tlhagisitsweng mo go tlhaloseng boloi. Ntle le dikgwetlho tseo, Khomišene e atlanegisa tlhaloso e e latelang jaaka yona e e tshwanetseng go amogelwa ka maitlhommo a patlisiso ya ga jaana le dikatlanegiso tse di amanang:

‘Boloji jo bo kotsi’ bo kaya tiriso ya ka bomo kgotsa e e kaiwang e le ya mokgwa o o seng wa tlhago kgotsa wa motlholo (seno se ka tswa se akaretsa tiriso ya dielemente tsa popego kgotsa nnyaa) go tshosetsa, kgotsa go baka,

- (i) Loso kgotsa kgobalo go kgotsa bolwetso kgotsa bogole mo mothong mongwe le mongwe; kgotsa
- (ii) Tshenyo kgotsa tatlhegelo kgotsa tshenyegelo ya thoto ya tlhaloso nngwe le nngwe; kgotsa
- (iii) Go dirisa tumelo le ditiragatso tse di rileng tse di amanngwang le boloi jo bo kotsi go tlhola tlalelo ya bosaekholoji kgotsa letshogo.

3.77 Patlisiso e e setseng e dirilwe mo tlhotlhomisong eno e tlhotlheleditse Khomišene gore ditiragatso tse di kotsi tse di tsepameng di teng tse di amanngwang le boloi, tseo di nang le ditlamorago tse di masisi mo setšhabeng. Ka moo, Khomišene e atlanegisa gore lenane le tlhongwe go supa ditiragatso tse di kotsi tse di tshwanetseng go laolwa. Go etswe tlhoko mathata a a amanngwang le go tlangwa ga lenane leno, Khomišene e tshitsinya gore le tshwanetse go nna le mefuta eo ya ditiragatso tse di kotsi tse di ka tlhagiswang; fela, lenane le le kaiwang ga le a tshwanela go nna le le tswetsweng ka ntlha ya ditlhabololo tse di ka nnang teng mo isagong. Mo nakong eno, Khomišene e atlanegisa gore bosenyi kgotsa ditiragatso tse di kotsi di tse di tshwanetseng go bewa ka fa tlase ga taolo ke tse di latelang: ditatofatso tsa boloi, patlo ya baloi, ditlolomolao tse di amanang le tiragatso ya boloi jo bo kotsi, le dipolao tsa muthi.

3.78 Go tswa mo ditlhopeng tse di supilweng mo temaneng e e fa godimo, go ka konosetswa ka gore mangwe a maitsholo a a thibetsweng a totobetse, jaaka ditatofatso tsa boloi, dipatlo tsa baloi, le dipolao tsa muthi. Setlhopha se se samaganeng le ditlolomolao tse di amanngwang le boloi jo bo kotsi ga se a tlhapa sentle ga jaana. Khomišene e ela tlhoko gore go na le mabaka mangwe ao batho ba ipoletseng gore ba utlwisitse ba bangwe botlhoko ka boloi, mme ntlha eno e tshwanetse go elwa tlhoko. Tharabololo e e tshitsintsweng ga e a tshwanela go latofatsa fela bao ba latofatswang ka go tsibogela matshosetsi a boloi, mme gape le ba ba bakang kgotsa tshosetsang ka go bakela ba bangwe kotsi ka boloi. Ntlha eno e tla batlisiswa go ya pele ka nako ya ditherisano tsa phatlhalatsa tse Khomišene e tla di tshwarang ka nako ya dipatlisiso.

KGAOLO 4

TAOLO YA BOLOI

A Matseno

4.1 Molao o o ka fa tlase ga thadiso o teng go ya ka letlhomeso la semolao le le laelang tsotlhe gore Molaotheo o mogolo, le molao otlhe o o sa tsamaelaneng le mowa wa Molaotheo ga se wa semolaotheo. Molaotheo ke lokwalo le le tshwanang le le esi le le sireletsang ditshwanelo tsa baagi ba naga. Ditshwanelo tseo di leng botlhokwa mo patlisisong ya ga jaana di sireleditswe mo Molaotheong. Basimolodi ba patlisiso eno ba ngangisane ka gore Molao o ba kganela go diragatsa ditshwanelo tsa bona tse di sireleditsweng ke Molaotheo – mo lebakeng leno, tshwanelo ya bona ya kgololosego ya bodumedi, kgololosego ya tlhagiso maikutlo, tekatekano, seriti, tshireletsego, le tshwanelo ya bona ya go tlhophela le go diragatsa tiro ya bona mo gare ga Aforikaborwa. Se se leng botlhokwa mo setlhopheng seno ke gore Molao o ba thibela go diragatsa tshwanelo ya bona ya bodumedi. Setlhophela se se kwa thoko sa batho ba ba simolotseng patlisiso eno, ka kelotlhoko go ditshwanelo tsa ba ba bangwe tsa bodumedi le setso, ba ngangisana ka gore ditshwanelo tseno di tshwanetse go lekanyetswa kgatlhanong le tshireletso e e tshwanetseng go abelwa batswasetlhabelo ba ditiragatso tse di kotsi tse di amanngwang le boloi.

4.2 Molao wa tlwaelo le molao wa setso e botlhokwa mo patlisisong eno, jaaka e kaiwa fa go botsolotswa dipuisano ka ga boloi le/kgotsa ditiragatso tse di kotsi. Kgetsi ya molao e e sekasekilweng fa tlase e tla bontsha gore mo dikgetsing tse di amanang le boloi, dingangisano di theilwe mo setsong go na le mo bodumeding. Mo dikgetsing tseo, potso e ntse e le gore a setso se ka diriswa jaaka tshireletso. Ga go a tlhapa gore molao wa tlwaelo o tlaholotswe gore o amogele tshireletso eno jaaka karolo ya molao wa Aforikaborwa. Dipotso di boditswe gore a tshireletso eo e ka tlhagiswa jaaka tshireletso e ntšhwa, kgotsa e tshwanetse go bopa karolo ya ditshireletso tse di ntseng di le teng.

4.3 Baagi ba tlhago ba ne ba, e bile bontsi bo sa ntse bo, laolwa ke molao wa setso, o o – jaaka molao wa tlwaelo – sa rulaganngwang ka thulaganyo ya khoutu. Jaaka fa tumelo mo boloing e ikaegile mo ditumelong tsa setso tsa baagi, kwa mafelong a metsemagae baeteledipele ba setso ba a reriswa go rarabolola dikgotlhang tse di amanang le boloi. Sa botlhokwa, ka jalo, ke gore a molao wa setso o ka tlabelolwa gore o samagane le merero e e amanngwang le ditiragatso tse di kotsi tse di amanngwang le boloi.

4.4 Mokgwa wa botshelo wa baagi o santse o buswa ke molao wa setso, o ditumelo tsa ona tsa setso di amogelwang ke Molaotheo, o botlhokwa mo go thaloganyeng ditiragatso tsa boloi mo baaging ba Aforikaborwa. Karolo eno e tla lebelela ka boripana tlhagelelo ya go amogelwa ga dingaka tsa setso, tseo di tsayang karolo ya botlhokwa mo mererong e e amanang le boloi magareng ga baagi ba tlhago.

4.5 Lokwalo la morero le sekasekile ka boripana ka moo Kgotlatshekelo ya Molaotheo e samaganeng le ditshwanelo tsa setlhotshwana sa badumedi. Bokhutlo jo bo fitlheletsweng go tswa mo thulaganyong ya molao ya semolaotheo ke gore dikgotlatshekelo di netefaditse tshireletso ya ditshwanelo tsa setlhotshwana sa badumedi. Seno se tshitsinya gore kgoeletso ka batho ba ba bolelang gore tiragatso ya boloi le karolo ya tlhagiso ya bodumedi jwa bona e tshwanetse go tsewa tsia fa go tlhomamiswa gore a tiragatso ya boloi e tshwanetse go latlha semolao.

4.6 Molaotheo o a laela ka ga boemo jwa molao wa boditšhabatšhaba. Karolo 39 ya Molaotheo, e e ka ga tlhaloso ya Molaotlhommo wa Ditshwanelo, e tlamela gore dikgotlatshekelo tsa Aforikaborwa di tshwanetse go tsaya tsia molao wa boditšhabatšhaba fa ba tlhalosa Molaotheo. Lokwalo la lorero le bontshitse maemo kwa boemong jwa boditšhabatšhaba, le go neelana ka palo ya didiriswa tsa Ditšhaba Kopano (UN) tse di amogelang tshwanelo ya bodumedi. Lokwalo le le kaile Tlhomamiso ya Botlhe ya Ditshwanelo tsa Botho (UDHR) le Kokoano mabapi le Ditshwanelo tsa Batho le Sepolotiki (ICCPR).

4.7 Athikele 18 ya UDHR e tlamela gore mongwe le mongwe o na le tshwanelo ya kgololosego ya kakanyo, segakolodi le bodumedi. Seno se akaretsa tshwanelo ya go fetola bodumedi kgotsa tumelo ya motho; le kgololosego, e ka nna ka esi kgotsa mo baaging le batho ba bangwe le mo pontsheng kgotsa poraefeteng, go bontsha bodumedi

kgotsa tumelo ya motho ka go ruta, diragatsa, obamela le go lemoga. Athikele 18 ya ICCPR, e le yona e tlamelang mabapi le tshireletso ya ditshwanelo tsa bodumedi, e kgothaletsa mekgatlho ya Puso go itlamba go tlotla ditshwanelo tsa bodumedi tsa baagi.

4.8 Ke taelo gore mo go tlhabololeng mekgwa e e ikaelelang go samagana le bothata jwa tirisodikgoka ya boloi, re tsewelele go lemoga ditsereganyo ka UN tsa go samagana le merero e e amanang le boloi. Lokwalo la morero le kaya go thapiwa ga Babegi ba ba Kgethegileng ke UN go tsibogela dipolao tse di amanang le boloi mo Aforika. Ditsereganyo tse di tshitsintsweng ke UN mo go samaganeng le boloi mo Aforika di tla elwa tlhoko mo go tlhabololeng mokgwa o Aforikaborwa o tlhokang go o latela mo thadisong ya yona ya taolo ya boloi.

4.9 Maikutlo le didiriswa tsa semolao tse di sekasekilweng mo lokwalong leno di bontsha tlhokego ya tlhatlhobo ka botlalo ya letlhomeso la molao. E leng, patlisiso e tshwanetse go tsepama e seng fela mo melaong mo Aforikaborwa mme gape le mo melaong mo dinageng tse dingwe mo kontinenteng tse di lekileng go rarabolola bothata jwa boloi, gape le WSA (jaaka molao o thadiswa) le didiriswa tse dingwe tsa molao tse di tlhamilweng mo Aforikaborwa, go tlamela ka tlhologanyo ya karolo e e tsewang ke WSA mo thulaganyong ya rona ya molao. Karolo eno e tlamela ka tshekatsheko ya semolaotheo ya WSA go neelana ka kaelo e e kgonegang mo mererong e Khomišene e tshwanetseng go e ela tlhoko mo letsholong la yona la go batla tharabololo go bothata jo bo tlhagisitsweng.

B Letlhomeso la semolao

1 Letlhomeso la selegae la semolao

a) Molao wa Kgatelelo ya Boloi 3 wa 1957

4.10 Molao o ne wa fetiswa ka 1957, le go tlhabololwa ka 1970 le 1997 ke Molao wa Kgatelelo ya Boloji le *Abolition of Corporal Punishment Act* ka tatelano.⁷⁸ Ditlhabololo tseno mo Molaong ga di a samagana le merero e e utlwagalang ka fa tlase ga Molao, mme e emiseditse dielo tsa potso ka ranta, le go tlatsa ka ditlolomolao tse dingwe mo Molaong

4.11 Molao o na le dikarolo tse nne mme tse pedi tsa tsona di tsamaelana le patlisiso eno. Go tshwanetse ga elwa tlhoko gore Molao ga o na karolo ya tlhaloso; seno ke se se sa itumediseng, jaaka fa bokao jwa “boloi”, jo bo bopang karolo ya ditlolomolao tsotlhe, bo sa tlhaloswa. Tlhaelo eno e atologela gape go mangwe a mareo a a dirisitsweng mo Molaong, ao a ka nnang le ditlhaloso tse dintsi mme ga a tlhaloswa.

4.12 Dikabelo mo dikarolong 1 le 2 di maleba fano, ka ntlha ya fa di na le ditlhopho tsa maitsholo a a sa letlelelwang go ya ka Molao. Dikarolo di tlhalosa maitsholo a a kganetsweng, le ao motho a ka bonwang molato wa ona le go lebaganwa ke kotlhaio. Dikarolo tseno di tlamela jaana (kgatelelo e tladitswe):

1 Ditlolomolao tse di amanang le tiragatso ya boloi le ditiragatso tse di tshwanang

Motho mongwe le mongwe yo—

- a) o latofaletsang motho yo mongwe ka go baka, ka dithata tsa motlholo, bolwetsi bongwe le bongwe kgotsa kgobatsa kgotsa tshenygo go motho mongwe le mongwe kgotsa sengwe le sengwe, kgotsa yo o bitsang kgotsa yo o supang motho yo mongwe jaaka moloi;
- b) mo mabakeng a a bontshang gore o boletse kgotsa o dira e kete o dirisa dithata tsa motlholo, boloi, tiriso ya ditlhare, go tshereanya kgotsa go loya, go rwesa molato se se bakileng loso la, kgobatsa kgotsa kutlwiso botlhoko go, malwetse mo, tshenygo go kgotsa go nyamela ga motho mongwe le mongwe kgotsa sengwe mo mothing yo mongwe;
- c) o thapang kgotsa fitlhelelang ngaka nngwe le nngwe ya moloi, mmatli wa moloi kgotsa motho mongwe le mongwe go bitsa kgotsa supa motho mongwe le mongwe jaaka moloi;
- d) o bolelang kakitso ya boloi, kgotsa tiriso ya ditshamo, le go eletsa motho mongwe le mongwe gore go loiwa jang, gobatsa kgotsa senya motho yo mongwe kgotsa sengwe, kgotsa o tlamela motho yo mongwe ka mokgwa wa go itirisa wa boloi;
- e) ka keletso ya ngaka nngwe ya moloi, mmatli wa moloi kgotsa motho mongwe kgotsa ka lebaka la go itira e kete o na le kitso ya boloi, o dirisa kgotsa o baka go tsenya mo tirisong mokgwa kgotsa kgato nngwe le nngwe e, go ya ka keletso eo kgotsa tumelo ya gagwe, e bonetsweng pele gore e tla gobatsa kgotsa senya motho mongwe kgotsa sengwe;
 - f) mabapi le go una molemo a dirang e kete o diragatsa kgotsa dirisa dithata dingwe tsa motlholo, boloi, tiriso ya ditlhare, tshereanyo kgotsa boloi,

⁷⁸ Act 50 of 1970 and Act 33 of 1997.

kgotsa o itlamma gore o tla bonela pele, kgotsa go itira e kete o na le kitso ya bonetetshi jwa okhalete go ribolola kwa le ka mokgwa o sengwe le sengwe se tshwanetseng go kabo se utswitswe kgotsa go latlhegile fa se bonwe.

g) o tla bonwang molato wa tlolomolao le go lebanwa ke katlholo—

(i) mo lebakeng la molato o o kailweng mo temaneng (a) kgotsa (b) mo ditlamoragong tse motho yo go ya ka ena tlolomolao e ne e dirilwe, a bolailweng, kgotsa fa molatofatswa a supilweng gore ka mokgwa wa tlwaelo kgotsa semelo ke ngaka ya moloi kgotsa mmatlhi wa moloi, go tswalelo kwa kgolegelong sebaka sa paka e e sa feteng dingwaga tse 20;

(ii) mo lebakeng la tlolomolao nngwe le nngwe e e kailweng mo temaneng e e umakilweng, go tuediso kgotsa tswalelo kwa kgolegelong sebaka sa paka e e sa feteng dingwaga tse lesome;

(iii) mo lebakeng la tlolomolao e e kailweng mo temaneng (c), (d) kgotsa (e), go tuediso e e sa feteng diranta tse makgolo a matlhano kgotsa go tswalelo kwa kgolegelong sebaka sa paka e e sa feteng dingwaga tse tlhano, kgotsa ka bobedi tuediso eo le tshwaro;

(iv) mo lebakeng la tlolomolao e e kailweng mo temaneng (f), go tuediso e e sa feteng diranta di le makgolo a mabedi kgotsa go tswalelo kwa kgolegelong ya sebaka sa paka e e sa feteng dingwaga tse pedi.

2 Diphopholetso

Fa motho mongwe le mongwe yo mabapi le ena tlolomolao e e kailweng mo temaneng (a) kgotsa (b) ya karolo 1 e neng e dirilwe, a bolailwe, go tla phopholetswa, go fitlhela go supilwe ka mokgwa mongwe, gore motho yoo o bolailwe ka ntlha ya taelo ya tlolomolao eo.

[Kgatelelo e tsentswe]

4.13 Ditlolomolao tse di tlhamilweng ka karolo1 ya Molao di kganela maitsholo a a amanang le dintlha tse di farologaneng, jaaka go sekasekilwe mo ditemaneng tse supa tse di latelang (ditemana 4.14 fo fitlha go 4.19). Karolotlaleletso (a) e kganela motho mongwe le mongwe mo go latofatseng motho yo mongwe ka go dirisa boloi go baka bolwetsi bongwe le bongwe kgotsa kgobatso kgotsa ditshenygo go motho mongwe le mongwe kgotsa sengwe, kgotsa go bitsa kgotsa go supa gore motho mongwe ke moloi. Kganelo eno e gatelela mabaka a go supilwa ga baloi, kgotsa dipatlo tsa baloi, mo batho ka esi ba latofatswang ka go baka dikotsi go ba bangwe ka boloi kgotsa tiriso ya dithata tsa motlholo.

4.14 Karolotlaleletso (b) e kganela motho mongwe le mongwe mo go boleleng kgotsa go direng e kete o dirisa thata ya motlholo, boloi, tiriso ya ditlhare, dikgaba kgotsa boloi, go amanya se se bakileng loso le la, kgobalo kgotsa kutlwisobotlhoko go, malwetsi mo, tshenygo go kgotsa go nyamela ga motho mongwe le mongwe kgotsa sengwe go motho yo mongwe. Kabelo eno e ama batho ba ba itsegeng jaaka “dingaka tsa baloi.” Gore go nne

le tlolo ya kabelo, maitsholo a “ngaka ya moloji” a tshwanetse go nna le ditlamorago tsa go baka kotsi jaaka loso, bolwetse, tshenyo kgotsa nyamelo ya motho kgotsa sengwe.

4.15 Karolotlaleletso (c) e samagana le maemo ao motho ka esi a thapang kgotsa a dirisa ditirelo tsa “ngaka ya moloji” kgotsa “mmatli wa moloji” kgotsa motho yo mongwe go bitsa kgotsa go “nkgelela” moloji. Mo lebakeng leno, tlolomolao e dirilwe fa motho a thapa ditirelo tsa mongwe jaaka ngaka ya moloji go mo gakolola ka boitshupo jwa moloji.

4.16 Karolotlaleletso (d) e kganela maemo ao motho yo o o bolelang kitso ka ga boloi kgotsa tiriso ya ditšhamo a gakololang motho yo mongwe ka moo a ka loang kgotsa gobatsang motho yo mongwe, kgotsa go senya sengwe, kgotsa go tlamela motho yo mongwe ka mekgwa ya go dira e kete ke boloi.

4.17 Karolotlaleletso (e) e kganela tiragatso ya boloi. Tseo di kganetsweng ke maemo ao motho mongwe le mongwe, ka kgakololo ya ngaka nngwe le nngwe ya moloji, mmatli wa moloji kgotsa motho yo mongwe, kgotsa ka lebaka la go itira e kete o na le kitso ka ga boloi, a dirisang kgotsa a dirang gore go diriswe mokgwa mongwe le mongwe kgotsa kgato e e, go tsamaelana le kgakololo eo kgotsa tumelo ya bona, go ka tseelwang gore e ka gobatsa kgotsa senya motho mongwe le mongwe kgotsa sengwe. Se se kganetsweng ke tiragatso e e ikemetseng ya boloi, kgotsa boloi jo bo diragatswang ka kgakololo ya motho yo mongwe (jaaka ngaka ya moloji kgotsa mmatli wa moloji).

