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**UKUQWALASELWA NGOKUTSHA KWE *WITCHCRAFT*
SUPPRESSION ACT 3 KA-1957
(UMTHETHO WOKULWA UBUGQWIRHA)**

IPhulo 135

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INTSHAYELELO

IKomishoni Yomthetho YoMzantsi-Afrika yasekwa yi *South African Law Commission Act 19 ka-1973*.

Amalungu eKomishoni ngala -

uJaji Mandisa Muriel Lindelwa Maya (uSihlalo)
uJaji Narandran (Jody) Kollapen (uSekela-Sihlalo)
uNjingalwazi Marita Carnelley
uNjingalwazi Vinodh Jaichand
uMnu Irvin Lawrence
uNjingalwazi Annet Oguttu
iGqwetha leeJaji uMahlape Sello
uNksz Thina Siwendu

UNobhala nguMnu Nelson Matibe. Iiofisi zeKomishoni zise-2007 Lenchen Avenue South, Centurion. Imbalelwano mayibhekiswe ku:-

Nobhala

IKomishoni Yomthetho YoMzantsi-Afrika

Private Bag X668

PRETORIA

0001

Umnxeba: (012) 622-6336

Ifeksi: (086) 266 1935

I-imeyili: jjoni@justice.gov.za

Olu xwebhu luyafumaneka nakwi-intanethi: <http://www.justice.gov.za/salrc/index.htm>

Yikomiti ecebisa ngokuqwalaselwa ngokutsha kwe *Witchcraft Suppression Act* ephathiswe eli phulo. Inkokeli yephulo ephathiswe eli phulo nguNjingalwazi Marita Carnelley (weYunivesithi yaKwaZulu-Natal), ongumKomishinala weKomishoni Yomthetho.

Amalungu ekomiti ngala:

uNjingalwazi David Bilchitza (weYunivesithi yaseJohannesburg)

uGqr Sibusiso Masondo (weYunivesithi yaKwaZulu-Natal)

uNksz Likhapha Mbatha

uNjingalwazi Pitika Ntuli (uNjingalwazi okumhlalaphantsi, weYunivesithi yaKwaZulu-Natal)

uNjingalwazi Theodore Petrus (weYunivesithi yaseFort Hare)

Umphengululi owabelwe eli phulo, ekunokuqhagamshelwana naye ukuze kufunyanwe ingcombolo ebhekele phaya, nguNksz Jennifer Joni.

ISANDULELA

Lo mqulu we ngxoxo ulungiselelwe ngenjongo yokuba ube sisiseko seengxoxo zeKomishoni, ukuze kufumaneke izimvo namacebiso kwabachaphazelekayo, nokunabisela kuluntu ulwazi ngokuqwalaselwwe ngokutsha kwe *Witchcraft Suppression Act*. Ngenxa yezi njongo, lo mqulu awuqulathanga zindululo zicacileyo zokuguqulwa komthetho. Ngoko ke iimbono, iziphetho nezindululo ezikulo mqulu mazingathathwa njengeembono zeKomishoni ezizezokugqibela. Lo mqulu wengxoxo upapashwe wonke ngenjongo yokuba unike ithuba abantu namaqumrhu abanqwenela ukuvakalisa izimvo nokucebisa ngokwenziwa kwenguqu kolu hlobo lomthetho benengcombolo eyaneleyo ukuze bakwazi ukuvakalisa izimvo eziphusileyo kwiKomishoni.

Abafuna ukuphendula bacelwa ukuba bathumele izimvo **ezibhaliweyo**, batsho abafuna ukukutsho okanye izicelo bazibhekise kwiKomishoni ungekabethi umhla **wama-30 kuEpreli 2016** kwidilesi ekwikhasi elandulela eli. Umphengululi uza kuzama ukukuncedisa kubunzima onokuthi ugagane nabo. Izimvo esezithunyelwe kakade kwiKomishoni mazingaphindwa; xa kunjalo abaphendulayo mabasuke nje bathi abagungqi koko bebekutshilo, ukuba kunjalo.

IKomishoni iza kuthatha ngokuthi abaphendulayo bayavuma ukuba iKomishoni icaphule kwabakuthethileyo, ngaphandle kokuba abakuthethileyo kubhalwe ukuba “kuyimfihlo”. Abaphendulayo mabazi ukuba ngokwe *Promotion of Access to Information Act 2 ka-2000* iKomishoni kusengafuneka ukuba iyidandalazise ingcombolo equlethwe koko bakuthethileyo.

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IMITHOMBO

IKomishoni Yokuguqulwa Komthetho YoMzantsi-Afrika

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IMITHETHO YEPALAMENTE

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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

IZIVUMELWANO

Convention on Civil and Political Rights (1966)

Universal Declaration of Human Rights (1948)

ULUHLU LWABAPHENDULILEYO:

1. SA Pagan Rights Alliance;
2. Umbutho Wabanyanga Ngokwesintu;
3. SA Pagan Council;
4. IKomishoni Yokulingana Ngokwesini;
5. uGqr Wallace weYunivesithi yaKwaZulu-Natal;
6. Women's Legal Centre;
7. namaPolisa oMzantsi-Afrika.

ISAHLUKO 1

INTSHAYELELO

1.1 Lo mqulu wengxoxo ulandela ukupapashwa kwencwadana yokufun' izimvo ngoSeptemba 9, 2014 ngenjongo yokuba kuvakaliswe izimvo, kuze kuqondwe ukuba hlobo luni lokutshintshwa komthetho olufunekayo. IKomishoni Yokuguqulwa Komthetho eMzantsi-Afrika (iKomishoni) iyababulela bonke abo bathe basabela kubizo lokuvakalisa izimvo baza basinika ingcombolo efanelekileyo yendlela ongaphuculwa ngayo lo mqulu wengxoxo.

1.2 Lo mqulu wengxoxo uluqhubela phambili uphando ngokuxela ezinye iindlela onokuguqulwa ngayo umthetho eziya kuthi zikhokelele kwisisombululo esibhadlileyo sokuqwalaselwa ngokutsha kwe*Witchcraft Suppression Act*. Lo mqulu ucacisa imfuneko yenguqu udlulisela kuluntu iziphetho ekufikelelwe kuzo yiKomishoni, kwaye uvavanya izimvo zoluntu ukuba zithini ngezisombululo iKomishoni efikelele kuzo.

1.3 IKomishoni izimisele ukubonisana nabo bachaphazelekayo. Ukongezelela ekupapasheni lo mqulu wengxoxo ngenjongo yokuba uluntu luvakalise izimvo, siceba ukubonisana nabachaphazelekayo abachatshazelwa bubugqirha. Emva kwale nkqubo, iKomishoni iza kuqulunqa ingxelo ekuza kubakho kuyo izindululo zayo zokugqibela nomthetho omawuye epalamente ukuba kuyimfuneko. Ingxelo iza kunikwa uMphathiswa woBulungisa Nophuhliso Neenkonziso Zolungiso-similo, onokuthi ke aziphumeze izindululo zeKomishoni ngokuwuthi thaca umthetho oyilwayo ePalamente.

A Imvelaphi yophando

1.4 NgoFebruwari 2007 iKomishoni yafumana isicelo esivela kwiSouth African Pagan Rights Alliance (SAPRA) ukuba iphande ukuba iyavisisana kusini na noMgaqo-siseko i*Witchcraft Suppression Act* kunye nomnye uMthetho Oyilwayo waseMpumalanga nawo okwangowokulwa ubugqwirha owathi wapapashwa ngo-2007.

1.5 Kuthe malunga noJuni okanye uJulayi ka-2007, emva kokuba sifumene esi sicelo sixelwe ngentla kwiSAPRA, neminye imibutho enjengoMbutho Wabanyanga Ngokwesintu (Abanyanga Ngokwesintu) neSouth African Pagan Council (SAPC) yakhuthazwa ukuba mayizibandakanye nayo ikhuthaze ukuqwalaselwa ngokutsha. Yomithathu le mibutho yathumela izimvo kwiKomishoni ukuze ziqwalaselwe xa kuqwalaselwa ngokutsha i*Witchcraft Suppression Act*.

1.6 IKomishoni yabiza intlanganiso yabo bonke abachaphazelekayo ngoSeptemba 4, 2008 apho kwaxoxwa khona ngezimvo ezithunyelweyo. Emva kwale ntlanganiso, ngoNovemba 14, 2008, iKomishoni yafumana izimvo eziqwalaselwe ngokutsha zivela kwiSAPC nezimvo ezivela kwAbanyanga Ngokwesintu, yomibini le mibutho icela olu phando luqkwe kucwangciso lweKomishoni.

1.7 Kwizimvo zayo iSAPRA icebisa ukuba itshitshiswe i*Witchcraft Suppression Act* ngesizathu sokuba ibenza bube lulwaphulo-mthetho ubugqwirha namagqwirha azichaza ngendlela eyeyawo njengePagans (Abahedeni). Ikwacebisa ukuba makungabikho mthetho wepalamente olawula ubugqwirha, ikwathi ukusetyenziswa gwenxa kobugqwirha makulwiwe ngokomthetho ongabhalwanga phantsi. Isizathu sokucebisa kwabo ngale ndlela sikukuba ubugqwirha buyinxalenye yeenkolelo zabo nonqulo lwabo. ISAPRA ithi i*Witchcraft Act* iyingxaki kuba ayiyichazi intsingiselo yegama "igqwirha" okanye "ubugqwirha." ISAPRA iyavuma ukuba embalini nakwintlalo yaseMzantsi-Afrika, igama elithi "igqwirha" nelithi "ubugqwirha" aye asetyenziselwa ukuchaza ubungendawo okanye izenzo zolwaphulo-mthetho ezinxulunyaniswa nokubulawa kwabantu bebulawelwa isithethe namashwangusha ngokubanzi. Bathi amalungu eSAPRA angamagqwirha azichaza ngendlela eyeyawo kwaye ayabungqina ubukho bamagqwirha, kodwa bathi abangabo abenzi bobungendawo nezaphuli-mthetho. Bakwathi ukuthakatha, ukwenza

umlingo nentlaninge yezithethe eziyelele apho zizinto zonqulo lwabo kwaye ziwela kudidi lwezinto ezibizwa ngokuba “uMzimba, iNgqondo noMphefumlo” okanye “Esoretic” kuzo zonke iivenkile eziphambili zeencwadi. Uluvo lwabo lukukuba njengokuba lo Mthetho usithi makuliwe nabo ubugqwirha, nto leyo elunqulo lwabo, uphikisana nokuninzi okutshiwo siSahluko 2 soMgaqo-siseko. Ngokwalela ukuthakatha, le mithetho yohlutha abemi ilungelo labo lokunqula ngokukhululeka (isiqendu 15 soMgaqo-siseko); nelungelo lokuthetha ngokukhululeka (isiqendu 16); nelungelo lokulingana (isiqendu 19); nelungelo lesidima sokuba ngumntu (isiqendu 10); nelungelo lokukhuseleka komntu (isiqendu 12) nelungelo lokuzikhethela indlela yokurhweba okanye umsebenzi ngaphakathi kwemida yoMzantsi-Afrika (isiqendu 22).

1.8 Kwizimvo ezingeniswe yiSAPC, ithi inkomfa yabo (eyayingo-2007) yavotela ukubhangiswa kwe *Witchcraft Suppression Act* ka-1957, kwaye iSACP iyaphikisana nemigaqo ekulo Mthetho. Kwinkomfa yabo ka-2007 lo mbutho ukhuthaze oko okubize ngokuba “sisigunyaziso saseMelville”. Isizathu sokuba nemigaqo ekwavunyelwana ngayo kwinkomfa sikukuba ziyakhuselwa iinkonzo ezincinane nguMgaqo-siseko.

1.9 Injongo yesigunyaziso saseMelville kukugcina amagama athi “igqwirha” nelithi “ubugqwirha” ukuze aqondwe ngokwendlela yale mihla yobuHedeni. Isizathu sokuthetha ngolu hlobo kukuba eMzantsi-Afrika kuyavunywa ukuba amagama athi “igqwirha” nelithi “ubugqwirha” aye asetyenziselwa ukuchaza “ubungendawo okanye izenzo zolwaphulo-mthetho ezinxulunyaniswa nokubulalela isithethe, ukutyhuthulwa kwamalungu omzimba omntu namashwangusha ngokubanzi”. Injongo yesi sigunyaziso ikwakukuqalisa inkqubo yokusungulwa komthetho wepalamente oya kuthintela ukucalulwa okungathethelelekiyo kwixesha elizayo nokubukulwa kwabaHedeni abangamagqwirha azichaza ngendlela eyeyawo.

1.10 ISAPRA neSAPC zithi lo Mthetho uthintela abaHedeni ekunquleni ngendlela yabo, ngokuthi nawuphi na umntu othi usebenzisa amandla angaziwayo, okanye osebenzisa ubugqwirha, okanye othi unolwazi lobugqwirha, waphul’ umthetho. Bathi isithintelo esikulo Mthetho esichaphazela abaHedeni, sinyhasha “amalungelo abo oMgaqo-siseko okunqula ngokukhululeka, okulingana, okukhululeka, okukhuseleka, nelungelo lokukhetha nokwenza umsebenzi wabo ngaphakathi kwemida yoMzantsi-Afrika.”

1.11 ISAPRA neSAPC bayakhala ngendlela obuchazwe ngayo ubugqwirha namagqwirha, besithi buchazwa ngendlela ejonge cala-nye. Oku kuchazwa kwamagama kunxulumanisa ubugqwirha namagqwirha nobungendawo okanye ukubulalela isithethe, ukutyhuthulwa kwemizimba yabantu namashwangusha. Bathi ukuchazwa ngale ndlela kuthoba isidima samagqwirha azichaza ngendlela eyeyawo.

1.12 ISAPRA igxininisa ukuba bukho ubugqwirha namagqwirha, isithi asibubo ubungendawo nolwaphulo-mthetho.

1.13 Kwizimvo zayo ezingenisileyo iSAPRA ibhekisela kuxwebhu oluveliswe yiSAPC olubhalwe nguGqr Dale Wallace, osisazi ngokuthelekiswa kweenkonzo ngeenkonzo. UGqr Wallace uthi lo Mthetho imvelaphi yawo ikulawulo lobukolonyali, obabuthe phithi ziinkolelo. Ugxininisa ukuba injongo yalo Mthetho yayikukulwa ukukholelwa kubugqwirha.

1.14 Ukungachazwa kwegama elithi “ubugqwirha” kulo Mthetho, okuthe kwabangela ukuba ubugqwirha bunxulunyaniswe nezenzo zolunya nokufa, kwakunye nezinye izenzo ezalelwayo ngulo Mthetho, kuye kwathiwa kuyaxhalabisa. Okutshiwo sisiqendwana (d) no-(f) zesiqendu 1 salo Mthetho, ezikwenza kube lityala lolwaphulo-mthetho ukuthi komntu unolwazi lobugqwirha, nothi, ngenxa yenzuzo, enze ngathi usebenzisa amandla angaziwayo, kuyingxaki kuba kuthintela ukwenziwa kwezinto zesintu.

1.15 ISPAC iyavuma ukuba buxhaphakile ubugqwirha kubantu abaNtsundu kwaye bubangele intshabalalo phakathi kwabo. Ithi iingcamango ngobugqwirha bezisoloko ziguqu-guquka ukususela kumaxesha obukolonyali, kwaye ziyaqhubeka ziguqu-guquka.

1.16 ISAPC ithi kuMzantsi-Afrika wasemva kwexesha localulo, izinto ezalelwayo kulo Mthetho kufuneka zijongwe ngamehlo oMgaqo-siseko, wona ofuna ukuba zonke iinkolo ziphathwe ngokulinganayo. ISACP ithi ubugqi, obungavunyelwayo sisiqendwana (d) no-(f), buyasetyenziswa zezinye iinkolo, kuquka nobuHindu. Ukusik' umda kwizenzo ezinjalo okanye ukuzenza zibe lulwaphulo-mthetho kungaba kukucalula.

1.17 ISAPC yalatha ukoyisakala komthetho wepalamente ukuphelisa ukukholelwa kubugqwirha kunye nokwenzakaliswa kwabantu okuhambisana nako kumazwe aseAfrika obukolonyali. Kukhankanywa amazwe aseAfrika athe ayilondoloza imithetho yepalamnte

yobugqwirha yexesha lobukolonyali, kodwa akabona mpumelelo eze naloo mithetho yepalamente. ISACP ithi kufuneka kuqwalaselwe nezinye izinto xa kuthethwa ngokwenzakaliswa kwabantu mayela nobugqwirha, ukongezelela kwimithetho yepalamente elwa ubugqwirha. Kubalulekile ukuba bathabath' inxaxheba abantu ngabantu abachaphazelekayo.

1.18 Uluvo lwAbanyanga Ngokwesintu luthi i *Witchcraft Suppression Act* mayitshitshiswe ize ithatyathelw' indawo ngomnye umthetho. Abanyanga Ngokwesintu bathi umthetho omtsha kufuneka ulungise ingxaki yokwenzakaliswa kwabantu okunxulumene nobugqwirha, kwaye kufuneka uchaze ukuba yintoni ubugqwirha. Abanyanga Ngokwesintu bathi igama elithi "ubugqwirha" malibe nentsingiselo yobugqwirha ngendlela obaziwa ngayo ngabantu abaNtsundu, liquke ukusetyenziswa kwamayeza ayingozi, ubugqi obuyingozi, nezinye izinto ezinokubangela ukugula, amashwangusha okanye ukufa komntu, okanye ukonakaliswa kwempahla. Abanyanga Ngokwesintu bakwathi kukho imfuneko yomthetho wepalamente oza kuxela ukuba zenzo zini ezibubugqwirha uze uzilawule. Oku kuya kunceda iinkundla zingakwazi nje kuphela ukukhusela abantu abaninzi abamsulwa abatyholwa ngobugqwirha, koko zikwazi nokohlwaya abantu abafunyaniswe benetyala lokuthakatha.

1.19 Abanyanga Ngokwesintu baxhasa uluvo lweSAPRA neSAPC oluthi lo Mthetho mawutshitshiswe. Kodwa ke Abanyanga Ngokwesintu bagqithela ngaphaya koko bacebise ukuba lo Mthetho mawuthatyathelw' indawo ngumthetho omtsha, wona oza kulungisa iingxaki ezinxulumene nokwenzakaliswa kwabantu mayela nobugqwirha, kwaye wenze kucaze ukuba yintoni kanye ubugqwirha. Abanyanga Ngokwesintu bathi makakhuselwe amakhoba atyholwa ngokuthakatha, kodwa kananjalo bohlwaywe abo bafunyaniswe benetyala lokuthakatha.

1.20 Abanyanga Ngokwesintu bayavuma ukuba amalungelo oluntu anento ayenzayo kwindlela umntu azijonga ngayo iinkolelo zeqela elithile labantu. Bathi lo Mthetho omtsha mawungasetyenziselwa ukulawula iinkolelo nokuziphatha kwabantu.

1.21 Abanyanga Ngokwesintu balumkisa ngokusetyenziswa kwamagama aye asetyenziswa kwixesha elidlulileyo ukuchaza ubugqwirha anjengelithi "igqirha", "igqwirha",

“umthakathi”, “ubusiyazi”, “amayeza”, “amandla angaziwayo”, njalo-njalo, kuba la magama ayakhohlisa.

1.22 Abanyanga Ngokwesintu bacebisa ukuba ubugqwirha buphathwe njengazo zonke ezinye iintlobo zolwaphulo-mthetho kwaye umthakathi athathwe njengomaphuli-mthetho. Benza umzekelo ngomntu ofunyenwe eneenyama zomntu, bathi loo mntu makabekwe ityala ngokwe *Human Tissue Act* ka-1983.

1.23 Abanyanga Ngokwesintu bakwacebisa ukuba kusetyenziswe imithetho yokumangalelwa kwabantu abangcolis’ igama labanye abathi, bengenabungqina baneleyo, batyhole abanye ngokuthakatha. Bakwacebisa ulamlo xa zingekho iindlela zokuqhubeka nesimangalo sokuthakatha.

1.24 Le mibutho mithathu ezimvo zayo zisisiseko zolu phando lwangoku ithethelela izimvo eziphikisayo ezixela indlela emakulwiwe ngayo nobugqwirha. ISAPRA neSAPC zithi makungaliwa nabo ubugqwirha, kwaye mabungalawulwa ngurhulumente. Abanyanga Ngokwesintu bona bathi mabulawulwe ngenxa yokusetyenziswa kakubi kobugqwirha.

B Ukuqukwa kophando kwisicwangciso seKomishoni

1.25 Emva kokuba sibe nentlanganiso ekuthethwe ngayo ngentla nombutho weSAPRA, iSAPC (ebimelwe yiLHR) kwakunye nAbanyanga Ngokwesintu (kwisiqendu 1.6); nasemva kokuba sifumene izimvo ezibhalwe ngokutsha kule mibutho, iKomishoni iye yenza uphando olulolokuqala ngenjongo yokuqonda ukuba akunakwenzeka na ukuquka olu phando kwisicwangciso sayo.

1.26 Kwintlanganiso eyayingoAgasti 1, 2009 iKomishoni yavumelana nezindululo ezazikumqulu wamacebiso, ezithi ukuqwalaselwa ngokutsha kwe *Witchcraft Suppression Act* makuqukwe kwisicwangciso seKomishoni. Izindululo neengongoma ezikumqulu wamacebiso ziye zaqwalaselwa ngenjongo yokuthi gqi nalo mqulu wengxoxo.

1.27 NgoJanuwari 15, 2010 iKomishoni yathumela incwadi kuMphathiswa woBulungisa Nophuhliso LoMgaqo-siseko icela ukuba asamkele isindululo seKomishoni (esenziwa ngoAgasti 1, 2009) ukuba siquke ukuqwalaselwa ngokutsha kwe *Witchcraft Suppression Act* kwisicwangciso seKomishoni.

1.28 NgoMeyi 2011, emva kokuqukwa kolu phando kwisicwangciso seKomishoni, olu phando lwanikezelwa kumphengululi weKomishoni. Akubanga thuba lide emva koku, iKomishoni yafumana incwadi (yomhla kaOkotobha 12, 2011) evela kuMphathiswa Wabasetyhini Nabantwana Nabantu Abaneziphene, ecela ukuba kuphandwe ngokubulawa kwabantu bebulawelwa ukwenza amayeza. Isicelo soMphathiswa sasibangelwa ziimeko ezibalaseleyo ezazibikwe kumajelo eendaba, eziquka ukubulawa kwabantwana ekuthiwa babulawelwa ukutyhuthulwa iindawo ezithile zemizimba yabo.

1.29 Kwintlanganiso yeKomishoni eyayingo-Okotobha 22, 2011, kwandululwa ukuba isicelo soMphathiswa Wabasetyhini Nabantwana Nabaneziphene sifakwe kolu phando. Ngo-Okotobha 24, 2011 iKomishoni yathumela incwadi kuMphathiswa imazisa ukuba isicelo sakhe sokuba kuphandwe ngokubulawa kwabantu bebulawelwa ukwenza amayeza siza kufakwa kwiPhulo 135 lesicwangciso seKomishoni. Iphulo 135 lolu phando lwangoku olungokuqwalaselwa ngokutsha kwe *Witchcraft Suppression Act*.

1.30 Umqulu ongokuqwalaselwa ngokutsha kwe *Witchcraft Suppression Act* wamkelwa yiKomishoni kwintlanganiso yayo eyayingoMeyi 11, 2014. Lo mqulu wapapashwa ukuze uluntu luvakalise izimvo ngoSeptemba 9, 2014. Umhla wokugqibela wokwamkela izimvo wawungo-Okotobha 31, 2014.

C *Ubungakanani bophando*

1.31 Uphando lweKomishoni ngokuqwalaselwa ngokutsha kwalo Mthetho lujongene nemibandela eziswe ngaphambili yimibutho ekhankanywe ngentla, iSAPRA, iSAPC nAbanyanga Ngokwesintu. Uphando lweKomishoni luza kuqwalasela kananjalo imibandela eyaziswa engqalelweni yayo ngulowo wayenguMphathiswa Wabasetyhini Nabantwana Nabaneziphene (okhankanywe ngentla), kwaye luza kwenza izindululo ngendlela enokusonjululwa ngayo ingxaki yokubulawa kwabantu bebulawelwa ukwenza amayeza.

ISAPHLUKO 2

IIMPENDULO ZOLUNTU KUMQULU

2.1 Emva kokupapashwa komqulu ngoSeptemba 2015, iKomishoni yafumana ibathwana lezimvo ezivela kwabachaphazelekayo bephendula kwizinto eyayizivezile kumqulu. Ezi zimvo ziza kushwankathelwa kweli candelo lomqulu wengxoxo kuze kuxoxwe ngazo ngokubhekele phaya kumacandelo alandelayo. Olu shwankathelo alulandelelani ngendlela ethile, kwaye lubhalwe ngokolandelelwano olwafunyanwa yiKomishoni.

2.2 ISAPRA nAbanyanga Ngokwesintu abathumelanga zimvo zitheni mayela neengongoma ezivelisiweyo kumqulu. Okuthethwe yiSAPRA kuhlobene nokuchana kwembali yophando. Abanyanga Ngokwesintu xa bebesabela kubizo lokuba makungeniswe izimvo, baqinisekise oko bebekuthethe ngaphambili.

2.3. Kufunyenwe izimvo nakwiSAPC. I-SAPC iqalisa ngokuvuma ukuba imeko eMzantsi-Afrika mayela nobugqwirha imbi kakhulu. Iyavuma kananjalo ukuba zikrakra iziphumo zokuthakatha, umzekelo ukwenzakaliswa kwabantu okuhambisana nokuthakatha, nobukho bezinye iindidi zobugqwirha. Ithi makubekho umahluko phakathi kobugqwirha obuyingozi nobugqwirha obuyinkolo.

2.4 ISAPC ithetha into eyayiyithethile xa lwaluqaliswa uphando, isithi mabungalawulwa ubugqwirha. Ukuthakatha kukhuselwe nguMgaqo-siseko weRiphabliki, ekhusela amalungelo okunqula. Inoluvo lokuba kufuneka kusetyenziswe umthetho ongabhalwanga phantsi xa abantu bemangalelwe ngolu lwaphulo-mthetho. Ithi xa kwaphulwe umthetho, njengaxa kwenziwe ubuqhetseba bemali, ukudlwengula, ukubulala, okanye ukuthengisa ngamalungu omzimba omntu, abaphuli-mthetho malixoxwe ityala labo ngokomthetho okhoyo.

2.5 ISAPC ikholelwa ukuba ukubulawula ubugqwirha kuza kulwandisa ulwaphulo-mthetho nokwenzakaliswa kwabantu okunxulunyaniswa nobugqwirha, kwaye iza kubhebhethekisa izenzo ezinjengokunukwa kwabantu, ukumonela, nokuphathwa kakubi kwabantu

abanukwa ngokuthakatha. ISAPC inoluvo lokuba umthetho othabatha indawo yomnye uza kulawula isenzo esithile ekungenakubakho bungqina ngaso, ube kwangaxesha-nye uzivuma njengezilungileyo zonke ezo zenzo nangona bekungeyiyo injongo.

2.6 Ukulawulwa kwabo kungakhuthaza izityholo nokwenzakaliswa kwabantu, okusukuba kubangelwa kukumonelana, ukungavani, ukurhanelana, uloyiko, nentlewendwane. Ezo zinto zingakhokelela kuphando oluziindleko kakhulu. Esinye isiphumo esibi singakukuba abantu bathabathel' umthetho ezandleni zabo, kutsho kwande ulwaphulo-mthetho nokutshutshiswa kwabantu abamsulwa abatyholwa bengenzanga nto.

2.7 ISAPC ilumkisa ngokusetyenziswa kwamagama athile anjegelithi "ukubulawelwa amayeza" nelithi "ukwenzakaliswa kubugqwirha". Ithi ukubulala kukubulala, nokwenzakalisa kukwenzakalisa, akukho mfuneko yokuchaza ngokuthi okunxulunyaniswa nobugqwirha. ISAPC ayiluxhasi uluvo lokuba ubugqwirha bona ngokwabo bululwaphulo-mthetho, ikakhulu ngenxa yokuba abantu abanukwa ngezenzo zolwaphulo-mthetho zokuthakatha abade bavume ukuba bangamagqwirha. Bahluka xa kulapho ke kwabo bangamagqwirha azichaza ngendlela eyeyawo, kuba bona babuthatha ubugqwirha babo njengenkolo, ingenguwo umsebenzi olulwaphulo-mthetho.

2.8 ISAPC iza namacebiso aliqela kwizimvo ezingeniswe yiyo, macebiso lawo aphelekwa zizizathu.

2.9 Malunga neengongoma ezichasiweyo yiSAPC, phakathi kwazo kukho ezi:

2.9.1 Okokuqala, ikuchasile ukusetyenziswa kweenkolelo zonqulo okanye zenkcubeko xa kusenziwa ulwaphulo-mthetho lobugqwirha. Uluvo lwayo luthi unqulo nenkcubeko mazingasetyenziswa njengezinto ezenza imeko ibe mandundu okanye njengezinto ezithethelelayo kwiimeko ezibandakanya ubugqwirha. Oku bakusekela kwinto ethi abantu abatyholwa ngolwaphulo-mthetho lobugqwirha abazivumi ukuba bangamagqwirha. Ngoko ke bagqiba kwelokuba ezo zenzo zolwaphulo-mthetho mazithathwe njengezenzo zolwaphulo-mthetho, qwaba ke! Bathi ukuzithethelela ngokuthi yinkcubeko kuza kunciphisa ubuqatha besohlwayo kuze kwenze kube lula ukuzithethelela.