4.18 Karolotlaleletso (f) e ama batho bao, mabapi le neo, ba dirang e kete ba dirisa boloi kgotsa mokgwa o go dirwang e kete go itsiwe ka ga dithata tsa motlholo, go fitlhelela kgotsa go ribolola lefelo le mokgwa o sengwe le sengwe se tshwanetseng go ka bo se utswitswe kgotsa se latlhegile se ka bonwang ka teng.

4.19 Karolo 1(i) e tlhola tlolomolao e motho a bolailweng ka ntlha ya maitsholo a a kganetsweng go ya ka dikarolotlaleletso (a) kgotsa (b), kgotsa mo molatofatswa a tumileng ka go nna mmatli wa moloji. Kotlhao ya molato mo karolotlaleletsong eno ke e setlhogo ka ntlha ya fa e rwala tswalelo kwa kgolegelong dingwaga di le 20. Kabelo e golagantswe le karolo 2 ya Molao, e e tlamelang ka gore fa motho a bolailwe ka ntlha ya maitsholo a a kganetsweng go ya ka dikarolotlaleletso (a) kgotsa (b), fa fela go supilwe ka mokgwa

mongwe, gore motho o tla fopholetswa gore o bolaile ka ntlha ya tiro ya maitsholo a a kganetsweng.

4.20 Molao, jaaka melao e mengwe eo mo kontinenteng ya Aforika le golo gongwe, o kganela tiragatso ya boloi le ditiro tse di amanang tse di amanngwang le boloi. Katlholelo ya kwa kgolegelong e e bokete le dituediso tse di kwa godimo tse di ka pateletswang mabapi le go dira ditlolomolao tseo di etswe tlhoko.⁷⁹

4.21 Bosenyi jo bo ngokelang kotlhao e e bokete e bile bo tsewa e le jo bogolo mo Molaong ke jo bo neetsweng mo dikarotlaleletsong (a) le (b). Mabapi le tiro ya bosenyi jono, molatofatswa o ngoka paka ya go tswalelwa kwa kgolegelong e e sa feteng dingwaga tse lesome, kgotsa tuediso ya R200 000.00. Fa molatofatswa a bolailwe ka ntlha ya bosenyi jo bo dirilweng, paka ya go tswalelwa kwa kgolegelong e oketswa go dingwaga tse 20.

4.22 Bosenyi jo bo amanang le melato e e neetsweng mo dikarotlaleletsong (c), (d) kgotsa (e) bo ngoka paka ya tswalelo kwa kgotlatshekelong sebaka sa dingwaga tse tlhano, kgotsa tuediso ya R100 000.00. Mabapi le bosenyi jo bo amanang le molato o o mo karotlaleletsong (e), o o akaretsang botsayakarolo jwa ngaka ya moloi mo bosenyi, fa motswasetlhabelo a bolailwe ka ntlha ya bosenyi joo, karotlaleletso (i) e ka diriswa le paka ya go tswalelwa kwa kgolegelong e ka oketswa go paka e e sa feteng dingwaga tse 20.

4.23 Bosenyi jo bo dirilweng ka fa tlase ga dikarotlaleletso (f) bo ngoka kotlhao e e kwa tlase; paka ya go tswalelwa kwa kgolegelong ke go fitlha go dingwaga tse pedi, ka tuediso ya R40 000.00. Karotlaleletso eno e ka ngoka gape kotlhao e e mo karotlaleletsong (i), e mo go yona kotlhao e ka nnang paka ya e e sa feteng dingwaga tse 20 fa, ka ntlha ya thuso e e tlametsweng go molatofatswa, motho o bolailwe.

4.24 Dikabelo mo Molaong, le dikotlhao tsa go dira maitsholo a a kganetsweng, di bontsha ka moo peomolao e neng e tsaya maitsholo a a kganetsweng ka tlhonamo ka teng. Se se botlhokwa gape go amogelwa ke melato e e tsewang jaaka e e masisi go ya

⁷⁹ The fines referred to in the paragraphs below have been adjusted to current monetary value according to the latest schedule issued in terms of the Adjustment of Fines Act 101 of 1991.

ka Molao, eo e leng ditatofatso tsa boloi le dipatlo tsa boloi. Tseno e ne e le dintlha tse di masisi ka nako e Molao o neng o fetiswa ka yona e bile di santse di na le ditlamorago tse di masisi mo setšhabeng gompieno.

4.25 Bosenyi jo bo dirilweng go ya ka dikarolotlaleletso tse di samaganeng le tiragatso ya boloi, dipatlo tsa boloi, le go dirisa ditirelo tsa dingaka tsa baloi go tlhoka go tlhajwa ka tsenelelo, segolosegolo ka tshedimoso ya Molaotheo le ditaelo tsa ona. Mo Aforikabrweng wa ga jaana go na le dikarolo tsa baagi, jaaka Badumedi Basele le dingaka tsa baloi (tse ga jaana di itsegeng ka dingaka tsa setso), tse di bolelang gore di diragatsa boloi jaaka karolo ya bodumedi kgotsa setso sa bona – ditshwanelo tse di sireleditsweng mo Molaotheong. Ditiro tsa dingaka tsa setso gompieno di tshwanetse go tsewa mo bokaong jwa *Traditional Health Practitioners Act*,⁸⁰ o o sa laoleng fela tiragatso eno mme gape o amogela dingaka tseno jaaka karolo ya thulaganyo ya tlhokomelo ya kalafi e e itsegeng. Patlo ya baloi kgotsa phitlhelelo ya baloi ke bothata jo bo tseneletseng, ka ntlha ya fa e ne e le dingwagosome tse di fetileng. Tlhomamiso ka Mopapa ya sešweng ya ga Blessed Daswa ke Kereke ya Katoliki e re gopotsa gore patlo ya baloi kgotsa phitlhelelo ya baloi e nnile le ditlamorago tse di setlhogo mo malobeng le gore maemo ao ga a ise a fetoge le mo Aforikaborweng wa sešweng.⁸¹ Ditheo tse di mo karolotlaleletsong e e samaganang le ditirelo tsa dingaka tsa setso e tshwanetse go tlhatlhojwa, ka ntlha ya gore fa batho ba dirisa ditirelo tseo ba dira jalo jaaka karolo ya ditumelo tsa bona tsa setso, tseo le tsona di sireleditsweng ke Molaotheo.

4.26 Maikutlo mo temaneng 4.25 a ka diriswa go maitsholo a a kganetsweng a a amanang le tiriso ya dithata tsa motlholo – sengwe se Badumedi Basele le dingaka tsa setso ba se dirang jaaka karolo ya kgwebo ya bona.

⁸⁰ Act 22 of 2007. This Act will be briefly discussed below.

⁸¹ On 13 September 2015, the Catholic Church celebrated the anointing of Mr Daswa as a saint. He was a teacher in the then Northern Province (now Limpopo). He was murdered on 2 February 1990 by members of his community, for refusing to accept the power of witchcraft or to participate in witch-finding. On 22 January 2015, Pope Francis authorised the Congregation for the Causes of Saints to promulgate and decree the martyrdom of Benedict Daswa. This process led to the beatification, which is public recognition by the Catholic Church that Benedict Daswa is “a blessed martyr of Christ and intercedes in heaven before God for the needs of God’s people”.

4.27 Puisano eno ya dikabelo tsa Molao le ditlamorago go bao ba tloang molao e bontsha ka moo go ka nnang bothata go dikgotlatshekelo gore di samagane le merero e e amanang le boloi, segolosegolo ka fa tlase ga tsamaiso ya semolaotheo.

4.28 Dikgotlatshekelo di samagane le palo ya dikgetsi tse di amanang le boloi, tse pedi tsa tsona di sekasekilwe ka boripana mo lokwalong la morero. Dikgetsi tse di sekasekilweng mo lokwalong leo di bontshitse gore fa dikgotlatshekelo di etse tlhoko tshireletso ya setso mo go samaganeng le dikgetsi tsa boloi. Mo dikgetsing ka bobedi, kgotlatshekelo ga e a amogela tshireletso ya setso e e tlhagisitsweng ke molatofatswa.

4.29 Mo go thadiseng dikgetsi mabapi le lokwalo leno, go fitlheletswe gore go na le mefuta e mebedi e megolo ya dikgetsi tse kgotlatshekelo e setseng e samaganeng le tsona. E leng, tse molatofatso a neng a latofatswa ka bosenyi jo bo laolwang ke molao wa bosenyi, le tse molatofatswa a neng a latofatswa go ya ka Molao o o thadiswang. Molao wa kgetsi o bontsha gape gore mo bontsing jwa dikgetsi, ntlha e e sekasekilweng di amana le le go bitsa motho moloi (ditatofatso tsa boloi), polao go itshireletsa kgatthanong le kgobatso, le dipolao tsa muthi. Ditlhopha tseno tse tharo tsa dikgetsi, le ditlamorago tsa tsona, di sekasekwa fa tlase.

4.30 Setlhopha sa ntlha ke dikgetsi tse mo go tsona go bitsa motho moloi go tlisitsweng kwa kgotlatshekelong, mme molatofatswa o ne a latofatswa go ya ka WSA. Mo dikgetsing tse molatofatswa a latofatswang ka go bitsa motho moloi, dikgotlatshekelo di gateletse bomasisi jwa tatofatso eo le tlhokego ya go sireletsa baagi kgatthanong le ditlamorago tse batho ba ba supilweng jaaka baloi ba lebaganeng le tsona. Mo *S v Phalane*,⁸² molatofatswa o ne a bonwa molato le go atholelwa ditlolomolao tse di dirilweng ka fa tlase ga karolo 1(a) ya Molao. Balatofatswa e ne e le baagi ba motse ba ba neng ba latofaditse mongongoregi ka tiragatso ya boloi, morago ga go tlhokafala ga mongwe wa baagi. Ditatofatso di ne di sa simololwa ke balatofatswa, ka ntlha ya fa ntlha ya boloi jwa mongongoregi e ne e sekasekilwe mo kopanong ya motse e bile ga twe o ne a kgalengwa mabapi le boloi jwa gagwe. Ka bonako morago ga loso la moagi wa motse, balatofatswa ba ne ba ya kwa go mongongoregi ba tswelela pele ka go mo latofatsa. Ga twe ba ne ba bitsa baagi go tla go kopana kwa legaeng la mongongoregi, mme morago kwa lebaleng la

⁸² [2005] JOL 14525 (T).

metshameko, kwa ba neng ba tlhotlheletsa baagi ba motse go fisa mongongoregi. Kgotlatshekelokgolo e ne e kgotsofaditswe ke ponomolato le katlholo ya kgotlatshekelo e e potlana, eo e neng e pateleditse tuediso ya R3 000.00 kfotsa go tswalelwa dikgwedi tse di lesome kwa kgolegelong ga mongwe le mongwe wa balatofatswa. Mo *S v Mashimbye*,⁸³ molatofatswa o ne a dirile molato go ya ka karolo 1(a) ya Molao fa a ne a tagilwe thata. O ne a atlholelwa go ya kgolegelong dingwaga tse lesome. Kgotlatshekelokgolo e ne ya ngangisana gore katlholo ya kgotlatshekelo potlana e feteletse, ka ntlha ya fa katlholo e e neetsweng go ya ka Molao ga e fete dingwaga tse lesome. Mo go fokotseng katlholo go dingwaga tse nne, halofo ya tsona e ne ya beelwa thoko, Kgotlatshekelo e ngangisane ka gore molatofatswa o dirile molato fa a ne a tagilwe. Le fa e amogetse bomasisi jwa molato o molatofatswa a o latofaletsang, le go dumela gore molatofatswa o tshwanetse go otlhaiwa setlhogo, Kgotlatshekelo e ngangisane ka gore boemo jwa tlhologanyo ya gagwe bo tshwanetse go tsewa tsia. Mo kgetsing ya *S v Maluleke*,⁸⁴ molatofatswa o ne a latofatswa go ya ka karolo 1(a) ya Molao, ka ntlha ya fa a ne a biditse mongongoregi moloji morago ga go latela mongongoregi ka ga go tloswa ga mmu o setlhako sa ngwana wa molatofatswa se neng se tlogetse motlhala mo go ona. Molatofatswa o ne a atlholelwa go tswalelwa kwa kgolegelong ngwaga o le esi, mme a dira boikuelo kgatlhanong le katlholo eo. Kgotlatshekelo e ne e sa kgotsofatswa ke kotlhao e e setlhogo eo, mme ya ngangisana ka gore tatofatso e ne e le masisi. Kgotlatshekelo e gateletse tshotlego eo batho ba ba bidiwang baloi ba nnang ka fa tlase ga yona, e e akaretsang “tlontlololo e e masisi, kgobatso le loso mo diatleng tsa baagi bangwe.”

4.31 Le fa melato go ya ka karolo 1(a) e ngoka katlholo ya go tswalelwa kwa kgolegelong sebaka se se sa feteng dingwaga tse lesome, tshwetso ya dikgotlatshekelo mo dikgetsing tse di kailweng fa godimo e farologane. Katlholo e e pateleditsweng e ne e le ya tswalelo kwa kgotlatshekelong dikgwedi tse lesome, dingwaga tse nne, le ngwaga o le esi ka tatelano. Go sa tlhokomologwe kamogelo ya gore melato e balatofatswa ba e latofaletsang e ne e le masisi, dikgotlatshekelo di ne di ipaakanyeditse go ela tlhoko mabaka a a fokotsang mo melatong e e dirilweng.

4.32 Setlhopha sa bobedi se akaretsa polao go itshireletsa kgatlhanong le kotsi, kgotsa mo kotsi e setseng e dirilwe go mo/bangongoregi. Mo kgetsing e e tlileng fa pele ga

⁸³ [2005] JOL 16159 (T).

⁸⁴ [2007] JOL 19283 (T)

Appellate Division (AD), molatofatswa o ne a bolaile motho yo mongwe – moagisane wa gagwe – ka ntlha ya tumelo ya molatofatswa mo boloing. Kgotlatshekelo e amogetse jaaka lebaka la phokotso tumelo ya molatofatswa, jaaka tlhaloso mabapi le molato o o dirilweng.⁸⁵ Kgotlatshekelopotlana e ne e atlholetse molatofatswa tswalelo kwa kgolegelong dingwaga di le lesome mabapi le bosenyi. Mo go fokotseng paka ya kwa kgolegelong go dingwaga di le nne, Kgotlatshekelo ka boikuelo e amogetse jaaka tlhaloso e e utlwagalang tumelo ya molatofatswa mo boloing, fa a sena go rema moagisane wa gagwe ka selepe – yo a mo tsereng ka phoso jaaka mamathwane. Dikgotlatshekelo di ne sa latelela peo mabaka le mokgwa wa AD mo go samaganeng le dikgetsi tsa tirisodikgoka ya boloi. Mo *S v Phama*,⁸⁶ molatofatswa o ne a bolaile motswasetlhabelo wa moswi morago ga go gakololwa ke ngaka ya moloji gore motswasetlhabelo o ne a rwala maikarabelo a loso la wa losika la gagwe. Kgotlatshekelo e ne ya se amogele gore tumelo mo boloing e ne e le lebaka la phokotso. Kgotlatshekelo e ne ya ngangisana ka gore lebaka la polao e ne e le go ipusoloesetsa, e seng tumelo mo boloing. Kgotlatshekelo e ne ya netefatsa katlholo ya kgotlatshekelopotlana ya tswalelo kwa kgolegelong dingwaga di le 12. Mo *S v Latha*,⁸⁷ kgotlatshekelo e ne ya samagana le kgetsi e e amanang le polao ya mosadimogolo ke ditlogolwana tsa gagwe. Motswasetlhabelo o ne a latofatswa ka go loa wa losika, yo o neng a tlhokafale ka ntlha ya seo. Mongwe wa balatofatswa o ne a rerisane le sangoma, yo o neng a mo gakolola gore motswasetlhabelo wa moswi o mo loile. Kgotlatshekelo e ne ya atlholela molatofatswa wa ntlha le wa bobedi go ya kgolegelong dingwaga tse 20 le tse 15 ka tatelano. Kgotlatshekelo e tsere tsia ntlha ya gore balatofatswa ba dirile molato ka ntlha ya fa moswi a ne a lere matshosetsi mo tshiamong ya malapa a bona. E ne ya tsaya gape tsia go tlhoka bokgoni ga bona go amogela bogolo jwa bosenyi jwa bona ka ntlha ya maemo a bona a go tagwa fa ba ne ba dira molato.

4.33 Setlhophha sa boraro ke sa dikgetsi tse di samaganang le dipolao tsa muthi. Ke moo dirwe tsa mmele tsa batho di kgaolwang go tswa mo batswasetlhabelong morago ga fa ba sena go bolawa, mme dikarolo tseo tsa mmele di diriswa go go dira muthi (ditlhare). Mokgwa o o tlhomilweng mo dikgetsing tseno, jaaka go sekasekilwe mo temaneng e e latelang, ke gore dikgotlatshekelo di farologantse magareng ga dikgetsi tse polao e

⁸⁵ *S v Netshivha* 1990 (2) SACR 331 (A).

⁸⁶ 1997 (1) SAR 485 (E).

⁸⁷ 2012 (20) SACR 30 (ECG).

dirilweng go se itshireletse fela mabapi le go ikunela molemo, le tseo polao e dirilweng ka ntlha ya fa mmolai kgotsa molatofatswa a ne a na le tumelo mo boloing. Dikgotlatshekelo di tshwentswe gape ke dikgetsi tse dipolao di neng di logetswe maano.

4.34 Mo *S v Alam*,⁸⁸ molatofatswa o kopane le ngaka ya setso, e e neng ya mo solofetsa tšhelete e e rileng mabapi le theko ya madi a motho ao a neng a a batlela kobamelo. Le fa kgotlatshekelo e amogetse gore molato o ne o sa logelwa maano, ga e a fitlhela bopaki bope go bontsha gore tiro ya molatofatswa e ne e ikaegile mo boloing, seo se kabong se tseetswe tsia mo lebakeng la phokotso. Kgotlatshekelo e ne ya gatelela bomasisi jo e tsayang dipolao tsa diretlo. Kgotlatshekelo e ne ya ngangisana ka gore molatofatswa ga a dira polao ka ntlha ya tumelo ya gagwe mo boloing mme ka go ikunela molemo ka boena. Katlholo ya dingwaga tse 15, tse tharo tsa tsona di ne tsa beelwa thoko, e ne ya newa mabapi le polao, ka tlaleletso ya dingwaga tse lesome – tse tlhano tsa tsona di ne tsa beelwa thoko – mabapi le tatofatso ya peto. Kgotlatshekelo e ngangisane ka gore dikatlholo tsa dipolao tsa diretlo di tshwanetse go romela molaetsa wa gore dipolao tseo di ka se dumelelwe. Mo *Mogaramedi v S*,⁸⁹ molatofatswa e ne e le mokatiswa wa sangoma yo o neng a bolaile ausi wa gagwe gore a bone karolo ya gagwe ya bosadi, eo a neng a e tlhoka gore a khutlise katiso ya gagwe ya go diragatsa. Kgotlatshekelopotlana e ne e mo atlholetse botshelo jotle jwa gagwe kwa kgolegolong go ya ka *Sentencing Act* ya 1997, mme o ne a dira boikuelo kgatlhanong le katlholo. Motheo wa boikuelo e ne e le gore o dirile molato ka ntlha ya tumelo ya gagwe ya bodumedi, eo e leng go bolaya ausi wa gagwe go ne go tlhokega mo go ena gore a feleletse katiso ya gagwe. Kgotlatshekelo e ne ya tlhagisa go tshwenyega ga yona ka go ata ga dipolao tsa diretlo le ka moo baagi ba tsibogelang ditlolomolao tseo ka teng. Kgotlatshekelo e ne ya dira kaelo go dikgetsi tse dipolao di dirilweng ka ntlha ya fa batho ba ne ba batla go itshireletsa kgatlhanong le kotsi. E ngangisane ka gore mabaka ao a tshwanetse go farologanngwa mo mabakeng ao bosenyi bo dirilweng ka ntlha ya go ikunela molemo kgotsa kgatlhegelo ya megagaru. Kgotlatshekelo e kgaphetse kwa thoko boikuelo, ka gore katlholo ya botshelo jotle e e pateleditsweng ke kgotlatshekelopotlana e lolame. E kaile gore katlholo eo e ne e tlhokega go thibela batho ba bangwe go dira polao ya diretlo.