2.9.2 Okwesibini, bathi iinkundla zakwantu mazingawachopheli amatyala ezenzo eziyingozi. Uluvo lwabo lukukuba izenzo zolwaphulo-mthetho zobugqirha maziphandwe ngabasemagunyeni abafanelekileyo, zisingathwe ngokomthetho welizwe. Uluvo lwabo lukukuba iinkundla zakwantu zisebenza okweenkundla zasehlathini, kulapho abantu abamsulwa bafunyaniswa benetyala, babulawe kabuhlungu. ISAPC indulula ukuba xa amatyala olwaphulo-mthetho lobugqirha eziswa phambi kweenkundla zakwantu, zona maziwadlulisele kwiinkundla zomthetho.

2.10 ISAPC iqhubeka icebise ngolu hlobo:

2.10.1 Okokuqala, ithi abanyanga ngokwesintu mababe nemigqaliselo yokuziphatha elawula umsebenzi wabo, ‘ukuze benze izinto ngenkathalo kwaye baphendule’. Ithi le migqaliselo mayingabi yinxalenye yomthetho kuba umthetho ongabhalwanga phantsi neminye imithetho sele ikho.

2.10.2 Okwesibini, icebisa ukuba kungenelelwe ngeendlela ezingenguwo umthetho, njengokusebenzisa imfundo enjongo yayo ikukukhanyisela uluntu ngokubanzi ngazo zonke iindlela zobuthakathi.

2.11 ISAPC ayiyiphendulanga eminye yemibuzo ebuziweyo kwincwadana yokufun’ izimvo, ingakumbi imibuzo engayiphendulanga yeyokuba mabuchazwe njani ubugqirha.

2.12. IKomishoni Yokulingana Ngokwesini ingenise izimvo kwiKomishoni isebenzisa iofisi yayo yasepalamente. IKomishoni Yokulingana Ngokwesini inxesha elide isingatha imibandela enento yokwenza nokwenzakaliswa okunxulumene nobugqirha, ukususela ku-1998 xa babebize iNkomfa Yezwelonke Engokwenzakaliselwa Ubugqirha. Ukwenjenje yayikukusabela kwisililo sokuba ubugqirha buneziphumo ezibuhlungu kubafazi, kubantwana, kwabaneziphene, nakwabakhulileyo. Ngaloo ndlela iKomishoni Yokulingana Ngokwesini ilujonga ukwenzakaliswa okunxulumene nobugqirha njengokukheth’ isini esithile, kwaye ifuna kuziwe necebo elibenza baphathwe ngokulinganayo abafazi namadoda.

2.13 Izimvo zayo ziquka imibandela eliqela, kuquka nezo zikhankanywe kwincwadana yokufun’ izimvo. Kananjalo iza nezindululo ngento emayithathelw’ ingqalelo xa kuchotshelwa ingxaki yobugqirha nokwenzakaliswa okuhambisana nabo.

2.14 Malunga nokuba lunqulo kobugqirha, iKomishoni Yokulinga Ngokwesini iyavuma ukuba uMgaqo-siseko uvumela inkululeko yokunqula (isiqendu 15) nenkululeko yokuthetha ngokukhululeka (isiqendu 16), nemfuneko yokukhusela abantu abasebenzisa ubugqirha njengonqulo lwabo. Ithi ke abo babona ngale ndlela mabanyanyezelwe, kodwa ke kuxhomekeke ekubeni zenziwa zicace iindidi ezikhoyo, kukhunjulwa kananjalo nento yokuba kukho nezinye iinkolo ezaziwayo kwaye kufuneka kubekho imvisiswano eluntwini.

2.15 Kumbuzo wokuba ungasetyenziswa kusini na umthetho ukulwa nokwenzakaliselwa ubugqirha, iKomishoni Yokulingana Ngokwesini iyavuma ukuba alwanelanga uphengululo olwenziweyo ukuze kwenziwe isigqibo esanelisayo. Kodwa ke ithi makujongwe ngamehlo abukhali ukwenzakaliselwa ubugqirha njengoko kukheth' icala ngokwesini. Ikuthatha oku njengokuyimfuneko ukwenza abaqulunqi bomthetho bazi ngamanyathelo afunekayo ukuze kulwiwe nokwenzakaliselwa ubugqirha okukheth' icala elithile kwisini. Kuvakala ngathi ithi loo manyathelo anokuba ngathatyathwa luluntu okanye ngabapolitiki; ayitshongo ke nokuba amanyathelo omthetho angayimfuneko kusini na.

2.16 IKomishoni Yokulingana Ngokwesini iyazixela ezinye zeengxaki ezibangelwa kukuba nomthetho olawula ubugqirha. Okokuqala ithi, xa busenziwa bube lulwaphulo-mthetho ubugqirha kunokubakho iingxaki ezinjengokuba kuza kuthiwa zinto zini kanye ezikwenza kube lulwaphulo-mthetho. Okwesibini, ibona kuza kubakho ubunzima ekuwiseni isigwebo kulwaphulo-mthetho lobugqirha. Ithi kungokunje abantu abohlwaywayo ngabenzakalisa abanye ngokunxulumene nobugqirha, ingengabo abo abagqibela besebenzisa "iyeza" elenziwe ngamalungu omntu. Uluvo lwayo luthi umthetho mawohlwaye nabo abathi basebenzise loo mayeza ekugqibeleni. Okwesibini, iKomishoni Yokulingana Ngokwesini ikuchasile ukuzithethelela ngokuthi yinkcubeko ekwenzeni ulwaphulo-mthetho lobugqirha. Ithi ukuzithethelela ngaloo ndlela makuvisisane noMgaqo-siseko. Okwesine, iKomishoni Yokulingana Ngokwesini ithi inkundla emayibe negunya lokuchophela amatyala okwenzakaliselwa ubugqirha makube yiNkundla Ephakamileyo, kungabi ziinkundla ezincinane njengokuba kunjalo ngoku. Ukudluliselwa kwamatyala kwiiNkundla Eziphakamileyo makwandulelwe lungenelelo lwakwantu. Injongo

yongenelelo kuza kuba kukucubungula iziganeko ezinento yokwenza nezityholo, ngenjongo yokusombulula iingxaki zoluntu ezingunobangela.

2.17 Mayela nokuchazwa kobugqwirha, iKomishoni Yokulingana Ngokwesini ayiniki ndlela omabuchazwe ngayo, kodwa icebisa ukuba indlela obuchazwa ngayo mayenze umahluko phakathi kobugqwirha obuluncedo nobungendawo.

2.18 Mayela nabanyanga ngokwesintu, iKomishoni Yokulingana Ngokwesini ithi mabalawulwe kumsebenzi abawenzayo. Oku kuza kuthintela ukusetyenziswa kwenyama yomntu nezinye izinto eziyityhefu ezisetyenziswa kumayeza esintu.

2.19 IKomishoni Yokulingana Ngokwesini inoluhlu lwezindululo efuna ukuba iKomishoni iziqwalasele kuphando lwayo. Nazi ezo zindululo:

2.19.1 *Witchcraft Suppression Act* ekhoyo ngoku mayitshitshiswe. Isizathu kukuba ayikwazanga ukunciphisa ukubuthanda ubugqwirha okanye ukwenzakalisa okuhambisana nabo.

2.19.2 Ilumkisa ngokusetyenziswa kwamagama athile, ngakumbi ekuchazeni into obuyiyo ubugqwirha. Ithi makubekho umahluko phakathi kwabahedeni, abanyanga ngokwesintu, nabathakathi. Ithi lo mahluko ubalulekile kuba nangona bonke aba bantu besebenzisa amandla angaziwayo, bakwenza oko ngeenjongo “ezahluke kwaphela.”

2.19.3 Icebisa ukuba kuqhutyekwe nolunye uphando ukuze kuqondakale ukuba izityholo zobugqwirha zibangelwa kukongama kwamadoda phezu kwabafazi kusini na. limeko zasentlalweni zenze ukuba iKomishoni Yokulingana Ngokwesini ikubone kuyimfuneko ukungenelela koluntu nabapolitiki ukulungisa ezi ngxaki, kunokuba kusetyenziswe umthetho.

2.19.4 Ngenxa yeengxaki zaseluntwini ezisenokuba ngunobangela wokwenzakaliswa kwabantu okuhambisana nobugqwirha, icebisa ulamlo nokusonjululwa kongquzulwano ngokukhokelwa ziinkokeli zomthonyama.

2.19.5 IKomishoni Yokulingana Ngokwesini ikwacebisa ukuba makubekho inguqu kwiinkokeli zakwantu ukwenzela ukuba kwizakhiwo zakwantu kubekho kokubini amadoda nabafazi ngokulinganayo.

2.19.6 IKomishoni Yokulingana Ngokwesini icebisa ukuba mabalawulwe abanyanga ngokwesintu. Oku kuza kwenza ukuba abakwenzayo kubekw' esweni kwaye bangawasebenzisi amalungu omntu ekwenzeni amayeza. Ikwacebisa ukuba ukulawulwa kwabanyanga ngokwesintu makwenzeke ngokubonisana nabanyanga ngokwesintu, neenkokeli zakwantu, namacandelo karhulumente achaphazelekayo, noluntu ngokubanzi.

2.20 UGqr Wallace ungenise uluvo olulolwakhe yedwa, elususela kuphengululo alwenzileyo ngobugqwirha eMzantsi-Afrika. Ungumfundi onesidanga sobugqirha ophengulula ngobugqwirha eMzantsi-Afrika. Izimvo zakhe ziphendula umbuzo obuziweyo kwincwadana yokufun' izimvo; siza kuzidwelisa ngendlela azidweliswe ngayo.

2.21 Malunga nokuchazwa kobugqwirha, uGqr Wallace ubalula ubunzima ekufumaneni indlela yokuchaza umkhwa oqondwa ngeendlela ngeendlela ziindidi ngeendidi zabantu. Uthi nangona ifana intsingiselo yamagama asetyenziswayo kwiilwimi zesiNguni, ingxaki yokuchazwa kobugqwirha inkulu ngenxa yeemeko eziguqukayo eluntwini, kuqoqosho nakupolitiko. Uthi indlela obuchazwe ngayo ubugqwirha kuMthetho Oyilwayo Wobugqwirha WaseMpumalanga ingaqondwa ngeendlela ngeendlela.

2.22 Malunga nokulawulwa kobugqwirha, uGqr Wallace uthi kwixesha elidlulileyo ukubulawula koyisakele ukusombulula iingxaki zalo mkhwa, ndaweni yoko kwavuthisa umlilo wokwenzakalisa othe washiya ngasemva amaxhoba angenandlela yokuncedakala. Uthi ubugqwirha yinto ekhoyo engenakukhanyelwa. Uthi ingozi yokuzama ukubulawula ubugqwirha inkulu ngaphezu kobuhle obunokuziswa kukuzama ukuqulunqa umthetho wobugqwirha. Akazi nokuba loo mthetho ungasebenziseka na ezinkundleni, njengoko zijamelene neengxaki kakade.

2.23 Kumbuzo wokuba zinto zini emazithintelwe kulo mkhwa, uthi njengoko lo mkhwa usenziwa egameni lonqulo nasegameni lenkcubeko, kuya kungquzulana noMgaqo-siseko ukuwenza ube lulwaphulo-mthetho. Nangona eqonda ukuba yonke into eyenziwa

egameni lonqulo okanye lenkcubeko ixhomekeka kwiinjongo zomntu, uthi kunganzima ngomthetho ukuba uyiqonde loo njongo.

2.24 Kumbuzo wokuba akho kusini na amanye amacebo endaweni yokubulawula, uGqr Wallace uthi umthetho kungokunje awuzivumeli izenzo ezithile ezinjengokubulala, ukubetha, ukungcolis' igama lomntu; ezo zinto kufuneka zihlale zithintelwe. Uthi azikho ezinye iindlela zokubulawula ubugqwirha.

2.25 UGqr Wallace uthi ubugqwirha mabungajongwa njengento embi nje kuphela, kuba busengaba neenjongo ezintle.

2.26 Okokugqibela, uchaza ubugqwirha ngendlela obuqhutywa ngayo kwicandelo labaHedeni, aze athi asingabo bonke abaHedeni abathakathayo. Uthi le meko ingakwenza kube nzima ukubakhuphela ngaphandle abaHedeni kumthetho wepalamente olawula ubugqwirha.

2.27 IWomen's Legal Centre (WLC) ingenise izimvo zayo ngenxa yamava ayo kwizinto ezichaphazela abasetyhini. I-WLC ngumbutho ongenguwo okarhulumente osingatha imicimbi echaphazela abasetyhini kwaye uye wasingatha amaphulo aqwalasela indlela umthetho wesintu obachaphazela ngayo abasetyhini nabantwana. Baye baqwalasela imikhwa yenkcubeko eyingozi kwabasetyhini, njengokuzingelwa komthakathi.

2.28 Kumsebenzi wabo bayavumelana nawo onke amalungelo akuMgaqo-siseko avumela abantu ukuba baphile ngokwenkcubeko yabo. Bakwathi ilungelo lokuphila ngokwenkcubeko yomntu malisetyenziswe ngokwemida ebekwe nguMgaqo-siseko, kwaye ukusetyenziswa kwelo lungelo makungalinyhashi ilungelo lokulingana phakathi kwamadoda nabafazi.

2.29 Izimvo ezingeniswe yiWLC zibalisa amava abo ekuzingelweni kwabathakathi kwimimandla abasebenza kuyo, neziphumo ezilumezayo kwabasetyhini, ngakumbi koomakhulu, abatyholwa ngokuthakatha. Bachaza iziphumo kwabasetyhini "abanukwa" ngokuthakatha. Amaxhoba ezo zityholo aye atshiswe, axulutywe ngamatye, okanye abulawe.

2.30 Okokugqibela, kuye kwafunyanwa izimvo zivela kumaPolisa oMzantsi-Afrika (amaPolisa), ngokuthe ngqo kwicandelo leCrimes Operations lamaPolisa. Izimvo zawo ziyavuma ukuba kukho izimvo ezimbini ezibetha-bethanayo ezivakaliswe kwincwadana yokufun' izimvo, imbono yokuba ukuthintelwa kobugqwirha kunyasha amalungelo akhuselwe nguMgaqo-siseko, olunye uluvo lube lusithi mawutshitshiswe lo Mthetho, indawo yawo ithathwe ngomnye.

2.31 AmaPolisa anoluvo lokuba njengoko imithetho ingabanga nampumelelo ekubulawuleni ubugqwirha nogonyamelo oluhambisana nabo, lo Mthetho mawutshitshiswe. Abakuxhasi ukuthatyathelw' indawo kwalo Mthetho ngomnye. Bathi ukwenzakaliswa okuhambisana nobugqwirha makuliwe nako kusetyenziswa umthetho okhoyo, oko kukuthi, umthetho wepalamente okhoyo nomthetho ongabhalwanga phantsi okhoyo. Ingongoma yabo ikukuba ulwaphulo-mthetho olwenziwayo lwenziwa kufunwa ukwenziwa kwamayeza, kwaye into yokuba bekufunwa ukwenza amayeza kumele kuthatyathelw' ingqalelo xa kugwetywa umntu.

ISAHLUKO 3

GQABA-GQABA NGOKUTHAKATHA

A Intshayelelo

3.1 Ukuthakatha yinto ebiqhubeka kwiindawo ngeendawo kulo lonke ihlabathi. Kumaxesha akudala, kwakuyinto embi, kwaye kwakuthathwa njengokuvukela uThixo okanye ukufulathela unqulo lobuKristu.

3.2 Kweli candelo lomqulu siza kujonga imbali yokuthakatha, sichaze ukuba kwakunjani mandulo, nokuthi kunjani ngoku. Siza kujonga nemvelaphi yokuthakatha eYurophu naseAfrika ukuze sibonise iingongoma ekungabonwa ngaso-nye kuzo. Siza kuqwalasela nendlela okujongwa ngayo ngoku ukuthakatha. Siza kuthetha nangeengxaki ezibangelwa yindlela okuchazwa ngayo, ukuze kubonakale ukuba yeyiphi eyona ndlela ilungileyo yokubuchaza ubugqwirha ngenxa yocelomngeni oluvela kubaHedeni. Oku kuqwalaselwa kweengxaki ezinento yokwenza nobugqwirha kubalulekile kuba kuza kuyikhokela iKomishoni ekuqondeni ukuba yintoni emayithatyathelwe kwingqalelo xa kufunwa iqhinga lokulungisa iingxaki ezizingisileyo — nasemva kwamashumi-shumi eminyaka yabakhoyo imithetho eyeza nobukolonyali.

B Imbali yobugqwirha

1 Imvelaphi yobugqwirha eYurophu naseAfrika

3.3 Eli candelo lithetha ngembali yokuthakatha. Liza kunaba ngemvelaphi yobugqwirha eYurophu naseMerika, lize liyithelekise nemvelaphi yobugqwirha eAfrika naseMzantsi-Afrika. Nangona kuza kuzinzwa kakhulu kuMzantsi-Afrika, kubalulekile ukubuqonda ubugqwirha ngokwelizwekazi esikulo, kuba ukubuqonda ngokwelizwekazi esikulo kunokusenza sibuqonde ngokwelizwe lethu.

3.4 Makukhunjulwe kwasekuqaleni ukuba le ngxoxo ayiyi kuba yeyobugqwirha nje neenkolelo ezingobugqwirha, kodwa iza kuzama ukuvelisa ezi nkolelo ngendlela yobunzululwazi. Ezinye iinkalo zobugqwirha zintsonkothile kakhulu. Asiyonjongo yale ngxoxo ukungena nzulu kwezo ntsonkotha.

3.5 Lo mxholo kuza kuthethwa ngawo ngeendlela ezimbini, ngendlela yenkcubeko nangendlela yobunzululwazi. Indlela yokuqala idibanisa oko kwenzeka kwamanye amazwe noko kwenzeka kweli lethu. Ukuthelekiswa kweenkcubeko kusekelwe ekuboneni izinto ezifana ngazo nezingafani ngazo iinkolelo nemikhwa kubantu beenkcubeko ngeenkcubeko.

a) Okubangele ukuba kuphengululwe ngobugqwirha: izinto ezibalulekileyo zokuqwalaselwa

3.6 Ukuphengululwa kobugqwirha ngokwenzululwazi kunexesha elide kunxulunyaniswa nokuphengululwa konqulo ngokwenzululwazi. Uncwadi lwenzululwazi ngobugqwirha luye lwahlulwa lwabantlantlu mbini. Olokuqala loluqhelekileyo, olungesakhiwo nomsebenzi weenkolelo nemikhwa yobugqwirha njengexalenye yezakhiwo zaseluntwini. Kwakuyimbono eyongamileyo le kuphengululo lwakuqala ngobugqwirha, ngakumbi ngexesha lobukoloniyali, njengoko iinzululwazi zaseBritani nakwamanye amazwe aseYurophu obukoloniyali zazisebenza phakathi kwabantu abaphila ngokwakwantu baseAfrika. Imbono yesibini, eyathi gqi emva kokuphela kwexesha lobukoloniyali nokuqalisa kwexesha lasemva kobukoloniyali, yenza ukuba indima yobugqwirha kubantu baseAfrika ibe yindlela yokuziqhelanisa neenguqu zopolitiko, zoqoqosho nezasantlalweni ezathi zabakho ngenxa yokuyekwa kobukoloniyali.

3.7 Ubugqwirha buye baqondwa ngendlela obunamandla ngayo kupolitiko, kuqoqosho nasentlalweni. Kananjalo bajongwa ngokwendlela obabusetyenziswa ngayo baza batshintshwa ngabantu baseAfrika besabela kwiimfuno zasemva kwamaxesha obukoloniyali. Uphengululo lwakutshanje lobugqwirha lugxininisa ukuntsonkotha kweenkolelo nemikhwa yobugqwirha.

b) Imvelaphi yobugqwirha: indlela obuqondwa ngayo

i) Ubugqwirha baseYurophu

3.8 Ayilula impendulo yombuzo othi bavela phi ubugqwirha. Zininzi izinto ezibalwayo ekuchazeni imvelaphi yobugqwirha — zininzi kakhulu ukuba zingachazwa ngokwenkcukacha. Ngokwenzululwazi, imvelaphi yobugqwirha ineenkcazelo ezininzi ngangeenkubeko ezikhoyo emhlabeni. Ngaphezu koko, kwale nto nje ekuthiwa bubugqwirha intsonkothile. Ukukholelwa kumandla angaziwayo nemikhwa ehambisana noko yinto endala njengobukho bomntu phezu kobuso bomhlaba. Abantu kudala ke benecala elinokuchazwa ngokuthi bubumoya, nto leyo ebangele ukuba bazibuze ukuba yintoni injongo yokuphila.

3.9 Kubantu benkcubeko yakuqala, oku kufuna ukwazi ngenjongo yobomi kwabangela ukuthi gqi kweenkolelo ezingachazekiyo. Emva koko ezi nkolelo zayondelelana, baza abantu baqalisa ukukhonza bekhokelwa zezo nkolelo. Ezi nkolelo ziye zaphembelela ubomi babantu ngeendlela ngeendlela.

3.10 Nangona ezi nkolelo nemikhwa ziye zatshintsha ngokuhamba kwexesha, abantu bona baye basoloko bekhokelwa kwimimoya okanye kubugqi, noba bukwimo enjani. Ingongoma ebalulekileyo emakucingwe ngayo yeyokuba ukuthi ukukholelwa kumandla angaphaya kwawendalo nemikhwa ehambisana noko ibubulungisa okanye ibubungendawo iphenjelelwa ziinkcubeko ngeenkubeko. Abantu benkcubeko nganye baye bayigxeka kananjalo beyijongela phantsi inkcubeko yabanye abantu. Ukuba sijonga imizekelo enjengeyamaGrike namaRoma angaphambi kobuKristu, kwakunye namaYiputa, aba bantu babeneenkolelo nemikhwa enokujongwa ngabantu abaninzi banamhlanje njengenento yokwenza nokusebenzisa imimoya, ubuHedeni, nobuSathana. Kwihlabathi lanamhlanje ukuba ngabakhonzi akudambanga. Mininzi imizekelo yeenkolelo nemikhwa ejongwa kakubi netshatyalaliswayo.

3.11 Imvelaphi ezintsonkothileyo zobugqwirha zichazwe ngentla. Phakathi kwabantu bamandulo, nangona kwakukholelwa kakhulu kumandla angaziwayo, kwakungacingwa “ngegqwirha” okanye “ngobugqwirha”. Imvelaphi yalama magama iseYurophu, kodwa angena eAfrika nakwamanye amazwe angengawo awaseYurophu ngobukoloniyali. La

mazwi alandelayo sisicatshulwa esicatshulwe kwi *Online Etymology Dictionary*, echaza intsingiselo yegama “igqwirha”:

[Ukususela] kumaxesha akudala amaNgesi “abasebenzisi bobugqi abangamabhinqa”, ekwathi kamva “umntu obhinqileyo wayefanele asebenzelane noMtyholi okanye nemimoya engcolileyo aze akwazi ukwenza imisebenzi yamandla angaziwayo ngokusebenzisana nayo”...

Kwinguqulo ka-1250 yencwadi yeBhayibhile ye-“Eksodus” igama elithi amagqwirha lisetyenziswa ngababelekisi abangamaYiputa abahlangula oonyana abasandul’ ukuzalwa bamaHebhere . . . Intsingiselo eyongezweyo yokuthi “umfazi omdala, ombi” isusela ekuqaleni kwe-15c . . . elithi igqirha [lisetyenziswa] ukususela ku-1718; lisetyenziswa koosobugqi baseAfrika ukususela ku-1836.

3.12 Sithabathela kule nkcazelo ingentla, singaphetha ngokuthi amagama athi “ubugqwirha” nelithi “igqwirha” ayenentsingiselo eyayichaphazela abantu ababekholelwa ukuba bayakwazi ukusebenzisa amandla angaziwayo bewasebenzisela ubungendawo. Oku kubonisa ukuba ibangelwa yintoni ingxaki ekhoyo ngoku ejongene nabasebenzisi bobugqwirha. Igama elithi Wiccans abalisebenzisa ukuzichaza nenkolo yabo linembali ende yokunxibelelana nemikhwa engendawo, imbali eyaqala eYurophu yaza yanabela kwezinye iindawo. Kunye noku kuye kwathi gqi igama elithi “ubugqwirha” ukuchaza yonke imikhwa okanye iinkolelo ezaphenjehlelewa ngabantu abanemimoya ukuba benze izenzo ezingendawo. Ngoko ke, ubugqwirha buye basetyenziswa kubantu baseAfrika ngamakolonyali nabavangeli basemazweni, abaye babuchaza ubugqwirha “njengokunxibelelana needemoni noMtyholi”.

3.13 Abantu baseYurophu bakuqala nabeMerika yobukolonyali bafuna ukubuchaza ubugqwirha ngokwendlela yobuKristu bamaPuritan. Babuchaza ngokweenkolelo zobuYuda nobuKristu zokulunga nobungendawo. Ngaloo ndlela, ukuthakatha kwakufana nokungena kwisivumelwano noSathana, ukuze othakathayo alawule amandla angaziwayo enanisa ngomphefumlo wakhe. Oku kwakhokelela ekubeni ubugqwirha bufaniswe nobuSathana nemikhwa ehlobene nabo. Abatyholwa ngobugqwirha babetyholwa ngokuguqula ubuKristu kwaye besohlwaywa ngako oko. Isiphumo saba kukuzingelwa kwabathakathi kulo lonke elaseYurophu nakwiMerika yobukolonyali, betshutshiswa,

bebulawa kabuhlungu abo barhanelwa ngokuthakatha. Ezi zenzo zaziphenjelelwe kokubhalwe nguKramer nanguSprenger kwi *Malleus Maleficarum*.

3.14 Ixesha ekuthiwa lixesha “leMinyaka Yobumnyama” lalibizwa ngolo hlobo kuba kwakukho iinkolelo noloyiko, ezaziphenjelelwa yiCawa njengegunya elongamileyo laloo minyaka. Kodwa ke, ngokuhamba kwexesha, iinkolelo zathatyathelw’ indawo yingqiqo nolwazi lwenzululwazi. Ubugqwirha baye bayanyaniswa neenkolelo zokuhlehlela emva okunxamnye nempucuko. Phantsi kwempembelelo yokucinga kokhanyiselo, amaKoloniyali aseYurophu awathi adibana nezithethe, neenkolelo, nemikhwa yabantu baseAfrika bacinga ukuba iinkolelo nemikhwa yaba bantu baseAfrika ziyafana nezabantu baseYurophu. Kwakunye nempembelelo yabavangeli basemazweni abangamaKristu, abazinyhashayo iinkolelo zemveli zabantu baseAfrika, ukunxulunyaniswa kwezi nkolelo nobungendawo kwakhokelela ekusetyenzisweni kwegama elithi “ubugqwirha”, nazo zonke iintsingiselo zalo zantlandlolo, lisetyenziswa kubantu baseAfrika. Oku komelezeka xa amakoloniyali athi afumanisa ukuba aneenkolelo ezithile ngabantu ababekwazi ukusebenzisa imimoya – nkolelo leyo efana neyayisisiseko seenkolelo zobugqwirha zaseYurophu ngexesha lobumnyama.

3.15 Kwihlabathi lanamhlanje, igama elithi Wicca lithe laba nentsingiselo ekhethekileyo kubantu abayisebenzisayo, abanjongo ikukuphelisa ukuthiywa kwayo okwaziwayo embalini. UStein noStein bayichaza iWicca njengonqulo olungelulo olobuhedeni, nto ethetha ukuba ijongwa njengokuvuselelwa kweendlela zokunqula zangaphambi kwexesha lobuKristu. Umbutho wangoku wobuWicca ekucaca ukuba waqala ngeminyaka yoo-1950, owaphenjelelwa ngumsebenzi wesazinzulu uGerald Gardner, owathi eBritani oko kwakuthathwa ngokuthi bubugqwirha kwakulunqulo lwangaphambi kobuKristu. Emva kokuba efumene amaWiccan, uGardner wazimanya nawo waba ligqwirha ngokwakhe. Wayekhohlelwa kwelokuba ayeyintsalela yonqulo lwakudala.

3.16 AmaWiccan athi unqulo lwawo alunanto yakwenza nokunqulwa kukaMtyholi okanye ubuSathana. Abasebenzisi ubugqi ngeenjongo ezingendawo, koko bakhuthaza okwahluke kwaphela — ukuthi ubugqi mabusetyenziselwe kuphela okulungileyo. IWicca “isondelelene nendalo” kwaye inomdla kwinkolelo yokuba amandla akho kuzo zonke izinto. Abasebenzisa iWicca basebenzisa izithethe ezibandakanya umculo, ukujuxuza,

nemibono. Injongo yobo bugqi “iluncedo kakhulu kwaye injongo kukuba incedise kwiingxaki zemihla ngemihla ezinjengezothando, impilo, inkuselo, imali nokuqeshwa”.

3.17 IWicca ikho kulo lonke ihlabathi, ngakumbi eYurophu, eMntla Amerika, naseMzantsi-Afrika. EMzantsi-Afrika ilunqulo olungaziwayo kuba ayikho phakathi kweenkonzo ezinkulu ezaziwayo. Abalandeli bayo abaninzi bayithatha iWicca njengonqulo lwale mihla olufanelana neemeko ezikhoyo. Ithandeka kakhulu kwabasetyhini ngenxa “yokungabi nazo iinkolelo ezicalula ngokobuni nolunye ucalulo ngokubanzi”. Kodwa nangona iya ithandwa ngokuthandwa iWicca nokwamkelwa kwayo ngokusemthethweni kwezinye iindawo, abayisebenzisayo basasoloko betshutshiswa.

3.18 Ingxaki anayo amaWicca intlantlu-mbini. Eyokuqala, kufuneka ajamelane nento ekudala ikho yokunxulunyaniswa kobugqwirha nemikhwa engendawo, njengoko kuchazwe ngentla. AmaWiccan amaninzi akhetha ukuzibiza ngokuba ngabathakathi kuba eli lithi amagqwirha linentsingiselo eyahlukileyo kodwa ebalulekileyo. Ngokwendlela abaqonda ngayo bona, igama elithi “umthakathi” ligama elalisetyenziswa ngokungafanelekanga kubahedeni, kubantu abanyangayo nakubantu ababesebenzisa isithethe esinenkqayi sokwenza umlingo. Ukuzibiza ngokuba ngabathakathi bakuthatha ngokuthi batsalela kubo igama ebelilelabo kakade kwaye ngaloo ndlela baqinisekisa imvelaphi yabo.

3.19 Eyesibini, amaWicca kufuneka aphenzulane nesityholo esenziwa ngabantu abangenalwazi sokudibanisa ubuWicca nobuSathana. Oku kudityaniswa kwezi zinto zimbini kusengabangelwa kukufana okubonwa kukho phakathi kwezinto ezenziwa kubuWicca nakubuSathana. Ngokutsho kukaSten noStein, “ukusetyenziswa kobugqi kubuSathana kuyafana kancinci nokusetyenziswa kobugqi ngamaWicca. Abantu benkolo yobuSathana bona bawabona amaWicca engabahanahanisi kuba ubugqi babo babusebenzisa kuphela kwizinto ezilungileyo”. Nangona izinto ezithile ezenziwayo zifana, injongo ezenzelwa yona ezo zinto yiyo eyahlula amaWicca kubantu benkolo yobuSathana. Njengoko abantu abangaphandle bengenalo ulwazi lwangaphakathi lwezi nkolelo, bazibona zifana. Yiyo le nto amaWicca ejongene nobunzima bokuqinisekisa uluntu ukuba wona awabandakanyeki kwimikhwa emdaka. Oku kuwenza amaWicca achukumiseke lula xa ebona ukungathandwa kwawo nokungaphathwa ngendlela eyiyo.

ii) Ubugqwirha baseAfrika

3.20 Iinkolelo nezenzo ezinxulunyaniswa nobugqi zinezizukulwana ngezizukulwana zikho kubantu baseAfrika. Phakathi kwazo singabalula iinkolelo nezenzo zokwenzakalisa abanye. Kodwa ke lona igama elithi “ubugqwirha” mhlawumbi liye lasetyenziswa ngenxa yempembelelo yobukoloniyali.

3.21 Njengoko kutshiwo ngentla, amagama athi “umthakathi”, “ubugqwirha” nelithi “igqirha” asuka kwisiNgesi sakudala, kwaye aba nentsingiselo ethile eYurophu. Ngokufika kobukoloniyali, la magama neentsingiselo zawo zaseYurophu aguqulelwa kwindlela yokuqonda yaseAfrika, ngokubukela kwamakoloniyali aseYurophu iinkolelo nezenzo zabantu bomthonyama baseAfrika. Okubangele iingxaki zomthetho nezolunye uhlobo ekuchazweni kwala magama kukusetyenziswa kwamagama esiNgesi xa kuthethwa ngeenkolelo nezenzo zabantu bomthonyama baseAfrika.

3.22 Ngoko ke iingxaki ezikhoyo ngoku ekuqondeni okubizwa ngokuba “bubugqwirha” zisukela ekuchazweni nasekuqondweni kwakudala kobukoloniyali (kwaseYurophu). Nangona ingekho indlela yobunzululwazi yokuhlolisisa iinkolelo nezenzo zobumoya zaseAfrika, uncwadi lwembali luyasinceda siqonde siziqonde ezi nkolelo nezenzo. Olu ncwadi lusinceda siqonde indlela eziqondwa ngayo ezi zinto eMzantsi-Afrika.

3.23 Uvulindlela owaziwa kanobom kwizifundo ezingobugqwirha eAfrika kwakunguEvans-Pritchard, omsebenzi wakhe unempembelelo kakhulu kwaba yingxelo yakhe ngobugqwirha kubantu abangama-Azande baseSudan. Umsebenzi kaEvans-Pritchard waphembelela izizukulwana ezalandela kamva zababhali-imbali yabantu baseAfrika, abancedisa ekumiseleni uphengululo ngobugqwirha. Iingxaki ezibangelwa kukusebenzisa amagama aseYurophu kwiimeko zaseAfrika zaqala ukucaca kwantlandlolo, kuba indlela obuqondwa ngayo “ubugqwirha” yayiphikisana — ubukhulu becala ngenxa yeenkcubeko ezingafaniyo. Umzekelo, uEvans-Pritchard wafumanisa ukuba ama-Azande ayesithi kukho umahluko phakathi kwento yena awayeyiqonda ngokuthi bubugqwirha nokuthakatha. Nangona omabini la magama ayeyinxalenye yobugqwirha ngokubanzi, umahluko wawukukuba ubugqwirha bona buyinto engenakwahlukana nomntu, kanti kona ukuthakatha akunjalo. Ubugqwirha babucingelwa ukuba busuka emathunjini omntu, bubangelwa “yinto yobugqwirha” ezuzwe njengelifa ukusuka kwesinye isizukulwana ukuya kwesinye. Yile nto ke eyayinika umthakathi

amandla anawo. La mandla ayebandakanya ukukwazi “ukutya umphefumlo” wexhoba. Ukuthakatha kwakuqondwa njengento eyenzeka ngaphandle. Kwakusisenzo umntu asenza esazi ukuba uyasenza esasibandakanya ukusetyenziswa kwezinto zendalo ezinjengamayeza okanye iityhefu. U-Evans-Pritchard uyachaza:

Ama-Azande akholelwa kwelokuba abanye abantu bangabathakathi kwaye banokubenzakalisa ngenxa yokuba banento abanayo engenakusuka kubo. Umthakathi akenzi msebenzi wokuthakatha, akathethi mazwi okuthakatha ngomlomo wakhe, kwaye akanamayeza. Isenzo sobugqwirha sisenzo esenziwa ngomoya. Ama-Azande akwakholelwa ukuba abathakathi banokubenzakalisa ngokwenza imilingo ngamayeza anobungozi. Ama-Azange abona umahluko phakathi ngokucacileyo kwamagqwirha nabathakathi.

3.24 Xa kujongwa ezi nkcazelo zingentla, kuyabonakala ukuba kukho ukudideka ekusetyenzisweni kwamagama. NgokukaEvans-Pritchard, igama elithi “ubugqwirha” limbaxa ngentsingiselo. Ligama elibanzi ngentsingiselo elithetha kokubini isenzo sokutya umphefumlo kwakunye nokwenzakalisa abanye ngokusebenzisa amayeza. Kodwa kwangale nkcazelo yakhe uEvans-Pritchard, ama-Azande athi kukho umahluko phakathi kwegqwirha nomthakathi. Ngeso sizathu, ukusetyenziswa kwegama elithi “ubugqwirha” ngendlela ethe gabalala akuchananga, kodwa aliwubonakalisi lo mahluko ocacileyo.

3.25 UReynolds uzibonile iingxaki ezingapheliyo emagameni ekusetyenzisweni kwegama elithi “ubugqwirha” okanye “umthakathi” xa ethelekisa iintsingiselo zamagama esiNgesi nezamagama eelwimi zabaNtsundu abangamaRotse bommandla owawunguMntla-Rhodesia (ngoku oyiZambia). NgokukaReynolds:

Igama elithi umthakathi okanye abathakathi lidla ngokutolikwa ngokuthi “witch” esiNgesini. Oku kubangela ukudideka kuba igama lesintu liquka kokubini “igqwirha” “nomthakathi”. Kokubini igqwirha nomthakathi kukholelwa ukuba banako ukwenzakalisa abanye ngokusebenzisa ubugqi, kodwa igqwirha lona amandla alo asoloko engawobubi, umthakathi yena usebenzisa amandla awazuzileyo, ukubopha abanye ngoomabophe, okanye amayeza...

3.26 Kummandla owawunguMzantsi-Rhodesia (ngoku oyiZimbabwe), uCrawford ufumanise ukuba ubugqwirha buqodwa ethe ukwahluka kancinane ngamaShona. Ngokutsho kukaCrawford, “Ukukholelwa kubugqwirha lilinge lomntu lokuzama ukuqonda amandla amabi endalo namashwangusha obomi. Xa ungekazi ntolo mahluko phakathi kobugqwirha nokuthakatha awusebenzi kwinkolelo yamaShona...”. AmaShona abaqonda

abathakathi njengabantu abakwazi ukwenza ubugqwirha ngemimoya nobugqwirha ngamayeza. Kodwa ke amaShona athi kukho umahluko phakathi komthakathi “wokwenyani” nezinye iindidi zabathakathi: “Ngumthakathi ‘wokwenyani’ kuphela okwazi ukwenza izenzo zobumoya [kwaye uchazwa] njengomntu ongenwe ngumoya ombi wezinyanya okanye umoya ombi ... othathwe ngaphandle kwaselusatsheni.” Ngokutsho kukaCrawford, indlela amaShona abujonga ngayo ubugqwirha yahlukile kuleyo echazwa nguMiddleton noWinter, abathe igama elithi “ubugqwirha” lichaza amashwangusha ngokubanzi, kanti elithi “ukuthakatha” lichaza amashwangusha athile. U Crawford uthi amaShona akholelwa kwelokuba ubugqwirha bubangela kokubini amashwangusha ngokubanzi namashwangusha athile; ngenxa yoko abakuqondi ukuthakatha. Abantu abazama ukwenzakalisa abanye ngokusebenzis amayeza bebengathathwa njengabathakathi “bokwenyani”, ngokungafaniyo nabo babecingelwa ukuba banamandla emimoya.

3.27 Kumazantsi eAfrika, izazinzulu ngemvelaphi yabantu zikwafumanise iindlela ngeendlela obuqondwa ngayo oko kubizwa ngokuba bubugqwirha kubantu beentlanga ngeentlanga. Kwilizwe ekwakuthiwa kuseBechuanaland, uSchapera wathi kukho umahluko phakathi kwamagqwirha asebusuku nabathakathi basemini, into ephantse ifane naleyo yama-Azande. U-Ashton uthi kukho umahluko phakathi kwamagqwirha nabathakathi nakubeSuthu, nangona ke kubo abathakathi babebangela uloyiko ngenxa yenkolelo yokuba bayakwazi ukuxhwila imiphefumlo yabafileyo bayenze izithunzela. Isizwe samaLobedu kwiphondo laseLimpopo sasiye siwabize amagqwirha nabathakathi ngokubabiza ngegama elibonisa ukuba akukho mahluko phakathi kwezi ndidi zimbini. Kodwa ke isizwe samaLobedu sasiwasebenzisa amagama achazayo ukubonisa ukuba babethetha ngobugqwirha basebusuku (obufana nohlobo lwemimoya), kuze kona ukuthakatha emini (okuhambisana nokuthakatha), eli gama lokugqibela liquka ukusetyenziswa kwamayeza ukubangela umonakalo. Amagqwirha asebusuku babewazuza amandla abo koonina, kanti bona abathakathi basemini babefumene ulwazi olukhethekileyo lobugqwirha balo. Abathakathi abangamaLobedu bahlukile kwangama-Azande; kwisizwe samLobedu, abathakathi babengacingelwa ukuba banamayeza obuthakathi.

c) Ukuthelekiswa kobugqwirha baseYurophu neMerika nobaseAfrika

3.28 Le ngxoxo ingentla ibonisa ukuba iinkolelo nemikhwa enxulumene nobugqi namandla angaphaya kwawendalo kudala ziyinxalenye yeenkcubeko zabantu baseNtshona nabaseAfrika. Kodwa izinto eziye zabizwa ngokuba “bubugqwirha” zinezinto ezifana ngazo kakhulu nezahluka ngazo kakhulu, a umntu ethelekisa ezi zinto phakathi kwabantu baseNtshona nabaseAfrika.

3.29 Enye into ebalulekileyo abafana ngayo abantu baseNtshona nabaseAfrika kukuba nakule mihla, iinkolelo nemikhwa enxulumene nobugqwirha zisekho macala omabini. Kodwa ke imbali nezinto zale mihla zithe zaphembelela ezo nkolelo ngendlela eyahlukileyo. Kubantu baseNtshona, ukususela mandulo ubugqwirha buye banxulunyaniswa nabantu ekwacucingwa ukuba bakwazi ukusebenzisa indalo namandla angaphaya kwawendalo, beyisebenzisela ukungcola. Kodwa ke ukuhamba nempucuko kuye kwazinciphisa iinkolelo zobugqwirha, eziye zajongwa njengokubuyela ebumnyameni nezithintela inkqubela. Nangona kunjalo, zona iinkolelo zobugqwirha ziye zasoloko zikho kubantu baseNtshona kwaye ziye zazibonakalisa kutshanje kwiinkolelo ezaziwa ngokuba bubuWicca.

3.30 Kumaxesha angoku, ubuWicca buyinkolo yobuhedeni engabalwayo kwiinkolo ezaziwayo. Njengoko sekuchaziwe, enye yeenjongo eziphambili zobuWicca kukuphelisa ukunxulunyaniswa kwale nkolo nobuSathana, ngokugxininisa ukunqulwa kwendalo, nangokuguqula ezi nkolelo zivumelane namaxesha esiphila kuwo. Kumazwe amaninzi aseNtshona, nakumazwe aqingqayo anjengoMzantsi-Afrika, ubuWicca busetyenziswa libathwana.

3.31 Nangona ubuWicca bubonwa njengenkolo yebathwana, kubantu baseAfrika iinkolelo nemikhwa eye yabizwa ngokuba “bubugqwirha” ziyinxalenye yeenkolelo zabo bonke abantu. Bekunjalo kwixesha elidlulileyo kwaye kusenjalo nangoku. Kwaba bantu ubugqwirha buyinto enganakukhanyelwa kwaye abantu ngabanye neentsapho bathabatha amanyathelo okuphepha ukuba zizisulu zabo ekucingwa ukuba basebenzisa ubugqi ukwenzakalisa abanye. Ngaloo ndlela ubugqwirha abuthathwa njengenkolelo nje, koko buthathwa njengento eyingozi ngokwenene nonobangela wamashwangusha, ukugula okanye nokufa. Njengakubantu baseNtshona bamandulo, abantu baseNtshona bakholelwa ukuba ababizwa ngokuba “bangamagqwirha” okanye “bangabathakathi” banokubenzakalisa abanye ngokusebenzisa into ekuthiwa ngumlingo omnyama, okanye

ngokusebenzisa amayeza. Umlingo omnyama ubandakanya ukusetyenziswa ukuthunywa kwezinto ezithunywayo ezinokusetyenziselwa ukwenzakalisa abanye. Amayeza wona angasetyenziselwa ukufaka ityhefu ekutyeni komntu okanye kwinto eselwayo. Ziyahluka ke iinkolelo kubantu ngeenkubeko ngeenkubeko.

3.32 Ubugqwirha babufudula bunxulunyaniswa nonqulo lobuYuda nobuKristu kwiYurophu yamandulo. Iinkolelo zobumnyama zaseAfrika ziqale ukubizwa ngokuba bubugqwirha kusakufika ubuKristu eAfrika, zayanyaniswa nobuKristu. Kuthe kusakufika iiCawa Ezizimeleyo ZaseAfrika, abathakathi banulunyaniswa nobuSathana ngendlela efana naleyo ekwakwenzeke ngayo kwiYurophu yamandulo nakwiMerika yobukoloniyali. Iicawa zobuKristu zaseYurophu eAfrika zazama ukuziphelisa iinkolelo zobugqwirha ngokuzibiza ngokuthi ziinkolelo nje, zikwenza oko ikakhulu ngokusebenzisa imfundo yaseNtshona yobukoloniyali. Kodwa zona iiCawa Ezizimeleyo ZaseAfrika zazikhuthaza iinkolelo zobugqwirha ngokuzenza zivisisane nobuKristu, nangokuza neendlela zobuKristu zokuzilungisa. Iicawa ezaziwayo zabavangeli basemazweni zalandela indlela ephenjelelwe yimbono yobukoloniyali yobugqwirha baseAfrika njengengaphucukanga neyokubuyela emva. Yaza ke le mbono yobugqwirha baseAfrika yabakho kwimithetho yepalamente yobukoloniyali kumazwe amaninzi obukoloniyali aseAfrika, kwaye iqhubekile inempembelelo kude kube ngoku.

2 Ukuchazwa kobugqwirha

3.33 Eli candelo liza kucubungula iindlela obuchazwa ngayo ubugqwirha, libonise ukuba indlela obuchazwa ngayo bunokuyiphembelela indlela obuqondwa ngayo ubugqwirha.

3.34 Njengoko kucacile kule ngoxo ingentla yembali, imbali yokusetyenziswa kwegama elithi “ubugqwirha” eAfrika kudale iimeko ezibangele ukuba kubekho imfuneko yokuqwalaselwa ngokutsha komthetho wepalamente okhoyo ngoku. Kuyimfuneko ukujonga ukuba umthetho wepalamente wobukoloniyali ubuchaze njani ubugqwirha kwaza kwaba nasiphumo sini oko kuchazwa.

3.35 Iinzame zobukoloniyali zokunyanzelisa kubantu baseAfrika iindlela zaseYurophu obuqondwa ngazo ubugqwirha kubangele ukuba kubekho umthetho wepalamente onjongo

yawo ikukucinezela iinkolelo nemikhwa enxulunyaniswa nobugqwirha. Into ebizwa ngopkuba lukhanyiselo ibe nempembelelo kulo mthetho wepalamente kuba kuye kwacingwa ukuba iinkoleli zabantu baseAfrika kubugqwirha azinangqondo. Ngokutsho kukaReynolds, “kubantu baseYurophu ubugqwirha kwakuyinkolelo nje . . . kwaye yayingahlonelwa.” Kwathi ke xa abantu baseYurophu befumanisa ukuba abantu baseAfrika babuthatha njengento ekhoyo ngokwenene ubugqwirha kwaye babezimisele ukuthabatha amanyathelo okuzikhusela kwingozi yobugqwirha, amakolonyali abona ukuba makalwe nabo kwaye azenze zingabikho mthethweni ezi nkolelo “eziphelele lixesha.” Kungoko ke ekwathi kwayilwa imithetho ngemithetho yokulwa iinkolelo zobugqwirha. Ukuze “aphucule” amazwe obukolonyali ngendlela ekwakwenziwe ngayo eYurophu, amakolonyali abona ukuba kuyimfuneko ukuzihesha okomshologu ezi nkolelo awayezibona “zingabhadlanga”. Ngoko ke kwazanywa ukuba zenziwe zibe lulwaphulo-mthetho ezin nkolelo zomthonyama zabantu baseAfrika. Ngenxa yokungazi nokungaqondi, iziphathimandla zobukolonyali zazama ukuyenza ingabikho mthethweni nayiphi na inkolelo okanye umkhwa onento yokwenza nobugqi. Ukuncedisa ukuze kwenzeke oku, iimishinari zobukolonyali zalindeleka ukuba ziguqulele ebuKristwini abantu bomthonyama kwaye zibabonisa ngandlela zonke ukuba bahlukane neenkolelo abebenazo. Ke zona iinkolelo zabantu baseAfrika bezingapheleli kubugqwirha nje kuphela, bezidlulela nasekunquleni izinyanya nasekuyeni emaxhweleni.

3.36 Imithetho yepalamente engobugqwirha eMzantsi-Afrika naphaya kummandla owawunguMntla-Rhodesia ibonise ukufana okukhulu neengcamango zaseYurophu zobugqwirha. Isiqendu 1(d) se *Witchcraft Suppression Act* sithi “Nawuphi na umntu . . . othi uyabazi ubugqwirha okanye ukusetyenziswa kwamayeza . . . waphul’ umthetho kwaye esakufunyaniswa enetyala . . . ukuba ummangalelwa kuvele ubungqina bokuba udume ngokuba ligqirha okanye ngokuzingel’ umkhondo womthakathi . . .” Indlela abhalwe ngayo la mazwi iyafana naleyo awayebhalwe ngayo kuMthetho Wobugqwirha wakuMntla-Rhodesia, owasithi “Nabanina ekufumaniseke ubungqina bokuba unomkhwa wokuba ligqirha okanye kungumsebenzi wakhe ukuba ligqirha okanye ukuzingel’ umthakathi uya kuthi akufunyaniswa enetyala agwetywe ifayini . . .” Ingxaki kukuba kuyo yomibini lemithetho yepalamente akukho mahluko phakathi kwabasebenzisa ubugqi ngendlela “elungileyo” (abavumisayo, abazi amaqwili, namaxhwele ngokubanzi) nabo ekukholelwa ukuba basebenzisa umlingo omnyama (abathi abantu baseYurophu bababiza ngokuba ngabathakathi). Abaqulunqi-mthetho abangamakolonyali basuka babiza wonk’ umntu othi

unolwazi lobugqi njengomthakathi. Ngaphezu koko, yomibini le mithetho i *Witchcraft Suppression Act* ne *Witchcraft Ordinance* bakwenza akwabikho mthethweni ukuya emaxhweleni, awathi amakoloniwali nawo awathatha ngokuthi ngamagqirha okanye abazingeli bomthakathi. Isiqendu 1(c) sithi se *Witchcraft Suppression Act* sithi “Nawuphi na umntu . . . osebenzisa igqirha okanye umzingeli womthakathi ukuba anuke omnye umntu njengomthakathi . . . waphul’ umthetho . . .” Ngokukwanjalo, *Witchcraft Ordinance* yayisithi “Nabani na osebenzisa omnye umntu anuke omnye njengomthakathi okanye omcela ukuba amcebise ngayo nantoni na . . . ngokusebenzisa ubugqwirha uza kufunyaniswa enetyala . . .” Ngaloo ndlela kwaba lulwaphulo-mthetho kubantu abaNtsundu ukuba basebenzise iindlela ezizezabo eziqhelekileyo zokufuna inkcazelo ngamashwa abahlelayo, okanye ngokugula nokufa.

3.37 Indlela yaseYurophu obuqondwa ngayo ubugqwirha kwi *Witchcraft Suppression Act* ibe nesiphumo esingesihle kubantu baseAfrika, esinye isiphumo ekube kukwanda kolwaphulo-mthetho olunxulumene nobugqwirha elizweni. Ukwenziwa kube lulwaphulo-mthetho ukuba lixhwele nokuya emaxhweleni kohluthe abantu abaNtsundu icebo elibalulekileyo lokuncedakala, kwaza kwayibetha ngoyaba indima ebalulekileyo yokunyangwa ngokwakwantu kubantu bomthonyama.

3.38 Nokusetyenziswa kwegama elithi “igqirha” kuyingxaki. Amaxhwele awanyangi nje kuphela iziguli ekucingelwa ukuba zithakathiwe, koko zikwaxilonga zize zinyange iziguli kwezinye iziguli okanye amashwa. Ukubiza ixhwele ngokuthi ligqirha kukungawusi so umsebenzi owenziwa ngamaxhwele, hayi nje kuphela njengabakhuseli boluntu koko nanjengabalamli phakathi kwehlabathi lemimoya nehlabathi labantu. Ukukwenza kube lulwaphulo-mthetho ukuya exhweleni kubalume abantu abaNtsundu ekusebenziseni indlela ebisoloko yamkelekile ngokwenkcubeko yokulwa namashwa. Kukwakhokelele nakuthini lo mthetho wepalamente wawukhusela abenzi bokungendawo. Ngenxa baye banda abantu abaqalisa ukubanqoloba abantu abarhanelwa ngokwenza ubugqi bokungcola. Oku kubangelwe ukwenzakaliswa kwabantu abarhanelwa ngokuthakatha eluntwini.

3.39 Enye into engunobangela kwiingxaki ezikwi *Witchcraft Suppression Act* kukucingelwa kwento yokuba kukho ubugqi namandla ahambisana nabo. KumaXhosa aseMpuma-Koloni, ubukho bobugqi bubonisa ubunzima obukhoyo ekuqondeni ukuba

umntu ungasobugqi wokulungileyo okanye wokubi kusini na. Igqirha (umntu ovumisayo) nexhwele (umntu onyangayo) baqondwa njengabenzi bokulungileyo, kanti lona igqwirha okanye umthakathi baqondwa njengabenzi bokubi. Kodwa amaXhosa ayavuma ukuba abavumisi namaxhwele banokusebenzisa amandla emimoya afanayo nalawo asetyenziswa ngabenzi bokubi. Ngoko ke amaXhosa athi ukuba umntu unolwazi lobugqi unokwenza izinto zobugqi. Ngamanye amazwi, amaxhwele anokuwoyisa amandla obugqi obungcolileyo ukuba wona ngokwawo anolwazi oluphangaleleyo lobugqi. Ngoko ke, amaxhwele abalulekile eluntwini. Enyanisweni umahluko phakathi kwabenzi bokulungileyo nabenzi bokubi ukwinjongo asukube enayo lowo usebenzisa amandla anawo. Abo basebenzisa ulwazi lwabo lobugqi ngenjongo yokunceda okanye yokuphilisa baye bathathwe ngokuthi bangamaxhwele, baze abo basebenzisa olu lwazi ngenjongo yokwenzakalisa bathathwe njengabenzi bomlingo wobungendawo. Ubugqi bona ngokwabo abunacala, benziwa ngumntu ukuba bube luncedo okanye bube yinkohlakalo. Lo mahluko neendlela ezingafaniyo abanokuthi ngayo basebenze ngayo abantu abanyanga ngokwakwantu, awuzange usiwe so kwindlela elachazwa ngayo igama elithi “ubugqwirha” kumthetho wepalamente wobukoloniyali.

3.40 Enye ingxaki emayela nokuchazwa kwegama kwi *Witchcraft Suppression Act* ikukuba ngubani kanye “oligqwirha”, ngakumbu kwiimeko zaxa omnye etyhola omnye ngobugqwirha, notyholwayo etyhola otyholayo. Umzekelo kuxa umntu ezibona elixhoba lobugqwirha bomnye umntu aze acele ixhwele ukuba enze ubugqi bokumkhusela. Ukuba lo obe ngowokuqala ukutyholwa ngobugqwirha uthi agule okanye abhubhe, kunokwenzeka ukuba izalamane zomfi zityhole ixhwele kwakunye nomntu oye exhweleni ngobugqwirha. Izalamane zomfi zinokuthi, ziziphindezela, ziye kwezalo ixhwele ukuze zoyise ubugqwirha bomntu wokuqala oye exhweleni. KumaXhosa asemaMpondweni ukuphakamis’ izigalo kokuziphindezela okubangelwa kukutyholana ngobugqwirha kwakuyinto eqhelekileyo ngeminyaka yoo-1990. Uphando kummandla wasemaMpondweni lubonise ukuba iindawo ezinjengakuTsolo yayiye ibe nemilo, engabangelwa nje kuphela bubusela bemfuyo, kok nakukutyholana ngobugqwirha. Xa kunjalo kungathiwa ngowuphi kanye oligqwirha? limeko ezinjalo kunokwenzeka ukuba zizo ezabangela ukubotshwa ngabhanti-nye okukwi *Witchcraft Suppression Act*, kodwa ukubotshwa ngabhanti-nye kuko kanye okudale iingxaki kunokuba kuzisombulule. Ke ngoko kubalulekile icace ngokwasemthethweni intsingiselo yegama elithi ubugqwirha ukuze kucace ukuba ngubani kanye “ongumaphuli-mthetho”.

3.41 Ukwenza umzekelo, ngo-2007 eMpumalanga, umfazi ominyaka ingamashumi amathandathu ubudala watyholwa ngokuthakatha umntwana okwishumi elivisayo owayezibulele. Amapolisa abamba aze amangalela abafazi ababini, ngokwe *Witchcraft Suppression Act*, ebanjelwa ukutyhola lo mfazi mdala. Suka wavuma lo mfazi mdala ukuba usebenzise ubugqwirha ukuze abe ufile lo okwishumi elivisayo. Ubunzima bokufumana ukuba ngowuphi kanye ongumaphuli-mthetho bubonakala kumazwi awathethwa lelinye lamapolisa awambambayo :

[Sibambe abafazi ababini ngokwenza izityholo ezingenasihlahla. Suka kwavela ukuba aba bafazi babini abenzanga nto. Siza kumtshutshisa njani lo mfazi ominyaka ingama-60? Simbeke ityala lokuba wenze ntoni? Amapolisa anyanzelekile ukuba amkhusele. Asinakuvumela mntu athabathel' umthetho ezandleni zakhe.