⁸⁸ 2006 (2) SACR 613 (Ck).

⁸⁹ 2015 (1) SACR 427 (GP).

4.35 Bokhutlo jo bo ka fitlhelelwang go tswa mo ditlhopheng tsa dikgetsi tse di sekasekilweng fano ke gore dikgotlatshekelo mo Aforikaborwa di dirisitse dikabelo tsa WSA mo go samaganeng le ditiragatso tse di amanang le boloi. Seno se farologane le mo dinageng tse dingwe tsa Aforika, mo ditatofatso tse dingwe – jaaka polao – di diriswang ka go tshwana mo dikgetsing tsa boloi. Dikgetsi tse di thadisitsweng gape di bontsha gore ga go mabaka ape ao motho a latofaditsweng fela ka tiragatso ya boloi; ke ditlamorago tsa tsa tiragatso eo tse e nteng e le motlhodi wa dikgetsi tsotlhe tse di lerilweng fa pele ga dikgotlatshekelo. Seo gape se leng botlhokwa go elwa tlhoko ke gore dikgotlatshekelo di ntse di eletsa go amogela ditiragatso tsa setso tse di tshotlheletsang batho ba ba dirang bosenyi jo bo amanngwang le boloi. Fa dikgetsi tse dingwe di amogetse tshireletso ya setso, bangwe ba etse tlhoko fela tumelo ya setso mo boloing mo go fokotseng katlholo. Maemo a tshireletso ya setso mo molaong wa Aforikaborwa ga a tthamalala. Seno se bakile puisano magareng ga baithuti ba molao, moo ba bangwe ba botsang gore a tshireletso ya setso ke karolo ya molao wa rona.

b) Molaotlhommo wa Baalafi ba Setso

4.36 Kganelo ya tiragatso ya boloi le tiriso ya dithata tsa motlholo e lerile tlhatlhobo ya karolo e e tsewang ke dingaka tsa setso mo mererong e e amanngwang le boloi. Go botlhokwa go ela tlhoko gore palo e e lebeletsweng ya Maaforikaborwa ba ba bonang dingaka tsa setso gore ba ba thuse ka ditlhokego tsa kalafi e kwa godimo thata. Jaaka sekai, magareng ga 2007 le 2011, phesente e e lekanyeditsweng go 70 go fitlha go 80 ya baagi e bonane le dingaka tsa setso, bao go tsewang gore ba fitlhelega bonolo go na le dingaka tsa kalafi tsa Bophirima.⁹⁰ Dingaka tsa setso di a bonwa go thibela kगतलhanong le kotsi ya motlholo kgotsa go itwela kगतलhanong le baloi.⁹¹ Tshedimosetso e e leng teng e tshitsinya gore go na le mefuta e e farologaneng ya dingaka tsa setso, jaaka tseo di dirisang ponelopele ya sedumedi, semowa, bobona, kgotsa ya motlholo.⁹² Baagi ba le bantsi ba amogela mefuta e mebedi e megolo ya baalafi, eleng bahebalisi (*inyangas*) ba

⁹⁰ Eastman in Bennett *Traditional African Religions* 184. Tebbe *Witchcraft and Statecraft*, 195.

⁹¹ Tebbe *Witchcraft and Statecraft* 194

⁹² Eastman in Bennett *Traditional African Religions* 184.

ba dirisang ditlhare tsa setso, le basiami (*masangoma*) ba ba dirisang merero ya semowa.⁹³

4.37 Tumelo mo dingakeng tsa setso ga e a ikaega mo lephateng lepe le le tsepameng la baagi e bile e gasagane. Ka pharologano go tiragatso ya kalafi, eo e laolwang, dingaka tsa setso di ntse di sa laolwe mo nakong e telele. Sentlesentle, go ya ka WSA, tiragatso ya kalafi ya setso e fedisitswe.

4.38 Pegelo ya Khomišene ya Ralushai,⁹⁴ eo e sekasekilweng mo lokwalong leno la morero, e tlhagisitse karolo e e tsewang ke baeteledipele ba setso le baalafi mo mererong e e amanang le boloi. Ka nako ya patlisiso ka Khomišene ya Ralushai, dingaka tsa setso di supilwe gore di tsaya karolo e kgolo mo mererong e e amanang le boloi. Go bolelwa gore ba tsere karolo e e sa tlhamalalang mo dipolaong tse di rileng tsa boloi, ka ntlha ya fa ba latofatswa ka go tlhotlheletsa tumelo mo boloing ka ponelopele ya bona. Mo go tlatseng, go bolelwa gore dipolao tse dingwe tsa diretlo di tlhotlheleditswe ke bona, mo mabakeng ao batswasetlhabelo ba bolaetsweng dikarolo tsa bona tsa mmele tseo di iswang go baalafi gore go dirwe muthi.⁹⁵

4.39 Go fetiswa ke Palamente ga *Traditional Health Practitioners Act*⁹⁶ ka 2007 e ne e le sesupo sa kamogelo ya puso ya dingaka tsa setso le karolo e ba e tsayang mo Aforikaborweng wa metlheng. Maitlhommo a Molao, jaaka a tlametswe mo karolong 2, ke go:

...

(b) tlamela mabapi le kwadiso, thupelelo le ditiragatso tsa baalafi ba setso mo Rephaboliking; le

(c) direla le go sireletsa dikgatlhegelo tsa maloko a baagi ba ba dirisang ditirelo tsa baalafi ba setso.

Molao o tlhalosa gape dikgopolo tse di maleba go lokwalo leno, tseo e leng “tiragatso ya kalafi ya setso”, ditlhare tsa setso”, le “filosofi ya setso”. Tseno di tlhalositswe mo Molaong jaana:

⁹³ Tebbe *Witchcraft and Statecraft*, 194

⁹⁴ Note 60.

⁹⁵ Ralushai Commission report 47-49.

⁹⁶ Note 80.

‘tiragatso ya kalafi ya setso’ e kaya tiragatso ya tiro, tirwana, kgato kgotsa tirelo e e ikaegileng mo filosofing ya setso e e akaretsang tiriso ya ditlhare tsa setso kgotsa tiragatso ya setso gape eo e nang le jaaka maikaelelo a yona-

- (a) Tlanelo kgotsa pusetso kgotsa thibelo ya bolwetse jwa mmele kgotsa jwa tlhaloganyo; kgotsa
- (b) Temogo, kalafo kgotsa thibelo ya bolwetse jwa mmele kgotsa tlhaloganyo; kgotsa
- (c) Kgopololo ya motho go mo kgontsha go dira ka tlwaelo mo lelapeng kgotsa setšhabeng; kgotsa
- (d) Paakanyo ya mmele le tlhaloganyo ya motho ka esi mabapi le bokgarebe/bokau, bogodi, kimo, pelegi le loso

...

‘ditlhare tsa setso’ di kaya selo kgotsa sere se se dirisitsweng mo tiragatsong ya boitekanelo jwa setso mabapi le-

- (a) Temogo, kalafo kgotsa thibelo ya bolwetsi jwa mmele kgotsa tlhaloganyo; kgotsa
- (b) Maitlhomangwe le mangwe a kalafo kgotsa phecolo, go akaretsa tlanelo kgotsa pusetso ya boitekanelo jwa mmele kgotsa tlhaloganyo kgotsa boitekanelo jwa batho, mme ga e akaretse sere se se kotsi kgotsa seretebatsi se se tlhagisang boikaego.

‘filisofi ya setso’ e kaya dithekeniki, ditheo, ditiori, diideoloji, ditumelo, megopolo le ditlwaelo tsa tlhago tsa Seaforika le tiriso ya ditlhare tsa setso tse go buisanweng go tswa go badimo go ya go lotso kgotsa go tswa ditshikeng go ya go tshikatshikeng, ka kgotsa eseng ka lokwalo le le kwetsweng, di ka tswa di tshageditswe ke bonetetshi kgotsa nnyaa, le tseo di diriswang ka kakaretso mo tiragatsong ya boitekanelo jwa setso;

4.40 Le fa maikaelelo a Molao a akaretsa bolaodi le taolo mo ditlhopheng tse di tsepamisitsweng tsa baalafi ba setso ba seporofesenale, Molao ga o tsepamise ditlhophatseo. Seno se ketefatswa ke ntlha ya gore tlhaloso ya “moalafi wa setso” ke motho yo o kwadisitsweng ka fa tlase ga Molao. Ntlha ya gore go tlhalositswe fela mohebalisi e dira gore motho a ipotse gore a ke sone fela setlhophatseo se se amogelwang ke Molao. Le fa go ka tswa go le jalo, go na gape le phopholetso ya gore baalafi botlhe ba setso ba ba neng ba le teng pele ga Molao ba a amogelwa jaanong.

4.41 Patlisiso eno ga e tshwenngwe ke tlhalelo e e supilweng mo molaong e e laolang dingaka tsa setso; seno ga se mo bolekanetsong jwa yona jo bo tlhomamisitsweng. Re tlhatlhoba ka boripana molao o o sekasekwang go gatelela dikgato tse puso e di tsereng go laola lephata, go latela kamogelo ya ditiragatso tsa setso mo Molaotheong. Patlisiso e

leka go gatelela dikgwetlho tsa go laola tiragatso e e ikaegileng mo tiragatsong ya boloi kgotsa tiriso ya dithata tsa motlholo, e e amanang segolo le kgwebo ya dingaka tsa setso.

c) Dithabololo tse dingwe tsa semolao

4.42 Go lobaka, baagi ba Aforikaborwa ba tswelela go sokola ka ditiragatso tse di kotsi tse di amanngwang le boloi le ditlamorago tsa teng tse di masisi. Dikgotlatshekelo di tswelletse go samagana le dikgetsi tsa bosenyi tse di amanang le ditiragalo tsa tirisodikgoka ya boloi. Mo dingwageng tse di fetileng tsa 1980 le kwa tshimologong ya 1990 go bonagetse koketsego mo ditiragalong tsa tirisodikgoka ya boloi, e bile go ne ga nna le tshuto e e bonagetseng go tswa go dipolao tse di amanang le boloi go ya go dipolao tsa muthi.⁹⁷

4.43 Ka 2007, ka maiteko a go gatelela didiriswa tse di dirisetswang go samagana le tirisodikgoka e e amanang le boloi, Palamente e ne ya fetisa *Criminal Law (Sentencing) Amendment Act 38 ya 2007* (Molao wa Katlholo). Tlhabololo eno e ka ga kotlha mabapi le ditiro tse di amanang le tiragatso ya boloi le go kgaolwa ga dikarolo tsa mmele.⁹⁸ Go tshwanetse go elwa tlhoko gore tlhabololo e sekaseka bosenyi jo bo setseng bo sekasekilwe mo *Human Tissue Act* le Molao o o ka fa tlase ga thadiso. Ka tlhomamo peomolao e lemogile tlhokego ya go tlhama mekgwa e e tiileng ya go otlhaya batho ba ba latofatswang ka bosenyi ka fa tlase ga *Sentencing Act*.

4.44 Karolo 5 ya *Sentencing Act*, e e tlhabololang Šejule 2 ya *Criminal Law Amendment Act* waf 1997, e tlamela ka mokgwa o o latelang:

(a) ka tlaleletso mo Karolong Part 1 morago ga temana (d) ya ditemana tse di tlhagisang ditlhopho tsa “polao”, ya ditemana tse di latelang:

(e) motswasetlhabelo o ne a bolawa gore go kgaolwe e seng ka fa molaong karolo nngwe le nngwe ya mmele wa motswasetlhabelo, kgotsa ka ntlha ya go kgaolwa go go seng ka fa molaong goo ga karolo ya mmele wa motswasetlhabelo;

(f) loso la motswasetlhabelo le bakilwe ke, kgotsa le amana ka tlhamalalo go, molato mongwe le mongwe o o tlhalositsweng mo karolong

⁹⁷ Tebbe in Bennett *Traditional African Religions* 158-159.

⁹⁸ Ibid.

1 (a) go fitlha go (e) ya *Witchcraft Suppression Act*, 1957 (Molao 3 wa 1957); ...

4.45 *Sentencing Act* e ikaelela go otlhaya badiri ba tirisodikgoka ya boloi go na le batho ba ba dirisang dikarolo tsa mmele tse di fitlhelelwang ka dipolao tsa muthi (e leng, “badirisi”). Karolo 1 ya *Sentencing Act* e dira kabelo mabapi le katlholo ya ka fa go bonwang ka teng ya minimamo ya botshelo jotlhe kwa kgolegelong jwa dipolao ka maikaelelo a go kgaola dikarolo tsa mmele, kgotsa jwa dipolao tse di amanang le tlolo ya dikarolotlaleletso (a) go fitlha go (e) tsa Molao wa Kgatelelo ya Boloi.⁹⁹

4.46 Le morago ga go fetiswa ga *Sentencing Act*, dikgoeletso di tswelletse go dirwa gore puso e tsepame mo bathong ba ba dirisang muthi o o dirilweng ka dikarolo tsa mmele, ka ntlha ya fa badirisi bano ba bonwa ba tlhama topo ya muthi oo.¹⁰⁰ Tona ya nako eo ya Basadi, Bana le Batho ba ba Golafetseng o ne a tshitsintse dikotlhao tse di tseneletseng mabapi le polao ya muthi, le tsamaiso e e tokafaditsweng ya go bega bosenyi jo bo amanang le polao ya muthi.¹⁰¹

4.47 Gape ka 2007, Mpumalanga e ne ya leka go laola tiragatso ya boloi. Ga go a tlhamalala gore goreng porofense eo e ne e batla go laola tiragatso ya boloi, ka tlaleletso go peomolao ya bosetšhaba e e samaganeng le boloi – e leng, Molao le *Sentencing Act*. Bangwe ba ngangisana ka gore kgato eno e ka tswa e tlhageletse ka ntlha ya tsielego e e tlhodilweng ke ditiego tsa puso tse di bonweng mo go thadiseng peomolao ya boloi.

4.48 Peomolao ya Porofense e tshitsintse *Mpumalanga Witchcraft Suppression Bill* ya 2007, e e neng e ikaeletse “go tlamela mabapi le kgatelelo ya boloi mo porofenseng, go tlhama Khouto ya Boitshwaro ya Dingaka tsa Setso, go tlamela mabapi le maikarabelo a Baeteledipele ba Setso le go tlamela mabapi le merero e e welang mo go ona.”

4.49 *Mpumalanga Witchcraft Suppression Bill* e ne e ikaeletse go dira dipatlo tsa baloi le tiro ya go latofatsa mongwe ka boloi bosenyi, mmogo le go dira e kete o diragatsa boloi.

⁹⁹ Tebbe in Bennett *Traditional African Religions* 173.

¹⁰⁰ Tebbe in Bennett *Traditional African Religions* 158.

¹⁰¹ Tebbe in Bennett *Traditional African Religions* 174. This ministry continues to add its voice by encouraging government to develop mechanisms to deal with muti killings. This was seen in their appeal in 2011, when they requested the Commission to investigate muti murders. The issues raised by the ministry now form part of this investigation.

Molaotlhom o tswetse pele go letla gore go nne le taolo e e tiileng ya “dingaka tsa setso”.¹⁰²

4.50 THO le SAPRA di eme kgatlanong le Molaotlhom le go dira ditlhagiso kwa pusong ya Mpumalanga. Kemokgatlanong ya THO e ne e ikaegile mo maikutlong a gore Molaotlhom o ne o le “kwa morago, o kgetholola semorafe, Sekeresete, seneoliberalale, [le] go tlhoka tlotlo go ditumelo tse dingwe tsa bodumedi...”. Ka thulano, SAPRA e eme kgatlanong le go dira ditiragatso tsa yona bosenyi, le seo se tla kaiwang ke tlolo ya semolaotheo.¹⁰³

4.51 Molaotlhom o ne wa tlogelwa le go se fetiswe go nna molao ke puso ya porofense. Seno se ka tswa e le ka ntlha ya kemokgatlanong ya Molaotlhom e e tlhagisitsweng ke THO le SAPRA.

2 Bomolaotheo jwa Molao wa Kgatelelo ya Boloji

4.52 Ke lebaka le le tlwaelegileng gore dikabelo tsa WSA di tlola dingwe tsa ditshwanelo tsa batho jaaka Badumedi Basele le dingaka tsa setso, bao ba bolelang gore ditiro tse di amanngwang le boloi ke karolo ya tumelo ya bona kgotsa ditumelo tsa setso. Ditshwanelo tseno di sireleditswe mo Molaotheong e bile di ka se tlole ntle le lebaka le le tsamaelanang le ditlhokego tsa Molaotheo.

4.53 Go tlwaelegile gore ditshwanelo tse di mo Molaotheong ga di nosi. Ditshwanelo tsotlhe tse di mo Molaotlhomong wa Ditshwanelo di ka lekanyetswa, fa tekanyetso eo e “utlwalega le go nna le lebaka mo setšhabeng se se tsweleng sa temokerasi.” Dingwe tsa ditshwanelo mo Molaotlhomong wa Ditshwanelo di na le ditekanyetso tsa ka fa gare, mme tse dingwe di ka lekanyetswa go ya ka karolwana ya tekanyetso ka kakaretso, karolo 36 ya Molaotheo.¹⁰⁴ Karolo 36 (1) e tlamela jaana:

¹⁰² Tebbe in Bennett *Traditional African Religions* 158. With regard to the regulation of traditional healers, the Bill proposed a requirement that Chiefs and Headmen must discourage gatherings aimed at identifying witches.

¹⁰³ Ibid.

¹⁰⁴ Currie & de Waal *The Bill of Rights Handbook* 2005, 164.

Ditshwanelo mo Molaotlhomong wa Ditshwanelo di ka lekanyetswa fela go ya ka molao wa tiriso ka kakaretso go fitlhela bogolo joo ditekanyetso di utlwagalang e bile di nang le mabaka mo setšhabeng se se tswelelang sa temokerasi se se ikaegileng mo seriting sa botho, tekatekano le kgololosego, go etswe tlhoko mabaka otlhe a a maleba, go akaretsa le

- a) Mofuta wa tshwanelo;
- b) Botlhokwa jwa maitlhomong a tekanyetso;
- c) Mofuta le bogolo jwa tekanyetso;
- d) Kamano magareng ga tekanyetso le maitlhomong a yona; le
- e) Mekgwa e e sa tiang thata ya go fitlhelela maitlhomong.

4.54 Karolo 36 e tlamela ka mekgwa e e tshwanetseng go diriswa mo go tlhomamiseng gore tekanyetso ya tshwanelo e na le lebaka. Seno se raya gore tekanyetso e amogelesega fa e na le mabaka go ya ka mokgwa o o beilweng – ntlha e e netefaditsweng ke Kgotlatshekelo ya Molaotlhomong mo dikgetsing tse di mmalwa. Karolo e tlamela mabapi le patlisiso ya dikgato tse pedi, e e botsang pele gore a tshwanelo e gatakilwe, sa bobedi gore a kgatako ya tshwanelo e na le mabaka. Pharologano magareng ga dikgato tse pedi tsa patlisiso ke gore mo logatong la ntlha, tsepamo e mo tlhalosong ya tshwanelo, fa logato la bobedi le tlhoka patlisiso e e tseneletseng go bontsha lebaka la tekanyetso.¹⁰⁵

4.55 Teko ya tekanyetso e e tlametsweng mo karolong 36 e tlhoka gore molao o o gatakang ditshwanelo o direle maitlhomong a a amogelesegang, e bile o tlhoka tekatekanyo magareng ga kotsi e e bakilweng ke molao o o gatakang le molemo o setšhaba se tla o unang go tswa mo kgatakong eo. Tiriso ya teko ya tekanyetso e tshagisitswe ka matsetseleko mo *S v Mokwanyana*,¹⁰⁶ kwa kgotlatshekelo e rileng:

Tekanyetso ya ditshwanelo tsa semolaotlhomong mabapi le maitlhomong a a nang le mabaka le a a tlhokegang mo setšhabeng sa temokerasi e akaretsa go kalwa ga mesola e e gaisanang, le kwa bokhutlong jaaka tekanyetso e e theilweng mo tekanyong ...Ntlha ya gore ditshwanelo tse di farologaneng di na le bokao jo bo farologaneng mabapi le temokerasi, le mo lebakeng la Molaotlhomong wa rona, mabapi le 'setšhaba se se tswelelang sa temokerasi se se theilweng mo kgololosegong le tekatekanong', e kaya gore ga go na maemo a a nosi a a ka diriswang go tlhomamisa go nna teng ga mabaka le botlhokwa. Ditheo di ka tlhongwa, mme tiriso ya ditheo tseo mo mabakeng a a rileng e ka dirwa mo kgetsing nngwe le nngwe. Seno se fitlhelwa mo tlhokegong ya tekanyo, e e goeletsang mabapi le tekatekanyo ya dikgatlhego tse di farologaneng. Mo kगतong ya go lekalekanya, dikakanyo tse di maleba di tla akaretsa mofuta wa tshwanelo e e lekanyeditsweng, le botlhokwa jwa yona go

¹⁰⁵ Currie & de Waal (2005) 167.