3.42 Ukwanda kokwenzakaliswa kwabantu okunento yokwenza nokuthakatha eminyakeni yoo-1990 kungathiwa yindlela abantu abaNtsundu abaphikisana ngayo ne *Witchcraft Suppression Act*. Ngokwendlela ababona ngayo abantu abaNtsundu, i *Witchcraft Suppression Act* yasebenzisa inkcazelo yegama yobukoloniyali neyexesha localulo ukuchaza “ubugqwirha”, ndlela leyo yokuchaza ephikisana nendlela obuqondwa ngayo ubugqwirha ngabantu abaNtsundu. Ngenxa yoko kunokuthiwa ukwenzakaliswa kwabantu abanukwa ngokuthakatha, kwixesha elidlulileyo nakweli xesha, yindlela abantu abasabela ngayo kwindlela eyingxaki umthetho wepalamente obuchaza ngayo ubugqwirha.

3.43 Nangona kuye kwazanywa kwixesha elidlulileyo ukuba kulungiswe ingxaki yokuchazwa kwegama, njengenkcazelo ecetyiswe ngurhulumente wephondo waseMpumalanga ngo-2007, zisekho iingxaki zokuqondwa kobugqwirha. Urhulumente waseMpumalanga wathi gqi noMthetho Oyilwayo Wokulwa Ubugqwirha ezama ukunciphisa ukwenzakaliswa kwabantu ngenxa yobugqwirha kwelo phondo. Emva kokuba kuthiwe gqi nalo Mthetho Oyilwayo, iSAPRA yavakalisa ukungaxoli kokuba lo Mthetho Oyilwayo uyababukula abazichaza bengamagqwirha ngendlela eyeyabo. UDamon Leff wathi, “uMthetho Oyilwayo Wokulwa Ubugqwirha WaseMpumalanga unenjongo yokulwa ubugqwirha kwaye uza kuphos' entolongweni amagqwirha azichaza

ngendlela eyeyawo ngenxa yokuthatha ngokuthi yonke loo nto bubugqwirha. Ephendula kumazwi kaLeff, uPetrus (2007) waphendula wenjenje kwiphephandaba i*Herald*:

Igama elithi “ubugqwirha” lithetha izinto ezingafaniyo kubantu ngabantu. Ukungaboni ngaso-nye kwindlela obuqondwa ngayo ubugqwirha bubangelwa kukungaboni ngaso-nye kubo ngokwabo. KubuWicca ubugqwirha bubonwa njengento entle kuba abathakathi ngabenzi bobugqi obulungileyo okanye “obumhlophe”. Kodwa eAfrika ubugqwirha bujongwa kakubi kuba abathakathi baziwa bengabantu abenza umlingo wobungendawo . . .

Ngamanye amazwi, ngokoluvo lweSAPRA, lo Mthetho Oyilwayo wawuyenye imbonakaliso yengxaki enamakhulu-khulu eminyaka ikho ebonwa ngabenzi bobuWicca (njengoko bekuchaziwe ngaphambili). Kodwa eMzantsi-Afrika asiloluvo lwamaWicca kuphela omaluqwalaselwe, kuba abantu abaNtsundu babubona ngenye indlela eyahluke kwaphela ubugqwirha.

3.44 Ngaphandle kwamalinge okubuchaza ubugqwirha aselexeliwe, bakho nabanye abaye bangenelela kula ngxoxo. UTebbe uthi “ubugqwirha kukusebenzisa amandla angaziwayo esetyenziselwa okubi, ukuze kwenzakale abanye, okanye ngenjongo yokuzinceda kube kusenzakala abanye”. Lo mbhali uhlabela mgama alichaze igqwirha njengomntu osebenzisa amandla angaziwayo ngeenjongo ezingcolileyo”. Kwenye incwadi yakhe, kwalo mbhali ubuchaza ubugqwirha “njengomkhwa wokusebenzisa emfihlakalweni amandla angaqondakaliyo esetyenziselwa ukwenzakalisa abanye okanye esetyenziselwa ukuzinceda ngendlela eyingozi kwabanye”.

3.45 Akukho namnye kwabathumele izimvo zabo ocebise ukuba mabuchazwe njani ubugqwirha. Abanye abanikanga zizathu zokungacebisi mayela nokuchazwa kweli gama. Abanye banike izizathu zokuba kungani lingamele lichazwe. IKomishoni Yokulingana Ngokwesini, nangona ibingazami kunika nkcazelo, icebise ukuba inkcazelo yegama kufuneka yahlule phakathi kobugqwirha obuluncedo nobuyingozi. Ugqr Wallace uthi ayinakubakho incazelo yobugqwirha kuba ubugqwirha buthetha izinto ngezinto kubantu ngabantu.

C Ubugqwirha kuMzantsi-Afrika wangoku

3.46 Njengoko kubonisiwe kweli candelo sisuka kulo kwicala lembali, ubugqwirha bunamashumi-shumi eminyaka busisibetho ebantwini. Iingxaki ezinento yokwenza neenkolelo zobugqwirha abaye bajongana nazo abantu kwixesha elidlulileyo, basajongana nazo kuMzantsi-Afrika wangoku.

3.47 Isicelo sokuba makuphandwe nezimvo ezingeniswe yimibutho ngemibutho zisikhumbuza ukuba iingxaki zobugqwirha nobugqwirha obuyingozi zisekho eluntwini. Kuyacaca kananjalo kwizimvo ezingenisweyo kwiKomishoni, kokubini ngabacele uphando nangabanye abachaphazelekayo, ukuba buqondwa ngeendlela ngeendlela ubugqwirha, kwaye nolindelo abanalo abantu ngabantu abathumele ezi zimvo lwahluka-hlukene. Okubalulekileyo kwiKomishoni ngabantu abachatshazelwa kakhulu sesi sibetho, abafazi nabantwana.

3.48 Incwadana yokufun' izimvo ibiqulethe amatyala asezinkundleni ekwakukho izityholo zokuthakatha, nendlela iinkundla eziwasingethe ngayo loo matyala. Incwadana yokufun' izimvo ibiqulethe namabali athatyathwe kumaphephandaba angeziganeko zobugqwirha. Azithothanga ezi ziganeko; emva kokuba iqukunjelwe incwaana yokufun' izimvo, amabali obugqwirha aye axhaphaka kumajelo eendaba. Iziganeko zobugqwirha ezibikwa kumajelo eendaba azikho kwimimandla ethile kuphela, koko kuwo phantse kuwo onke amaphondo oMzantsi-Afrika.

3.49 Ngo-2013 kwabakho iingxelo ezininzi zamatyala asezinkundleni obugqwirha awathi achotshelwa ziinkundla kumaphondo ngamaphondo. Empuma-Koloni, iNkundla yeNqila kuGatyana yagweba ummangalelwa iminyaka eli-15 entolongweni. Kuthiwa wayebethe umfazi ominyaka ingama-44 awayethola ngokuthakatha embethe ngentonga wade wafa. Empumalanga inkundla yachophela ityala apho ummangalelwa wamangalelwe ngokubulala, umfi exhwilwe kwindawo yokuthengisa utywala kusempondo zankomo. Kubikwa ukuba umfi wabulawelwa kwinqwelo-mafutha awayexhwilwe ngayo, kwaza kwatyhuthulwa kuye elinye lamatapile akhe, nengono, nenxalenye yobuchopho, nemilenze. ELimpopo iNkundla Ephakamileyo yagweba amadoda amabini isigwebo sobomi esiphindwe kabini entolongweni awayevele phambi kwenkundla ngesityholo sokubulala umntu ngenjongo yokwenza amayeza ngaye. Abamangalelwa babebekwe ityala lokubulala umfana, batyhuthula amalungu angasese kuye. Kubikwa bazama

ukuwathengisela igqirha amalungu akhe, laza lona alavuma ukuwathenga, suka labikela amapolisa. KwaZulu-Natal iNkundla Ephakamileyo yachophela ityala lamadoda amathathu awayebethe abafazi ababini bafa ngenxa yokuba ebanuka ngokuthakatha. Aba bafazi benzakaliswa ngeyona nkohlakalo imanyumnyezi, bagqejwa entloko ngesando esathi sabakroboza ukhakayi, amanye amanxeba ingawegqudu nomkhonto. Kubikwa ukuba yamgweba ama-20 eminyaka entolongweni ummangalelwa ngamnye. Ijaji yathi kuMzantsi-Afrika wale mihla ukurhanela umntu ngokuthakatha akukuthetheleli ukubulala.

3.50 Ngo-2014 iingxelo zamajelo eendaba ziqhubekile zibika iziganeko zokwenzakaliswa kwabantu ngokutyholwa kwabantu ngokuthakatha nokuxoxwa kwamatyala anjalo kumaphondo ngamaphondo. EMpumalanga kubikwa ukuba kwabulawa umntwana ominyaka mithandathu ebulawa ngulo mntu obhinqileyo owayecelwe ngumama womntwana ukuba amgcinele yena. Ekubuyeni kukamama womntwana kwindawo awayeye kuyo, waxelelwa ngumgcini womntwana ukuba akamazi apho akhoyo, waza wacinga ukuba umntwana ukuyise esakungamfumani. Kwathi kusakubikelwa isibonda saza isibonda sambuza imibuzo umgcini womntwana, umgcini womntwana waphendula wathi akambulalanga umntwana. Umzimba womntwana wafunyanwa ngabantu basekuhlaleni kumlambo okufuphi, umzimba wakhe utyhuthulwe. Kuthiwa injongo yayikukusebenzisa amalungu omzimba wakhe ukwenza amayeza ngawo. Ummangalelwa wagwetywa ubomi entolongweni yinkundla. EGauteng, eMamelodi (ilokishi engasePitoli), indoda yatyholwa ngokubulala umfazi wayo kuba kuthiwa wajika waba yinyoka elirhamncwa eyayiza kuhlasela le ndoda. Ijaji eyayichophele ityala ayizange ikwamkele oku kuzithethelela; yamfumanisa enetyala lokubulala yaza yagweba le ndoda ubomi entolongweni ngokuphindwe kathathu. Ijaji ayikwamkelanga ukuzithethelela okuthi unobangela wesi senzo solwaphulo-mthetho yayibubugqwirha. ENTshona-Koloni iNkundla Ephakamileyo yachophela ityala loqhawulo-mtshato apho uMphathiswa wayetyhola inkosikazi yakhe ngobugqwirha. UMphathiswa lo wazithethelela ngelithi wancama wakrexeza ngenxa yokuba emva kweminyaka elithoba betshatile inkosikazi yakhe inkosikazi yakhe yayithakatha kwaye ivumela ukuba kwenziwe imisebenzi yokuthakatha emzini wakhe. Watyhola inkosikazi yakhe ngokuthatha ezinye zeempahla zakhe zokunxiba azise egqirheni, ecela nomgcini womntwana wabo ukuba avuvuzele izinto ekutyeni kwakhe. Nangona kwakukho izityholo zokuthakatha, inkundla yawuqhawula umtshato.

3.51 Ngo-2015 kwabakho ezinye iziganeko ezibikwa kumajelo eendaba. Kwiphondo laseMntla-Ntshona, kwafunwa uncedo lwamapolisa xa uluntu lwalutshisa umzi wexhwele kuba lityholwa ngokusebenzisana nabafazi ababini ababetyhola ngokuthakatha. Aba bafazi babini, omnye wabo owayezanalana nexhwele eli, babexhwile usana olunenyanga ekhayeni lalo. Larhoxiswa ityala laba bafazi babini kuba balubuyisa usana. Lwaqhubeka uphando, ngeli xesha inkundla yona iqhubeka netyala lokutshisa nokubetha ngenjongo yokwenzakalisa ngokumanyumnyezi.

1 Ubugqwirha nabantu bomthonyama

3.52 Iingxelo zamajelo eendaba ezikhankanywe kweli candelo lingentla zibonisa ukusetyenziswa kobugqwirha nendlela obuqondwa ngayo ngabantu bomthonyama eMzantsi-Afrika. Ezi ngxelo zamajelo eendaba zikwabonisa ubudlelane obukhoyo phakathi kobugqwirha nokukwazi ukusebenzisa amandla angaziwayo ngenjongo yokwenzakalisa abanye abantu nempahla yabo. Ngaphandle kweengxelo zamajelo eendaba, into eyaziwayo kakhulu kukuba abantu abadla ngokutyholwa ngokuthakatha ngoomakhulu, kanti bona abantu abenzakalisa abanye bebanuka ngokuthakatha kudla ngokuba lulutsha olungabafana. Kukholelwa ukuba abantu bathakathiswa ngumona.

3.53 Abantu abadla ngokunukwa ngokuthakatha ngabantu abadala (ingakumbi abasetyhini), nangona ke kukhe kwenzeka ukuba kunukwe nolutsha. Abantu badla ngokutyholwa kuba kucingelwa ukuba basebenzise ubugqwirha ukuphucula iimeko zabo.

3.54 Xa bexakwe bubugqwirha, abantu baye bafun' uncedo kubantu abanjengamaxhwele, abavumisi, ngenjongo yokuba balwisane namashwa okanye ke baphelise amashwa batshabalalise nobugqwirha obo. Enye indlela abantu abaphindisa ngayo kubugqwirha kukuthabathel' umthetho ezandleni zabo. Abantu abathakathiweyo kuyenzeka ukuba baziphindezele, kuziphindezela umntu omnye okanye uluntu lonke ngokumbulala okanye ngokumtshisa loo mntu abamranelayo okanye ngokumgxotha ekuhlaleni. Uhlolisiso olwenziwe ngo-2009 lubonisa ukuba eyona ndlela eqhelekileyo yokwenzakaliswa abarhanelwa ngokuthakatha kukwenza umonakalo kwimizi yabo, kulandele ukunyanzeleka ukuba bangcuchalaze besuka kwenye ilali ukuya kwenye.

3.55 Enye into exhaphakileyo kubantu bomthonyama kukubulawelwa ukwenza amayeza. Oku kubangele ukuba iSebe Labasetyhini Nabantwana Nabaneziphene licele iKomishoni ukuba iphande ngoku kubulawa kwabantu. Iingxelo zamajelo eendaba namatyala asezikundleni ekuthethwe ngawo kulo mqulu abonisa iziganeko zokubulawa kwabantu kuze kuthengiswe amalungu emizimba yabo ethengiselwa abantu abenza amayeza okunyanga abagulayo.

3.56 Incwadana yokufun' izimvo ichaza ngokubanzi indlela urhulumente wedemokrasi azame ngayo ukuphelisa ukwenzakaliswa kwabantu benzakaliselwa ubugqwirha. Kwincwadana yokufun' izimvo kuthethwa ngokumiselwa kweKomishoni Yophando ngo-1995 ukuze iphande ngokwenzakaliselwa ubugqwirha nokubulawa kwabantu bebulawelwa izithethe eLimpopo. Nangona zingadange zisetyenziswe izindululo zeKomishoni kaRalushai, zisenza sibuyonde ubugqwirha nokwenzakaliswa kwabantu okubangelwa bubo eMzantsi-Afrika.

3.57 Elinye ilinge likarhulumente lokulwa nesibetho sobugqwirha nokwenzakwaliswa kwabantu okubangelwa bubo kukubhalwa koMthetho Oyilwayo Wobugqwirha waseMpumalanga. Lo Mthetho Oyilwayo ubulilinge likarhulumente wephondo lokulwa nobugqwirha, abuthatha njengobuxhaphakileyo kwelo phondo. Inkqubo yokuqhubela phambili nalo Mthetho Oyilwayo yayekwa, waza awaphumelela ukuba ude ube ngumthetho.

3.58 Ubugqwirha kubantu bomthonyama mabungaqondwa nje kuphela ngokwenkcubeko, koko nangokuqonda ukuba iinkolelo zonqulo zinento eziyenzayo kwindlela obuqondwa ngayo ubugqwirha. U-Olupona uthi "Amava obunoya aseAfrika kulapho ummandla 'wobuthixo' okanye ongcwele ungena nzulu kumava emihla ngemihla omntu kangangokuba, unqulo, inkqubeko, noluntu zihlobene". Ngokutsho kukaEllis Ter Haar,

Kukho ubungqina obuxananazileyo bokuba abantu abaninzi baseAfrika namhlanje bayaqhubeka beba neenkolelo ezisusela kwisintu sabo abazisebenzisa kwizinto abazenza imihla ngemihla, naxa sebehlala ezidolophini kwaye beziphilisa ngemisebenzi yaseburhulumenteni okanye yemizimveliso.

La mazwi abonisa ukuba indlela ezaziqondwa ngayo izinto kwantu isenento eyenzayo kubomi babantu baseAfrika bale mihla.

3.59 Abenkolo nabo baphendulile kwingxubakaxaka yobugqwirha. Iimpindulo zivela kwiiCawa Zomthonyama ZaseAfrika, kwiicawa zeemishinari, kwiicawa zobuPentekosti, nakubantu bezithethe zomthonyama. AbeeCawa Zomthonyama ZaseAfrika babekholelwa nzulu kubukho bokungendawo. Obo bungendawo buqondwa njengobugqwirha. Oku kuqondwa kobungendawo kuyinxalenye yengxoxo enkulu ezicaweni, kwaye kuye kuthethwe ngako kwiintshumayelo nakwezinye iindlela zonxibelelwano. Kwezi cawa kugxininiswa ekuzikhuseleni kwiziphumo zobungendawo. Amarhamente akhuthazwa ukuba asebenzise onke amacebo icawa ethe gqi nawo, azikhusele kwiziphumo zobu bungendawo. Ukuba umntu uthe wachatshazelwa—njengoko la mandla ekhohlakele—kukho ezinye izithethe zokuhlambulula abantu nokubabuyisela kubomi obupheleleyo. Ukunyangeka asikokomntu kuphela, koko nendawo yonke emngqongileyo.

3.60 Kwiicawa zabavangeli basemazweni, kuquka necawa yamaWesile, kukho inkolelo eyendeleyo kubugqwirha. Uninzi lwabantu luyakholwa ukuba bukho ubugqwirha, kodwa abambalwa bayathandabuza. Kodwa akuthethwa ngabo kwiintshumayelo nakwezinye iindawo zonxibelelwano zecawa. Kukho inkolelo ethe saa yokuba amanye amarhamente angamaWesile alungileyo emini kodwa abe ngamaZiyoni ebusuku. Oku kubonisa umkhwa wabanye abantu abakwiicawa ezaziwayo wokuchwechwa ngobusuku baye ezicaweni zamaZiyoni besiya kufuna ukuphiliswa. Imfundiso yecawa yona ithi ubungendawo bunokuchazwa ngendlela yobungendawo (ubuSathana) nokuhlaselwa ziidemoni, nokuthi umthandazo kuphela kwento engamhlangula umntu koko kuhlaselwa. Kodwa njengoko uninzi lwabantu abahamba kwezi cawa bekhulele apho kukholelwa kakhulu kubugqwirha, endaweni yokuya kwabanyanga ngokwesintu (abaye bajongwe njengotshaba) baya kwabeeCawa Zomthonyama ZaseAfrika, ngakumbi kwiicawa zamaZiyoni. Kwezo Cawa Zomthonyama ZaseAfrika nakwabanyanga ngokwesintu ke kuyiwa ngokuchwecha.

3.61 Mayela neecawa zobuPentekosti, inkolelo iyafana neyeeCawa Zomthonyama ZaseAfrika. Iicawa eziphilisa ngomlingo, ezinjengezooMshumayeli uFP Motsoeneng (uMboro), uLesego Daniel, uChris Oyakhilome nabanye abaninzi zenza ukuba kukholelwe kakhulu kubugqwirha. Abanye abahambi-cawa baxelelwa ukuba banenyambalala

yezilwanyana ngezilwanyana ezisiswini zabo, ngakumbi iinyoka. Ubukho bezo zilwanyana eziswini zabantu ngumsebenzi wamagqwirha. Ubukhulu becala kuye kungaxelwa ukuba ngoobani abo bathakathi. Kwiicawa ezinjengezi abantu baye bathenjiswa ukukhuselwa kuzo zonke iindidi zoomoya abangendawo okuquka nobugqwirha.

3.62 Kukwakho abo bakholwa ukuba ubugqwirha sisichasi sokulunga, ubumsulwa, nokuba ngummelwane olungileyo. Kwiimeko ezininzi apho kuye kwabizwa abanyanga ngokwesintu kuye kwafumaniseka ukuba bubugqwirha. Ngokusebenzisa iindlela zabo zokugxotha imimoya, abantu abanyanga ngokwesintu banceda iziguli zabo ukuba ziphile kwimisebenzi yobugqwirha. Abanye abanyanga ngokwesintu nabanolwazi kwinkcubeko bathi busondelelene kakhulu ubugqwirha nokuthakatha, ukuthakatha kona kunxulunyaniswa nobungendawo. Abanye abanyanga ngokwesintu bathi bona abananto yakwenza nokubulawa kwabantu bebulawelwa ukwenza amayeza, bengenanto yakwenza kananjalo nokuthengiswa kwamalungu abantu. Bawubona umsebenzi wabo ikukuwuphilisa umzimba womntu, ukusetyenziswa kwamalungu omntu ke kuchasene nomsebenzi wabo.

2 Ubugqwirha njengendlela yokunqula

3.63 Izimvo ezithunyelwe yiSAPRA nayiSAPC zibonisa ubukho bemikhwa enxulumene namandla angaziwayo, nakubantu abangengobaseAfrika. Abantu abasebenzisa ubugqwirha ngale ndlela bathi buyindlela yabo yokunqula. AbaHedeni bathi bayakhuselwa nabo nguMgaqo-siseko, befuna nokwamkelwa njengenkolo elibathwana. AbaHedeni bayichaza inkolo yabo njengenkolo enqula indalo ekholelwa kwinto yokuba uMhlaba nezidalwa zawo ungcwele. Bakhuthaza ukulondolozwa kwendalo esingqongileyo nokunqulwa kukaQamata ekubume bakhe obahluka-hlukileyo.

3.64 NgoSeptemba 2007 abaHedeni eMzantsi-Afrika bahlanganisana ngenjongo yokubuyisa igama “umthakathi” nelithi “ubugqwirha” ngokwendlela yobuHedeni. Injongo yokuwabuyisa yayikukugxininisa amalungelo abo akhuselwe nguMgaqo-siseko nokufuna ukutshitshiswa kwe*Witchcraft Suppression Act*, wona okwenza kube lulwaphulo-mthetho ukuthakatha eMzantsi-Afrika. Isenzo sabaHedeni sibonisa indlela ukuthakatha okuqondwa ngayo eMzantsi-Afrika okwenza ukuba eli gama layanyaniswa nemikhwa yolwaphulo-mthetho okanye yobungendawo.

3.65 AbaHedeni bayavuma ukuba zikho iingxaki ezibangelwa kukungachazwa kokuthakatha kwi*Witchcraft Suppresion Act* nezisombululo ezacetyiswa yiKomishoni kaRalushai kwingxelo yayo, nezo ezikuMthetho Oyilwayo Wokulwa Ubugqwirha WaseMpumalanga. Bathi indlela okuchazwe ngayo ukuthakatha kubangel' ingxaki kuba yenza ukuba kuqondwe ngendlela efanayo.

3.66 AbaHedeni bathi njengabantu abakule nkolo, nanjengamagqwirha azichaza ngendlela eyeyawo, kufuneka kube ngabo abayichazayo intsingiselo yamagama elithi “ubugqwirha” nelithi “amagqwirha”. Bona bawuchaza kanje umsebenzi wabo:

Ubugqwirha bubuchule bamandulo bokunqula nobomlingo nobumoya bale mihla babahedeni obusebenzisa ukuvumisa, ubugqi bovelwano nezenzo zesithethe zabahedeni.

3.67 Icebiso elivela kubaHedeni lithi makungabikho mthetho oqulunqwayo wokulwa nokuthakatha; ndawen yoko izenzo eziyingozi ezinxulunyaniswa nokuthakatha makuliwe nazo ngokomthetho ongabhalwanga phantsi.

D Esicebisa ukuba makwenziwe

3.68 Izimvo ezifunyenwe yiKomishoni zokuqalisa olu phando, izimvo ezifunyenweyo ziphendula kwiingongoma eziveliswe kwincwadana yokufun' izimvo, nophengululo olwenziwe ngenjongo yokufuna ukuqonda le nto kuthiwa bubugqwirha zibe luncedo kakhulu. Kubonakele ukuba bakholelwa kangakanani abantu kumandla angaziwayo kulo lonke ihlabathi. Impendulo kumbuzo wokuba ezi nkolelo kumandla angaziwayo zilungile okanye azilungile ixhomekeka kwiinkcubeko ngeenkcubeko. AbaHedeni bona bathe ukuthakatha abakusebenzisayo akunanto yakwenza nobungenadawo. Ezinye izimvo zona zibonise ukuba eMzantsi-Afrika ubugqwirha bunxulunyaniswa nako konke okungendawo—okanye ke kungenjalo kunxulunyaniswa noko okwenzelwe ukwenzakalisa.

3.69 Izimvo ezithunyelwe kwiKomishoni zikwabonisa imfuneko yokwahlula ubugqwirha bobuHedeni kubugqwirha obuyingozi. Oku kwahlulwa kubalulekile ukuze kuqondakale ukuba kunokwenzeka kusini na ukuba ukusetyenziswa kokuthakatha kungajongwa na

ngendlela eyahlukileyo, kungayanyaniswa nemikhwa eyingozi okuye kwayanyaniswa nayo.

3.70 Kolu phando olufuna ukuguqulwa kwe *Witchcraft Suppression Act*, kukho abankqangaza ngelithi bafuna amalungelo abo okunqula akhuselwe nguMgaqo-siseko. Kwelinye icala, kukho imfuneko yokuwahlonela amalungelo abantu abayisekela inkolelo yabo kubugqirha kwelokuba yinkolo yabo yemveli okanye inkcubeko yabo, lungelo elo likhuselwayo nguMgaqo-siseko.

3.71 Ngoxa iKomishoni iyivuma imfuneko yokukwahlula ukusetyenziswa kobugqirha ngendlela ekufuneka ngayo, ayinakububetha ngoyaba ubomi babantu abaninzi baseMzantsi-Afrika obuchatshazelwa yimikhwa eyingozi yobugqirha. Izimvo ezithunyelwe luninzi lwabo bathumele izimvo ziyakuqinisekisa ukuthi ubugqirha butshabalalisa ubomi babantu abaninzi abamsulwa kulo lonke ilizwe lethu. Abanyanga ngokwesintu, kwizimvo zabo abazithumeleyo, bavumile ukuba kuyafuneka ukuba kulwiwe nokwenzakaliswa kwabantu benzakaliselwa ubugqirha. Iingxelo zamajelo eendaba ekuthethwe ngazo kulo mqulu, ziyaqhubeka zibika amabali awothusayo okwenzakaliswa kwabantu ngobugqirha. Oku kwenzakaliswa kukho kokubini ezidolophini nasemaphandleni. Iingxelo zamajelo eendaba nobungqina obuveliswe kwiKomishoni zibonisa ukuba abantu abatyholwa ngokuthakatha batshiselwa imizi, okanye babethwe, okanye babulelwe, imizimba yabo ityhuthulwe kwenziwe amayeza.

3.72 Abantu abachatshazelwa bubugqirha bazizisulu kwaye kufuneka bakhuselwe. Uphando olwenziweyo nezimvo ezithunyelweyo zibonisa ukuba ngabafazi nabantwana ikakhulu abazizisulu. Abantwana baye babulawa yaza imizimba yatyhuthulwa ukuze kwenziwe amayeza ngayo. Abafazi noomakhulu baye banukwe ngokuthakatha, baze babethwe, babulawe okanye bagxothwe ekuhlaleni.

3.73 IKomishoni iyaqonda ukuba ziyabetha-bethana izimvo zabo bathumele izimvo mayela nokuba mawubekho kusini na umthetho wepalamente olawula ubugqirha. Siyazi ukuba ngeli xesha abanye abathumele izimvo, njengAbanyanga ngokwesintu, bekhalezela ukungabikho komthetho wepalamente wokukhusela abantu abamsulwa nokohlwaya abo bafunyenwe benetyala lokuthakatha—abanye abanjengeSAPRA, neSAPC neKomishoni Yokulingana Ngokwesini ngokuyinxenye—bathi makungabikho mthetho olawula

ubugqwirha ngokuthe ngqo. Kwabanolu luvo lwamva, uluvo lukukuba sele ikho kakade imithetho yokujongana nezenzo ezinjengokubulala, ukubetha, nokutshiswa kwemizi. Abanye, njengeKomishoni Yokulingana Ngokwesini, banoluvo lokuba ukuba ukuthakatha kwenziwa kube lulwaphulo-mthetho, kungaba nzima ukwazi ukuba ngongoma zini ekufuneka kuziwe nobungqina bazo.

3.74 Liyinene elokuba ukho umthetho ongabhalwanga phantsi neminye imithetho yepalamente yokujongana nemikhwa eyingozi yobugqwirha. Kodwa umbuzo ngowokuba yanele kusini na ukujongana nengxaki eneenkulungwane zeminyaka iphakathi koluntu. Ingongoma ekufuneka iqwalaselwe yiKomishoni ize yenze izindululo ngayo kolu phando kukuba loo mithetho yanele kusini na ukulungisa iingxaki ezixovulwe kulo mqulu.

3.75 Xa sisakh' umkhanya, imithetho ayibancedanga abantu ekuthibazeni ukwenzakaliselwa ubugqwirha. Ngokuqinisekileyo kufuneka kwenziwe into, kubonakale ukuba umthetho unganceda njani.

3.76 Enye yeengxaki ekufuneka ilungisiwe, ukuba ubugqwirha buyalawulwa, kukuchaza ukuba yintoni "ukuthakatha" okanye "ukuthakatha okuyingozi". Uphando luza kumiliselwa kule ngongoma. Yona eyokuchaza ukuba yintoni ukuthakatha okuyingozi ayinakuphetshwa kuba kuyimfuneko ukuze bonke abachaphazelekayo babe kuqonda kunye. IKomishoni sele ibuqonda kakade ubunzima obuye babonakala ekuchazeni ubugqwirha. Nangona kuza kubakho ubunzima, iKomishoni ibona ukuba mabuchazwe ngale ndlela ilandelayo:

'Ukuthakatha okuyingozi' kukusebenzisa ngabom amandla angaziwayo (nokuba kukusebenzisa izinto ezibonakalayo okanye akunjalo) ngenjongo yokusongela okanye ukubangela

- (i) ukufa komntu okanye ukwenzakala kwakhe okanye ukumfak' isifo okanye ukumenza agoqeke;
- (ii) ukutshabalala kwempahla okanye ukulahleka kwayo nokuba yenjani na; okanye
- (iii) ukusetyenziswa kwenkolelo nemikhwa ethile enxulumene nokuthakatha okuyingozi ngenjongo yokoyisa.

3.77 Uphando olusele lwenziwe luyenze ayathandabuza iKomishoni kwinto yokuba ikho imikhwa eyingozi yobugqwirha eneziphumo eziphanzisayo eluntwini. Ngenxa yoko iKomishoni indulula ukuba kuqulunqwe uluhlu lwemikhwa eyingozi emayilawulwe. Ngokuqonda iingxaki ezihambisana nokuba noluhlu olunjalo, iKomishoni icebisa ukuba

makubekho kulo loo mikhwa eseyicacile ukuba iyingozi; kodwa ke uluhlu olo malungathathwa ngokuthi akusekho nto enokongezwa kulo ngenxa yeziganeko ezisenokuthi zenzeke kwixesha elizayo. Xa kulapha, iKomishoni icebisa ukuba imikhwa eyingozi emayilawulwe makube yile: izityholo zokuthakatha, ukuzingelwa komthakathi, izenzo zolwaphulo-mthetho ezinxulumene nokuthakatha okuyingozi, nokubulalela ukwenza amayeza.

3.78 Xa umntu ejonga iindidi ezi kwesi siqendu sandulelayo, kuyabonakala ukuba ezinye zezinto ezingavumelekanga zizicacele, njengokutyhola umntu ngokuthakatha, ukuzingela umthakathi, nokubulalela ukwenza amayeza. Uddi lolwaphulo-mthetho olunxulumene nemikhwa eyingozi yokuthakatha alucacanga kakhulu lona. IKomishoni iphawula ukuba kukho amaxesha apho abantu beye bazivumela ngokwabo ukuba babenzakalisile abanye ngobugqwirha; le nkalo ke iyafuna ukuqwalaselwa. Isisombululo esicetyiswayo asithinteli kuphela abo basabela kwizisongelo zokuthakathwa, koko sithintela nabo basongela ukwenzakalisa abanye ngobugqwirha. Le nkalo iza kuqwalaselwa ngokubanzi kwinqanaba lokubonisana eza kungena kulo iKomishoni xa kuphandwa.

IS AHLUKO 4

UKULAWULWA KOBUGQIRHA

A Intshayelelo

4.1 Lo Mthetho oqwalaselwa ngokutsha uphakathi kweminye imithetho ethi uMgaqo-siseko wongamile kwaye wonke omnye umthetho ongqubana nawo uphuthile. UMgaqo-siseko luxwebu olulodwa olukhusela amalungelo abemi belizwe. Amalungelo abalulekileyo kolu phando akhuselwe kuMgaqo-siseko. Abaqalisi bolu phando baye bathi lo Mthetho uyabathintela ekusebenziseni amalungelo abo oMgaqo-siseko—sitsho ilungelo lokunqula ngokukhululeka, ilungelo lokuthetha ngokukhululeka, ilungelo lokulingana, elokukhuseleka, nelungelo lokuzikhethela umsebenzi abafuna ukuwenza ngaphakathi kwelizwe loMzantsi-Afrika. Okubaluleke nangakumbi kweli qela kukuba lo Mthetho ubathintela ekusebenziseni ilungelo labo lokunqula. Iqela elahlukileyo labantu abaqalisa olu phando bathi la malungelo makabekwe esikalini athelekiswe nelungelo lokukhuselwa amaxhoba emikhwa eyingozi yokuthakatha.

4.2 Umthetho ongabhalwanga phantsi nomthetho wesintu nayo ibalulekile kolu phando. Amatyalala asenkundleni ekuza kuthethwa ngawo apha ngezantsi aza kubonisa ukuba kwiimeko ezibandakanya ubugqwirha, izinto ezithethwayo zisekelwe kwinkcubeko kunakunqulo. Kwiimeko ezinjalo, umbuzo uye waba kukuba inkcubeko inokusetyenziswa na njengendlela yokuzithethelela. Akucaci nokuba umthetho ongabhalwanga phantsi uphuhlisiwe ukuze uyamkele le ndlela yokuzithethelela njengenxalenye yomthetho waseMzantsi-Afrika. Kuye kwabuzwa imibuzo malunga nokuba ukuzithethelela okunjalo makube yindlela yokuzithethelela entsha, okanye makube yinxalenye yeendlela zokuzithethelela ebezisoloko zikho.

4.3 Abantu bomthonyama bebesoloko belawulwa ngumthetho wesintu, kwaye uninzi lwabo lusalawulwa nguwo, mthetho lowo nawo ongabhalwanga phantsi. Njengoko ukukholelwa kubugqwirha kusekelwe kwinkcubeko, emaphandleni kuyiwa kwabanyanga ngokwesintu ukuba basombulule iingxaki zobugqwirha. Okubalulekileyo ke ngoko kukuba

umthetho wesintu ungakhuliswa kusini na ukuze usombulule iingxaki zemikhwa eyingozi yobugqwirha.

4.4 Ubomi obuphilwa ngabantu abasalawulwa ngumthetho wakwantu, abazinkolelo zabo zamkelwayo nguMgaqo-siseko, bubalulekile ekuqondeni ubugqwirha eMzantsi-Afrika. Kweli candelo kuza kuphonononga ukwamkelwa kweenkokeli zakwantu, ezikwafeza lukhulu kwizinto zobugqwirha kubantu bomthonyama.

4.5 Incwadana yokufun' izimvo ichaze ngokufutshane indlela iNkundla YoMgaqo-siseko ethe yawasingatha ngayo amalungelo abantu beenkolo ezinqabileyo. Isigqibo ekufikelelwe kuso xa kuhlolwa indlela osingethwe ngayo ziinkundla lo mbandela sesokuba iinkundla ziyawakhusela amalungelo eenkolo ezinqabileyo. Oku kubonisa ukuba isililo sabantu abathi ukuthakatha kuyinxalenye yokunqula kwabo kumele kuthatyathelw' ingqalelo xa kusenziwa isigqibo sokuba izinto ezikukuthakatha mazenziwe zibe zezingekho mthethweni.

4.6 INkundla YoMgaqo-siseko iyasanceda nakwimeko yomthetho wamazwe ngamazwe. Isiqendu 39 soMgaqo-siseko, esithetha ngokuchazwa kwentsingiselo yoMqulu Wamalungelo, sithi iinkundla zoMzantsi-Afrika maziwuthathel' ingqalelo umthetho wamazwe ngamazwe xa zichaza intsingiselo yoMgaqo-siseko. Incwadana yokufun' izimvo iyizekelise le meko ngokuyithelekisa noko kwenzeka kumazwe ngamazwe, yaza yadwelisa amaxwebhu aliqela eZizwe Ezimanyeneyo alivumayo ilungelo lokunqula. Le ncwadana yakhankanya iUniversal Declaration of Human Rights (UDHR) neConvention on Civil and Political Rights (ICCPR).

4.7 Isiqendu 18 sithi wonk' ubani unelungelo lokucinga ngokukhululeka, lokusebenza ngesazela sakhe esikhululekileyo, nokunqula ngokukhululekileyo. Oku kuquka nelungelo lokulutshintsha unqulo okanye inkolelo, nelungelo lokuyisebenzisa inkolo yakhe okanye inkolelo ngokuyifundisa abanye, anqule, ekwenza oko eyedwa okanye ekunye nabanye. Isiqendu 18 seICCPR, naso esikhusela amalungelo okunqula, sikhuthaza amazwe angamalungu kwesi sivumelwano ukuba awahloniphe amalungelo okunqula abemi bawo.

4.8 Kunyanzelekile ukuba ekuthini gqi neendlela zokulwa nesibetho sobugqwirha, sihlale sikukhumbula okutshiwo ziZizwe Ezimanyeneyo mayela nokusingathwa

kweengxaki zokuthakatha. Incwadana yokufun' izimvo ikhankanya ukumiselwa kwaBaniki-ngxelo Abakhethekileyo bemiselwa ziZizwe Ezimanyeneyo ukuba bachophele ukubulawa kwabantu ngobugqwirha eAfrika. Iindlela zokunceda ezicetyiswe ziZizwe Ezimanyeneyo ekulweni nobugqwirha eAfrika ziza kusiwa iso ekuzeni necebo emalisetyenziswe nguMzantsi-Afrika xa uqwalasela ngokutsha umthetho wepalamente weli lizwe ongobugqwirha.

4.9 Izimvo ezivakaliswe apha namaxwebhu omthetho abonisa imfuneko yokuwujonga ngamehlo aphantaleleyo umthetho. Ngamanye amazwi, uphando lumele lungapheleli nje kwimithetho yaseMzantsi-Afrika koko nakweyamanye amazwe kwilizwekazi lethu asele eye azama wona ukujongana nesibetho sobugqwirha, kwakunye ne *Witchcraft Suppression Act* (njengomthetho oqwalaselwa ngokutsha ngoku) namanye amaxwebhu omthetho aqulunqwe eMzantsi-Afrika. Eli candelo likwasikrobisa kuMgaqo-siseko ngokumayela ne *Witchcraft Suppression Act*.

B Imithetho

1 Imithetho yelizwe lethu

a) *Witchcraft Suppression Act 3 ka-1957*

4.10 Lo Mthetho waphunyezwa ngo-1957, wenziwa utshintsho ngo-1970 nango-1997 waba yi *Witchcraft Suppression Amendment Act* nayi *Abolition of Corporal Punishment Act*. Utshintsho olwenziwayo aluzange luchaphazele umongo walo Mthetho, koko lwenza nje ukuba iiponti zithatyathelw' indawo ziirandi, kwaza kongezwa ezinye izenzo ezikukona.

4.11 Lo Mthetho uneziqendu ezine kwaye zimbini kuphela ezichaphazelekayo kolu phando. Makuqatshelwe ukuba lo Mthetho awunaso isiqendu esichaza intsingiselo yamagama; ilusizi kakhulu loo nto kuba "ubugqwirha" abuchazwanga ekubeni zonke izenzo ezikukona ezikulo Mthetho zithetha ngabo. Le mpazamo ichaphazela namanye amagama asetyenzisiweyo kulo Mthetho asenokuba neentsingiselo ezininzi kodwa abe engachazwanga.

4.12 Isiqendu 1 nesesi-2 ziyachaphazeleka apha kuba ziqulethe izenzo ezingavumelekanga ngokwalo Mthetho. Ezi ziqendu zixela izenzo ezingavumelekanga, anokuthi umntu ukuba uzenzile abe waphul' umthetho kwaye afunyaniswe enetyala. Ezi ziqendu zithi (okugxininisiweyo kugxininiswe sithi):

1 Izenzo ezikukona zobugqirha nezenzo ezifana nezo

Nawuphi na umntu–

- a) ocingela omnye umntu ngokuthi ubangele ukuba abe nesifo okanye enzakale okanye kwenzakale impahla yakhe, esebenzisa amandla angaziwayo, okanye otyhola omnye umntu ngokuthi ungumthakathi;
- b) othi kwiimeko ezibonisa ukuba uzingomb' isifuba ngokusebenzisa amandla angaziwayo okanye wenza ngathi usebenzisa amandla angaziwayo, ubugqirha, ukuthakatha, ukutsala ngomlingo, ucingela omnye umntu ngokubangela ukufa, ukwenzakala, isifo, ukunyamalala komntu okanye kwempahla;
- c) oqesha okanye ocenga igqirha. Umzingeli womthakathi okanye nawuphi na omnye umntu ukuba alathe omnye umntu njengomthakathi;
- d) othi unolwazi lobugqirha, okanye lokusebenzisa amakhubalo, aze acebise omnye umntu ukuba kuthakathwa njani, wenzakaliswa njani omnye umntu okanye yonakaliswa njani impahla yakhe, okanye onika omnye umntu iindlela zokuthakatha;
- e) othi ngokucetyiswa ligqirha okanye ngumzingeli womthakathi okanye ngomnye umntu, okanye ngokuzenza ngathi unolwazi lobugqirha, asebenzise ulwazi olunjongo yalo ikukwenzakalisa omnye umntu;
- f) othi eza kufumana inzuzo enze ngathi usebenzisa amandla angaziwayo, ubugqirha, ukulawula abanye ngomlingo, okanye axele amathamsanqa, okanye athi angaxela yena ukuba into ebiweyo okanye elahlekileyo ingafumaneka phi

waphul' umthetho kwaye esakufunyaniswa enetyala–

- (i) xa kusisenzo esikukona ekuthethwe ngaso kwisiqendu (a) okanye (b) apho athe wabulawa umntu lowo ekwenziwe kuye eso senzo, okanye xa ummangalelwa kuthe kwaveliswa ubungqina bokuba unomkhwa okanye udumo lokuba ligqirha okanye umzingeli womthakathi, uya kugwetywa ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka engama-20;
- (ii) xa kusesinye isenzo esikukona ekuthethwe ngaso kwesi siqendu sixeliweyo, uya kugwetywa ifayini okanye ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka elishumi;
- (iii) xa kusesinye isenzo esikukona ekuthethwe ngaso kwisiqendu (c), (d) okanye (e), uya kugwetywa ifayini engagqithiyo kumakhulu amahlanu eerandi okanye agwetywe ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka emihlanu, okanye agwetywe kokubini ifayini nokuvalelwa entolongweni;
- (iv) xa kusisenzo esikukona ekuthethwe ngaso kwisiqendu (f), uya kugwetywa ifayini engagqithiyo kumakhulu amabini eerandi okanye agwetywe ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka emibini.

2 Izinto eziya kuthathwa ngokuthi zinjalo kungekho bungqina

Xa efile umntu ekwenziwe kuye isenzo esikukona ekuthethwe ngaso kwisiqendwana (a) okanye (b) phantsi kwesiqendu 1, kuza kuthathwa ngokuthi

loo mntu ufe ngenxa yokwenziwa kweso senzo esikukona, ngaphandle kokuba kuziwa nobungqina bokuba akunjalo. [Okugxininisiweyo kugxininisiwe sithi]

4.13 Izenzo ezikukona ezidalwe sisiqendu 1 salo Mthetho ziyakwalela ukwenza izinto ngezinto ekuthethwe ngazo kwiziqendu ezisixhenxe ezilandelayo (iziqendu 4.14 ukuya ku-4.19). Isiqendwana (a) siyakwalela ukuba umntu atyhole omnye ngokusebenzisa ubugqirha ukumfaka isifo okanye ukumenzakalisa okanye ukonakalisa impahla yakhe, okanye alathe umntu othile ngelithi ungumthakathi.

4.14 Isiqendwana (b) siyamalela umntu ukuba azingomb' isifuba ngokuthi usebenzisa okanye azenze ngathi usebenzisa amandla angaziwayo, ubugqirha, ukulawula omnye ngomlingo, okanye athi unobangela wokufa okanye wokwenzakala okanye wentlungu yokufelwa, okanye wesifo, okanye wokonakala kwempahla, okanye wokunyamalala komntu okanye kwempahla, athi unobangela ngomnye umntu. Esi siqendwana sichaphazela abantu abaziwa ngokuba "ngamagqirha". Ukuze sibe saphuliwe esi siqendwana isenzo "segqirha" kufuneka sizale ukufa, isifo, umonakalo okanye ukunyamalala komntu okanye kwento.

4.15 Isiqendwana (c) sithetha ngeemeko apho umntu eqesha okanye esebenzisa "igqirha" okanye "umzingeli womthakathi" okanye esebenzisa omnye umntu ukuba anuke igqirha okanye umthakathi. Xa kunjalo, isenzo esikukona senzeka umntu esebenzisa omnye umntu onjengegqirha ukuba amthele thsuphe ukuba ngubani umthakathi.

4.16 Isiqendwana (d) asizivumeli iimeko apho umntu othi unolwazi lobugqirha okanye lokusebenzisa amakhubalo acebise omnye umntu ukuba angamthakatha njani okanye amenzakalise njani omnye umntu, okanye angawenza njani umonakalo kwinto, anike omnye umntu izinto zobugqirha.

4.17 Isiqendwana (e) siyakwalela ukuthakatha. Okungavumelekanga ziimeko apho umntu, ngokucetyiswa ligqirha, ngumzingeli womthakathi okanye ngomnye umntu, esenza into enjongo yayo ikukukwenzalisa umntu okanye ukubangela umonakalo kwinto. Okungavumelekanga kukuzithakathela komntu ngokwakhe, okanye ukuthakatha ecetyiswa ngomnye umntu (onjengegqirha okanye umzingeli womthakathi).

4.18 Isiqendwana (f) sithetha ngabo bantu abathi, beza kufumana umvuzo, benze ngathi basebenzisa ubugqirha okanye ulwazi lwamandla angaziwayo, ukuze kufumaneke into ebiweyo okanye elahlekileyo.

4.19 Isiqendu 1(i) sikwenza kube sisenzo esikukona ukuba kufe umntu ebulawa sisenzo esalelweyo ngokwesiqendwana (a) okanye (b), okanye sikwenza kube sisenzo esikukona ukuba umntu adume ngokuba ngumzingeli womthakathi. Isohlwayo sesi senzo sesona siqatha kuba ngama-20 eminyaka entolongweni. Esi siqendu sinxibelelene nesiqendu 2 xa kufe umntu ngenxa yesenzo esalelweyo ngokwesiqendwana (a) okanye (b), loo mntu uya kuthathwa ngokuthi ufe ngenxa yesenzo esalelweyo, ngaphandle kokuba kuziwa nobungqina obubonisa ukuba akunjalo.

4.20 Lo Mthetho, njengeminye imithetho kwilizwekazi laseAfrika nakwezinye iindawo, uyakwalela ukuthakatha nezenzo ezihlobene nako. Kukho izohlwayo eziqatha zokuvalelwa entolongweni nezefayini.

4.21 Izenzo zolwaphulo-mthetho ezinesona sohlwayo siqatha nezithathwa ngokuthi zibi kakhulu kulo Mthetho zezo zidweliswe kwisiqendwana (a) no-(b). Ngokwenza olu lwaphulo-mthetho, ummangalelwa uzibizela ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka elishumi, okanye ifayini yama-R200 000.00. Xa ixhoba life ngenxa yolwaphulo-mthetho olwenziweyo, ixesha lokuvalelwa entolongweni liyandiswa libe ngama-20 eminyaka.

4.22 Izenzo zolwaphulo-mthetho ezidweliswe kwisiqendwana (c), (d) okanye (e) zohlwayelwa ukuvalelwa entolongweni ixesha elinokude lifike kwiminyaka emihlanu, okanye ifayini ye-R100 000.00. Mayela nolwaphulo-mthetho lwesiqendwana (e), oluquka ukubandakanyeka kwegqirha kolo lwaphulo-mthetho, ukuba ixhoba life ngenxa yolo lwaphulo-mthetho, isiqendwana (i) singasebenza lize ixesha lokuvalelwa entolongweni landiswe ukuya kwixesha elingagqithiyo kuma-20 eminyaka.

4.23 Izenzo zolwaphulo-mthetho zesiqendwana (f) zinezohlwayo ezinganeno noko; ixesha lokuvalelwa entolongweni lingafikelela kwiminyaka emibini, ifayini yona ibe ngama-R40 000.00. Esi siqendwana sisenokwenza ukuba umntu ohlwaywe isohlwayo

esikwisiqendwana (i), apho isohlwayo sinokuba sesexesha elingagqithiyo kuma-20 eminyaka ukuba kufe umntu ngenxa yokuncediswa kummangalelwa.

4.24 Okutshiwo ngulo Mthetho, nezohlwayo zabo benze okungavumelekanga, zibonisa ukuba indlu yowiso-mthetho yayizithatha nzulu kangakanani ngelo xesha izenzo ezingavumelekanga. Okunye okubalulekileyo omakuqatshelwe zizenzo ezikukona ezijongwa zizibi kakhulu ngokwalo Mthetho, ezizizityholo zokuthakatha nokuzingelwa kwabathakathi. Kwakuzizinto ezixhalabisa kakhulu ezi ngexesha owaphunyezwa ngalo lo Mthetho kwaye zinesiphumo esibi eluntwini nanamhlanje.

4.25 Izenzo zolwaphulo-mthetho ezikhankanywe kwiziqendu ezithetha ngokuthakatha, ukuzingela umthakathi, nokusebenzisa amagqirha, kufuneka ziqwalaselisiswe, ngakumbi njengokuba sekwabakho uMgaqo-siseko. KuMzantsi-Afrika wanamhlanje kukho abathile eluntwini, njengabaHedeni namagqirha (ngoku ekuthiwa banyanga ngokwesintu), abathi basebenzisa ukuthakatha njengenxalenye yonqulo lwabo okanye inkcubeko yabo—malungelo lawo akhuselweyo kuMgaqo-siseko. Okwenziwa ngabanyanga ngokwesintu namhlanje kufuneka kujongwe ngokwe *Traditional Health Practitioners Act 22* ka-2007, engagqibeli nje ngokuyamkela le ndlela yokunyanga, koko ibamkela kananjalo aba banyangi njengenxalenye yabanonopheli bempilo abaziwayo. Ubukho babazingeli bomthakathi buyaxhalabisa njengokuba kwakuxhalabisa kumashumi eminyaka eyadlulayo. Ukungcwaliswa kwakutshanje kukaBlessed Daswa engcwaliswa yiCawa yamaKatolika kusikhumbuza ukuba ukuzingelwa komthakathi kwakuba neziphumo ezimanyumnyezi kwixesha elidlulileyo nokuthi loo nto ayitshintshanga kulo Mzantsi-Afrika wangoku. Imigaqo ekwisiqendwana esithetha ngeenkondo zabanyanga ngokwesintu kufuneka ihlolisiswe, kuba xa abantu besebenzisa ezo nkondo benza njalo njengenxalenye yeenkolelo zabo zenkcubeko, nazo ezikhuselweyo nguMgaqo-siseko.

4.26 Iimvakalelo ezikwisiqendu 4.25 esingentla zingasebenza nakwizenzo ezingavumelekanga ezihlobene nokusetyenziswa kwamandla angaziwayo—nto leyo abaHedeni nabanyanga ngokwesintu abayenza njengenxalenye yomsebenzi wabo.

4.27 Le ngxoxo yokutshiwo nguMthetho neziphumo kwabo bawaphulayo ibonisa ukuba kunganzima kangakanani kwiinkundla ukuchophela amatyala obugqwirha, ngakumbi njengokuba sekwabakho uMgaqo-siseko.

4.28 Iinkundla ziye zachophela amatyala aliqela obugqwirha, amabini kuwo kuye kwaxoxwa ngawo kwincwadana yokufun' izimvo. Amatyala ekuxoxwe ngawo kuloo ncwadana yokufun' izimvo aye abonisa ukuba iinkundla ziye zakuthathel' ingqalelo kusini na ukuzithethelela kokuthi yinkcubeko xa zichophele amatyala obugqwirha. Kuwo omabini amatyala iinkundla ayikwamkelanga ukuzithethelela kummangalelwa ngokuthi yinkcubeko.

4.29 Xa bekuqwalaselwa amatyala ngenjongo yokuqulunqa lo mqulu, kuye kwafumaniseka ukuba zimbini iindidi eziphambili zamatyala aye achotshelwa ziinkundla. Olunye udidi kulapho ummangalelwa ebemangalelwe ngolwaphulo-mthetho olukumthetho wolwaphulo-mthetho, luze olunye udidi kube lapho ummangalelwa emangalelwe ngokwe *Witchcraft Suppression Act* eqwalaselwa ngokutsha ngoku. La matyala akwabonisa ukuba ikakhulu bekuba yimeko apho kwalathwe umntu njengegqwirha (ukunukwa), ukubulala ngenjongo yokuzikhusela engozini, nokubulalela ukwenza amayeza. Ezi ndidi zintathu zamatyala, neziphumo zawo, kuthethwa ngazo apha ngezantsi.

4.30 Udidi lokuqala ngamatyala apho umntu wamangalelwa ngokwalatha omnye njengomntu oligqwirha, waza ummangalelwa wabekw' ityala ngokwe *Witchcraft Suppression Act*. Kumatyala apho ummangalelwa ebekwe ityala lokwalatha umntu njengegqwirha, iinkundla ziye zagxininisa ububi beso sityholo nemfuneko yokukhusela uluntu kwiziphumo abajamelana nazo abantu abanukiweyo. Kwityala lika-*S v Phalane* abamangalelwa bafunyaniswa benetyala baza bagwetyelwa ulwaphulo-mthetho abalwenze ngokwesiqendu 1(a) se *Witchcraft Suppression Act*. Abamangalelwa babengabahlali ababetyhole ummangali ngokuthakatha emva kokuba kusweleke umntu elalini. Izityholo zazingasuki kubamangalelwa; ubugqwirha bommangali babuxovulwe kwintlanganisano yelali, kuthiwa ke wangxoliswa ngobugqwirha obo bakhe. Emva kokuba kusweleke umntu elalini, abamangalelwa baya kummangali baqhubeka bemtyhola. Kubikwa ukuba babiza noluntu ukuba luhlanganisane ekhayeni lommangali, emva koko bahlanganisana kwibala lemidlalo, apho ke bahlupheza abahlali ukuba bamtshise ummangali. Iinkundla Ephakamileyo yaneliseka sisigqibo senkundla yemantyi sokubafumanisa benetyala abamangalelwa nasisigwebo abasinikwayo sefayini yama-R3 000.00 okanye ukuvalelwa entolongweni iinyanga ezilishumi ummangalelwa ngamnye.

Kwityala lika-*S v Mashimbye* ummangalelwa wayenze isenzo esikukona esikwisiqendu 1(a) se *Witchcraft Suppression Act* enxile engazazi negama. Wagwetywa iminyaka elishumi entolongweni. INkundla Ephakamileyo yathi isigwebo senkundla yemantyi siqatha gqitha kuba isigwebo esivunywe ngulo Mthetho asigqithi kwiminyaka elishumi. Ekusithobeni isigwebo saba yiminyaka emine, emibini kuyo ixhonyiwe, iNkundla yathi ummangalelwa usenze esi senzo enxilile. Nangona iNkundla yathi iyabuqonda ububi besenzo amangalelwe ngaso ummangalelwa, ivuma kananjalo ukuba ummangalelwa kuyafuneka ohlwaywe kanobom, iNkundla yathi noko imeko awayekuyo ngokwasengqondweni kufuneka icingelwe. Kwityala lika-*S v Maluleke* ummangalelwa wabekw' ityala lokwaphula isiqendu 1(a) salo Mthetho, etyhole ummangali ngobugqwirha emva kokuba engxolise ummangali emngxolisela ukuthatha umhlaba ekwakunyathele kuwo umntwana wommangalelwa ngesihlangu. Ummangalelwa wagwetywa unyaka entolongweni, wabhena kweso sigwebo. INkundla yesibheni ayizange yaneliseke seso sigwebo siqatha, kodwa ke yathi ityala awayebekwe lona lalilibi. INkundla yagxininisa imeko ebuhlungu eviwa ngabantu ekuthiwa bangamagqwirha, equka “ukuthotyw’ isidima ngendlela embi kakhulu, ukwenzakala, nkqu nokufa bebulawa yilali”.

4.31 Nangona izenzo ezikukona ezikwisiqendu 1(a) zinesigwebo sentolongo esingekho ngaphezu kweminyaka elishumi, izigqibo zeenkundla kumatyala ekuthethwe ngawo ngentla ziya azafana. Izigwebo ziye zaba zezeenyanga ezilishumi, iminyaka emine, nonyaka. Nangona iinkundla zivumile ukuba amatyala abamangalelwe ngawo abamangalelwa mabi kakhulu, ziye zakulungela ukuthathel’ ingqalelo iimeko ezimnyenyiselayo ummangalelwa.