¹⁰⁶ 1995 (3) SA 391 (CC).

setšhaba se se tsweleng sa temokerasi se se theilweng mo kgololosegong le tekatekanong; maitlomo ao tshwanelo e a lekanyeleditsweng le botlhokwa jwa maitlomo ao go setšhaba seo, bogolo jwa tekanyetso, nonofo ya yona, le kwa tekanyetso e tshwanetseng go nna botlhokwa gona, gore a ditlamorago tse di solofetsweng di tla fitlhelelwa ka mekgwa mengwe e e seng kotsi thata go tshwanelo e e kaiwang ...¹⁰⁷

4.56 Tshekatsheko ya bomolaotheo jwa WSA e a tlokega mabapi le patlisiso eno, e se fela go tihomamisa gore Molao jaaka ga o ntse o go ya ka Molotheo kgotsa nnyaa, mme gape go tihalosa gore molao o o tsepameng o ka tihabololwa go laola karolo eno. Gore go sekasekwe ntlha eno, go botlhokwa go tthatlhoba bosenyi bongwe le bongwe jo bo supilweng ke Molao ka boona. Mo karolong e e latelang, kabelo nngwe le nngwe mo Molaong e a sekasekwa go tihomamisa gore tekanyetso ya yona ya ditshwanelo tsa semolaotheo e na le mabaka.

a) Go supa mongwe jaaka moloi

4.57 Karolo 1(a) ya Molao e tlamela gore ke molato gore motho mongwe le mongwe a

‘thweswa molato mo mothong yo mongwe go bakwa, ka motlholo, ga bolwetsi bongwe le bongwe kgotsa kgobalo kgotsa tshenygo go motho mongwe le mongwe kgotsa sengwe, kgotsa yo o bitsang kgotsa bontshang motho yo mongwe jaaka moloi.’

Molato o newa katlholo ya dingwaga tse 20 kwa kgolegolong, fa motho a bolailwe ka ntlha ya go rweswa molato kgotsa fa molatofatswa a supilwe go nna “ka tlwaelo kgotsa semelo ngaka ya moloi kgotsa mmatlhi wa moloi”. Mo mabakeng mangwe, kotlhao ke go tswalelwa dingwaga tse lesome kwa kgolegolong. Dikabelo di tihamaladitse gore molato o tsewa o le masisi tota. Bomolaotheo jwa molato jo bo tihodilweng ke kabelo eno bot la sekwasekwa moragonyana.

4.58 Go lebege fa dikabelo di kganela go kaya motho jaaka moloi kgotsa go kaya gore motho o tihagiseditse yo mongwe kotsi ka tirso ya metlholo. Go lebege ka bonako go na le dikgatako tse di kgonegang tse di mmalwa tsa ditshwanelo. Ya ntlha e akaretsa taolo go se batho ka nosi ba se buang kgotsa rwesang molato. Seno se gataka karolo 16 ya Molaotheo, e e tlamelang gore “Mongwe le mongwe o na le tshwanelo ya kgololosego ya

¹⁰⁷ Ibid para 104.

tlhagiso maikutlo e e akaretsang –...kgololosego ya go amogela kgotsa go arogana tshedimosetso kgotsa dikakanyo”. Fa motho a dumela gore mongwe o bakile kotsi ka mokgwa wa motlholo, kabelo mo karolong 1(a) e tla ba thibela semolao mo go bueng jalo. Seno, jaaka go bonagala, se lebega jaaka kgatako ya kgololosego ya tlhagiso maikutlo. E na le kgonego ya go gataka karolo 15 ya Molaotheo, e e tlamelang gore “mongwe le mongwe o na le tshwanelo ya kgolosego ya segakolodi, bodumedi, kakanyo, tumelo le mogopolo”. Mo *S v Lawrence*, Kgotlatshekelo ya Molaotheo e tshotse gore:

Boleng jwa kgopolo ya kgololosego ya bodumedi ke tshwanelo ya go letla ditumelo tseo tsa bodumedi jaaka fa motho a tlhopha, tshwanelo ya go bolela ditumelo tsa sedumedi mo phatlalatseng le ntle le letshogo, sekgoareleisi kgotsa tsibogelo, le tshwanelo ya senola tumelo ya sedumedi ka kobamelo le tiragatso kgotsa ka go ruta le phatlalatsa.¹⁰⁸

4.59 Jaaka go bonagala, kabelo mo karolong 1(a) e thulana le tshwanelo ya motho ya tlhagiso ya ditumelo. Fela, ditumelo tseo di ka nna karolo ya ditso le ditumelo tse di farologaneng tsa Aforikaborwa tse di akaretsang le tumelo mo motlholong. However, such beliefs may form part of a range of South African cultures and religions that include a belief in the supernatural. Ka nako eo, jaaka ntlha ya therisano e e botlhokwa, le kabelo, tsepamo ya Molao e ka bonwa go ka lebiswa segolo kwa ditumelong tsa setso sa Aforika ka ga boloi. Go ditumelo ka bophara mo Aforikaborwa tsa gore kotsi e ka, ka dinako dingwe, bakwa ka tiro ya motlholo. Seno se golagana le ntlha ya gore go na le tekano ya tlhakanelo go kgatako, e e amanang le karolo 31 ya Molaotheo. karolo 31 e tlamela gore “Batho ba e leng ba setlhopha sa setso, sedumedi kgotsa baagi ba puo e e tshwanang, ba ka se tingwe tshwanelo, le maloko a mangwe a baagi bao – (a) go itumelela setso sa bona, diragatsa tumelo ya bona le go dirisa puo ya bona”. Ka ngangisano, go ka nna gape le kgatako ya karolo 9 ya Molaotheo, ka ntlha ya fa kabelo e ka tsewa gore e a kgetholola – le gale jaaka go bonagala – ka mabaka a segakolodi, tumelo le setso.

4.60 Mo thulaganyong ya semolaotheo ya Aforikaborwa, kgatako jaaka go bonagala ya tshwanelo ga e khutlise patlisiso mo bomolaotheong. Potso nngwe gape e ka tlhagelela ya go newa ga mabaka a kgatako eo. Go newa goo ga mabaka go ka diragala ka kamano le dingwe tsa dikabelo tse di thalositsweng fa godimo mo dikgatong tse di farologaneng tsa patlisiso. Mabapi le kgololosego ya tlhagisomaikutlo, go ka tswa go na le potso ya gore a

¹⁰⁸ *S v Lawrence; S v Nagel; S v Solberg* 1997 (4) SA 1176 (CC) para 92 quoting Dickson CJ in *R V Big M Drug Mart* (1983) 13 CRR 64.

kgethololo ga e a lolama. Go efoga puisano e telele mabapi le thutamolao ya tshwanelo nngwe le nngwe, patlisiso ya karolo 36 e tla sekwasekwa mme se se tla tsenyeletsa bontsi jwa dintlha tse di tlhagelelang mo ditekanyetsong tse dingwe tsa ka fa gare tsa ditshwanelo.

4.61 Morago ga go sekasekana le mofuta wa ditshwanelo tse go buiwang ka tsona (tse di leng botlhokwa tsotlhe), ntlhakgolo ya ntlha ya karolo 36 ke go tlhagisa maitlhommo a kabelo. Go bontshitswe gore mo Aforikaborwa, go bitsa motho jaaka moloi go ka dira gore a tsholwe makgwkgwa e bile gantsi go na le ditlamorago tsa tirisodikgoka ka tlhamalalo kgatlhanong le motho wa bona.¹⁰⁹ Jaaka kabelo ya molato e bontsha, seno se ka isa kwa losong kgotsa tlhagisetso kotsi e e setlhogo mo tshiamong ya mmele wa bona kgotsa tlhologanyo. Go ka nna gape le karolo ya bong go maikaelelo a kabelo eo, mo maitekong a yona a go sireletsa basadi ba ba welang kwa ntle ga baagi ba tlwaelo kgatlhanong le go sotlwa jaaka baloi ka dithulaganyo tsa loago tsa sepateriaki tse ba di pateleditsweng. Fa maitlhommo a kganelo e le go emisa tshotlo eo, pheretlho, le tirisodikgoka kgatlhanong le batho ba ba supilweng jaaka baloi, maitlhommo a lebega a le mo molaong ka gotlhe.

4.62 Karolo e e latelang ya patlisiso e akaretse go tlhagisa mofuta le bogolo jwa tekanyetso: ka tlhamalalo, kgololosego ya motho ya tlhagisomaikutlo le bodumedi di lekanyeditse mme e seng thata. Motho o ka se rwele motho yo mongwe molato wa kotsi ya motlholo kgotsa o ka se mmitse moloi. Ngangisano e e botlhokwa e e tlhagisitsweng ke SAPRA e amana le ntlha ya gore batho bangwe ga jaana ba diragatsa mokgwa o o "siameng" wa boloi, o mo go ona batho ka esi ba itshupang ka nepagalo jaaka baloi. Tekanyetso fano e ka nna le bogolo jo bo mo magareng jaaka e kgoreletsa karolo e e tlhamaletseng ya botlhokwa ya tiragatso ya sedumedi.

4.63 Karolo e e latelang ya patlisiso ya tekanyo e tlhoka kakanyo ka ga kamano magareng ga tekanyetso le le maitlhommo a yona. A go dira dithweso molato tseo bosenyi go tla emisa ka nonofo ditlhaselo mo balatofatsweng ba boloi? Go lebega e kete go tla nna le kamano e e tlhalefileng magareng ga molao le maitlhommo a ona, ka ntlha ya fa maikaelelo e le go thibela dithweso molato tseo ka kgonagalo ya dikotlhao tse di masisi. Go na gape le potso e e mabapi le bogolo jo molao oo o itsegeng ka teng go ralala naga,

¹⁰⁹ The media reports referred to in paragraphs 3.50 to 3.52 above demonstrate how people's lives can be placed in danger if they are accused of witchcraft.

seo se ka thibelang nonofo ya ona. Fela, seno ke setlhogo sa puso gore e rute batho ka ga sona, go na le go nna ntlha e molao o ka e fitlhelelang ka nosi.

4.64 Teko ya bofelo e ama go nna teng kgotsa go sa nneng teng ga “mokgwa o o sa gagamalang thata” wa kgono o o ka diriswang go fitlhelela maitlhommo a peomolao. E leng, a go na le mokgwa o o nang le kutlwalo e e kwa tlase mo tshwanelong, mme o ntse o ka kgona go fitlhelela maitlhommo a o a ikaeletseng? Potso mabapi le kabelo eno ke gore a ka gongwe o bulegile thata le go nna mogolo thata.¹¹⁰ Ka mantswe mangwe, go tlhokega go akangwa sentle gore a kabelo e athame thata le go letla go dirwa molato ga, jaaka sekai, dikakanyo tsa lefatshe tsa semolao tsa bodumedi. Kwa bokhutlong, dikgatlhego tse dikgolo tsa puso ke go thibela tirisodikgoka kgatlhanong le tshotlo ya batho ba e leng, kgotsa ba ba latofatswang ka go nna baloi. Ka jalo, ga e tlhoke go thibela kaelo nngwe le nngwe kwa mothong jaaka “moloji”, segolosegolo mo seno se ka nnang le khuetso e e siameng – jaaka go ngangisanwe ke SAPRA. Go nna mogolo ga go kaye gore kabelo e ka se bolokwe le go nyalangwa le Molaotheo. Jaaka, go ka nna gore kabelo eno e ka tlhabololwa go bontsha gore thweso molato ya gore motho ka moloi e tshwanetse go nna le “maikaelelo a go sotla kgotsa go tlhagisetsa motho ka esi kotsi, e ka nna mo mmeleng kgotsa mo tlhologanyong”. Bothata ke gore a maikaelelo ao a ka supywa bonolo go latela bokao jwa polelo, e e ka tlhagisang maikaelelo. Fa mongwe mo gare ga phuthogo ya batho ba ba tshotseng dibetsa a goeletsa “A re lateleng baloi kwa dintlong A le B”, go tla tlhamalala gore maikaelelo ao a ne a le teng. Go bonega e kete kganelo e e potlana e ka newa mabaka go ya ka letlhommeso la semolaotheo.

b) Moloi yo o utlwisang moloi yo mongwe botlhoko

4.65 Karolo 1(b) ya Molao e tlamela mabapi le molato ka motho mongwe le mongwe yo o -

mo maemong a a bontshang gore o dirisa kgotsa o dira e kete o dirisa thata ya motlholo, boloi, tiriso ya ditlhare, dikgaba kgotsa tshereanyo, o rwea motho yo mongwe molato wa se se bakileng loso la, kgobatso kgotsa kutlwisano botlhoko go, bolwetsi mo, tshenygo go kgotsa go

¹¹⁰ *Case v Minister of Safety and Security; Curtis v Minister of safety and Security* 1996 (3) SA 617 (CC).

nyamalala ga motho mongwe le mongwe kgotsa sengwe go motho yo mongwe.

Tiriso ya mafoko mo kabelong eno e bokoa. E lebega e kaela go kganelo go mongwe yo o dirisang kgotsa yo o dirang e kete o dirisa thata ya motlholo go bolela gore motho mongwe ke “moloji” yo o utlwisitseng motho yo mongwe botlhoko. Matshwenyego a a mabapi le kabelo eno a tswana le a a amanang le karotlaleletso (a), jaaka go tlhagisitswe ke kabelo ya molato, eo e tshwanang ka kamano le dikarolo ka bobedi. Karolo 1(b) e kganela batho ba go akanngwang gore ba dirisa dithata tsa motlholo mo go boleleng ka nonofo gore mongwe o batlile tlhagisetsa batho ba bangwe kotsi ka mokgwa wa motlholo.

4.66 Tshekatsheko ya kgatako e tswana le puisano ya karolo 1(a) fa godimo, ntle gore tekanyetso go puo e tla diriswa go mongwe yo o “bolelang kgotsa dirang e kete” o diragatsa thata ya motlholo. Bolekanyetso jwa kabelo bo bonnye le kgatako ga se e kgolo. Neo ya mabaka gape e tla thewa mo go batleng go tla thweso molato ya boloi mo bathong ba ba rileng go tla tshotlo, kgobotletso, le tirisodikgoka kgatllhanong le motho wa bona. Tshekatsheko ya tekanyo e tla nna e e tshwanang, e bile ka gongwe go tla nna bonolo go naya mabaka a seno ka ntlha ya go se nneng masisi thata ga kgatako. Ka nako e le esi, go a itumedisa go ela tlhoko “mekgwa e e sa tiang thata” ya tshekatsheko gape. E ka nna gore mo kgetsing eno, go botlhokwa go kganela thweso eo ya molato ka mongwe le mongwe yo o bolelang kgotsa yo o dirang e kete o diragatsa dithata tsa motlholo; e kete seno se kaela go masangoma. Motho yoo o ka, jaaka karolo ya tiro ya gagwe ya seporofeshe nale, tsibogela kopo ya go supa motho jaaka moloi, fela ntle le maikaelelo a go tlhagisa kotsi. Fela, bokao jwa go supa motho jaaka moloi ke leloko leo le le tlotlegang la baagi bo ka nna masisi go abela kganelo e e tletseng mo bokgoning jwa bona jwa go dira jalo, ba ka tswa ba ikaeletse go utlwiswa botlhoko kgotsa nnya.

c) Go thapa mongwe go batla moloi

4.67 Karolo (c) ya Molao e kganela motho mongwe le mongwe yo o

thapang kgotsa yo o le kang go thapa ngaka nngwe le nngwe ya moloi, mmatli wa moloi kgotsa motho mongwe le mongwe go bitsa kgotsa go supa motho mongwe jaaka moloi.

Kabelo eno e kganela motho ka esi go kopana le ngaka ya moloi kgotsa sangoma go bitsa motho jaaka moloi. E leka go thibela tiragatso mo logatong la ntlha la tshupo. E thulana ka tlhamalalo le batho ka esi ba ba dumelang mo boloing, mme ka jalo e nna le ditlamorago tsa dikgatako ka mokgwa o o tshwanang le o o tshalositsweng mo tshekatshekong ya karolo 1(a) fa godimo. Ka nako e etshwanang, go naya mabaka go amana gape le go kganela batho go batla go itse gore fa motho e le moloi. Seno ke kgoreletso e kgolo e bile e ka gola fa e sa lekanyetswe ka kabelo. Ga go a tlhamalala gore mo dikgetsing tsotlhe, motho o ka batla go itse fa mongwe e le moloi fela gore a mo utlwise botlhoko. Ka jalo, go phekola kgonagalo ya go se nneng semolaotheo, go ka tlhokega go lekanyetsa kabelo eno ka peelo e e jaaka “gore go sotlwe motho ka esi yo o rileng kgotsa go utwisa tshiamo ya bona ya mmele le tlhaloganyo botlhoko”.

d) Kganelo ya go phatlhalatsa kitso ya boloi

4.68 Karolo (d) ya Molao e tlhama molato mabapi le motho yo o –

Bolelang kitso ya boloi, kgotsa tiriso ya ditšhamo, le go gakolola motho mongwe le mongwe ka mokgwa wa go loa, gobatsa kgotsa senya motho mongwe le mongwe kgotsa sengwe, kgotsa o tlamela motho mongwe le mongwe ka mokgwa o e keteng wa boloi.

Molato ono o ngoka tuediso e e sa feteng diranta di le makgolo a matlhano,¹¹¹ kgotsa go tswalelwa kwa kgolegolong go fitlha go dingwaga tse tlhano.

4.69 Gape, kabelo e thadilwe bokoa. Ga go a tlhamalala gore ke eng se se kganetsweng, segolosegolo ka ntlha ya tiriso ya mafoko “le” le “kgotsa” mo kabelong. Karolo ya ntlha ya molato e tlhagelela e kete e kganela mongwe mo go boleleleng kitso ya boloi kgotsa tiriso ya ditšhamo. A seo se lekane mabapi le go khomišena molato? Ga go a tlhamalala, fela tlhaloso e e nepagetseng e ka tshitsinya gore ga go a lekana. Dipopi tse dingwe tse pedi tsa tlaleletso di a tlhokega. Motho ka gongwe o ka (a) eletsa motho mongwe le mongwe ka mokgwa wa go loa kgotsa gobatsa kgotsa senya yo mongwe; kgotsa (b) tlamela motho mongwe le mongwe ka mokgwa o o dirilweng e kete wa boloi. Go lebege e kete go a kgonega go atlholelwa molato oo fa motho a bolela ka kitso ya boloi

¹¹¹ In terms of the current schedule the fine for a crime committed under this subsection is R100 000.00.

le go tlamela motho ka mokgwa wa boloi, le kwa ntle ga maikaelelo kgotsa teko ya go utlwise yo mongwe botlhoko. Karolo eno e amana thata le leina la Molao, le le buang ka kgatelelo ya boloi. Kabelo eno sentlesentle e kganela go phatlhalatswa ga boloi.