4.32 Udidi lwesibini lolokubulala ngenjongo yokuzikhusela engozini, okanye lolokwenzakaliswa kommangali. Kwityala elafikelela kwiNkundla Yezibheni, ummangalelwa wayebulele omnye umntu—ummelwane wakhe—ngenxa yokukholelwa kommangalelwa kubugqwirha. Inkundla yayamkela njengento emnyenyisela isigwebo ummangalelwa into yokuba wayekholelwa kubugqwirha, esithi yiloo nkolelo eyamqhubela ekwenzeni eso senzo. Inkundla yemantyi yayimgwebe iminyaka elishumi entolongweni. Ekusithobeni sibe yiminyaka emine isigwebo xa ebhena, inkundla yesibheni yamkela ukukholelwa kommangalelwa kubugqwirha njengekuphela kwenkcazelo evakalayo yommangalelwa, eyamenza ukuba axabele ummelwane wakhe ngezembe—ecinga ukuba lilulwane. Asizizo zonke iinkundla eziye zalandela ekhondweni leNkundla Yezibheni xa

zichophele amatyala okwenzakaliswa ngenxa yobugqwirha. Kwityala lika-*S v Phama* ummangalelwa wabulala ixhoba emva kokuxelelwa ligqirha ukuba lixhoba eli elibangele ukufa kwesizalwane sommangalelwa. INkundla ayizange ikwamkele ukuthi ukukholelwa kubugqwirha kwakusisizathu esimnyenyiselayo ummangalelwa. INkundla yathi intsusa yokubulala yayikukuziphindezela, ingekukho ukukholelwa kubugqwirha. INkundla yavumelana nesigwebo senkundla yemantyi seminyaka eli-12 entolongweni. Kwityala lika-*S v Latha* inkundla yachophela ityala lokubulawa kukamakhulu ebulawa ngabazukulwana bakhe. Umakhulu lo wayetyholwa ngokubulala isizalwane, saza safa. Omnye wabamangalelwa wayeye nasegqirheni, elamxelela ukuba uthakathwe ngumakhulu lo oswelekileyo. Inkundla yamgweba ummangalelwa wokuqala iminyaka engama-20 entolongweni, yaza yamgweba ummangalelwa wesibini iminyaka eli-15 entolongweni. Inkundla yathathel' ingqalelo into yokuba abamangalelwa balenza eli tyala kuba umfi wayeyingozi kwiintsapho zabamangalelwa. Yathathel' ingqalelo nento yokuba kwakudodobele ukuqonda kwabo ukuba benza ityala ngenxa yokuba babenxilile ukuyenza kwabo le nto.

4.33 Udidi lwesithathu ngamatyala okubulawa kwabantu bebulawelwa ukwenza amayeza. Amalungu omzimba omntu ayatyhuthulwa emva kokuba ebulewe, kwenziwe ngawo amayeza. Into ecacayo kula matyala njengoko iza kucaciswa kwisiqendu esilandelayo ngezantsi, kukuba iinkundla ziye zawasingatha ngeendlela ezingafaniyo amatyala apho ukubulala kwakungenganjongo yokuzikhusela, koko ngenjongo yokuzuza, nalapho ummangalelwa enze ityala kuba ekholelwa kubugqwirha. Iinkundla ziye zaxhalaba nalapho ukubulala kwakucetyiwe.

4.34 Kwityala lika-*S v Alam* kwafika kummangalelwa umntu onyanga ngokwesintu, wamthembisa imali iyeyokuthenga igazi lomntu awayelifunela umsebenzi othile. Nangona inkundla yavumayo ukuba olu lwaphulo-mthetho lwalungacetywanga, ayizange ifumane bungqina bokuba izenzo zommangalelwa zazibangelwa kukukholelwa kwakhe kubugqwirha, nto leyo eyayingamnyenyisela. Inkundla yagxininisa indlela ekujonga kakubi ngayo ukubulawa kwabantu bebulawelwa umsebenzi othile. Inkundla yafumanisa ukuba ummangalelwa wayengambulalanga umfi kuba ekholelwa kubugqwirha, koko ngenxa yenzuzo awayeza kuyifumana. Wagwetywa iminyaka eli-15 entolongweni, emithathu kuyo yaxhonywa, ngetyala lokubulala, kwaza kongezwa eminyaka elishumi, kwaxhonywa emihlanu, ngetyala lokudlwengula. Inkundla yathi izigwebo zokubulalela amayeza

kufuneka zenze abantu babone ukuba ukubulala okunjalo akunakunyanyezelwa. Kwityala lika *Mogaramedi v S* ummangalelwa wayeligqirha elalibulele udade walo ukuze lifumane ilungu lakhe langasese, elifunela ukugqibezela intwaso. Inkundla yemantyi yaligweba ubomi entolongweni ngokwe *Sentencing Act* ka-1997, laza labhena. Isizathu sokubhena lathi kukuba lalenze eli tyala ngenxa yenkolelo yalo yonqulo, ekukuba isenzo sokubulala udade sasiyimfuneko ukuze agqibezele intwaso. Inkundla yavakalisa inkxalabo ngokwanda kokubulawelwa imicimbi yesintu nendlela uluntu oluziva ngayo ngezi ziganeko. Inkundla yabhekisela kumatyala apho kwakubulewe abantu kuzikhuselwa engozini. Yathi oko kwahlukile kwimeko yaxa ulwaphulo-mthetho lusenzelwa inzuzo okanye into efunwa ngumntu. Inkundla yasichitha isibheno, isithi isigwebo senkundla yemantyi sifanelekile. Kananjalo yathi eso sigwebo siyimfuneko ukoyikisa abanye abantu ekwenzeni into enjalo.

4.35 Isiphetho ekunokufikelelwa kuso xa kujongwa ezi ndidi zamatyala axovulwe apha ngentla sesokuba iinkundla eMzantsi-Afrika zisebenzise okutshiwo yi *Witchcraft Suppression Act* ekuchopheleni obugqwirha. Oku kwahlukile kwamanye amazwe aseAfrika apho ubugqwirha buchotshelwa ngokufanayo namanye amatyala anjengokubulala. Amatyala axovuliweyo apha abonisa ukuba azikho iimeko apho umntu eye watyholwa ngobugqwirha kuphela; sisiphumo sobugqwirha esibe ngunozala wawo onke la matyala athe aba phambi kweenkundla. Okunye okubalulekileyo omakuqatshelwe kukuba iinkundla ziye zakulungela ukuyamkela inkcubeko ephemelela abantu abenza izenzo zolwaphulo-mthetho ezinxulumene nobugqwirha. Njengokuba kwamanye amatyala kuye kwamkelwa ukuzithethelela ngenkcubeko, kwamanye inkolelo yenkcubeko iye yamkelwa kuphela njengento enyenyisela isigwebo. Ukuthi kuthathwa njani ukuzithethelela ngenkcubeko aph' eMzantsi-Afrika akucaci. Oku kubangele ukungaboni ngaso-nye kwizifundiswa zomthetho, ezinye zibuza ukuba ukusithela ngenkcubeko kuyinxalenye yomthetho kusini na.

b) *ITraditional Health Practitioners' Act*

4.36 Ukwalelwa kobugqwirha nokusetyenziswa kwamandla angaziwayo kufunisa ukuba kuhloliswe indima yabanyanga ngokwesintu kwizinto ezinxulunyaniswa nobugqwirha. Kubalulekile ukuqaphela ukuba liphezulu kakhulu inani eliqikelelwayo labantu

baseMzantsi-Afrika abaya kwabanyanga ngokwesintu ukuze banyangeke. Umzekelo: phakathi kuka-2007 no-2011, liqikelelwa phakathi kwama-70 nama-80 ekhulwini inani labantu abathi baya kwabanyanga ngokwesintu, ekuthathwa ngokuthi ababizi kakhulu kunoogqirha besilungu. Kukwayiwa kwabanyanga ngokwesintu ngenjongo yokuzikhusela kwiingozi zemimoya okanye ngenjongo yokuziphindezela kubugqwirha. Ingcombolo efumanekayo ibonisa ukuba baziindidi ngeendidi abanyanga ngokwesintu, njengabo abasebenzisa ukuvumisa ngenkolo, ngokomoya, ukuvumisa ngenkqu, nokuvumisa ngemimoya. Uninzi lwabantu lwazi iindidi ezimbini eziphambili zabanyanga ngokwesintu: amaxhwele, wona asebenzisa amayeza esintu, nabavumisi (amagqirha) abasebenza ngemimoya.

4.37 Ukukholelwa kwabanyanga ngokwesintu asikokwecandelo elithile loluntu; kuthe ndii. Ngokungafaniyo noogqirha, bona balawulwa yimithetho, abanyanga ngokwesintu banexesha elide bengalawulwa yimithetho. Enyanisweni, ngokwe *Witchcraft Suppression Act*, ukunyanga ngokwesintu akuvunyelwa ngumthetho.

4.38 Ingxelo yeKomishoni kaRalushai ekuthethwe ngayo kwincwadana yokufun' izimvo, ikhankanye indima ezezwa ngabanyanga ngokwesintu kwizinto ezimalunga nobugqwirha. Ngexesha lokuphanda kweKomishoni kaRalushai, abanyanga ngokwesintu bathathwe njengabanendima enkulu kubugqwirha. Kuthiwa badlale indima engangqalanga kumatyala athile okubulala obugqwirha, kuba kuthiwa baphembelele ukukholelwa kubugqwirha ngokuvumisa kwabo. Ukongeza apho, kubikwa ukuba okunye ukubulawa kwabantu bebulawelwa amayeza kuphenjelelwa ngabo.

4.39 Ukuphunyezwa yiPalamente kwe *Traditional Health Practitioners Act* ngo-2007 kwakuyindlela karhulumente yokubonisa ukuba uyabamkela abanyanga ngokwesintu nendima yabo kuMzantsi-Afrika wangoku. Injongo yalo Mthetho ngokwesiqendu 2 yile:

...

(b) kukwenza ukuba babhaliswe, baqeqeshwe abanyanga ngokwesintu kwiRiphabliki;

(c) kukunceda nokukhusela uluntu olusebenzisa abanyanga ngokwesintu.

Lo Mthetho ukwachaza amagama abalulekileyo kulo mqulu, athi “ukunyanga ngokwesintu”, “amayeza esintu”, nelithi “ingqiqo yesintu”. La magama achaziwe kuwo lo Mthetho ngale ndlela ilandelayo:

‘ukunyanga ngokwesintu’ kukwenza umsebenzi osekelwe kwingqiqo yesintu equka ukusetyenziswa kwamayeza esintu okanye ukunyanga ngokwesintu okunjongo yako—

- (a) ikukubuyisela empilweni engokwasemzimbeni okanye engokwasengqondweni;
- (b) ikukuxilongwa, ukunyangwa okanye ukuthintelwa kokugula kwasemzimbeni okanye kwasengqondweni;
- (c) ikukomelezwa komntu ukuze loo mntu akwazi ukuthabathisa kwakhona ekusebenzeni ngokuqhelekileyo elusatsheni okanye eluntwini; okanye
- (d) ikukuxhotyiswa komntu ngokwasemzimbeni okanye ngokwasengqondweni exhotyiselwa ixesha lokufikisa, ukuba ngumntu omdala, ukukhulelwa, ukuzala umntwana nokufa
...

‘amayeza esintu’ yinto esetyenziswa ekunyangeni ngokwesintu—

- (a) iyeyokuxilonga, ukunyanga okanye ukuthintela ukugula kwasemzimbeni okanye kwasengqondweni; okanye
- (b) iyeyenjongo yokunyanga, kuquka ukubuyisela empilweni impilo yasemzimbeni okanye yasengqondweni yabantu,

kodwa eli gama aliquki isiyobisi esimenza umntu abe likhoboka laso okanye esiyingozi

‘ingqiqo yesintu’ ziindlela zomthonyama zaseAfrika, imigaqo, iinkolelo, izimvo namasiko nokusetyenziswa kwamayeza esintu asuka kwizinyanya esiza kubantwana bazo okanye asuka kwesinye isizukulwana esiya kwesinye isizukulwana, kungakhathaliseki ukuba kukho nto ebhaliweyo okanye ayikho, kungakhathaliseki ukuba axhaswa yinzululwazi okanye akunjalo, asetyenziswa ngokuqhelekileyo ekunyangeni ngokwesintu;

4.40 Nangona iinjongo zalo Mthetho ziquka ukulawulwa kweendidi ezithile zabanyanga ngokwesintu, lo Mthetho awuxeli ukuba zeziphi na ezo ndidi. Oku kwenziwa nzima kukuba “umntu onyanga ngokwesintu” uchazwa njengomntu obhalisiweyo ngokwalo Mthetho. Into yokuba lixhwele kuphela elichaziweyo yenza ukuba azibuze ukuba lolu kuphela na udidi olwamkelwayo ngulo Mthetho. Nangona kunjalo, ngoku kuthathwa ngokuthi bonke abanyanga ngokwesintu ababekho ngaphambi kokuba kubekho lo Mthetho bayamkelwa.

4.41 Olu phando aluyi nokuya ekusileleni okubonakeleyo kumthetho olawula abanyanga ngokwesintu; oko kungaphaya kwemida yolu phando. Sihlolisisa ngokufutshane umthetho ukubonisa amanyathelo athatyathwe ngurhulumente ngenjongo yokulawula icandelo elithile, ngokuvumelana nokwamkelwa kwezinto zenkcubeko kuMgaqo-siseko. Injongo

yolu phando ikwakukugxininisa imingeni yokulawula isenzo esingqiyame kubugqwirha okanye ekusetyenzisweni kwamandla angaziwayo, nto leyo esondelelene nomsebenzi wabanyanga ngokwesintu.

c) Okunye okwenzekileyo kwimithetho yepalamente

4.42 Sekulixesha elide abantu baseMzantsi-Afrika bezama-zamana nemikhwa eyingozi yobugqwirha neziphumo zayo ezibi. Iinkundla ziqhubekile zichophela amatyala olwaphulo-mthetho abandakanya ukwenzakaliswa kubugqwirha. Kwiminyaka yokugqibela yoo-1980 neyokuqala yoo-1990 kuye kwanda ukwenzakaliswa kwabantu ngenxa yobugqwirha, laza laphunguka kakhulu inani lababulawa ngokuthakathwa kwaba ngababulawelwa ukwenza amayeza.

4.43 Ngo-2007, kwilinge lokomeleza izixhobo ezisetyenziselwa ukulwa nokwenzakaliselwa ubugqwirha, iPalamente yaphumeza i*Criminal Law (Sentencing) Amendment Act* 38 ka-2007 (UMthetho Wokugweba). Weza notshintsho ekohlwayelweni izenzo ezinentsi yokwenza nobugqwirha nokutyhuthulwa kwamalungu omzimba. Makuqatshelwe ukuba olu tshintsho lolwezenzo zolwaphulo-mthetho esekuthethiwe ngazo kwi*Human Tissue Act* nakulo Mthetho oqwalaselwayo ngoku. Kuyacaca ukuba indlu yowiso-mthetho yabona imfuneko yokuza namanyathelo angqongqo ngakumbi okohlwaya abantu abatyholwa ngolwaphulo-mthetho ngokoMthetho Wokugweba.

4.44 Isiqendu 5 soMthetho Wokugweba esenza utshintsho kwiShedyuli 2 ye*Criminal Law Amendment Act* ka-1997, sithi:

(a) ngokuthi kwiCandelo 1 emva kwesiqendu (d) kongezwe iziqendu ezixela iindidi “zokubulala”:

(e) ixhoba labulawa ukuze kutyhuthulwe ngokungekho mthethweni ilungu lomzimba, okanye lafa ngenxa yokutyhuthulwa kwelungu lomzimba;

(f) ukufa kwexhoba kwaba sisiphumo sesenzo esikukona esixelwe kwisiqendu 1 (a) ukuya ku-(e) se*Witchcraft Suppression Act* 3 ka-1957;

...

4.45 Injongo yoMthetho Wokugweba kukohlwaya abenzakalisa abanye ngobugqwirha endaweni yokohlwaya abantu abasebenzisa amalungu omzimba afunyenwe xa kubulawa abantu bebulawelwa ukwenza amayeza (oko kukuthi, abasekugqibeleni kwisenzo).

Isiqendu 1 soMthetho Wokugweba sithi lowo ochophele ityala makasebenzise okwakhe ukuqonda malunga nokuba agwebe isigwebo esisisinyanzelo sokuvallelwa ubomi bonke entolongweni xa kubulawelwe ukutyhuthula amalungu omzimba, okanye xa kubulawelwe ukwaphula isiqendwana (a) ukuya ku-(e) se *Witchcraft Suppression Act*.

4.46 Nasemva kokuba uphunyeziwe uMthetho Wokugweba, siye saqhubeka isankxwe esifuna ukuba urhulumente makabe qatha kakhulu kubantu abasebenzisa amayeza awenziwe ngamalungu omzimba, kuba abo bantu ngabo abadala imfuneko yala mayeza. OwayenguMphathiswa Wabasetyhini Nabantwana Nabaneziphene wacebisa ukuba mazibe qatha nangakumbi izohlwayo xa umntu ebulawelwe ukwenza iyeza, wacebisa nokuba kuphuculwe indlela yokubika izenzo zolwaphulo-mthetho zokubulawelwa ukwenza amayeza.

4.47 Ngo-2007 njalo, iMpumalanga yazama ukuqulunq' umthetho wobugqwirha. Akucaci ukuba kungani eli phondo lalifuna ukuqulunq' umthetho olawula ubugqwirha, phezu kokuba ukho umthetho wepalamente welizwe lonke wobugqwirha—oko kukuthi, i *Witchcraft Suppression Act* noMthetho Wokugweba. Abanye bathi mhlawumbi kungenxa yokubonakala kukarhulumente ecotha ukuwuqwalasela ngokutsha umthetho wepalamente ongobugqwirha.

4.48 INdlu YoWiso-mthetho YaseMpumalanga yeza necebo loMthetho Oyilwayo Wobugqwirha WaseMpumalanga ka-2007, onjongo yawo 'yayikukulwa ubugqwirha kwiphondo, ukuxela imigqaliselo yokuziphatha yabanyanga ngokwesintu, ukuxela imisebenzi yeenkokeli zomthonyama nokulungiselela izinto eziyelele kwezi”.

4.49 Injongo yoMthetho Oyilwayo Wobugqwirha WaseMpumalanga yayikukwenza kube lulwaphulo-mthetho ukuzingela umthakathi nokunuka umntu ngobugqwirha, nokuzenza ngathi uyathakatha. Kananjalo lo Mthetho Oyilwayo wawubalawula ngokunqongqo “abanyanga ngokwesintu”.

4.50 Abanyanga Ngokwesintu neSAPRA bawuchasa lo Mthetho Oyilwayo baza bathumela izimvo kurhulumente waseMpumalanga. Abanyanga Ngokwesintu bawuchasa lo Mthetho Oyilwayo ngelithi “usibuyisel’ emva, unobuhlanga, ungecala lobuKristu, awuvumeli ukuba kukhululekwe, [kwaye] awuzihloneli iinkolelo zabanye abantu zonqulo...”

ISAPRA yona yakuchasa ukwenziwa zibe lulwaphulo-mthetho izinto ezenzayo, nokunyhashwa koMgaqo-siseko okubandakanyekileyo.

4.51 Lo Mthetho Oyilwayo wayekwa ungadange uphunyezwe ube ngumthetho. Mhlawumbi kwaba ngenxa yokuchaswa kwawo ngAbanyanga Ngokwesintu neSAPRA.

2 Ukuvisisana nokungavisisani kwe*Witchcraft Suppression Act* noMgaqo-siseko

4.52 Yinto eyaziwayo ukuba okutshiwo yi*Witchcraft Suppression Act* kuyawanyhasha amanye amalungelo abantu abanjengabaHedeni neenkokeli zomthonyama, abathi izenzo ezithile ezinxulumene nobugqwirha ziyinxalenye yonqulo lwabo okanye iinkolelo zabo zenkcubeko. La malungelo akhuselwe nguMgaqo-siseko kwaye akanakunyhashwa ngendlela engathethelelwayo nguMgaqo-siseko.

4.53 Yinto eyaziwayo ukuba amalungelo akuMgaqo-siseko awavulekanga uhalala. Onke amalungelo akuMqulu wamaLungelo anokusikelwa umda, ukuba oko kusikelwa umda “kokunokubonelela nokuthethelekayo kuluntu olukhululekieleyo lwentando yesininzi”. Amanye amalungelo asikelwa umda kwalapha ngaphakathi kuMgaqo-siseko, amanye anokusikelwa umda ngokomthetho osebenza kuwonkewonke, osisiqendu 36 soMgaqo-siseko. Isiqendu 36(1) sithi:

Amalungelo akuMqulu wamaLungelo anokusikelwa umda kuphela ngokomthetho osebenza kuwonkewonke, kodwa ukusikelwa umda oko kube kokunokubonelela nokuthethelekayo kuluntu olukhululekileyo lwentando yesininzi oluhlonela isidima sokuba ngumntu, ukulingana nenkululeko, kuvelelwa zonke iinkalo emazivelelwe, eziquka

- a) ubunjani belungelo;
- b) ukubaluleka kwenjongo yokusikelwa umda;
- c) ubunjani bokusikelwa umda nenjongo yako;
- d) ikhonkco phakathi kokusikelwa umda nenjongo yako;
- e) nokusetyenziswa kweyona ndlela ingcathu yokuyifeza loo njongo.

4.54 Isiqendu 36 sixela iimfuneko emazijongwe ekwenzeni isigqibo sokuba ukusikelwa umda kuyathetheleleka kusini na. Oku kuthetha ukuba ukusikelwa umda kuyamkeleka ukuba kuyathetheleleka xa kujongwa iimfuneko ezixeliweyo—nto leyo eye yagxininiswa yiNkundla yoMgaqo-siseko kumatyala aliqela. Esi siqendu sithetha ngokuzibuza okukabini, okokuqala uzibuza ukuba linyhashiwe kusini na ilungelo, okwesibini uzibuza

ukuba ukunyhashwa kwalo kungathetheleleka na. Umahluko phakathi kwale mibuzo mibini kukuba kumbuzo wokuqala kujongwa kwindlela echazwa ngayo intsingiselo yelungelo, kanti kumbuzo wesibini kufunwa ukuthetheleleka komda.

4.55 Ukusikelwa umda okufunwa sisiqendu 36 kufunisa ukuba umthetho onyhasha ilungelo ube nenjongo eyamkelekayo, kwaye ufunisa ukuba kubekho ukulinga-lingana phakathi komonakalo odalwa ngumthetho onyhashayo nezinto eziza kuzuzwa luluntu koko kunyhashwa. Ukusetyenziswa komda kwacaciswa gca kwityala lika-*S v Makwanyane* apho inkundla yathi:

Ukusikelwa umda kwamalungelo oMgaqo-siseko ngenjongo enokubonelela neyimfuneko kuluntu lwentando yesininzi kubandakanya ukubeka esikalini izinto ezixabisekileyo ezikhuphisanayo. . . Into yokuba amalungelo angafaniyo anentsingiselo engafaniyo kwintando yesininzi, nakuMgaqo-siseko wethu, 'nakuluntu olukhululekileyo lwentando yesininzi olusekelwe kwinkululeko nokulingana' kuthetha ukuba akukho mlinganiselo opheleleyo onokuxelwa wokwenza isigqibo ngokuba unako na ukubonelela nokuthi uyimfuneko kusini na. Kunokumislewa imigaqo, kodwa ukusetyenziswa kwaloo migaqo kwiimeko ezithile kunokwenziwa kuphela ngendlela eyahlukileyo kuxhomeke kwityala ngalinye. Loo nto ayiphepheki kwimfuneko yokulinga-lingana, efunisa ukuba kubekho ukulinga-lingana kwezinto ezingafaniyo. Ekulinga-linganiseni, izinto emaziqwalaselwe ziquka ubunjani belungelo elisikelwa umda, nokubaluleka kwalo kuluntu olukhululekileyo lwentando yesininzi olusekelwe kwinkululeko nokulingana; injongo yokusikelwa umda kwelungelo nokubaluleka kwaloo njongo kolo luntu; ubungakanani bokusikelwa umda, ukuphumelela kwako, ingakumbi apho ukusikelwa umda kuyimfuneko, enoba isiphumo esinqwenelwayo sinokufezekiswa ngezinye iindlela ezingalinyhashi kakhulu ilungelo . . .

4.56 Ekwenzeni olu phando, kuyafuneka kuhloliswe ukuvisisana nokungavisisani kwe*Witchcraft Suppression Act* noMgaqo-siseko, ngenjongo yokwenza kucace ukuba kunokuthiwa gqi nomthetho wepalamente kusini na wokulawula lo mbandela. Kuyimfuneko ke ngoko ukuhlolisisa ulwaphulo-mthetho ngalunye oluxelwa ngulo Mthetho. Kwicandelo eliza kulandela apha ngezantsi, siqwalasela isiqendu ngasinye ngenjongo yokubona ukuba ukusikelwa umda kwamalungelo oMgaqo-siseko kuyathetheleleka kusini na.

a) Ukwalatha umntu njengegqwirha

4.57 Isiqendu 1(a) se*Witchcraft Suppression Act* sithi kusisenzo esikukona ukuba umntu

‘atyhole omnye umntu ngokuthi nguye obangele ukuba omnye umntu abe nesifo, okanye enzakale, okanye konakale impahla yakhe, emtyhola ngokuthi ukwenze oko ngokusebenzisa amandla angaziwayo, okanye emtyhola ngokuthi ungumthakathi’.

Esi senzo esikukona sinesohlwayo sama-20 eminyaka entolongweni ukuba kufe umntu ngenxa yokutyholwa, okanye ukuba kuveliswe ubungqina bokuba ummangalelwa “unomkhwa okanye udumo lokuba ligqirha okanye umzingeli womthakathi”. Kwezinye iimeko, isohlwayo yiminyaka elishumi entolongweni. Esi siqendu salo mthetho sikwenza kucace ukuba esi senzo esikukona sithathwa njengesibi kakhulu. Ukuvisisana okanye ukungavisisani kwesi senzo esikukona esikwesi siqendu kuza kuthethwa ngako emva kwethutyana.

4.58 Esi siqendu sibonakala sikuthintela ukumbiza omnye umntu ngokuthi uligqwirha okanye ukuthi omnye wenzakalise omnye ngamandla angaziwayo. Ngoko nangoko kubonakala kukho ukunyhashwa okuliqela kwamalungelo. Okokuqala bavalwa umlomo abantu kwinto abavumeleke ukuba bayitsho. Oku kunyhasha isiqendu 16 soMgaqo-siseko esithi “Wonk’ ubani unelungelo lenkululeko yokuthetha, eliquka---... inkululeko yokufumana ingcombolo okanye ukunika abanye ingcombolo okanye iingcamango”. Ukuba umntu ukholelwa ukuba omnye wenzakalise omnye ngamandla angaziwayo, okutshiwo sisiqendu 1(a) kuyamthintela ekuyithetheni loo nto. Xa sithi krwaqu nje, oku kubonakala ikukunyhasha inkululeko yokuthetha. Kukwanyhasha isiqendu 15 soMgaqo-siseko esithi “wonk’ ubani unelungelo lokwenza ngokwesazela sakhe, unenkululeko yokunqula, yokucinga, yokukholelwa, nokuba noluvo lwakhe”. Kwityala lika-*S v Lawrence* iNkundla yoMgaqo-siseko yathi:

Inqontsonqa yenkululeko yokunqula lilungelo lokuba neenkolelo zonqulo umntu akhetha ukuba nazo, ilungelo lokuzidandalazisa iinkolelo zonqulo esidlangalaleni engoyiki, engathintelwa okanye angxoliswe, nelungelo lokuyibonisa inkolelo yonqulo ngokunqula okanye ngokuyifundisa abanye nokuyisasaza.

4.59 Xa kujongwa nje ngaphezulu kungembiwanga nzulu, okutshiwo sisiqendu 1(a) kuyaliphazamisa ilungelo lokuba umntu azivakalise iinkolelo zakhe. Kodwa ke ezo nkolelo zinokuba yinxalenye yeenkcubeko ngeenkcubeko zaseMznatsi-Afrika neenkonzozo eziquka ukukholelwa kumandla angaziwayo. Kwangaxesha-nye, lo Mthetho ubonakala ujolise kwiinkolelo zenkcubeko zabantu baseAfrika ngobugqwirha. Kukho iinkolelo ngeenkolelo

eMzantsi-Afrika zokuba maxa wambi ukwenzakala kungavela kumandla angaziwayo. Isiqendu 31 sithi “Abantu abangabencubeko ethile, abangabonqulo oluthile, okanye abangabolwimi oluthile abanakubandezwa ilungelo, bekunye nabanye abantu boluntu lwakowabo — (a) lokuyonwabela inkcubeko yabo, lokunqula ngokonqulo lwabo, nelokusebenzisa ulwimi lwabo”. Kungabakho nokunyhashwa kwesiqendu soMgaqo-siseko kuba okutshiwo yi *Witchcraft Suppression Act* kungabonakala kucalula — xa kungembiwanga nzulu — kucalula ekusetyenzisweni kwesazela, nenkolelo nenkcubeko.