4.70 Jaaka go bonagala, karotlaleletso e lebege e kete e gataka ditshwanelo tse di mmalwa. E bonagala segolosegolo e gataka karolo 15 ya Molaotheo, e e akaretsang tshwanelo ya kgololosego ya segakolodi, bodumedi, kakanyo, tumelo le mogopolo. Jaaka go setse go tlhalositswe, seno se akaretsa tshwanelo ya go diragatsa ditumelo tsa gago. Fa re ela tlhoko gore go na le ditumelo le ditso tse di diragatsang boloi mo Aforikaborwa, go na le kgatako ya karolo 31. Go ya pele, go na le kgonego ya magatwe a a mabapi le kgethololo ka fa tlase ga karolo 9 mo mabakeng a segakolodi, tumelo le setso. Popi e e kgathisang mabapi le karolo 9 e ka nna magatwe a kgethololo ka mabaka a bong, fa re lebelela gore boloi bo amanngwa gantsi le basadi; ka jalo, kganelo e ka ama e seng ka tekano ditiragatso tse di rileng tsa basadi.¹¹²

4.71 Potso e nna teng ya gore a kabelo eno e ka newa mabaka kgotsa nnyaa go ya ka karolo 36(1) ya Molaotheo. Mofuta wa tshwanelo o botlhokwa, ka jalo potso e e latelang e ama botlhokwa jwa maitlhommo a tekanyetso. Ga go a tthamalala gore maitlhommo a kabelo eno ke afe a a amang go newa mabaka ga yona.

4.72 Go lebege e kete maitlhomomagolo ke go kganela kotsi e e tlhagiswang ke baloi go motho mongwe le mongwe kgotsa sengwe. Kganelo eno e lebege e amana ka tsepamo le go phatlhalatswa ga boloi ka go kgontsha ba bangwe go fitlhelela mokgwa wa go dirisa boloi. Maitlhommo a lebege a tseelela gore boloi ka bobona bo teng jaaka setheo, le gore bo ka baka kotsi e e bonagalang mo bathong. Bothata mo go lekanyetseng maitlhommo a kabelo eno a ama go sekaseka gore, ka mabaka a bosupi, a phopholetso eno e nepagetse, le gore ke kotsi efe e e ka tlhagisetswang batho ka esi. Bothata mo go lekanyetseng botlhokwa jwa maitlhommo ano bo amana le potso ya gore a ntlha ya gore karolo e kgolo ya batho ba Aforikaborwa ba dumela mo boloing le dikotsi tsa jona ke motheo o o lekaneng o ka ona tiragatso eo e ka dirwang molato, kgotsa ka go tshwana go dira go thusa batho ba bangwe go dira boloi molato. Go mo molaong ka tthamalalo gore puso e battle go thibela batho mo go utlwiseng ba bangwe botlhoko ka mokgwa wa mmele

¹¹² Albertyn C and Goldblatt B 'Equality' in *Constitutional Law of South Africa* (Juta, 2005) 35-55 to 56

kgotsa tlhologanyo. Bothata ka morero ke gore a kganelo ya bosenyi e ka dumelelwa go ema ka ntlha ya ditumelo tse di rileng tsa motlholo tse di sa letleng netefatso ya bonetetshi. Ka go newa ditlamorago tse di masisi tsa go fbonwa molato wa bosenyi, ka setso go ne go tsewa gore ga go eletsege go setlega ditatofatso mo dikakanyong tse di rileng tsa sedumedi kgotsa ditumelo tse di sa letleng netefatso ya bonetetshi. Ka nako e e tshwanang, Khomišene e amogela gore tumelo mo bolong e ka diriswa go tlhola maikutlo a letshogo mo go bao ba dumelang mo go jona. Batho bangwe ka esi ba ka ipolela gore ba dirisa boloi ka mokgwa o o ikaeletseng go utlwiswa ba bangwe kotsi. Gore kutlwiso botlhoko ya nnete ya mmele e a diragala kgotsa nnyaa, kgato eo e ka baka kutlwiso botlhoko e e masisi ya tlhologanyo le tlalelo go batho ka esi mo baaging. Khomišene e dumela gore fa ditiragatso tse di kotsi tse di amanngwang le boloi di ka dirwa bosenyi, ke tiriso e e ikaeletsweng ya ditiragatso tseo go utlwiswa botlhoko kgotsa go baka tlalelo ya tlhologanyo e e tshwanetseng go totiwa.

4.73 Mofuta le bogolo jwa tekanyetso di ama setlhopha se sennye sa batho, e bile di ka se utlwale segolo mo bokgoning jwa bona jwa go dira ditiro tse di mo molaong. A tekanyetso e amana ka mabaka le maitlhomomo? E kete, kganelo ya go arogana tshedimose tso ya boloi le batho ba bangwe e tla lekanyetsa tiragatso, le go lekanyetsa dikotsi tse di ka kgonegang tse e ka di bakang (fa tseno di amogetswe). A go mekgwa e mengwe e e sa tiang thata go fitlhelela maitlhomomo? Kabelo le yona e lebege e bulegile that aka ntlha ya fa e akaretsa mefuta yotlhe ya boloi e seng fela mefuta e e kotsi. Segolosegolo, fa molato o ka dirwa – o o sa tlhamalalang – ka ntlha ya go phatlhalatsa mokgwa wa boloi, e ka akaretsa mo lefelong la yona batho ba ba batlang go bolela le go phatlhalatsa ditumelo tse di umakilweng ke SAPRA, tse di sa batleng go utlwiswa ope botlhoko. Fa kabelo e tshegeditswe, e tshwanetse go tlhabololwa gore e tlhagise gore keletso e e ka ga mokgwa wa go utlwiswa motho botlhoko ke karolo e e botlhokwa ya kabelo, gore go se akaretswe mekgwa e e seng kotsi ya boloi.

4.74 Kwa bofelong, potso e amana le gore a kutlwiso botlhoko ya motlholo e e setlgilweng mo ditumelong tsa setlhopha se segolo sa Maforikaborwa e ka fitlhelela maitlhomomo a a mo molaong mo molaong wa molaotheo kgotsa nnyaa, mo dikakanyo tseno di sa dumelweng ke Maforiborwa otlhe le tlhokego ya bopaki. Jaaka fa Khomišene e ngangisane, peomolao e ka tsereganya go kganela tiriso e e kaiwang e le ya boloi e e ka bakang tlalelo ya tlhologanyo mo go ba bangwe.

e) Kganelo mo boloing

4.75 Karolo (e) ya Molao e tlhama molato mabapi le motho yo o–

Ka kgakololo ya ngaka nngwe le nngwe ya moloi, mmatli wa moloi kgotsa motho yo mongwe kgotsa ka lebaka la kitso e e dirwang e kete e a itsiwe ya boloi, o dirisang kgotsa bakang gore go diriswe mokgwa mongwe kgotsa tsamaiso e e, go ya ka kgakololo eo kgotsa tumelo ya gagwe, e tseelwang gore e gobaditse kgotsa e sentse motho mongwe le mongwe kgotsa sengwe..

Kabelo eno ke yona e e kganelang tiragatso ya boloi e e tseelwang gore e gobaditse kgotsa sentse motho mongwe kgotsa sengwe. Dikgatako tsa ditshwanelo di tla latela tshekatsheko ya karoltlaleletso (d) fa godimo. Ditshekatsheko tsa neo ya mabaka di tla tshwana. Potso ke gore a go mo molaong, mo temokerasing ya semolaotheo, go kganela go tsaya karolo mo ditsamaisong tsa motlholo tse di diretsweng go utlwiswa ba bangwe botlhoko. Puso e na le mabaka a go fedisa ditiragatso tse di ka dirang gore batho ba utlwiswe botlhoko. Bothata fano, gape, bo mo ntlheng ya gore ga se Maaforikaborwa otlhe ba ba dumelang mo goreng dikotsi tseo di ka nna le ditlamorago, le gore ditumelo tseo ga di ikamanye le netefatso ya bonetetsi. Fa mongwe, mo sephiring sa kwa lelapeng la gagwe, a ka re mo metsotswaneng mengwe le mengwe e e lesome “Ke batla dithata tsa motlholo gore di tlhagisetse X kotsi”, a seno se ka kganelwa? E kete, se ka seke, fa go ne go dumetswe gore ga go kotsi epe e e masisi e e ka diragalang. Fela, go dumelwa gore kotsi e ka diragala, mme peomolao e tla nna le mabaka a tsereganyo a a theilweng mo maikaelelong a motho a go utlwiswa botlhoko, mmogo le tlalelo ya tlhaloganyo e e baketsweng bao ba leng kगतलhanong le yo o tshosetswang. Bothata fano ke gore molao o bulela kgonego ya go dira ditiro bosenyi, mme ka gongwe le batho, dikarolo tseo tse dikgolo tsa baagi di engwe kगतलhanong ka ntlha ya ditumelo tsa metlholo, le go dirwa bosenyi goo go ka gataka ditshwanelo tsa ba bangwe. Di tla tsewa ka metlha yotlhe jaaka bothata go bakela motho ka esi kotsi go theilwe mo tumelong e e sa netefatswang ya ngangisano ya yo mongwe. Tiro nngwe le nngwe ya puso ya go e dira bosenyi e tshwanetse go setlegwa mo bopaking jo bo tlhamaletseng jwa maikaelelo a go utlwiswa botlhoko mo letlhakoreng la Modiri, kgotsa go baka tlalelo e kgolo ya tlhaloganyo.

f) Thibelo mo boloing le boporofeta mabapi le go boelwa

4.76 Karolo (f) e e dira molato fa motho mongwe le mongwe –

Mabapi le poelo a dirang e kete o diragatsa kgotsa dirisa thata nngwe le nngwe ya motlholo, boloi, tiriso ya ditlhare, dikgaba kgotsa tshereanyo, kgotsa a dumela gore o a porofeta, kgotsa o dira e kete go tswa mo bokgoning kgotsa kitsong ya bonetetshi jwa okhalete jwa go ribolola gore sengwe le sengwe se se ka tswang se utswitse kgotsa se latlhegile se ka bonwa kae kgotsa jang.

Eno ke e nngwe ya dikabelo tse di gakantshang, eo ka bo yona e ka se amogelesegeng ka mabaka a bokaobontsi le go tlhoka tlhaloso. E leka go kganela ditiro tse tharo tse di latelang: (a) go dira e kete o dirisa dithata tsa motlholo mabapi le go boelwa; (b) go dumela gore o a porofeta (mabapi le poelo kgotsa nnyaa?); le (c) go dira e kete, ka tiriso ya thuso ya motlholo, go batla kwa sengwe se se ka tswang se utswitse kgotsa latlhegile se ka bonwang.

4.77 Ntle le ditshwanelo tse dingwe tse di kailweng pele, le dikgatako tse di ka kgonegang tse dingwe tsa ditshwanelo tseo, kabelo eno e dirisa karolo 22 ya Molaoheo, e e tlamelang gore “Moagi mongwe le mongwe o na le tshwaneloya go tlhopha kgwebo, tiro kgotsa porofeshene ka kgololosego. Tiragatso ya kgwebo, tiro kgotsa porofeshene e ka laolwa ka molao”. Go ka botswa ka molao gore going motho a ka se dirise bokgoni jwa saekhiki kgotsa a bolele gore ke moporofeta go iphidisa. Ka tthamalalo, go na le molao o o kganelang seno, mme fa molao oo o sa neya mabaka o ka se nne “molao o o molaong”. Fa karolo 22 e sa diriswe, ka jalo motho o ka dirisa tshwanelo ya seriti sa botho mo karolong 10, e ka ngangisano e tsenyeletsang tshwanelo ya go iphidisa ka mokgwa o motho o ka o kgonang o a nang le ona. Karolo 12 e ka kaiwa, e leng, tshwanelo ya kgololoseo le tshireletsego ya motho mmogo le ya tshiamo ya mmele le tlhaloganyo.

4.78 Ka moo, potso ya neo ya mabaka e a tlhagelela gape. Dikabelo ga di amane ka tthamalalo le go utlwisana ba bangwe botlhoko mme go dirisa dithata tsa motlholo go boelwa. Kgatlhego ya puso ke efe mo go seno? Puso e ka ngangisana ka gore e leka go thibela batho ka esi mo go tsietsweng go duela tšhelete mabapi le ditirelo tse e leng tsa tsietso. Tsepamo e lebege e le mo bathong “ba ba dirang e kete”: ka gongwe go na le lebaka la go kganela tsietso fano, go sireletsa batho ka esi kgatlhanong le bao ba boelang gore ban a le dithata tsa motlholo mme ba sena tsona. Bothata bo amana le ka moo go ka

tlhomamiswang gore ke bomang ba ba dirang e kete le bao e leng ba nnete, mabapi le dithata tsa motlholo, ka ntlha ya tlhaloso seno se ka se tlhongwe go ya ka bonetetshi. Molao jaaka o eme o ka kgona go emisa tiragatso ya ditlhare tsa setso, eo e amogetsweng semolao go ya ka melao e mengwe.

4.79 Go feta moo, go mo taolong ya bothati ka tlhamalalo le go nna kgatlhanong le kgololosego ya motho ka esi go pateletsa se batho b aka eletsang go se reka. Ka ngangisano, batho ba le bantsi ba dumela mo diphekolong tsa ditlhare tsa selegae, mo ditšhamong tse di farologaneng, le tse dingwe tse dintsi tse puso e sa di laoleng. Goreng go tlhaolwa ditiragatso tseno? Molao wa ga jaana o lebega e kete o theilwe mo go direng polelo ya katlholo ka ga dithata tsa motlholo le boporofeta, ntle le mabaka a a tlhamaletseng a go dira jalo. Mofuta le bogolo jwa tekanyetso di dikgolo kgatlhanong le bao ba bolelang gore ba na le dithata tseo, ka ntlha ya fa bas a kgone go boelwa ka gotlhe go tswa mo go tsona. Ka ntlha ya go tlhoka maitlhommo a a tlhamaletseng, ga go a tlhamalala gape go ka lekanyetswa jang dipatlisiso tse pedi tsa bofelo tsa karolwana ya ditekanyetso. Kabelo eno ke yona e e sa newang mabaka go feta le go san ne semolaotheo ka tlhamalalo. Peomolao e lebega e sa tlhamalala mo goreng seno se nnile le ditlamorago tse di kana ka eng ka go amogela dikotlhao tse di fokoditsweng tsa molato mo karolong 1 (f) fo go bapiswa le tse dingwe tse di fitlhelwang mo Molaong otlhe. Le fa go le jalo, go dirwa molato ka boona ga go ye ka Molaotheo.

g) Melato

4.80 G na le phetogo ya dikgato tsa melato go ya mokgwa o di tsewang leng masisi ka teng. Ka tlhamalalo, maikaelelo a ditatofatso tse di masisi thata ke go emisa ka tsepamo tiragatso ya go rwesa btho ka esi molato wa boloi. Jaaka re bone, seno ke maikaelelo a a ka newang mabaka a Molao mo karolong 1 (i), le fa go belaelwa semolaotheo. Karolo ya ntlha e fa tlhaloganyo: molato wa go rwesa motho molato wa boloi o masisi thata fa motho a bolailwe ka ntlha ya thweso molato eo. Karolo ya bobedi e a gakgamatsa: bomasisi jwa molato bo a oketsega fa molatofatswa “a netefaditswe gore ka mokgwa kgotsa ka semelo ke ngaka ya moloi kgotsa mmotli wa moloi”. Ga go a tlhamalala gore go kaiwa eng ka go

nna “ka mokgwa” ngaka ya moloji. “Ka semelo” le yona ga e a tihamalala, le go letla ditatofatso le maikutlo a a sa laolegeng a baagi go oketsa bomasisi jwa molato oo. Mme fela, ga go a tihamalala ka gotlhe gore bothata ke bofe fa motho yo o rwesang yo mongwe molato wa boloi e le moloji kgotsa mmatlhi wa moloji. Maikaelelo a kabelo go lebega e kete ke go thibela thweso molato eo; ka moo, e tshwanetse go thibela seno mo karolong ya mongwe le mongwe. Ga go a tihamalala goreng go na le lebaka la go oketsa kotlha segolosegolo go ikaegilwe mo boitshupong jwa motho yo o rwesang yo mongwe molato go na le mo seo ba se dirang. Ka ntlha ya seo, go lebega e kete kabelo go fitlha fano e tlhoka mabaka mme ka ntlha ya seo ga go mo molaotheo.

h) Phopholetso

4.81 Kabelo e e samaganang le phopholetso, eo e leng, karolo 2 ya Molao, e tthagisa gore fa go na le thwesomolato wa boloi go motho mme o a bolawa, go phopholetswa gore motho o bolailwe ka ntlha ya go dirwa ga molato (ntle le fa go netefaditswe ka mokgwa mongwe). Ka kakaretso, Kgotlatshekelo ya Molaotheo e bone fa dikabelo tsa go rwesa molatofatswa maikarabelo a go bontsha gore ga a molato go se go ya ka Molaotheo.¹¹³ Potso ya botlhokwa e amana le go newa ga mabaka: a go na le kamano e e tlhamaletseng magareng ga go dirwa ga molato mo Molaong le polao? Bohata ke gore phopholetso e lebega e bulegile thata. E bua ka motho yo o bolailweng ntle le go naya dintlha ka botlalo – jaaka, thwesomolato e dirilwe leng? Fa e ne e dirilwe dingwaga tse lesome pele motho a bolawa, a go bolawa ga motho yoo go santse go le maleba? Ka go tlhoka lesego, bosenyi jwa tirisodikgoka mo malatsing a segompiano bo ile magoletsa gore motho o ka bolawa ntle le go golaganngwa le tatofatso eo. Mabaka a polao le kamano ya ona le thwesomolato di tshwanetse go batlisiswa go tlhomamisa fa ka tota go na le kamano. Ka tlwaelo, seno se ne se ka tlhoka kgato e e tlwaelegileng ya patlisiso ya bosenyi gore e diragale. Mabapi le seno, go na le kgonego ya gore kabelo eno ya go rwesa molatofatswa maikarabelo a go bontsha gore ga a molato e se ya semolaotheo. Polao e tla tlhoka go netefatswa gore e amana le thwesomolato, go ya ka bomasisi le ditlamorago mabapi le motho ka esi.

¹¹³ See, for instance, *S v Manamela* 2000 (3) SA 1 (CC).

4.82 Kwa bokhutlong, tshekatsheko eno e akareditse puisano le dikabelo tse di botlhokwa tsa Molao, go di tshaloganya le go ela tlhoko dikgatako tse di kgonagalang tsa ditshwanelo tse di botlhokwa tsa tse di ka tswang di le teng, le neo e e kgonegang ya mabaka a dikgatako tseo. E tlhagisitse dikabelo tse di rieng tse di ka sireletswang, fa seo e ka nna tsela e e ka latelwang, fa fela di tsamaiswa go ya ka Molaotheo.

3 Ditlhabololo mo mafelotaolong a mangwe

4.83 Lokwalo la morero le tlhatlhobile ka boripana boloi mo dinageng tse dingwe tse pedi tsa Aforika, ka tsepamo ditlhabololo mabapi le mokgwa o dinaga tseo di samaganeng le merero e e amanang le boloi ka teng. Dinaga tseo ke Malawi le Zimbabwe. Lokwalo leno la puisano le tla lebelela dinaga tse dingwe tse di mmalwa tsa Aforika, go tlhomamisa ditlhabololo mo dinageng tseo mabapi le ditiragatso tsa boloi le tirisodikgoka e e amanngwang le boloi. Seno ke ka maikaelelo a go naya tlhaloganyo e e okeditsweng ka ga ka moo dinaga tse dingwe mo kontinenteng di samaganang le merero e e farafereng bothata jwa boloi kgotsa tirisodikgoka e e amanang le boloi. Kelotlhoko e e rileng e mo goreng a go thuso nngwe e e tlišwang ke go dira melao ya boloi sešwa go tsaya tsia diphetogo tsa loago tse di fetogileng le ditlhokego. Lokwalo la puisano le tla lebelela kwa Cameroon (Bophirima jwa Aforika), Kenya (Botlhaba jwa Aforika), Malawi (borwa-botlhaba jwa Aforika), le Zimbabwe (borwa jwa Aforika).

4.84 Jaaka go lemogilwe mo lokwalong la morero, dikarolo tse dintsi tsa Aforika tse di neng e le tsa koloniale di na le difikantswe tse di neng di le, kgotsa di santse di le, tsa maikaelelo a go gatelela tumelo mo boloi. Dingwe tsa difikantswe tseo ke tsa dingwagagolo tsa bolesomerobongwe kgotsa bogare jwa dingwagagolo tsa bosomeamabedi. Morago ga go iponela boikemelo, dingwe tsa dikoloniale tsa pele di tsere dikgato tsa go sekaseka gape melao ya bona ya boloi, eo ba e tsayang gore e kgatlanong le ditumelo tsa bontsi jwa baagi mo ditšhabeng tseo.