4.60 Kwixesha loMgaqo-siseko eMzantsi-Afrika, ukunyhashwa kwelungelo, xa kujongwa nje kungembiwanga nzulu, akuwenzi uphelele apho umbuzo wokuvisisana noMgaqo-siseko. Umbuzo uyaqhubeka ube ngowokuba kuyathetheleleka na oko kunyhashwa. Oko kuthetheleleka kunokwenzeka kwezinye zezinto ezitshiwo ngulo mthetho ezixelwe ngentla kumanqanaba ngamanqanaba emibuzo. Malunga nenkululeko yokuthetha, kungabakho umbuzo wokuba izityholo ziyintetho yentiyo kusini na. Malunga nokulingana, kukho umbuzo wokuba ukucalula kuyathetheleleka kusini na. Ukuphepha ingxubusho ende malunga nokuba uthini umthetho ngelungelo ngalinye, siza kuhlolisisa imibuzo yesiqendu 36; oku ke kulindeleke ukuba kugubungele uninzi lweengongoma ezivela kokunye ukusikelwa umda kwamalungelo.

4.61 Emva kokuqwalasela uhlobo lwamalungelo (abalulekileyo onke), into yokuqala ebalulekileyo kwisiqendu 36 kukufumanisa injongo yoko sikutshoyo. Kwenziwe kwacaca ukuba eMzantsi-Afrika ukwalatha umntu njegegqwirha kungakhokelela ekutshutshiweni kwaye kudla ngokubangela ukwenzakaliswa kwaloo mntu. Oku kungabangela nkqu nokufa nokuphazamiseka engqondweni. Kwinjongo yoko kutshiwo sesi siqendu kusenokuba kwakucingelwa nesini somntu, xa kuzanywa ukukhusela abasetyhini njengabona bantu badla ngokunukwa. Ukuba injongo yokukwalela ukuthakatha kukuphelisa ukubukulwa kwabo, ukuzingelwa nokwenzakaliswa kwabo balathwa njengamagqwirha, injongo ibonakala ivakala.

4.62 Isigaba esilandelayo sokuzibuza kukuzibuza uhlobo nobungakanani bokusikelwa umda. Ngokucacileyo, inkululeko yomntu yokuthetha neyokunqula zisikelwe umda, kodwa hayi kakhulu. Umntu akanakusuka nje atyhole omnye umntu ngokuthi usebenzisa amandla angaziwayo okanye amalathe njengegqwirha. Ingongoma ebalulekileyo eveliswa yiSAPRA yeyokuba abanye abantu ngoku basebenzisa uhlobo “oluhle”

lobugqirha. Ukusikelwa umda apha akunakuba kukhulu kangako kuba kuthintelwa into ecacileyo nebalulekileyo yonqulo.

4.63 Isigaba esilandelayo sokuzibuza kukuzibuza ngobudlelane phakathi kokusikelwa umda nenjongo yako. Ngaba ukwenziwa kube lulwaphulo–mthetho kwezityholo zokuthakatha kuyakuthintela ukuhlaselwa kwabatyholwayo? Kubonakala ngathi kungakho ubudlelane obuthethelekayo phakathi komthetho nenjongo yawo, njengoko ikukuthintela oko kutyholwa ngezohlwayo eziqatha. Kukwakho nombuzo wokuba loo mthetho waziwa kangakanani kwilizwe lonke, nto leyo engawenza ungabi nampumelelo kakhulu xa ungaziwa. Kodwa ke, yinto le efuna urhulumente ukuba afundise uluntu ngobukho baloo mthetho, kunokuba kube yinto enokufezwa ngumthetho uwodwa.

4.64 Into yokugqibela emakuzibuzwe yona yeyokuba ikho kusini na ‘indlela engcathu’ enokusetyenziswa ukufeza injongo nyomthetho wepalamente. Oko kukuthi, likho kusini na icebo lokulicutha kancinane ilungelo, kodwa libe elo cebo lisayifeza injongo yalo? Umbuzo apha ukukuba ngaba icebo elo ligubungela ummandla obanzi kakhulu kusini na. Ngamanye amazwi, kukho imfuneko yokucingisisa ukuba okutshiwo ngumthetho kubanzi kangangokuba kuzenza zibe lulwaphulo-mthetho na iindlela zokunqula ezaziwa ehlabathini liphela. Ekugqibeleni, eyona nto anomdla kuyo urhulumente kukuthintela ukwenzakaliswa nokubukulwa kwabantu abathakathayo, okanye abatyholwa ngokuthakatha. Xa kunjalo, akukho mfuneko yokuba urhulumente athintele konke ukubizwa komntu njengomthakathi, ngakumbi xa kungathethi nto embi – ngokutsho kweSAPRA. Ukuba banzi ngokugqithiseleyo komthetho akuthethi kuthi umthetho awunakwenziwa uvisisane noMgaqo-siseko. Umzekelo, kusenokuba okutshiwo ngumthetho kungaxananaziswa kutsho ukuba ukutyhola umntu ngelithi uyathakatha sukuba “kunenjongo yokumenza abukulwe okanye enzakaliswe, nokuba wenzakaliswa emzimbeni okanye ngokwasengqondweni”. Ingxaki kukuba loo njongo bungaveliswa lula na ubungqina bayo ngokusebenzisa amazwi athethiweyo, abonisa ukuba bekukho injongo. Ukuba umntu kwisihlwele sabantu abaphethe izikhali uyakhwaza esithi “Masihlasele abathakathi abakwindlu ethile nethile”, kungazicacela ukuba kukho injongo. Ngoko ke kubonakala ukuba kungafuneka umthetho ongekho banzi ukuze uvisisane noMgaqo-siseko.

b) Ukutyholwa kwegqwirha lelinye

4.65 Isiqendu 1(b) se *Witchcraft Suppression Act* sikwenza kube kukwaphul' umthetho ukuba umntu—

kwiimeko ezibonisa ukuba uzixela ngokwakhe okanye uzenza ngathi usebenzisa amandla angaziwayo, ubugqwirha, ukusebenzisa imilingo, ukudengisa umntu, atyhole omnye umntu ngokuthi ubangele ukufa, ukwenzakala, ukungenwa sisifo, okanye ukonakalelwa yimpahla.

Adweliswe ngobuyilo amazwi alo mthetho. Kuvakala ngathi uthintela ozixela okanye ozenza ngathi usebenzisa amandla angaziwayo ukuba athi umntu othile ungumthakathi owenzakalise omnye umntu. Ukuxhalaba ngalo mthetho kuyafana noko okumalunga nesiqendwana (a). Isiqendu 1(b) siyabalela abantu abacingelwa ukuba basebenzisa amandla angaziwayo ukuba mabathi umthu othile ebefuna ukwenzakalisa abanye ngendlela engaziwayo.

4.66 Indlela yopkuphicotha ukunyhashwa kwelungelo iyafana naleyo yesiqendu 1(a), ngaphandle nje kokuba umqathango ekuthetheni usebenza kuphela kumntu “ozixela okanye ozenza ngathi” usebenzisa amandla angaziwayo. Okutshiwo sisiqendu akukho banzi kangako, kanti nokunyhashwa kwelungelo akukho kukhulu. Kwakhona ukuthetheleleka kungaba sekufuneni ukuphepha ukutyholwa kwabantu abathile ngobugqwirha ukuze bangabukulwa, bangazingelwa, bangenzakaliswa. Ukulinganiswa kokusikelwa umda nenjongo okuyifezayo kuyafana, kwaye ke apha kungathetheleleka noko ngenxa yokungabi kukhulu kokunyhashwa kwelungelo. Ngaxesha-nye kunomdla ukucinga kwakhona ‘ngendlela engcathu yokufeza injongo’. Kusengaba yimfuneko ukukwalela ukutyhola komntu ozixela okanye ozenza ngathi usebenzisa amandla angaziwayo; singathatha ngokuthi oku kubhekisa kumagqirha. Igqwirha, njengomsebenzi walo, lisenokuba lenza nje ngokwesicelo somntu sokuba lixele ukuba othakatha loo mntu, kodwa lona igqirha lingenanjongo yakumenzakalisa loo mntu. Kodwa ukwalatha umntu njengomthakathi esalathwa ngumntu ohloniphekileyo ekuhlaleni kusenokuba yinto embi kakhulu ngokokude ifunise ukuba makathintelwe ekwenzeni kwakhe njalo, nokuba injongo kukwenzakalisa okanye akunjalo.

c) Ukusebenzisa omnye umntu afumane umthakathi

4.67 Isiqendu (c) se *Witchcraft Suppression Act* sithintela nabani na—

osebenzisa okanye ocenga igqirha, umzingeli-mthakathi okanye nabani na ongomnye ukuba axele umthakathi.

Esi siqedu salela umntu ekuyeni egqirheni ukuba lixele umthakathi. Siphelisa le nto apho iqala khona. Sigxuphuleka phakathi kwabantu abakholelwa kubathakathi, ngoko ke sinyhasha ilungelo ngendlela efanayo nexelwe xa bekuxovulwa isiqendu 1(a) ngenla. Kwakhona, ukuthetheleleka kokwenza njalo kokokuba kuthintelwa abantu bangazami ukuba umntu othile ungumthakathi. Oku kukugxuphuleka okukhulu ukuba akuzanywa cebo lokukunciphisa. Into engacaciyo yeyokuba xa umntu efuna ukwazi ukuba ngubani umthakathi ngaba kungenxa yokuba usoloko efuna ukumenzakalisa kusini na loo mntu. Ngoko ke, ukuze kuphepheke ukunyhashwa koMgaqo-siseko, kungayimfuneko ukusisikel' umda esi siqendu ngamazwi anjengokuthi “ngenjongo yokumenza abukulwe umntu okanye ngenjongo yokumenzakalisa emzimbeni okanye ngokwasengqondweni”.

d) Ukwalelwa kokusasaza ulwazi ngobugqwirha

4.68 Isiqendu (d) se *Witchcraft Suppression Act* sikwenza kube kwaphul' umthetho ukuba umntu—

athi unolwazi lobugqwirha, okanye olokusetyenziswa komlingo, aze acebise omnye umntu indlela yokuthakatha, yokwenzakalisa okanye yokonakalisa into, okanye anike omnye umntu engathi yeyokuthakatha.

Esi senzo sokwaphul' umthetho sinesohlwayo se fayini engagqithiyo kwiirandi ezintlanu, okanye ixesha elinokude lifikelele kwiminyaka emihlanu entolongweni.

4.69 Kwakhona, esi siqendu sibhalwe ngobuyilo. Akucaci ukuba yintoni kanye ethintelwayo, ngakumbi ngenxa yokusetyenziswa kwamagama athi “aze” nelithi “okanye”. Inxalenye yokuqala yesenzo esikukona ibonakala ikukwalela umntu ukuba athi unolwazi lobugqwirha okanye ukusetyenziswa komlingo. Ngaba oko kwanele ukwenza isenzo esilulwaphulo-mthetho? Akucaci, kodwa kubonakala ngathi akunjalo. Kukho ezinye iingongoma ezimbini ezifunekayo. Kufuneka kubekho umntu (a) ocebisa omnye indlela yokuthakatha okanye yokwenzakalisa omnye okanye impahla yakhe; okanye (b) anike omnye umntu indlela engathi yeyokuthakatha. Kubonakala kunokwenzeka ukufunyanwa unetyala lesenzo esikukona esinjalo ukuba umntu uthi unolwazi lobugqwirha aze anike

omnye umntu indlela yokuthakatha, noba ngaba akanayo injongo yokwenzakalisa omnye. Esi siqendu sihlobene kakhulu negama le *Witchcraft Suppression Act* esithetha ngokulwiwa kobugqwirha. Esi siqendu sithintela ukusasazwa kobugqwirha.

4.70 Xa kujongwa nje kungembiwanga nzulu, esi siqendwana sibonakala sinyhasa amalungelo aliqela, kuquka ilungelo lokukhokelwa sisazela ngokukhululeka, ilungelo lokunqula, nelokucinga, nelokukholelwa nelokuba noluvo. Njengoko sekukhankanyiwe, oku kuquka ilungelo lokusebenzisa iinkolelo umntu anazo. Xa sicinga ukuba kukho iinkonzo neenkubeko ezisebenzisa ukuthakatha eMzantsi-Afrika, kukwakho nokunyhashwa kwesiqendu 31. Kwakhona, kunokwenzeka kubekho othi uyacalulwa phantsi kwesiqendu 9 ngezizathu zesazela, inkolelo nenkcubeko. Into enomdla malunga nesiqendu 9 kusenokuba libango lokuba umntu ucaluliwe ngokobuni bakhe, njengoko ubugqwirha budla ngokwayanyaniswa nabafazi; ngenxa oku esi salelo singachaphaela izinto ezithile ezenziwa ngabafazi kuphela.

4.71 Kuvela umbuzo wokuba okutshiwo sesi siqendu kunokuthetheleleka na ngokwesiqendu 36(1) soMgaqo-siseko. Uhlobo lwelungelo lubalulekile, ke ngoko umbuzo olandelayo ungokubaluleka kwenjongo yokusikel' umda. Akucaci ukuba iyintoni injongo yokutshiwo sesi siqendu eyenza ukuba sithetheleleke.

4.72 Injongo ephambili kubonakala ikukuthintela ingozi ebangelwa bubugqwirha emntwini okanye empahleni. Esi sithintelo sibonakala sinento yokwenza nokusasazwa kobugqwirha ngokwenza abanye bafumane iindlela zokuthakatha. Ingxaki ekuzameni ukuqonda injongo kukufumanisa ukuba ukuba oku okucingelwayo kuchanile na, nokuthi kwenzakala kuni okunokwenzeka ebantwini. Kufanelekile ukuba urhulumente afune ukuthintela ukwenzakaliswa kwabantu emzimbeni okanye ngokwasengqondweni. Ubunzima busekubeni kunokuvunyelwa kuqulunqwe umthetho wolwaphulo-mthetho kusini na ngenxa yokukholelewa kumandla angaziwayo angenakungqinwa ngokwenzululwazi. Ngenxa yeziphumo ezilumezayo zokufunyaniswa komntu enetyala lolwaphulo-mthetho, kuye kwafunyaniswa kungebobulumko ukusekela izimangalo kwiimbono zonqulo ezingangqinwanga ngokwenzululwazi. Ngaxesha-nye, iKomishoni iyaqonda ukuba ukukholelwa kubugqwirha kunokusetyenziswa ukudala uloyiko kwabo bakholelwayo kubo. Abanye abantu basengavuma ukuba bayathakatha ngenjongo yokwenzakalisa abanye. Nokuba kubakho ngokwenene na ukwenzakala okanye akubikho, ukuzama kukodwa

kungabenza bangcungcutheke ezingqondweni abantu ekuhlaleni. IKomishoni inoluvo lokuba ukuba zenziwa zibe lulwaphulo-mthetho izenzo zobugqwirha, kumele kwenziwe oko kujoliswe kwinjongo abe enayo umntu xa esenza isenzo eso.

4.73 Ubunjani nobungakanani bokusikelwa umda kuchaphazela ibathwana labantu, kwaye akuyi kuba sisithintelo ekwenzeni imisebenzi yabo evumelekileyo emthethweni. Ngaba ukusikelwa umda kuhlobene nenjongo? Ukwalelwa kokunika abanye ulwazi lobugqwirha kuza kukusikel' umda oko, kuze kusikel' umda nomonakalo onokubakho. Ikho kusini na indlela engcathu yokufeza injongo? Okutshiwo ngumthetho kubanzi kakhulu kuba kuquka zonke iintlobo zokuthakatha, endaweni yokuba kuquke eziyangozi kuphela.

4.74 Ekugqibeleni, umbuzo ngowokuba ingozi yokwenzakalisa ngamandla angaziwayo esekelwe kuninzi lwabantu baseMzantsi-Afrika inokuba yinjongo efanelekileyo kuMgaqo-siseko, xa kungengabo bonke abantu baseMzantsi-Afrika ababona ngolo hlobo kwaye kungekho nobungqina. Kunjengokuba itshilo iKomishoni, indlu yowiso-mthetho ingangenelela ukwalela ukuthakatha okunokubangela ukudandatheka ezingqondweni zabanye.

e) Ukwalelwa kokuthakatha

4.75 Isiqendu (e) se *Witchcraft Suppression Act* sikwenza kube kukwaphul' umthetho ukuba umntu athi—

ngokucetyiswa liggirha okanye ngumzingeli-mthakathi okanye ngomnye umntu, ngokuzenza ngathi unolwazi lokuthakatha, asebenzise iindlela ezithi, ngokwelo cebiso okanye ngokwenkolelo yakhe, yenzakalise omnye umntu okanye into yakhe.

Sesi siqendu esalela ukuthakatha okunjongo yako ikukwenzakalisa umntu okanye ukubangela umonakalo kwinto. Ukunyhashwa kwelungelo kulandela inkqubo ekwisiqendwana (d). Nenqubo yokufumanisa ukuthetheleleka iyafana. Umbuzo kukuba kuyafaneleka ngenene kusini na kwixesha ledemokrasi ukukwalela ukusebenzisa amandla angaziwayo okwenzakalisa abanye. Ingxaki apha, kwakhona, kukuba asingabo bonke abantu baseMzantsi-Afrika abakholelwa kwelokuba ungabakho nyhani umonakalo, kwaye ezi nkolelo azinakungqinwa ngokwenzululwazi. Ukuba umntu, esesithe ekhayeni lakhe,

uthi “ndifuna ukuba imimoya yenzakalise ushani-bani”, ngaba oko kufuneka kwalelwe? Akunjalo, ukuba kubonakala kungenakubakho monakalo oza kwenzeka. Kodwa ukuba kukholelwa kwinto yokuba ungabakho umonakalo, xa kunjalo indlu yowiso-mthetho inganezizathu zokungenelela ngenxa yokuba kukho injongo yokwenzakalisa, kwakunye nokudandatheka engqondweni okwenzeka kwabo ezibhekiswe kubo ezi zisongelo. Ingxaki apha kukuba umthetho uvula ithuba lokwenza zibe lulwaphulo-mthetho izenzo ezichaswe luninzi lwabantu, kwaye oko kwenziwa kwazo zibe lulwaphulo-mthetho kunyhasha amalungelo abanye. Ngokuqhelekileyo kuye kuthathwe ngokuthi kuyingxaki ukwenzakalisa omnye ngokusekelwe kwinkolelo engaqinisekiswa yomnye umntu. Nalphi na inyathelo likarhulumente lokwenza into ibe lulwaphulo-mthetho kufuneka lisekelwe kubungqina obucacileyo bokuba nenjongo yokwenzakalisa kwalowo wenzakalisayo, okanye abe nenjongo yokubangela ukudandatheka okukhulu engqondweni.

f) Ukwalelwa kobugqwirha nokuxel’ ithamsanqa ngenjongo yenzuzo

4.76 Isiqendu (f) sikwenza kube kukwaphul’ umthetho ukuba umntu—

ngenjongo yenzuzo asebenzise amandla angaziwayo, ubugqwirha, ukwenz’ imilngo, ukuxel’ ithamsanqa, okanye ukwenza ngathi unobuchule okanye ulwazi lwenzululwazi yemimoya yokufumanisa apho ikhoyo into ekucingelwa ukuba ibiwe okanye ilahlekile.

Sesinye isiqendu esididayo esi esinokufunyaniswa siphuthile ngenxa yokuba mbaxa ngentsingiselo nokungacaci. Sivakala sisalela ezi zinto zintathu: (a) ukwenza ngathi usebenzisa amandla angaziwayo ngenjongo yenzuzo; (b) ukuxel’ amathamsanqa (ngenjongo yokwenz’ inzuzo okanye kungeyiyo loo njongo); (c) usebenzisa uncedo lwamandla angaziwayo, wenze ngathi angawufumana umkhondo wento ebiweyo okanye elahlekileyo.

4.77 Ngaphandle kwamalungelo akhankanywe ngentla, nokunyhashwa kwawo okusenokwenzeka, esi siqendu sisekelwe kwisiqendu 22 soMgaqo-siseko esithi: “Wonke ummi unelungelo lokuzikhethela urhwebo alufunayo, okanye umsebenzi ofundelweyo, ngokukhululeka. Ukurhweba, okanye ukwenza umsebenzi ofundelweyo kusengalawulwa ngumthetho”. Kungafaneleka ukubuza ukuba kungani umntu engenakusebenzisa

ubuchule bakhe bokuxel' amathamsanqa ukuze aziphilise. Ngokucacileyo, ukho umthetho okulawulayo oku, kodwa ukuba loo mthetho awuthetheleleki, usenokungabi "ngumthetho ofanelekileyo". Ukuba asisebenzi isiqendu 22, umntu angabhenela kwilungelo lokuba nesidima sokuba ngumntu elikwisiqendu 10, ekunokuthiwa liquka ilungelo lokuziphilisa ngendlela umntu anokuziphilisa ngayo. Nesiqendu 12 singachaphazeleka, ilungelo lokukhululeka nelokukhuseleka komntu nelokukhuseleka emzimbeni nasengqondweni.

4.78 Uyavela kwakhona umbuzo wokuthetheleleka. Okutshiwo apha akunanto yakwenza ngokungqalileyo nokwenzakalisa abanye, koko kunento yokwenza nokusebenzisa amandla angaziwayo ngenjongo yenzuzo. Ungena njani urhulumente apha? Urhulumente usengathi uzama ukukhusela abantu ekukhohlisweni bahlawule imali beyihlawulela iinkonzo eziyinkohliso. Kubonakala ukuba kujoliswe "ekuzenzeni ngathi" kwabantu. Mhlawumbi kuyafana nokwalelwa kobuqhetseba, ukukhusela abantu kwabo bathi banamandla angaziwayo babe bengenawo. Ingxaki kukuba uza kwaziwa njani ozenza ngathi unobuchule ngokwenyani, mayela namandla angaziwayo, kuba yinto engenakungqinwa ngokwenzululwazi le. Ngendlela eyiyo i*Witchcraft Suppression Act* isengathintela ukusetyenziswa kwamayeza esintu, nto leyo evumelekileyo ngokweminye imithetho yepalamente.

4.79 Ngaphezu koko, kuyangqubana nenkululeko yomntu ukuxelela abantu ukuba mabathenge ntoni, bangathengi ntoni. Abanye abantu bakholelwa kumayeza asekhaya, nakokunye okungalawulwayo ngurhulumente. Kungani kuzezi zinto kuphela? Ubunjani nobungakanani bokusikelwa umda kukhulu kwabo abathi banala mandla njengoko bengenakuzuzwa nto konke-konke kuwo. Njengoko ingacacanga injongo, akucaci ukuba ingahlolwa imibuzo emibini yokugqibela yokusikelwa umda. Esi siqendu sesona singathethelelekiyo nesiingavisisaniyo noMgaqo-siseko. Kubonakala ngathi indlu yowiso-mthetho yayingaqinisekanga ukuba kungakanani na ukusikelwa umda kuba zincitshisiwe izigwebo zesenzo esikukona esikwisiqendu (f) xa zithelekiswa nezinye ezikwi*Witchcraft Suppression Act*. Kodwa ke ukwenziwa kube lulwaphulo-mthetho kona akuvisisani noMgaqo-siseko.

g) Izenzo ezikukona

4.80 Zishiya-shiyaniswa ngokwamanqanaba obubi bazo izenzo ezikukona. Ezona zimangalo zinzima kujongwe ngazo ukuba kupheliswe umkhwa wokutyhola abanye ngobugqirha. Njengoko sibonile, le yeyona njongo ithethelelekayo kwiinjongo ze *Witchcraft Suppression Act* kwisiqu 1(i), nangona irhaneleka ukuba ayivisisani noMgaqo-siseko. Inxalenye yokuqala yaso iyavakala: ukutyhola omnye umntu ngobugqirha kubi kakhulu xa athe wabulawa loo mntu. Inxalenye yesibini yona iyaxaka: ububi besenzo buba bubi kakhulu ukuba ummangalelwa “kufumaniseke ubungqina bokuba ummangalelwa kulikakade lakhe okanye unodumo lokuba ligqirha okanye ukuba ngumzingeli-mthakathi”. Akucaci ukuba kuthethwa ukuthini xa kusithiwa “kulikakade” ukuba ligqirha. Kanti nokuthi “unodumo” akucaci ukuba kuthetha ukuthini, kwaye ukuvulel’ indlela izityholo nokuthi uluntu luzenze ngakumbi ezi zenzo ezikukona. Ngaphezu koko, akucaci ukuba kwenza mahluko mni ukuthi umntu otyhola omnye ngobugqirha uligqirha okanye ungumzingeli-mthakathi. Injongo yalo mthetho ibonakala ikukuthintela ukutyhola; ukuba kunjalo ifanele ikuthintele nokuba kwenziwa ngubani na. Akucaci ukuba kungani ukuba qatha kwesohlwayo kuxhomekeka ekubeni ngubani otyholayo endaweni yokuba kuxhomekeke ekubeni wenza ntoni. Ngenxa yoku, kubonakala ngathi le nxalenye yomthetho ayithetheleleki kwaye ngenxa yoku ayivisisani noMgaqo-siseko.

h) Ukwamkela ngokuthi kunjalo kungekho bungqina

4.81 Inxalenye yalo mthetho ethetha ngokwamkela into ngokungathi injalo kungekho bungqina, oko kukuthi isiqu 2 se *Witchcraft Suppression Act*, ithi ukuba kuthe kwatyholwa umntu ngobugqirha waza wabulawa, makuthathwe ngokuthi umntu lowo ubulelwe ngenxa yokwenziwa kwesenzo esikukona (ngaphandle kokuba kukho ubungqina obuphikisa obo). Kwiimeko ezininzi, iNkundla yoMgaqo-siseko ifumanise ukuba into yokufuna ukuba kube ngummangalelwa oza nobungqina bokuba umsulwa ayivisisani noMgaqo-siseko. Umbuzo obalulekileyo ngowokuzithethelela: ngaba kukho ubudlelane obucacileyo phakathi kokwenziwa kwesenzo esikukona nokubulawa? Ingxaki kukuba oku okwamkelwa ngokuthi kunjalo kubanzi kakhulu. Kukhankanywa umntu obuleweyo kodwa kungabikho zinkcukacha — umzekelo, senziwe nini eso sityholo? Ukuba senziwa eminyakeni elishumi ngaphambi kokubulawa komntu, ngaba eso sityholo sisenento yokwenza nokubulawa kwakhe? Ngelishwa, ulwaphulo-mthetho lokwenzakalisa namhlanje lwane kangangokuba umntu angabulawa ngaphandle kokumnxibelelanisa neso sityholo. Iimeko zokubulawa kwakhe nokwayamana kwazo nesityholo kufuneka

ziphandwe ukuze kuqondakale ukuba lukho kusini na unxibelelwano. Ngokuqhelekileyo, oko kuya kufuna uphando oluqhelekileyo lolwaphulo-mthetho. Xa kunje, kunokwenzeka ukuba oku kufunwa kobungqina bokuba msulwa kummangalelwa kuphikisana noMgaqo-siseko. Kufuneka kubekho ubungqina bokuba ukubulawa kunxibelelene nesityholo, ngakumbi njengokuba ziza kuba krakra iziphumo kumntu omangalelweyo.

4.82 Elokuphetha, apha siye saqwalasela iinxalenye ezibalulekileyo ze *Witchcraft Suppression Act*, ukuze siziqonde nokuze siqonde nokunyhashwa okunokwenzeka kwamalungelo asisiseko nokuthetheleleka koko kunyhashwa. Sibonisile ukuba zeziphi iinxalenye zomthetho ezinokuthi zilondolozwe, ukuba kunqweneleka ngolo hlobo, ukuba nje zenziwa zivisisane noMgaqo-siseko.

3 Okwenzeke kwamanye amazwe

4.83 Incwadana yokufun' izimvo iye yahlolisisa ubugqwirha kwamanye amazwe amabini aseAfrika, yahlolisisa ngakumbi indlela loo mazwe aye azisingatha ngayo iimeko zobugqwirha. Loo mazwe yiMalawi neZimbabwe. Lo mqulu wengxoxo uza kukhangela nakwamanye amazwe ambalwa aseAfrika, ukuze kuqondakale okwenzekileyo kuloo mazwe malunga nobugqwirha nokwenzakaliswa kwabantu okuhambisana nabo. Injongo yoku kukwenza ukuba kuqondwe bhetele indlela amanye amazwe aqubisana ngayo neengxaki zobugqwirha okanye ukwenzakaliswa kwabantu okuhambisana nobugqwirha. Sijongisisa ukuba kukho ububhetele obukhoyo na ngokuyenza ihambelane namaxesha angoku imithetho yobugqwirha. Umqulu wengxoxo uza kuthetha ngeCameroon (eNtshona-Afrika), ngeKenya (eMpuma-Afrika), ngeMalawi) (emazantsi-mpuma-Afrika) nangeZimbabwe (kumazantsi eAfrika).

4.84 Njengoko kuye kwatshiwo kulo mqulu wengxoxo, iinxalenye ezininzi zeAfrika ezazithathwe ngamakolonyali zinemithetho enjongo yayo yayikukuphelisa, nangoku isekukuphelisa, ukukholelwa kubugqwirha. Eminye yale mithetho midala kangangokuba iqala emva kwinkulungwane ye-19 okanye phakathi kwinkulungwane yama-20. Ukususela oko athi afumana inkululeko, amanye ala mazwe awayengawobukolonyali aye athabatha amanyathelo okujonga ngokutsha imithetho yawo yobugqwirha, ayijonga njengengqubanayo neenkolelo zoninzi lwabemi kuloo mazwe.