4.85 Patlisiso e e dirilweng ke mokgatlho wa boditšhabatšhaba o o bidiwang HelpAge International (Pegelo ya HelpAge)¹¹⁴ e ne ya sekaseka dinaga tse di farologaneng tsa Aforika, ka tsepamo go tlhomamisa fa molao kgotsa matlhomeso a peomolao a ka diriswa go samagana le boloi. Pegelo ya HelpAge e gatelela ditemogo le diphithlelelo ka ga maemo a melao ya boloi mo dinageng tse ba di batlisiseng.

4.86 Sa ntlha, mo dinageng tsotlhe tse di batlisisweng go na le tumelo e e anameng mo bololing, e bile mo mabakeng a mantsi maphata otlhe a baagi ba dumela mo bololing. Boloi bo diriswa gantsi go tlhalosa bomadimabe o bo rileng jo bo itemogetsweng ke maloko a baagi. Diphithlelelo di bontsha gore mo dinageng tse dintsi tse di batlisisweng mabapi le Pegelo ya HelpAge, tlhokofatso e lebisitswe go batho ba bas a sreletsegang, g akaretsa le basadi (segolosegolo basadibagolo), bana, maswafi, le batho ba basa itekanelang mo tlhaloganyong. Baagi ba otlhaya ka mkgwa o o seng mo molaong batho ba ba latofaetswang boloi ka mekgwa e e farologaneng, go tloga ka go ba koba mo baaging go ya go ba utlwiseng botlhoko mo mmeleng le ka go ba bolaya.

4.87 Sa bobedi, ka ntlha ya fa dinaga tse di batlisisweng e ne e le tsa koloniale, bontsi bo na le difikantswe tse di samaganang le boloi le/kgotsa tirisodikgoka e e amanang le boloi. Letlhomeso la semolao mo dinageng tseno le tla sekasekwa ka botlalo fa tlase. Melao e e laolang boloi mo dinageng tsotlhe tseno ga e na tlhaloso ya “boloi”.¹¹⁵ Tlhokego ya tlhaloso e dira gore go nne thata go atlhola dikgetsi tsa mofuta o, mme e tlogela go le gontsi mo diatleng tsa batlhankedi ba boatlhodi ba ba atlholang dikgetsi tse.¹¹⁶

4.88 Pegelo ya HelpAge e tlhagisa mekgwa e mene e e farologaneng ya semolao e e dirisitsweng go samagana le boloi. Yona ke:

- (a) Molawana o o dirang tiragatso ya boloi molato;
- (b) Tiriso ya dikgotlatshekelo tsa setso;
- (c) Melao e e ikemiseditseng go fedisa tumelo mo bololing le go dira tiragatso e e itebagantseng le bao ba latofatswang ka boloi molato; le

¹¹⁴ HelpAge International. *Using the Law to tackle accusations of witchcraft: HelpAge International's position.* www.helpage.org/.../using-the-law-to-tackle-accusations-of-witchcraft-helpage-internationals-position.pdf Accessed on 30 April 2015. The HelpAge report surveyed nine countries: Burkina Faso, Cameroon, India, Cote d'Ivoire, Kenya, Malawi, Senegal, South Africa and Tanzania.

¹¹⁵ HelpAge Report at 4.

¹¹⁶ *Ibid.*

- (d) Botšhotšhisi jwa dikgetsi tsa tirisodikgoka kgatlhanong le bao ba latofaletswang boloi, ka tiriso ya melao ya bosenyi e e leng teng.¹¹⁷

4.89 Mo mkgweng e mebedi ya ntlha (a le b), go na le temogo ya go nna teng ga boloi. Maikaelelo a molawana ke go sireletsa setšhaba kgatlhanong le kotsi e e bakilweng ke boloi.¹¹⁸ Ka thulno, mo mekgweng e mengwe e mebedi (c le d) ga go temogo ya go nna teng ga boloi, mme tsepamo e mo go sireletseng batho ba ba latofaletswang boloi.

4.90 Diphitlhelelo mo Pegelong ya HelpAge di a sedimosa mabapi le taolo ya boloi. Pegelo e bontsha gore molawana o o lebagantsweng bao ba latofaletswang boloi ga o dire, ka ntlha ya fa o paletswe ke go fokotsa tumelo mo boloing; e bile ga o a dira jaaka thibelo go ditatofatso tsa boloi kgotsa tirisodikgoka e e amanang le boloi.¹¹⁹

4.91 Phitlhelelo e nngwe e amana le go tlhokega ga kgatelelo ya melao e e laolang boloi. Kgatelelo e batla e sa kgonege, segolosegolo mo go nang le tumelo mo go nneng teng ga boloi go ralala maphata otlhe a baagi. Mo mpeng ya bothata go na le tlhokego ya phitlhelelo ya tshiamo ke bao ba latofaditsweng; gape, ka dinako dingwe tlhokego ya tumelo mo thulaganyong ya molao ke sekgoreletsi go kgatelelo.¹²⁰

4.92 Ntlha ke gore fa go sekasekwa boloi, motho o samagana le nyenyefatso go tswa go ditheo tse tlhomilweng tsa molao, segolosegolo molao wa bosenyi, mme seno ke tlhobaboroko. Pegelo ya The HelpAge e bontsha gape gore fa go samaganwa le dikgetsi tsa boloi, go na le go tswa mo ditheong tse di tlhomilweng jaaka kamogelo ya bopaki jwa mabaka le jwa magatwe, melao ya bopaki jo bo amogelesegang, le netefatso ya kgolagano ya lebaka magareng ga bosenyi jo bo dirilweng le tiro ya motlholo.¹²¹ Jaaka go sekasekilwe golo gongwe mo lokwalong leno, tlhokego ya tlhaloso ya “boloi” mo didiritsweng tsotlhe tsa molao tse di laolang boloi e dura gore go nne bokete, mo letlhakoreng le lengwe, gore dikgotlatshekelo di netefatse gore go dirilwe bosenyi. Mo letlhakoreng le lengwe, motho yo o latofaletswang boloi ga a itse dipopi tsa bosenyi jo a bo latofaletswang. Seno se gataka tshwanelo ya tshekiso e e lolameng. Mabapi le tiriso ya

¹¹⁷ HelpAge report at 5.

¹¹⁸ Ibid.

¹¹⁹ HelpAge Report at 6.

¹²⁰ Ibid.

¹²¹ HelpAge Report at 7.

dikgotlatshekelo, patlisiso ya HelpAge e fitlheletse gore seno ga se thuse, ka ntlha ya fa mekgwa e e dirisitsweng mo dikgotlatshekelong tseo e na le bothata. Seno ke ka ntlha ya gore dikgotlatshekelo tsa setso ba samagane le bothata jwa gore boloi bo teng le gore maloko a baagi a tshwanetse go sireletswa kgatlhanong le kotsi e e amanngwang le boloi.¹²²

a) Cameroon

4.93 Fela jaaka dinaga tse dintsi mo Aforika, kwa Cameroon tumelo mo kgotsa tiragatsong ya boloi e aname. Boloi bo tlhaloswa jaaka tiragatso e e amanang le motlholo, o o ka nnang baloi ba ba bosula, batho ba ba nang le dithata tsa go lwantsha baloi ba ba bosula, kgotsa batho ba ba nang le dithata tsa go alafa.¹²³ Jaaka kwa mafelong a mangwe (ao a tla tlhaloswang fa tlase), bao bas a sireletsegang mo baaging ba go lebaganweng le bona ke basadibagolo, bana ba ba tshwerweng ke bolwetsi jwa othisimi, le maswafi kgotsa batho ba ba lwalang tlhaloganyo. Bao ba latofaetswang boloi ba bewa ka fa tlase ga tirisodikgoka ya mmele le go kojwa mo baaging.¹²⁴ Ntlha e e kgatlhisang ka Cameroon ke gore e na le hisetori ya go dira diteko sa batho ba ba belaelwang gore ke baloi.¹²⁵

4.94 Boloi kwa Cameroon bo laolwa ka letlhomese la molao la morago ga koloniale le le neng la tlhabololwa morago ga fa naga e iponela boipuso ka 1960. *Penal Code*, ka tsepamo Diathikele 251, 278 le 279, di laola boloi. Athikele 251, athikele e kgolo e e sekasekang boloi, e tlamela jaana:

Mongwe le mongwe yo o dirang tiro ya boloi, bommagalai kgotsa kobamelo e e ka kgoreletsang thulaganyo ya setšhaba kgotsa kagiso, kgotsa go tlhagisetsa motho yo mongwe kotsi, thoto kgotsa sere, e ka nna ka go amogela moputso kgotsa ka mokgwa mongwe, o tla otlhaiwa ka go tswalelwa kwa kgolegolong ya sebaka sa go tloga ka dingwaga tse pedi go ya go tse di lesome kgotsa ka tuediso ya difranc di le dikete tse tlhano go fitlha go tse di seketekgolo.¹²⁶

¹²² HelpAge Report at page 8.

¹²³ HelpAge Report page 13.

¹²⁴ Ibid.

¹²⁵ Tebbe N, 'Witchcraft and statecraft: liberal democracy in Africa', *Georgetown Law Journal* 96:183, 2007 at 232.

¹²⁶ Ibid.

Athikele 278 e tlamela gore boloi le molato o o gakatsang mo dikgetsing tsa polao ya kotlhao e e kwa tlase kgotsa polao, le Athikele 279 e tlamela gore boloi bo tsewa jaaka kutlwisobotlhoko ya mmele.¹²⁷

4.95 Sebaka se se leele morag ga go nna teng ga taolo ya boloi ka *Penal Code*, go nnile le pelaelo mo go e gateleleng. Seno se fetogile ka dingwaga tsa 1980, fa dikgotlatshekelo di ne di simolola go utlwa dikgetsi tse di amanang le boloi. Baatlhodi ba ne ba ikaegile mo ditlhalosong tsa bona tsa boloi, le ka dinako dingwe ba atlhotse baloi ba ba belaelwang ka bopaki jwa dingaka tsa setso.¹²⁸ Dikgetsi tse di amanang le boloi go kaiwa gore ga go bonolo go di netefatsa, segolosegolo ka ntlha ya fa batšhotšhisi ba itemogela mathata a go netefatsa gore dithata tsa motlholo di bakile kotsi e go ngongoregwang ka yona.

4.96 Ntle le maiteko a go dirisa molao go sekaseka dikgetsi tsa boloi, ga go a nna le katlego e e kalo. Go isa dikgetsi tseno kwa thulaganyong ya bosiamisi ga go a tlega.

Kenya

4.97 Naga ya Bolhaba jwa Aforika e aparetswe ke tumelo e e anameng mo boloing. Batho ba ba latofaletswang boloi ba a fapogantshwa, tlhokofatswa (mo mmeleng le mo tlhaloganyong), le ka dinako dingwe ba a bolawa.¹²⁹

4.98 Kwa Kenya, boloi bo laolwa ka *Witchcraft Act* ya 1925, eo e neng e le taolo ya koloniale e e dirilweng molao gape morago ga boipuso.¹³⁰ Molao ono o neelana ka ditiragatso tse di mmalwa jaaka melato; tseo e leng “go dira e kete o diragatsa boloi, go bolela ka ga kitso ya boloi, go nna le ditšhamo tse di amanang le tiragatso ya boloi.”¹³¹ Molao o tswela pele go kganela ditatofatso tsa boloi tse di sa dirwang ka bothati jo bo maleba. Jaaka melao e e tshwanang le e mengwe mo kontinenteng, Molao ga o tlhalose

¹²⁷ See HelpAge report page 13.

¹²⁸ Ntebbe (2007) at page 232.

¹²⁹ HelpAge Report at page 18.

¹³⁰ Ibid.

¹³¹ Ibid. The offences created in the Kenyan Act are similar to most that are found in the South African Witchcraft Suppression Act discussed in this paper.

“boloi”. Go na gape le *Penal Code*, eo e sekasekang tirisodikgoka e e amanngwang le boloi, go akaretsa le polao le thukutho.¹³²

4.99 Ka tlwaelo, tumelo mo boloing ga e tsewe jaaka ntlha ya phokotso molato mo dikgetsing tse di amanang le boloi, ntle le fa motswasetlhabelo a itshotse ka mokgwa o o dirileng gore molatofatswa a dumele gore e ne e le tiro ya boloi.

4.100 *Witchcraft Act* ga e diriswe gantsi kwa Kenya. Dikgetsi di le dintsi di tliswa ka fa tlase ga *Penal Code*, ka ditatofatso tsa polao le go lobela motho dintshi.

c) Malawi

4.101 Go na le tumelo e e anameng mo boloing kwa Malawi, le batho ba gantsi ba latofaletsang boloi ke basadibagolo. Boloi kwa nageng e obo laolwa ka *Witchcraft Act* ya 1911. Molao ono ga o tshalose “boloi”, e bile ga o tlamele ka kaelo ka moo dikgetsi tsa boloi di tshwanetseng go sekasekwa ka teng.¹³³ Bontsi jwa dikgetsi tse di amanang le boloi di sekwasekwa go ya ka Tsamaiso ya Bosenyi le Khoutu ya Bopaki.

4.102 *Malawian Witchcraft Act* e tshwana ka dilo tse dintsi le Molao wa Kgatelelo ya Boli wa Aforikaborwa. O, le ona, kganela ditatofatso tsa boloi, go dira e kete o dirisa boloi, le ditiragatso tsa dingaka tsa boloi le babatli ba baloi.

4.103 Le fa go na le kamogelo ya gore *Witchcraft Act* ya Malawi e ikemiseditse go sireletsa batho kgatlhanong le ditiragatso tse di kotsi tse di amanngwang le boloi, bangwe ba ngangisane ka gore Molao ke wa kgale. O fetisitswe ka 1911.¹³⁴ Bothata jo bo tlhagisitsweng ka Molao ke jwa gore ga o amogele go nna teng ga boloi, ke ka moo e e dirang ditatofatso tsa boloi molato. Batho ba le bantsi ba dumela gore tiragatso ya boloi e tshwanetse go dirwa molato gore go sireletse baagi kgatlhanong le boloi. Fela, go na le kamogelo ya dikgwetlho tse di leng teng mo go direng boloi molato, jaaka bopaki jo bo netefaditsweng mo dikgetsing tseo, go etswe tlhoko gore boloi bo dirisa dithata tsa

¹³² HelpAge Report at page 18.

¹³³ HelpAge Report at page 20-21.

¹³⁴ Malawi Law Commission *Issues Paper* 6.

motlholo. Bao ba leng kgatlhanong le Molao wag a jaana ga ba a kgotsofatswa ke ntlha ya gore ga o sireletse batswasetlhabelo ba ditatofatso tsa boloi.

4.104 Boloi bo diriswa go tthalosa bomadimabe kgotsa ditiragalo tse di sa siamang tse di diragalelang batho. Go dumelwa gore baloi ba dira ka maikaelelo a go utlwiswa ba bangwe botlhoko, le gore baloi ba tseelwa gore ba kgona go tshela bomadimabe mo batswasetlhabelong ba bona.¹³⁵ Ditatofatso tsa boloi di kwa godimo kwa Malawi, le bao ba latofatswang ba lebagane le mefuta e e farologaneng ya tshotlakako – jaaka tshotlakako ya mmele, tshenyo ya thoto, le ka dinako dingwe loso.¹³⁶ Ntle le ditatofatso tseo, batho ba a tsongwa fa go na le magatwe a gore baloi ba ba belaelwang ba rwala maikarabelo a go ruta bana go diragatsa boloi, kgotsa mo baloi ba pegwang molato wa go baka loso kgotsa bomadimabe bongwe.¹³⁷

4.105 Kwa Malawi, ka go farologana le mo Aforikaborwa, batho ba le bantsi bam o thulaganyong ya tshiamiso ya bosenyi ka ntlha ya gore ke batswasetlhabelo ba ditatofatso tsa boli, e leng, ba latofaditswe ka tiragatso ya boloi.¹³⁸ Bao ba latofatsang ba bangwe ka tiragatso ya boloi ga ba sekasekwe.¹³⁹

4.106 Malawi e simolotse kgato ya go thadisa molawana wa yona wa boloi. has started a process of reviewing its witchcraft legislation. *Malawi Law Reform Commission* (Malawi LRC) e tshwaragane le go kgato ya go batlisa thadiso ya *Witchcraft Act*. Ka Moranang 2009, Malawi LRC e phasaladitse lokwalo la morero mabapi le thadiso ya molawana wa naga eo wa boloi.¹⁴⁰ Kgato ya go ntšhwafatsa molao e diragetse ka ntlha ya boikuelo jwa maloko a setšhaba mabapi le thadiso ya *Witchcraft Act*, o ba latofatsang gore o ne o sa tsamaelane le ditumelo tse di tlwaelegileng tsa baagi ba kwa Malawi.¹⁴¹ *Malawian Witchcraft Act* e tseela gore boloi ga bo teng, mme phopholetso eno e mo kganetsong le ditumelo tse di tlwaelegileng mo baaging ba Malawi.

¹³⁵ Byrne C *Hunting the vulnerable: Witchcraft and the law in Malawi*, 16 June 2011. Web

¹³⁶ HelpAge Report at page 20-21

¹³⁷ Ibid.

¹³⁸ Malawi: *Suspected witches jailed*. IRINNews

¹³⁹ Ibid.

¹⁴⁰ Malawi Law Commission *Issue Paper*.

¹⁴¹ Malawi Law Commission *Issue Paper* 5.

4.107 Nngwe ya ditlhagiso tse di dirilweng mo go tsibogeleng lokwalo la morero la Malawi e tshegetsa go busetswa ga dikabelo tsa molao go sireletsa basadi kgatlhanong le ditiragatso tse di kotsi.¹⁴² *Bar Human Rights Committee* (BHRC) e tshitsinya gore ga go tlhokege gore ntshafatswe molao, ka ntlha ya fa o ikamanya le maemo a ditshwanelo tsa botho a boditshabatshaba a a sireletsang basadi. BHRC e bontsha gore seo se ka dirwang ke go maatlafatsa dikabelo tsa ga jaana tsa molao ka go itsise mekgwa e e seng ya semolao, jaaka thuto le phitlhelelo.¹⁴³

4.108 Lokwalo la morero le sekasekile gape tshotlo ya bana ka ditatofatso tsa boloi. Mo tsibogelong ya morero ono, BHRC e ngangisana ka gore *Malawi Act* ya ga jaana e sireletsa bana kgatlhanong le ditatofatso tsa boloi.¹⁴⁴ Ba kaela go dikarolo 4 le 3 tsa Molao, tse di dirang tshotlo ya batho jaaka baloi le go bewa ka fa tlase ga maemo a a masisi, ka tatelano molato.¹⁴⁵

4.109 Kgato ya go ntshwafatsa molao kwa Malawi e eme. Malawi LRC e tlhalositse gore fa e sale go phasalatswa ga Lokwalo la Morero ka 2009, ga go ise go phasalatswe lokwalo lepe la patlisiso.¹⁴⁶

d) Zimbabwe

4.110 Kwa Zimbabwe go na le tumelo e e anameng mo boloing, le fa ponagalo e se ya botlhe.¹⁴⁷ Moithuti mo dithutong tsa bodumedi, Mafico, o ngangisana ka gore go tlhokega ga tumelo ya botlhe go bakile dikgetsi tse di rileng tse di batlisitsweng ke mapodisi, mo dimela tse go tweng di ne di dirisitswe go bolaya batho di netefaditse gore ga di kotsi fa di tlhatlhojwa. Yona ngangisano eo e diriswa mabapi le dikgetsi tse mo go tsona dipatlisiso tsa morago ga loso di dirilweng mo bathong ba ba bolailweng ke baloi ba ba “ipoletseng”,

¹⁴² Submission to the Malawi Law Commission titled *Observations of the Bar Human Rights Committee on the relevant international legal standards*, Bar Human Rights Committee of England of Wales (2011), 9. This submission is referred to as the BHRC submission.

¹⁴³ Ibid.

¹⁴⁴ BHRC submission at page 15.

¹⁴⁵ Ibid.

¹⁴⁶ The status of the investigation was confirmed during an email communication between the designated researcher and a senior official of the Malawi LRC in May 2015.

¹⁴⁷ Mafico T.J *Witchcraft: Belief and realities: A debate*, 1986 Zambezia at 119-130.

mme ditlhatlhobo tsa morago ga losodi bontshitse gore loso le diragetse ka ntlha ya mabaka a tlhago. Seno se diragetse le ka ditopo tse go neng go twe di retlilwe ke baloi mme tsa fitlhelwa di le mo maemong a a siameng.¹⁴⁸

4.111 Go begilwe gore go na le dipharologano mo mokgweng o dikgotlatshekelo tsa setso ditso le dikgotlatshekelo tsa semmuso di sekasekang le dikgetsi tsa boloi ka teng. Dikgotlatshekelo tsa setso di simolola ka tshwetso ya gore boloi bo teng, fa dikgotla tsa semmuso di gopola gore boloi ga bo teng.¹⁴⁹ Dikakanyo tsa dikgotlatshekelo tsa semmuso di ne di theilwe mo filosofing e e fitlhelwang mo *Witchcraft Suppression Act (Ordinance 14)* ya 1899, e e neng e laola boloi mo nageng eo go fitlha ka 2006.¹⁵⁰

4.112 Molao wa 1899 o ne o ikaeletse go otlhaya bao ba bitsang ba bangwe gore ke baloi (ditatofatso tsa boloi). Molao o tlhalositse “boloi” jaaka “go gasa bola, tiriso ya ditšhamo le mekgwa e mengwe e e amogetsweng mo tiragatsong ya tiriso ya ditlhare.”¹⁵¹ Basosioloji jaaka Chanvunduka ba sekasekile tlhaloso, ba ngangisana ka gore ga go a siama go amanya go gasa bola le boloi, ka ntlha ya fa go gasa bola e le mekgwa wa kobamelo o o diriswang ke dingaka tsa setso. Dingangisano tse di tshwanang le eo di ne tsa dirwa ka ga kganelo ya tiriso ya ditšhamo, ka ntlha ya fa go ne go dumelwa gore ditšhamo tse dintsi ga di amane ka gope le boloi.¹⁵² Mo go batleng go itse gore a motho ke moloi, diteko tsa kgatelelo di ne tsa dirwa. Mekgwa ono wa patlo o ne wa sekwasekwa segolo le go tsewa gore ke kinane ya kgale.¹⁵³ Tshwetso e e neng ya tsewa ke bao bas a dumeleng mo boloing key a gore ke botlhami jwa dikakanyo tsa batho.¹⁵⁴ Setlhopha seno se amanya tumelo mo boloing le maemo a a jaaka bohumanegi, malwetsi a a anameng, letlhoyo le letshogo ntle le mabaka.¹⁵⁵

¹⁴⁸ Mafico (1986) 122.

¹⁴⁹ Mafico (1986) 119.

¹⁵⁰ In 2006, Zimbabwe passed the Criminal Law (Codification and Reform) Act, which replaced the Witchcraft Act of 1899.

¹⁵¹ Chavundika G.L. *Realities of Witchcraft* 1986 Zambesia at 130-135.

¹⁵² Ibid.

¹⁵³ Mafico (1986) 123.

¹⁵⁴ Mafico (1986) 122.

¹⁵⁵ Mafico (1986) 123.

4.113 Bokhutlo jo bo ka fitlhelelwang ka puisano ka ga boloi kwa Zimbabwe ke gore baithuti bangwe ba amogetse tumelo mo boloing, fa ba bangwe ba santse ba dumela gore booi ga bo teng.

4.114 Se se amanang le patlisiso eno ke ka moo boemo jwa mabaka bo leng ka teng morago ga go fetiswa ga molao wa boloi “wa metlheng” kwa Zimbabwe, le ka tsepamo ka moo dikgotlatshekelo di sekasekileng dikgetsi tsa boloi. Molawana o mošwa, *Criminal Law (Codification and Reform) Act wa 2006 (Codification and Reform Act)*, o lemoga go nna teng ga boloi le go kganela tiriso ya ditiragatso tse di amanngwang le boloi. Go tshwanetse go elwa tlhoko gore molao o o laolang boloi ga o a ikemela ka nosi mme ke o o samaganang le khouto ya bosenyi ya naga.

4.115 Karolo VI ya kgaolo 2 ya *Codification and Reform Act* e samagana le bosenyi jo bo amanang le boloi, e bile e neilwe setlhogo “*Witchcraft, witch-finding and crimes related thereto.*” Krolo eno e tlhaotse bosenyi jo Molao o batlang go bo laola le go samagana le jona. Molao o kganela go dira ditiragatso tsa tse ka tlwaelo di amanngwang le boloi, go supa baloi, go dirisa mekgwa e e seng ya tlhago ya rarabolola bosenyi kgotsa tlolomolao; le go tlamela ditatofatso tse dingwe kgotsa tse di diragetseng gongwe ka tse di ka fa tlase ga karolo e e maleba. Karolo VI e tlamela gape gore tumelo mo boloing e tla tsewa jaaka lebaka la phokotso ya molato mme e seng tshireletso kgatlhanong le bosenyi jo bo tlametsweng mo molaong.

4.116 Karolo e tlamela gape ka tlhaloso ya mareo mangwe a a dirisitsweng mo dikabelong. Mareo a a tlhalositsweng ke “latofatsa motho ka boloi” le “mokgwa o eseng wa tlhago.” Karolo e tlamela gore “latofatsa motho ka boloi” go kaya go bontsha gore motho yoo—

- (a) o dirisitse, o dirisa kgotsa o ka dirisa kgotsa o kgona go dirisa mekgwa e e seng ya tlhago go baka—
 - (i) loso kgotsa kgobalo go kgotsa bolwetsi kgotsa bogole mo mothing mongwe le mongwe; kgotsa
 - (ii) go riritlwa kgotsa tatlhegelo kgotsa tshenyegelo ya thoto ya tlhaloso nngwe le nngwe;
- kgotsa
- (b) o tsenwe ke mowa o o bakileng, o o bakang kgotsa o ka kgotsa o kgona go baka—
 - (i) loso kgotsa kgobalo go kgotsa bolwetse kgotsa bogole mo mothing mongwe le mongwe; kgotsa

- (ii) go ripitla kgotsa tatlhegelo kgotsa tshenyegelo ya thoto ya tlhaloso nngwe le nngwe;

Tlhaloso ya “mokgwa o o seng wa tlhago” o akaretsa le tiragatso ya patlo ya baloi. Ka go tlhoka lesego, ga go tlhaloso ya “boloi” e e tlametsweng mo molaong.

4.117 Dikgetsi tsa kgotlatshekelo di thadisitswe mabapi le patlisiso eno go tlhomamisa dikatlholo tse dikgotlatshekelo e di dirileng go ya ka dikabelo tsa molao wa 2006. Temogo ka kakakretso ke gore dikgotlatshekelo ga di ise di dirise dikabelo tsa molao o mošwa go samagana le le dikgetsi tsa boloi. Dikgetsi tse di thadisitsweng di bontsha gore thulaganyo ya tshiamo ya bosenyi e dirisa ditlolomolao tse di tlametsweng mo *Codification and Reform Act*, e seng ditlolomolao tse di tsepameng tse di neetsweng mo Karolong VI ya Kgaolo 2 ya *Codification and Reform Act*.

4.118 Mo dikgetsing tse di samaganeng le polao e e tlhotlheleditsweng ke boloi, balatofatswa ba ne ba latofatswa ka bosenyi jwa polao jaaka bo laolwa ke karolo 47 ya *Codification and Reform Act*. Le fa batho ba ba latofatswang mo dikgetsing tseo ba ne bas a latofatswa le ditlolomolao tse di ka fa tlase ga dikarolo 97 go fitlha go 102, merero ya boloi e ne ya umakwa ka go feta. Jaaka sekai, mo *S v Simoyi*¹⁵⁶ molatofatswa o ne a tlhabile rraagwe go fitlha a neela mowa ka nako ya kgakgauthano, e e diragetseng ka ntlha ya fa molatofatswa a rwesa mmaagwe molato wa go diragatsa boloi. Dingangisano tsa boloi di ne di sa simolola mme di umakilwe fela go fetwa ke kgotlatshekelokgolo fa e ne e athola molatofatswa. Molatofatswa o ne a atholelwa dingwaga tse 12 mabapi le polao. Mo *S v Techu & Others*,¹⁵⁷ molatofatswa o ne a latofatswa ka polao go ya ka karolo 47 ya *Codification and Reform Code*. Polao ya moswi ga twe e ne e tlhotlheleditswe ke ditatofatso tsa boloi tse di neng di dirilwe kgatlhanong le moswi. Mo go atholeng molatofatswa go tswalelo kwa kgotlatshekelong dingwaga tse 18, kgotlatshekelo e tsere tsia tumelo ya molatofatswa mo boloing jaaka lebaka la phokotsomolato mabapi le bosenyi jo bo dirilweng. Mo *S v Hamunakwadi*,¹⁵⁸ molatofatswa o ne a bolaile mmaagwe ka ntlha ya tumelo ya gagwe ya gore o ne a mo loa. Tatofatso eno e tlhageletse morago ga tlhomamiso e a e amogetseng go tswa kwa dingakeng tsa setso, tse di kaileng gore mmaagwe e ne e le ena a bakileng mathata a gagwe a lenyalo. Le fa kgotlatshekelo e

¹⁵⁶ [2015] ZWHHC 560

¹⁵⁷ [2015] ZWHHC 271.

¹⁵⁸ [2015] ZWHHC 323.

ngangisane ka gore tumelo mo boloing e amogetswe mo molaong jaaka phokotsomolato, e ganne phemelo ya tlhotlheetso ka pelaelo ya boloi, ka ntlha ya gore molato ga o a dirwa ka tshoganyetso. Kgotlatshekelo e ngangisane ka gore fa molatofatswa a bolaya mmaagwe, o ne a sa rumolwa.

e) Bokhutlo

4.119 Maaforikaborwa ba ka ithuta go tswa mo ditiragalong tsa dinaga tse dingwe mo kgaolong. Mo bokaong jwa Seaforika le mo ditlhopheng tsa tlhologo, ke mogopolo o sele go gana gore tumelo mo boloing le mo ditiragatsong tsa boloi tse di leng kotsi mo bathong ba bangwe e teng. Se se tlhokegang ke tekano magareng ga go amogela tumelo ya setso mo boloing mo letlhakoreng le lengwe, le mo letlhakoreng le lengwe go fetiswa ga melao e e laolang ditiragatso tse di kotsi tse di amanngwang le boloi.

4.120 Tsenyeletso ya dingaka tsa setso jaaka “baitseanape ba bopaki” mo dikgetsing tsa kgotlatshekelo tse di sekasekang melato e e amanang le boloi go ntse go buisanwa ka ga yona mo dinageng tse dingwe tsa Aforika. Kwa Cameroon, jaaka sekai, dikgotlatshekelo tsa puso di thapa “baokamedi ba baloi” (*nkong*) ba ba kanetsweng go naya bopaki kgatlhanong le balatofatswa ba baloi.¹⁵⁹ Le fa Cameroon e dirile semmuso ditiragatso tsa boloi bosenyi, tiriso ya baokamedi ba setso ba baloi e leka go maatlafatsa ditumelo tseo tse puso e ka lehang go di fedisa.

C TSHEKATSHEKO LE DIKATLANEGISO

4.121 Thadiso ya Molao e tlile ka nako e melao yotlhe mo Rephaboliking ya Aforikaborwa e tlhokang go ikamanya le Molaotheo. Fa Molao o fetiswa, go ne go se kamogelo e e lekaneng ya ditshwanelo ka jalo e ne e sa tlhoke go ikamanya semolaotheo. Molao o ne o le kotsi e bile o ne o tlotla go le gonnye ditumelo tsa setso tse baagi ba tlhologo ba neng ba di tshegetsa ka nako eo. Gore go samaganwe le ditiragatso tsa boloi ditiragatso tse di amanang tse di kotsi, Molao o gateletse mefuta yotlhe ya ditiro tsa boloi.

¹⁵⁹ Fisiy and Rowlands, (1989); Fisiy and Geschiere (1990); Geschiere and Fisiy (1994); Fisiy (1998); Niehaus (2001).

4.122 Setšhaba se tlabologile, segolosegolo mo bokaong jwa Aforikaborwa, kwa ditaelo tsa Molaotheo di leng dikgolo. Tiragatso ya boloi e ka se tlhole e bonwa fela ka leitlho la baagi ba tlhago, kwa bo amanngwang le bosula. Go na le dikarolo tse dingwe tsa baagi tse di diragatsang ga jaana se ba se “boloi”, jo go tweng ke tiragatso ya tshwanelo ya bodumedi. Ditshwanelo tsa sedumedi tsa setlhotswana di ka se ikgatholoswe, segolosegolo ka tshedimoso ya tsamaiso ya semolaotheo, e e gatelelang tshireletso ya ditlhotswana tsa bodumedi. Ditumelo tsa setso tsa baagi ba tlhologo, tseo dingwe tsa tsona di nang le seabe mo ditiragalong tse di kotsi tse di amanngwang le boloi, di tlhoka mokgwa mongwe wa kamogelo le tshireletsego, ka ntlha ya gore ditumelo tseo le tsona di sireleditswe mo Molaotheong.

4.123 Molao o o thadiswang o sa le mo bukeng ya molao, mme melao e mengwe e setse e tsentswe mo tirisong go samagana le dingongorego tse di ka ga tiragatso ya boloi. Fela didiriswa tsotlhe tseno tsa molao ga di a thibela ditiragatso tse di kotsi tse di amanngwang le boloi. Dikgotlatshekelo ga di a ikgatholosa maikarabelo a tsona a go gatelela molao le go sireletsa baagi, ka ntlha ya fa ba tswelletse go otlhaya bao ba gatakileng dikabelo tsa didiriswa tsa molao tsa maikaelelo a go fedisa tirisodikgoka ya boloi.

4.124 Re ithutile go tswa mo ditaolong tse dingwe tse di nang le mathata a a tshwanang a gore dikgwetlho tse di tlhodilweng ke tumelo mo boloing di aname e seng fela mo Aforikaborwa mme le mo lefatsheng ka bophara. Dinaga mo kontinenteng ya Aforika di na le motswako wa melao, segolosegolo tseo di ikgatholosang tumelo mo boloing mo gare ga baagi, le bao ba tshegetsang ngangisano ya go nna teng ga tumelo mo boloing.

4.125 Nako e fitlhile ya kamogelo ya kanamo ya tumelo mo boloing, mmogo le kamogelo ya gore ga se mefuta yotllhe ya tiragatso ya boloi e e leng kotsi. Fela, mefuta e mengwe e kotsi e le ruri. Pharologantsho e e botlhokwa e tshwanetse go dirwa magareng ga tiragatso ya boloi ka boyona le ditiragatso tse di kotsi tse di amanngwang le boloi. Dikgotlatshekelo di lopiwa jalo go samagana le dikgetsi tse di ka ga ditiragatso tse di kotsi tse di amanngwang le boloi, le eseng tumelo ka boyona. Ka jalo, Khomišene e atlanegisa gore Molao wa ga jaana, o o palelwang ke go dira dipharologantsho tseno ka nepagalo, o tshwanetse go phimolwa.

4.126 Molao o o phimotsweng o tshwanetse go emelwa ka molao wa sešweng o o ikamanyang le go kganela maitsholo a a kotsi mo baaging. Ke nnete gore melao e mentsi e setse e le teng e e ka dirisetswang go samagana le le ditiragatso tse di kotsi, go akaretsa le melao ya bosenyi le melao e mengwe jaaka *Human Tissue Act*. Khomišene e dumela gore jaaka ga dilo di ntse, melao eno ga e a thusa go le kalo. Go le gontsi go ka fitlhelelwa fa molao o le esi o ka tlhabololwa go samagana le ditiragatso tse di kotsi tse di amanngwang le tiragatso ya boloi. Molao o o tshitsintsweng o tla bidiwa “Molao wa Kganelo ya Ditiragatso tsa Boloi tse di Amanngwang le Ditumelo mo Boloing,” e bile e tla nna mokgwa wa thibeloesi wa go samagana le mathata a a sa siamang le go nna kgatlhanong le loago a a amanngwang le boloi.

4.127 Molao o o tshitsintsweng o tla samagana le merero e e tshwanang le ditatofatso tsa boloi, dipatlo tsa baloi, bosenyi jo bo amanngwang le kgotsa jo bo rotloeditsweng ke tumelo mo boloing, le dipolao tsa muthi. Tshekatsheko ya semolaotheo e e tlametsweng mo kgaolong eno e bontshitse ka moo dikarolo tse dingwe tsa Molao wa ga jaana di ka fetolwang kgotsa tsa dirwa sešwa go tsamaelana le ditlhokego tsa semolaotheo. Khomišene ka jalo e atlanegisa gore taolo ya maitsholo jaaka ditatofatso tsa boloi, bosenyi jo bo amanngwang le boloi, le dipolao tsa muthi. Molao o o tshitsintsweng o tla tshamalatsa gape gore tumelo mo boloing ga se phemelo mo dikgetsing tseo tse di masisi, mme o ka diriswa mo phokotsong ya molato. Molao o tla neela gape dikatlholo mabapi le maitsholo a a kotsi a a kganetsweng ke Molao. Dintlha tsa molao o o tshitsintsweng di sekasekwa mo Kgaolong 5 fa tlase.

KGAOLO 5

BOIKGETHELO JO BONGWE MABAPI LE NTŠHWAFATSO YA MOLAO

A Ditiragatso tse di kotsi tse di amanngwang le boloi

5.1 Tiragatso ya boloi le ditiragatso tse di kotsi tse di amanngwang le yona di na le dintlha tse di bonagalang tse di tshwanetseng go sekasekwa ka kgaogano. Tiragatso ya boloi ga twe e amana le tlhagiso ya ditiragatso tsa bodumedi le tsa setso. Bao ba diragatsang boloi, e ka tswa e le jaaka bodumedi kgotsa tiragatso ya setso, ke setlhotswana se se tlhokang tshireletsego go ya ka Molaotheo. Ka phapaano, ditiragatso tse di kotsi tse di amanngwang le boloi ke ponagalo e e tlhokang kelotlhoko e e kgethegileng ka ntlha ya ditlamorago tsa tsona tse di masisi mo baaging ba le bantsi.

5.2 Khomišene e gatelela pharologanyo eno, ka ntlha ya fa go le botlhokwa go tlhaloganya mokgwa wa yona mo go samaganeng le merero e e amanang le boloi. Tiragatso ya boloi, jaaka e tlhagisitswe ke bontsi go akaretsa le Badumedi Basele – bao ba ipitsang gore ke baloi – ga se matshosetsi kgotsa ngongorego mabapi le Khomišene. Merero ya nnete ke ditiragatso tse di arogangang baagi, tse di letlang go bolawa ga baloi, le go dira gore batho ba tshele ka letshogo.

5.3 Khomišene e tlhagisitse (mo Kgaolong 4 fa godimo) ditiro tse di tlhokang go elwa tlhoko le go laolwa. Tseo ke ditatofatso tsa boloi, patlo ya moloi, bosenyi jo bo amanngwang le boloi, le dipolao tsa muthi. Tseno ke merero e e saleng e emetse katlholo fa pele ga dikgotlatshekelo tse dintsi mo nakong e e telele.

B Taolo ya tiragatso ya boloi

5.4 Ditlhagiso tse di dirilweng go Khomišene go simolola patlisiso eno e gateletse dintlha tsa botlhokwa mabapi le kgato ya ntšhwafatso ya molao tse di tshwanetseng go elwa tlhoko. Sa ntlha, dintlha tse di tlhagisitsweng kwa Khomišeneng di bontshitse gore dikgwetlho tse baagi ba le bantsi ba santseng ba lebagane le tsona ka ntlha ya ditiragatso

tse di amanngwang le boloi. Sa bobedi, go na le dikgatlhego tse di farologaneng tse di gaisanang tse di tshwanetseng go lekangwa – jaaka tsa batho ba ba diragatsang boloi le tsa batswasetlhabelo ba ba itemogelang ditlamorago tsa ditiragatso tse di kotsi tse di amanngwang le boloi.

5.5 Khomišene e amogela maikarabelo a yona a go ntshetsa pele le go sireletsa ditshwanelo tse di mo Molaotlhomong wa Ditshwanelo, segolosegolo ditshwanelo tsa setso le ditshwanelo tsa ditlhophana tsa bodumedi. Fela, Khomišene e etse tlhoko ntlha ya gore ditshwanelo tseo ga di nosi le gore di ka se diragatswe go utlwiswa ba bangwe botlhoko. Tiragatso ya ditshwanelo mo Molaotlhomong wa Ditshwanelo ka Badumedi Basele le dingaka tsa setso ga e a tshwanela go thibela taolo e e tla kganelang kgatako ya ditshwanelo tsa ba bangwe – mo kgetsing ya ga jaana, ditshwanelo tsa batswasetlhabelo ba ba tshwanetsweng ke tshireletso kgatlhanong le ditiragatso tse di kotsi.

5.6 Patlisiso e e tlhagisitsweng mo lokwalong leno, segolosegolo kgetsi ya molao, e bontshitse gore mo dikgetsing tsa kwa kgotlatshekelong fo go nang le kamano ya boloi, tiragatso ya boloi ga se gantsi e nna motlhodi wa kgotlhang. Lebaka e ka nna bothata jo bo leng teng mo go netefatseng gore motho ka nnete ke moloi yo o diragatsang. Gantsi, dikgotlhang di ka ga bosenyi jo bo amanngwang le boloi.

5.7 Khomišene e botsoloditse kgoeletso e e dirilweng ya gore boloi bo dirwe molato, jaaka e e dirilweng ke Khomišene ya Ralushai Commission le ditheo tse dingwe tse di botlhokwa. Dikgoeletso tse di ka se tsewe ka bonosi; di tshwanetse go lekangwa le dikgoeletso go tswa kwa bathong ba ba diragatsang boloi jaaka karolo ya bodumedi jwa bona kgotsa setso. Seo ka tlwaelo se leng botlhokwa mo puisanong ke ditiragatso tse di kotsi tse di amanngwang le tumelo ya boloi.

5.8 Khomišene e sokotse ka tlhaloso ya “boloi”, mme seno e ntse kgwetlho go ba le bantsi pele. Go tlhama tlhaloso ya boloi, ka tsepamo “tiragatso e e kotsi ya boloi”, go ntse go le botlhokwa go tlhalosa se Khomišene e batlang go se laola. Ka ntlha ya fa tlhaloso e e tshitsintsweng e gatelela ntlha ya gore boloi jo bo kganetsweng bo akaretsa tiriso ya mokgwa o e seng wa tlhago kgotsa thata ya motlholo go baka kotsi, ditiragatso tse di jaaka tsa Badumedi Basele le dingaka tsa setso di ka se tsenyeletswe ka fa tlase ga

molao o o tshitsintsweng. Badumedi Basele le dingaka tsa setso ga ba ikaelele go utlwisisa ope botlhoko ka ditiragatso tsa bona.

5.9 Ka ntlha ya mabaka a a neetsweng fa godimo, Khomišene e tla a tlanegisa gore ditiragalo tse di kotsi tse di amanngwang le boloi di laolwe.

C Ditiragatso tse di kotsi tsa boloi tse di kganetsweng

5.10 Lokwalo leno le sekasekile le go gatelela ditiragatso tse di kotsi tse di amanngwang le ditiragatso tsa boloi, le ka moo tseno di nang le ditlamorago tse di masisi mo baaging ba le bantsi. Melao e e farologaneng e teng gore e samagane le bothata jwa tirisodikgoka ya boloi, mme go fitlhela gompieno ga go tharabololo epe e e fitlheletsweng. Melao yotlhe e e samaganang le boloi e tlamela mabapi le dikotlhao tse di tiileng tsa batho ba ba latofatswang ka bosenyi jo bo amanang le tiragatso e e kotsi ya boloi.

5.11 Lokwalo leno, go latela tshekatsheko ya semolaotheo ya Molao wa ga jaana, e tlhagisitse maitsholo a a sa ntseng a tlhoka go go kganelwa go netefatsa gore ntwaga katlhanong le bosenyi jo bo amanang le boloi e maatlafaditswe. Khomišene e tshitsinya gore dikganelo kgatlhanong le ditiro tse di latelang e tlamelwe mo molaong o o tshitsintsweng:

- ditatofatso tsa boloi;
- patlo ya moloji;
- bosenyi jo bo amanngwang le boloi jo bo kotsi; le
- dipolao tsa muthi.

5.12 Dintlha tsa maitsholo a a kganetsweng di sekasekilwe ka boripana fa tlase. Dintlha ka ga bogolo jwa dikganelo di tlhagisitswe mo thalong ya Molaotlhommo e e tsamayang le lokwalo leno la puisano.

1 Ditatofatso tsa boloi

5.13 Patlisiso e e dirilweng le ditlhagiso tse di amogetsweng go tswa go mekgatlho e e nang le kgatlhego di bontsha gore bosenyi jwa go latofatsa motho ka go nna moloi ke jo bo masisi. Go ya ka Molao, bo na le katlholo ya go tswalelwa kwa kgotlatshekelong sebaka sa dingwaga tse di sa feteng lesome. Mo mabakeng a fa motho a bolailwe ka ntlha ya ditatofatso tsa boloi, katlholo e oketswa go paka ya tswalelo kwa kgolegelong e e sa feteng dingwaga tse 20.

5.14 Dipegelo tsa bosenyi jwa tirisodikgoka jo bo lebisitsweng go bao ba latofaletsang boloi di ka se ikgatholoswe. Ntlha ya gore setlhopho se se lebaganweng ke batho ba ba sa sireletsegang, segolosegolo basadi – le basadibagolo ka tsepamo, e tshwanetse go tsewa tsia gape e a tshosa.

5.15 Tshekatsheko ya semolaotheo ya tekanyetso ya ditshwanelo tsa batho ba ba latofatsang ba bangwe ka boloi, jaaka kgololosego ya tlhagisomaikutlo le ditshwanelo tsa tlhakanelo, e bontshitse gore tekanyetso ya ditshwanelo e ka ngangisanwa go nna tekanyetso e e nang le mabaka. Seno ke ka ntlha ya gore maitlhommo a kganelo ke go emisa tshotlo le tirisodikgoka kgatlhanong le bao ba supilweng jaaka baloi. Go tsamaelana le tshekatsheko e e kailweng, Khomišene e atlanegisa gore kganelo mo ditatofatsong e lekanyetswe go mabaka ao maikaelelo e leng go sotla kgotsa go baka kotsi (mo mmeleng kgotsa mo tlhaloganyong).

2 Dipatlo tsa baloi

5.16 o bontshitswe mo patlisisong mo lokwalong leno gore batho mo baaging b ba rileng b aka ya kwa dingakeng tsa baoi gore “di dupelele” baloi. Molao ga jaana o kganea maitsholo a go batla baloi. Go tshwanetse go tlhalogangwa gore dipatlo tsa baloi di dirwa segolo go utlwiswa bao ba supilweng jaaka baloi botlhoko. Pharologano e le esi magareng ga ditatofatso le dipatlo tsa baloi ke gore dipatlo tsa baloi ka dinako dingwe di dirwa ka thuso ya ngaka ya moloi. Seno se masisi thata magareng ga baagi ba bangwe, mme se baka ditlamorago tsa kutlwiso botlhok go bao ba supilweng. Ruri maitsholo ano ga a kgatlhise e bile a tshwanetse go kganelwa. It has been indicated in the research in this paper that people in certain communities may approach witchdoctors to “smell out” witches.

5.17 Thadiso ya kgetsi ya molao e bontshitse ka moo batho ba ba supilweng jaaka baloi ka dipatlo tsa baloi ba sotlwanng ka teng ke balatofatsi. Mokgwa o le esi o o maleba wa go samagana le dipatlo tseno tsa baloi ke go ganela maitsholo le go otlhaya badiri ba tseo.

5.18 Malebana le seno, Khomišene e atlanegisa kganelo ya dipatlo tsa baloi tse di nang le maikaelelo a go sotla le go baka kotsi mo bathong ba ba supilweng jaaka baloi.

3 Bosenyi jo bo amangwang le boloi jo bo kotsi

5.19 Bosenyi jo bo farologaneng bo dirwa ka ntlha ya tumelo mo boloing. Ke nnete gore baagi ba le bantsi ba Aforikaborwa ba dumela mo boloing, e bile go na le letshogo la go loya magareng ga bontsi. Dintlha tse di tlhokang go elwa tlhoko ke tsa go nna teng ga batho ba ba bolelang kgotsa ipolelang gore ba utlwiswa ba bangwe botlhoko ka tiriso ya boloi, le bao ba tshabang go loiwa ba be ba tsiboga ka ntlha ya letshogo ka go iphemela kgatlanong le batho ba ba latofatswang ka tiragatso ya boloi. Motheo wa go tlhama molato mabapi le setlhopha sa batho ba ba bolelang gore ba dira ditaragatso tse di amangwang le boloi gore ba beye batho ba bangwe ka fa tlase ga tlalelo ya tlhaloganyo di tshwanetse go laolwa.

5.20 Kgetsi ya molao e bontshitse dikgetsi tse di masisi tse di amanang le kotsi e e dirilweng kgatlanong le batho ba ba latofaditsweng ka go diragatsa boloi. Ga go kgetsi epe e e bontshitseng gore bao ba latofaditsweng e ne e le badiragatsi ba boloi ba nnete. Molao wa ga jaana o kganela tiragatso ya boloi – mabapi le badiragatsi botlhe go akaretsa le Bwicca. Molao o mošwa o o tshitsintsweng o tshwanetse go atlhola bao ba diragatsang boloi jo bo kotsi kgotsa ba ba tshosang ba bangwe ka gore ba tla loiwa, fa o ntse o sa thibele ditaragatso tse di seng kotsi tse di amangwang le Wicca kgotsa kalafo ya setso.

4 Dipolao tsa muthi

5.21 Lokwalo leno le gateletse bokao jo dipolao tsa muthi di diragalang ka jona. Mo dikgetsing tse dingwe, dipolao di tlhotlheletswa ke dingaka tsa setso, tse di eletsang badirelwa ba tsona gore di ba tlietse dikarolo tsa mmele gore di dire muthi. Batho ba ba angwang segolo ke dipolao tseno ke ban aba bannye, ba ba tlhokang tshireletso mo

temokerasing ya rona ya semolaotheo. Karolo 28 ya Molaotheo e re laela ka ga botlhokwa jwa go sireletsa ditshwanelo tsa bana mo setšhabeng sa rona.

5.22 Molao o o ka fa tlase ga thadiso ga o sekaseke dipolao tsa muthi. Ponagalo eno e sekasekwa ka boripana ke *Sentencing Act*, e e neelang dikatlholo tse di masisi go bao ba bolayang gore ba kgaole dikarolo tsa mmele. Kabelo mo *Sentencing Act* ga e golaganngwe le dipolao tse di amanngwang le boloi.

5.23 Khomišene e tsaya dipolao tse di dirilweng gore go kgaolwe dikarolo tsa mmele go dira muthi jaaka ntlha e e amang baagi thata. Lefapha la maloba la Basadi, Bana le Batho ba ba Golafetseng le lopile gore dipolao tsa muthi di lebelelwe le ditlhabololo tsa semolao tse di dirilweng mo taolong ya ga jaana ya bosenyi joo.

5.24 kakanyo ya Khomišene ka ga dipolao tsa muthi ke gore tsepamo e tshwanetse go nna mo maemong a a farologaneng, e leng, mo badiring ba tirisodikgoka (bao ba dirang polao ka boyona mo batswasetlhabelong), dingaka tsa setso tse di thapang bangwe go bolaya gore ba ba tlele dikarolo tsa mmele, le badirisi ba muthi oo. Khomišene e dumela gore maitsholo a batsayakarolo botlhe mo “ketaneng ya boleng ya tlhagiso” ya muthi a tshwanetse go kganelwa le go otlhaiwa, ka tshepo ya gore go a dira molato gono go tla fokotsa bosenyi joo.

REPHABOLIKI YA AFORIKABORWA

**MOLAO WA KGANELO YA DITIRAGATSO TSE DIKOTSI TSE DI AMANNGWANG LE
DITUMELO TSA BOLOI**

(Jaak o itsisitswe.....

TONA YA BOSIAMISI LE TLHABOLOLO YA MOLAO THEO

MOLAOTLHOMO

Go tlamela mabapi le kganelo ya ditiragatso tse di kotsi tse di amanngwang le ditatofatso tsa gore motho ke moloji; go sireletsa baagi kgatlhanong le tirisodikgoka e gantsi e amanngwang le magatwe ka ga ditiragatso tse di kotsi tsa boloi; go dira ditiragatso tse di kotsi tse di amanngwang le ditumelo tsa boloi bosenyi; go tlamela mabapi le dikotlhao tsa ditiragatso tse di kotsi tse di supilweng; le go tlamela mabapi le merero e e gokaganeng le tsona.

O DIRWA MOLAO ke Palamente ya Rephaboliki ya Aforikaborwa, jaana:

1 Dithaloso

Mo molaong ono, ntle le fa bokao bo kaya ka mokgwa mongwe----

“tiragatso e e kotsi ya boloi” e kaya tiragatso jaaka e tlhalogantswe mo baaging ba setso ba Aforika ka tiriso ya mafoko ukuthakatha, ukuloya, boloi ubugqwira, ao a akaretsang tiriso ya ka bomo kgotsa e e kaiwang e se ya tlhago kgotsa ya motlholo (seo se ka tswa se akaretsa tiriso ya dilo tse di bonagalang kgotsa nnyaa) go tshosetsa kgotsa go baka:

(i) Loso kgotsa kgobatso go kgotsa bolwetse kgotsa bogole go motho mongwe le mongwe; kgotsa

(ii) Tlhatlhamololo kgotsa tatlhegelo kgotsa tshenygo go thoto ya tlhaloso nngwe le nngwe; kgotsa

(iii) tiriso ya tumelo le ditiragatso tse di rileng tse di amanngwang le boloi jo bo kotsi go baka tlalelo kgotsa letshogo la bosaekholoji.

“patlo ya baloi” go kaya tiro nngwe le nngwe e e dirilweng ka maikaelelo a go supa motho gore o dirisa boloi jo bo kotsi;

“muthi” o kaya ditlhare tsa setso tse di baakantsweng ke moitseanape mo ditlhareng tsa setso; le

“bosenyi jwa muthi” bo kaya taelo e e seng mo molaong ya tiro e e kganetsweng ke molao mabapi le maitlomo a go kgaola karolo nngwe le nngwe ya mmele go dira muthi;

2 Maikaelelo a Molao

Maikaelelo a Molao ke –

- (a) go tlhagisa ditiragatso tse di amanngwang le boloi jo bo kotsi le ditatofatso tsa gore motho o diragatsa boloi jo bo kotsi mo baaging;
- (b) go kganela ditiragatso tse di kotsi tse di amanngwang le tiragatso ya boloi le ditatofatso tsa boloi;
- (c) go tlamela mabapi le dikotlhao tsa badiri ba ditiragatso tse di kotsi tse di amanngwang le boloi.

3 Ditatofatso tsa boloi

(1) Motho mongwe le mongwe yo o latofatsang motho yo mongwe ka go diragatsa boloi jo bo kotsi kgotsa yo o bakang bolwetse bongwe le bongwe, kgobalo kgotsa tshenygo go thoto ka tiriso ya boloi, ka maikaelelo a go:

- (a) sotla; kgotsa
- (b) utwisa botlhoko mo mmeleng kgotsa semoweng;

o tla bonwa molato wa tlolomolao le go atlholelwa go ya kgolegelong sebaka se se sa feteng dingwaga tse tlhano fa a bonwe molato, kgotsa tuediso.

(2) Fa motho a bolailwe ka ntlha ya molato o o dirilweng mo karotlaleletsong (1), motho yo o rwalang maikarabelo a kotsi, fa a bonwe molato, o tla newa katlholo ya minimamo mabapi le polao ya go baka loso leo.

4 Patlo ya baloi

(1) Motho mongwe le mongwe yo o leakang go bona thuso ya ngaka ya setso kgotsa mongwe le mongwe, ka maitlhommo a go tlhagisa kgotsa go supa boitshupo jwa motho yo mongwe jaaka moloi kgotsa go kaya gore motho o diragatsa boloi jo bo kotsi le gore o bakile bolwetse, kgobalo kgotsa tshenygo go thoto ka tiragatso ya boloi jo bo kotsi, o tla bonwa molato wa tlolomolao mme o tla lebanwa ke katlholo, fa fela maikaelelo a tlhagiso eo e ne e le go:

(a) sotla; kgotsa

(b) baka kutlwiso botlhoko mo mmeleng kgotsa moweng.

(2) Ngaka ya setso, kgotsa motho mongwe le mongwe yo o bolelang gore o dirisa mokgwa wa motlholo, o kganelwa mo go tlameleng thuso go motho mongwe le mongwe mabapi le maitlhommo a go tlhagisa kgotsa go supa motho yo mongwe jaaka moloi kgotsa go kaya gore motho yo mongwe o diragatsa boloi mme o bakile bolwetse, kgobalo go batho kgotsa tshenyego ya dithoto ka tiragatso ya boloi.

(3) Katlholo ya melato e e mo karotlaleletsong (1) le (2) e tla nna paka ya go ya kgolegelong sebaka se se sa feteng dingwaga tse tlhano; le fa go na le motho yo o bolailweng ka ntlha ya go supiwa, katlholo ya minimamo ya polao e tshwanetse go pateletswa.

5 Bosenyi jo bo amannngwang le boloi jo bo kotsi

(1) Mongwe le mongwe yo o itlhagisang go nna modiragatsi wa boloi jo bo kotsi o tla bonwa molato wa tlolomolao.

(2) Katlholo ya molato go ya ka karotlaleletso (1) e tla newa le kotlhao ya go ya kgolegelong dingwaga tse di sa feteng tse pedi, kgotsa tuediso.

6 Bosenyi jwa muthi

(1) Motho mongwe le mongwe yo o –

(a) tsayang karolo mo polaong ya motho e e seng mo molaong le ka maikaelelo gore a tle a kgaole ntle le molao karolo nngwe ya mmele mo mothong yoo; kgotsa

(b) tsayang karolo mo tirong nngwe le nngwe e ditlamorago tsa yona e leng go kgaola go seng mo molaong ga karolo nngwe ya mmele wa motho; kgotsa

(c) tsayang karolo mo kgwebong nngwe le nngwe ya dikarolo tsa mmele tsa motho mabapi le maitlhommo a go dira muthi;

O tla bonwa molato.

(2) Go sa tlhokomologwe molao mongwe le mongwe, motho –

(a) yo o bonweng molato wa tlolomolao e e kailweng mo karolong 1(a) o tla newa katlholo e e neetsweng jaaka katlholo ya minimamo mabapi le polao;

(b) yo o bonweng molato wa tlolomolao e e kailweng mo karotlaleletsong 1(b) o tla newa katlholo ya go golegwa sebaka se se sa feteng dingwaga tse lesome, kgotsa tuediso; le

(c) yo o bonweng molato wa tlolomolao e e kailweng mo karotlaleletsong 1(c) o tla newa katlholo ya go golegwa sebaka se se sa feteng dingwaga tse tlhano, kgotsa tuediso.

7 Phediso ya melao le dipoloko

(1) Go tsamaelana le dikabelo tsa karotlaleletso (2), molao o o tsepamisitsweng mo Šejuleng o a fediswa go ya ka bogolo jo bo tlhagisitsweng mo kholomong ya boraro ya Šejule.

(2) Molato mongwe le mongwe o o dirilweng kgotsa o go tseelwang gore o dirilwe ka fa tlase ga dikabelo tsa molao o o fedisitsweng ka karotlaleletso (1), gape o na le bokgoni jwa go ka dirwa ka fa tlase ga kabelo nngwe le nngwe ya Molao ono, o tla tseelwa gore o dirilwe ka fa tlase ga Molao ono.

8 Setlhogo se se khutshwane le tshimologo

Molao ono o tla bidiwa Molao wa Kganelo ya Ditiragatso tse di Kotsi tse di Amangwang le Tumelo ya Boloi, 2016, le go tsenngwa mo tirisong ka letlha le le tlhomamisitsweng ke Moporesidente wa Naga ka kgoeletso mo Lokwalodikgannyeng la Puso.

Šejule

MELAO E E FEDISITSWENG

Nomoro le ngwaga wa molao	Setlhogo	Bogolo jwa phediso
Molao 57 wa	<i>Witchcraft suppression Act, 1957</i>	Otlhe

1957		
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