4.85 Uhlolisiso olwenziwe yintlangano ekumazwe ngamazwe ebizwa ngokuba yiHelpAge International (iHelpAge) lukhangele kumazwe aseAfrika, ngenjongo yokuqonda ukuba imithetho inokusetyenziswa na ukulwa ubugqwirha. INgxelo yeHelpAge ivelisa iingongoma ezinomdla nokufunyenweyo ngemeko yemithetho yobugqwirha kumazwe eye yakhangelwa kuwo.

4.86 Okokuqala, kuwo onke amazwe ekukhangelwe kuwo kukholelwa kakhulu kubugqwirha, kwaye kwiimeko ezininzi onke amacandelo oluntu ayakholelwa kubugqwirha. Kuye kusetyenziswe ubugqwirha ukuchaza amashwa athile ahlela abantu. Okufunyenweyo kubonisa ukuba kuninzi lwamazwe ekukhangelwe kuwo yiHelpAge, abantu abazisisulu ngabafazi (ngakumbi asebekhulile), abantwana, abantu abaziinkawu, nabantu abagula ngengqondo. Uluntu lubohlwaya ngeendlela ngeendlela abantu abatyholwa ngokuthakatha, abanye bayagxothwa ekuhlaleni, abanye benzakaliswe, babulawe nokubulawa.

4.87 Okwesibini, ekubeni onke amazwe ekuye kwakhangelwa kuwo ayengawobukoloniwali, amaninzi anemithetho yepalamente elungiselelwe ubugqwirha okanye ukwenzakaliselwa ubugqwirha. Imithetho yala mazwe kuza kuthethwa ngayo banzi apha ngezantsi. Yonke imithetho elawula ubugqwirha kula mazwe ayibuchazi ubugqwirha ukuba buyintoni na. Ukungachazwa kwabo kwenza ukuba kube nzima ukuwachophela amatyala, ngaloo ndlela okuninzi kuyekelwa kwiimantyi okanye iijaji ezichophela loo matyala.

4.88 INgxelo yeHelpAge iza neendidi ezine zemithetho esetyenzisiweyo ukulwa ubugqwirha:

- (a) imithetho ekwenza kube lulwaphulo-mthetho ukuthakatha;
- (b) ukusetyenziswa kweenkundla zakwantu;
- (c) imithetho enjongo yayo ikukuphelisa ukukholelwa kubugqwirha nekwenza kube lulwaphulo-mthetho ukwenza into kwabo banukwayo;
- (d) nokutshutshiswa kwabo bamangalelwe ngobugqwirha, kusetyenziswa imithetho ekhoyo yolwaphulo-mthetho.

4.89 Ku-(a) naku-(b), kuyavunywa ukuba bukho ubugqwirha. Injongo yemithetho yepalamente kukukhusela uluntu ekwenzakalisweni bubugqwirha. Ku-(c) naku-(d) akuvunywa ukuba bukho ubugqwirha, ngenxa yoko kukhuselwa abantu abatyholwa ngobugqwirha.

4.90 Okufunyenwe yiNgxelo yeHelpAge kuyanceda malunga nokulawulwa kobugqwirha. Ingxelo ibonisa ukuba imithetho yepalamente eyakhelwe abo batyholwa ngobugqwirha ayisebenzi kuba ayikunciphisanga ukukholelwa kubugqwirha, kwaye ayisebenzanga njengesithintelo kwizityholo zobugqwirha okanye ekwenzakaliselweni ubugqwirha.

4.91 Okunye okufunyanisiweyo kukungabikho kwemithetho enyanzelisayo elawula ubugqwirha. Ukunyanzelisa kuphantse kube yinto engenakwenzeka, ngakumbi apho abantu bonke bekholelwa kubugqwirha. Ingxaki ephambili kukungabufumani ubulungisa abo batyholwayo; nokungakuthembi ukusebenza komthetho kuthintela ukunyanzeliswa kwawo.

4.92 Inyaniso ikukuba xa kuthethwa ngobugqwirha, kuthethwa ngokuphambuka kwimigaqo eyaziwayo yomthetho, ngakumbi kwimithetho yolwaphulo-mthetho, kwaye oku kuyaxhalabisa. INgxelo yeHelpAge ikwabonisa ukuba xa kuchotshelwe amatyala obugqwirha, kudla ngokuphambukwa kwimigaqo eyaziwayo enjengokwamkeleka kobungqina beemeko nobungqina obungundiva, nobungqina bokubakho kwekhonkco phakathi kolwaphulo-mthetho olwenziweyo nesenzo esenziwe ngamandla angaziwayo. Njengoko kukhe kwakhankanywa kulo mqulu, ukungachazwa kokuba yintoni kanye ubugqwirha kuyo yonke imithetho elawula ubugqwirha kuzenzela ubunzima iinkundla ukuqonda ukuba buye babakho kusini na ubungqina bokuba lwenziwe ulwaphulo-mthetho. Kwelinye icala, omnye otyholwa ngobugqwirha akazazi izakhi zolwaphulo-mthetho amangalelwe ngalo. Oku ke kunyhasha ilungelo lokuxoxwa kwetyala ngendlela enobulungisa. Malunga nokusetyenziswa kweenkundla zakwantu, uhlolisiso olwenziwe yiHelpAge lufumanise ukuba ukusetyenziswa kwazo akuncedi kuba iindlela ezisetyenziswa kwezo nkundla ziyinxaki. Oku kubangelwa kukuba iinkundla zakwantu zithi ubugqwirha yinto ekhoyo kwaye ke ngoko uluntu kufuneka lukhuselwe kwiingozi zobugqwirha.

a) eCameroon

4.93 Njengakumazwe amaninzi aseAfrika, ukukholelwa kubugqwirha nokubusebenzisa kuxhaphakile eCameroon. Ubugqwirha buchazwa njengento yamandla angaziwayo, esenokuba yenziwa ngabathakathi bobubi, abantu abanamandla okulwa ubuthakathi obubi, okanye abantu abanamandla okuphilisa. Njengakwezinye iindawo (ekuza kuthethwa ngazo apha ngezantsi), abona bantu bazisisulu ngoomakhulu, abantwana abazizidalwa, abantu abaziinkawu, nabantu abagula ngengqondo. Abo banukwa ngokuthakatha bayenzakaliswa bagxothwe nokugxothwa ekuhlaleni. Into enomdla ngeCameroon kukuba inembali yokuxoxa amatyala abantu abanukwa ngokuthakatha.

4.94 ECameroon ubugqwirha bulawulwa yimithetho yasemva kobukoloni ali eyabakho emva kokukhululeka kwelo lizwe ngo-1960. Umthetho olawula ubugqwirha ngumthetho obizwa ngokuba yiPenal Code, ngakumbi isiqendu 251, 278 nesama-279. Isiqendu 251, ekusesona esithetha ngobugqwirha, sithi:

Nabani na owenza isenzo sobugqwirha, somlingo okanye sokuvumisa ekungenzeka sigxobhagxobhe ucwangco okanye inzolo eluntwini, okanye ekungenzeka senzakalise umntu okanye sonakalise impahla, nokuba ukwenza oko eza kufumana umvuzo okanye enye into, uya kohlwaywa ngokuvalelwa entolongweni ixesha eliqalela kwiminyaka emibini ukuya kwelishumi nangefayini yamakhulu amahlanu ukuya kwikhulu lamawaka ee*francs*.

Isiqendu 278 sithi ubugqwirha yinto eyenza isohlwayo sibe qatha ngakumbi kumatyala okubulala ngempazamo okanye kumatyala okubulala, size isiqendu 279 sithi ubugqwirha buthathwa njengokwenzakalisa umntu emzimbeni.

4.95 Ixesha elide emva kokubakho komthetho oyiPenal Code olawula ubugqwirha, kukhe kwabakho ukuzilazila ekuwunyanzeliseni. Kuye kwatshintsha oku malunga neminyaka yoo-1980 ngokuthi iinkundla ziqalise ukuchophela amatyala obugqwirha. Iijaji zinyanzeleka ukuba zisebenzise eyazo indlela ezibuqonda ngayo ubugqwirha; ngamanye amaxesha ziye zabafumanisa benetyala abantu abarhanelwayo ngokuthembela kubungqina babantu abanyanga ngokwesintu. Kuthiwa kunzima ukufumana ubungqina kumatyala obugqwirha, ngakumbi ngenxa yokuba abatshutshisi bakufumana kunzima ukuqiniseka ukuba ngamandla angaziwayo abangele umonakalo ekukhalwa ngawo.

4.96 Nangona kwenziwe iinzame zokusebenzisa umthetho ukulwa nobugqwirha, akubangakho mpumelelo ingako. Ukusa la matyala kwiinkundla zomthetho akubanga nampumelelo.

b) eKenya

4.97 Nalo eli lizwe elikwiMpuma yeAfrika lithiwe lwale ziinkolelo zobugqwirha. Abantu abanukwayo benziwa amakheswa, bayenzakaliswa (emzimbeni nangokwasengqondweni), maxa wambi babulawe.

4.98 EKenya, ubugqwirha bulawulwa yi *Witchcraft Act* ka-1925 engumthetho wobukoloniyali owabuye waphindwa emva kokuba likhululekile elo lizwe. Lo Mthetho ubala izenzo eziliqela zokuthakatha njengezenzo ezikukona: “kukwenza ngathi uyathakatha, kukuhamb’ usithi ebantwini unolwazi ngokuthakatha, kukuba namakhubalo okuthakatha”. Lo Mthetho uyakwalela kananjalo ukwenziwa kwezityholo ezingenziwa kusetyenziswa amagunya afanelekileyo. Njengayo yonke eminye imithetho kwilizwekazi leAfrika, lo Mthetho awubuchazi ubugqwirha ukuba buyintoni na. Kukwakho nePenal Code, ethetha nokwenzakaliswa kwabantu ngobugqwirha, kuquka ukubulala nokuphanga.

4.99 Ngokuqhelekileyo, ukukholelwa kubugqwirha akuthathwa njengento emnyenyisela isigwebo umntu kumatyala obugqwirha, ngaphandle kwalapho ixhoba lenze izinto ngendlela eyenze ummangalelwa wakholelwa ukuba bekusisenzo sobugqwirha.

4.100 I *Witchcraft Act* ayisetyenziswa njalo eKenya. Amatyala amaninzi achotshelwa ngePenal Code, yona enamatyala okubulala nokubulala ngempazamo.

c) eMalawi

4.101 Bakholelwa kakhulu kubugqwirha abantu baseMalawi, kwaye abantu abasoloko betyholwa ngokuthakatha ngoomakhulu. Kwela lizwe ukuthakatha kulawulwa yi *Witchcraft Act* ka-1911. Lo Mthetho awubuchazi ubugqwirha, unganiki nesikhokelo sokuba makasingathwe njani amatyala obugqwirha. Inkoliso yamatyala obugqwirha ichotshelwa ngokwe *Criminal Procedure and Evidence Code*.

4.102 I*Witchcraft Act* yaseMalawi ifana ngezinto ezininzi ne*Witchcraft Suppression Act* yaseMzantsi-Afrika. Nayo ayikuvumeli ukutyholwa kwabantu ngobugqwirha, ukuzenza ngathi uyathakatha, nobukho bamagqirha okanye abazingeli bomthakathi.

4.103 Nangona iqondwa into yokuba injongo ye*Witchcraft Act* yaseMalawi kukukhusela abantu kwizinto eziyingozi zobugqwirha, bambi baye bathi lo Mthetho ushiywe lixesha. Waphunyezwa ngo-1911. Ingxaki ethe yabonakala kulo Mthetho yeyokuba awubuvumi ubukho bobugqwirha; ngenxa yoko ikwenza kube kukwaphul' umthetho ukutyhola umntu ngobugqwirha. Uninzi lwabantu luthi ukuthakatha kufanele kwenziwe kube kukwaphul' umthetho ukuze abantu bakhuseleke ekuthakathweni. Kuyavunywa kona ukuba lukho ucelomngeni ekubenzeni kube lulwaphulo-mthetho ubugqwirha, njengokuthi buza kuvela phi ubungqina njengokuba ubugqwirha kuyinto esebenzisa amandla angaziwayo. Abo bawuchasileyo lo Mthetho ukhoyo bakhwiniswa kukuba awubakhuseli abangamaxhoba okuthakathwa.

4.104 Ubugqwirha busetyenziswa ukuchaza amashwa awehlela abantu. Kucingwa ukuba abathakathi bathakathela nje ukwenzakalisa abantu kuphela, kwaye abathakathi babonwa njengabakwaziyo ukubazisela amashwa abantu. Kuxhaphakile ukunukwa kwabantu eMalawi; abanukiweyo bayohlwaywa ngandlel' ithile — babethwe, batshatyalaliselwe impahla, babulawe nokubulawa. Ngaphandle kokunukwa, bayazingelwa nokuzingelwa xa kuvakala ukuba abanukwayo bakwafundisa abantwana ukuthakatha, okanye xa kuvakala ukuba ngumthakathi obangele ukufa komntu okanye obangele amashwa akhe.

4.105 Ngokungafaniyo naseMzantsi-Afrika, abantu abaninzi baphambi kweenkundla ngenxa yokunukwa. Abanuka abanye bona abafane benziwe nto.

4.106 IMalawi iqalise ukuwuqwalasela ngokutsha umthetho wayo wobugqwirha. IKomishoni Yokuguqulwa Kwemithetho YaseMalawi iphonononga indlela engaguqulwa ngayo i*Witchcraft Act*. NgoAprili 2009, iKomishoni Yokuguqulwa Kwemithetho YaseMalawi yapapasha incwadana yokufun' izimvo ngenjongo yokwenz' iinguqu kumthetho wobugqwirha welo lizwe. Ukuguqulwa komthetho kwafunwa luluntu, lusithi

i*Witchcraft Act* yaseMalawi ihambela kude neenkolelo ezaziwayo zabantu baseMalawi. I*Witchcraft Act* yaseMalawi ithatha ngokuthi yinto engekho ubugqirha, kodwa loo nto iphikisana neenkolelo zabantu baseMalawi.

4.107 Ezinye zezimvo ezithunyelweyo zisabela kwincwadana yokufun' izimvo yaseMalawi zixhasa ukuba mawulondolozwe lo mthetho ukuze ukhusele abafazi kwizenzo eziyingozi. IBar Human Rights Committee (BHRC) ithi akukho mfuneko yokuwuguqula lo mthetho kuba uvisisana nemithetho yamazwe ngamazwe yamalungelo oluntu ekhusela abafazi. IBHRC ithi into enokwenziwa kukomeleza okutshiwo ngumthetho okhoyo ngokuthi gqi namacebo angengawo awomthetho, njengokufundisa uluntu.

4.108 Incwadana yokufun' izimvo yathetha nangokubukulwa kwabantwana betyholwa ngokuthakatha. Ekuphenduleni kule ngongoma, iBHRC ithi lo Mthetho okhoyo waseMalawi uyabakhusela abantwana kwizityholo zokuthakatha. IBHRC yalatha kwisiqendu 3 nesesi-4 salo Mthetho, ezikwenza kube lityala ukubukulwa kwabantu njengamagqirha nokuxoxwa kwamatyala abo ngendlela ebuhlungu.

4.109 Ukuguqulwa komthetho eMalawi kumile kungokunje. IKomishoni Yokuguqulwa Komthetho YaseMalawi ithi oko kwathi kwapapashwa iNcwadana Yokufun' Izimvo ngo-2009 akukho ncwadana yimbi yokufun' izimvo eye yapapashwa.

d) eZimbabwe

4.110 NaseZimbabwe abantu balapho bayakholelwa kubugqirha, nangona ke kungezizo zonke iindawo. Ofundisise izifundo zonqulo, uMafico, uthi isizathu sokuba kungabi zizo zonke iindawo ezikholelwa kubugqirha kukuba kwamanye amatyala awayephandwa ngamapolisa kusithiwa kusetyenziswe izityalo ukubulala abantu, kufumaniseke zingenamandla xa zivavanywa. Kukwatshiwo loo nto xa izidumbu ziye zatyandwa ngenjongo yokufumanisa unobangela wokufa kusithiwa umntu ubulewe ngabathakathi abazixela ngokwabo, kodwa ukutyandwa kwezidumbu kufumanise ukuba abo bantu babulewe ngoonobangela abaqhelekileyo abayindalo. Kukwanjalo nangezidumbu ekuthiwe zityhuthulwe ngabathakathi, suke zafunyanwa ziphelele.

4.111 Kubikwa ukuba kukho umahluko kwindlela iinkundla zakwantu eziwasingatha ngayo amatyala obugqwirha nendlela eziwasingatha ngayo iinkundla zomthetho. Iinkundla zakwantu ziwasingatha zinenkolelo yokuba yinto ekhoyo ubugqwirha, kanti zona ezomthetho ziwasingatha zinenkolelo yokuba yinto engekho. Inkolelo yeenkundla zomthetho isekelwe kwindlela yokucinga ekwi *Witchcraft Suppression Act (Ordinance 14)* ka-1899, eyayilawula ubugqwirha eZimbabwe kwade kwaba ngunyaka ka-2006.

4.112 Injongo yalo Mthetho ka-1899 yayikukohlwaya abo balatha abanye njengamagqwirha. Lo Mthetho wawubuchaza ubugqwirha 'njengokuphosa amathambo, ukusetyenziswa kwamakhubalo nazo zonke ezinye izinto ezisetyenziswa ekuthakatheni. Izazi zentlalo yoluntu ezinjengo Chanvunduka zaziqiniseka le ndlela obabuchazwa ngayo, zisithi kuphosakele ukudibanisa ukuphoswa kwamathambo nobugqwirha, kuba ukuphosa amathambo yindlela yokuvumisa. Kwakutshiwo njalo nangokukwalela ukusetyenziswa kwamakhubalo kuba kukholelwa ukuba amakhubalo amaninzi akananto yakwenza nokuthakatha. Ukuze kuqondwe ukuba umntu ungumthakathi kusini na, indlela eyayisetyenziswa yayinenkohlakalo. Le ndlela yokufumanisa yagxekwa kanobom kusithiwa iphelelwe lixesha. Isiphetho ekwakufikelelwa kuso ngabo bangakholelwayo kubugqwirha sasiye sibe kukuba yinto nje ecingwa ngabantu ezingqondweni. Eli qela labantu libayamanisa ubugqwirha neemeko ezinjengobuhlwempu, ukwanda kwezifo, intiyo engenazizathu noloyiko.

4.113 Isiphetho ekungafikelelwa kuso ngobugqwirha eZimbabwe sesokuba ezinye izifundiswa zazikuvuma ukuba kukho ubugqwirha, zibe ezinye ziqinisekile ukuba yinto engekho.

4.114 Okufanele kukhankanywe kolu phando yimeko ethe yabakho ukususela oko kwathi kwaphunyezwa lo mthetho "wale mihla" waseZimbabwe, ikakhulu indlela iinkundla eziye zawasingatha ngayo amatyala obugqwirha. Umthetho omtsha wepalamente, i *Criminal Law (Codification and Reform) Act* ka-2006 (*Codification and Reform Act*), uyabuvuma ukuba bobugqwirha kwaye uyakwalela ukwenziwa kwezinto ezinxulumene nobugqwirha. Makuqatshelwe ukuba umthetho olawula ubugqwirha asingomthetho ozimele wodwa, koko ngumthetho walo lonke ulwaphulo-mthetho.

4.115 ICandelo VI lesahluko 2 se*Codification and Reform Act* sithetha ngezenzo zolwaphulo-mthetho ezinxulumene nobugqwirha; umxholo walo uthi “Ubugqwirha, ukuzingelwa komthakathi nezenzo zolwaphulo ezinxulumene nezo”. Eli candelo lizenze zacaca izenzo zolwaphulo-mthetho lo Mthetho onenjongo yokuzilawula. Lo Mthetho uyakwalela ukubandakanyeka kwizenzo ezidla ngokwayanyaniswa nobugqwirha, ukwalatha amagqwirha, ukusebenzisa iindlela ezingezizo ezendalo ukusombulula ulwaphulo-mthetho okanye ukoniwa; ukwaxela amanye amatyala umntu anokubekwa wona. ICandelo VI likwathi ukukholelwa kubugqwirha kuya kuba yinto emnyenyisela isigwebo umntu, hayi emthethelelayo, xa enze izenzo zolwaphulo-mthetho ezixelwe kulo mthetho.

4.116 Eli Candelo likwachaza amanye amagama asetyenzisiweyo. Amagama achaziweyo lelithi “ukunuka umntu” nelithi “iindlela ezingezizo ezendalo. Eli Candelo lithi “ukunuka umntu” kukuthi loo mntu—

- (a) usebenzise, usebenzisa okanye kungenzeka asebenzise okanye angakwazi ukusebenzisa iindlela ezingezizo ezendalo ukubangela—
 - (i) ukufa, ukwenzakala, isifo okanye ukugogeka; okanye
 - (ii) ukutshabalala okanye ukulahleka okanye ukonakala kwempahla nokuba yenjani na;
- (b) unomoya obangele, obangela okanye ekungenzeka ubangele, okanye ongakwazi ukubangela—
 - (i) ukufa, ukwenzakala, isifo okanye ukugogeka; okanye
 - (ii) ukutshabalala okanye ukulahleka okanye ukonakala kwempahla nokuba yenjani na;

Ukuchazwa kwelithi “iindlela ezingezizo ezendalo” kuquka ukuzingela umthakathi. Ngelishwa ke noko, elithi “ubugqwirha: lona alichazwanga.

4.117 Siye saqwalasela amatyala asezinkundleni ukuze sibone ukuba ziye zathini izigqibo zeenkundla njengoko kukho umthetho ka-2006. Kuphawuleka ukuba iinkundla aziwusebenzisanga umthetho ka-2006 ukusingatha amatyala obugqwirha. Okucacayo kukuba iinkundla zisebenzisa izenzo zolwaphulo-mthetho ezikwi*Codification and Reform Act*, kungezizo izenzo zolwaphulo-mthetho ezidweliswe kwiCandelo VI seSahluko 2 se*Codification and Reform Act*.

4.118 Kumatyala okubulala apho intsusa ibugqwirha, abamangalelwa bamangalelwa ngolwaphulo-mthetho lokubulala okulawulwa sisiqendu 47 se *Codification and Reform Act*. Nangona abamangalelwa kuloo matyala babengamangalelwanga ngezenzo zolwaphulo-mthetho zesiqendu 97 ukuya kwese-102, ubugqwirha bakhankanywa. Umzekelo, kwityala lika-*S v Simoyi* ummangalelwa wayehlabe uyise wafa bexabana, ngenxa yokuba ummangalelwa wayetyhole unina ngobugqwirha. Ubugqwirha abuzange buvele, koko bakhankanywa nje kancinane yinkundla xa igweba ummangalelwa. Ummangalelwa wagwetywa iminyaka eli-12 entolongweni ngokubulala. Kwityala lika-*S v Techu & Others*, ummangalelwa wayemangalelwe ngokubulala ngokwesiqendu 47 se *Codification and Reform Code*. Ukubulala kummangalelwa kuthiwa kwakubangelwe kukuba wayetyhola umfi ngokuthakatha. Ekugwebeni ummangalelwa iminyaka eli-18 entolongweni, inkundla yakuthatha njengento emnyenyisela isigwebo ukuthi wayekholelwa kubugqwirha. Kwityala lika-*S v Hamunakwadi* ummangalelwa wayebulele unina esithi uyathakathwa ngunina. Esi sityholo saba mandla emva kokuba siqinisekise ngamagqirha, esithi unina wayengunobangela wokungonwabi okwakusemtshatweni wommangalelwa. Nangona inkundla yathi ukukholelwa kubuthakathi yinto enyenyisa isigwebo ngokwasemthethweni, yakukhaba ukuzithethelela kwakhe ngokuthi wayeqhutywa kukurhanela ukuthakathwa, kuba isenzo esi akunakuthiwa wasenza ngomzuzu umsindo wawuphezulu.

e) Isiphetho

4.119 Abantu baseMzantsi-Afrika bangafunda kwiziganeko ezenzeke kwamanye amazwe kumazantsi eAfrika. Kubantu baseAfrika nabanye abantu bomthonyama, kukuzikhohlisa ukukhanyela ukuba ubugqwirha yinto esekhoyo. Okufunekayo kukuvuma kwelinye icala ukuba abantu bayakholelwa kubugqwirha, kanti kwelinye icala kufuneka kuphunyezwe imithetho elawula izenzo eziyingozi ezinxulumene nobugqwirha.

4.120 Ukubandakanywa kwabantu abanyanga ngokwesintu 'njengamangqina aziincutshe' kumatyala asezinkundleni obugqwirha nako kuye kwaxoxwa ngako kwamanye amazwe aseAfrika. Umzekelo, eCameroon iinkundla zomthetho zisebenzisa "abavumisi bobugqwirha" (*nkong*) abaneziqinisekiso ukuba baze kunika ubungqina xa abamangalelwa betyholwa ngobugqwirha, Nangona ilizwe laseCameroon lizenze zaba lulwaphulo-mthetho ngokusesikweni izenzo zobugqwirha, ukusetyenziswa kwabavumisi bobugqwirha kubonakala kukhuthaza kanye ezi nkolelo urhulumente azama ukuziphelisa.

C UKUWUPHONONONGA NEZINDULULO

4.121 Oku kuqwalaselwa ngokutsha kwe *Witchcraft Suppression Act* kwenzeka ngexesha xa yonke imithetho kwiRiphabliki yoMzantsi-Afrika kufuneka ukuba ivisisane noMgaqo-siseko. Xa wawuphunyezwa lo Mthetho kwakungekabikho kuhlonelwa kwamalungelo; ke ngoko kwakungekho mfuneko yokuba uvisisane noMgaqo-siseko. Lo Mthetho wawungazikhathalelanga iinkolelo abantu bomthonyama ababenazo ngelo xesha. Ukuze ulwe nabo bonke ubugqwirha nezenzo eziyingozi ezayamene nabo, lo Mthetho wasuka walwa nazo zonke iintlobo zomsebenzi wobugqwirha.

4.122 Uluntu luye lwaguquka ngokuguquka, ngakumbi eMzantsi-Afrika, apho okutshiwo nguMgaqo-siseko kongamileyo. Ukuthakatha akusenakujongwa kuphela ngendlela okujongwa ngayo ngabantu bomthonyama, xa kwayamene nobungendawo. Kukho amanye amacandelo oluntu asebenzisa into ayibiza ngokuba “bubugqwirha”, besithi basebenzisa ilungelo labo lokunqula. Amalungelo okunqula eli bathwana akanakubethwa ngoyaba, ngakumbi njengokuba kukho uMgaqo-siseko, ogxininisa ukukhuselwa kwebathwana labantu elinqulayo. Iinkolelo zenkcubeko zabantu bomthonyama, ezinye zazo ezinentsi yokwenza nezenzo zobugqwirha eziyingozi, nazo kuyafuneka ukuba zikhuselwe ngandlel’ ithile, kuba kaloku nezo nkolelo zikhuselwe nguMgaqo-siseko.

4.123 Lo Mthetho oqwalaselwa ngokutsha usekwimiqulu yomthetho; kuye kwasetyenziswa eminye imithetho ke ukusabela kwiinkxalabo zokuthakatha. Kodwa yonke le mithetho ayizithomalalisanga izenzo eziyingozi ezinxulumene nobugqwirha. Iinkundla azilutyeshelanga uxanduva lwazo lokunyanzelisa umthetho nolokukhusela abemi, kuba ziye zaqhubeka zibohlwaya abo baphula imithetho enjongo yayo ikukuthibaza ukwenzakaliselwa ubugqwirha.

4.124 Sivile kwamanye amazwe aneengxaki ezinjengezethu ukuba imicelimngeni edalwa kukukholelwa kubugqwirha ixhaphake kungekuphela nje eMzantsi-Afrika, koko nakwihlabathi liphela. Amazwe kwilizwekazi laseAfrika anengxubevange yemithetho, ikakhulu leyo ekubetha ngoyaba ukukholelwa kubugqwirha eluntwini, naleyo esekelwe kwiinkolelo zobugqwirha.

4.125 Lifikile ixesha lokuba ivunywe into yokuba baninzi abantu abakholelwa kubugqwirha, kuvunywe nento yokuba asizizo zonke iintlobo zobugqwirha eziyingozi. Kodwa ke, ezinye iintlobo ziyingozi ngokwenene. Ngoko ke kufuneka kubekho umahluko ocacileyo phakathi kokuthakatha nezenzo eziyingozi ezinxulumyaniswa nokuthakatha. Iinkundla zicelwa ukuba zichophele amatyala ezenzo eziyingozi ezinxulumyaniswa nobugqwirha, kungekuko ukukholelwa kubo. Ngenxa yoko iKomishoni indulula ukuba lo Mthetho ukhoyo, owoyisakalayo ukucacisa lo mahluko ngokwaneleyo, mawutshitshiswe.

4.126 UMthetho otshitshiswayo mawuthatyathelw' indawo ngumthetho wala maxesha othintela izenzo eziyingozi eluntwini. Yinyaniso kona ukuba sele ikho ngobuninzi kakakde imithetho enokusetyenziswa ukulwa izenzo eziyingozi, kuquka nemithetho yolwaphulo-mthetho neminye imithetho enjenge *Human Tissue Act*. IKomishoni inoluvo lokuba ngokwemeko ekuyiyo le mithetho ayibanga naluncedo lubhekele phi. Bekungafezwa lukhulu ukuba bekungathiwa gqi nomthetho omnye wokujamelana nezenzo eziyingozi ezinxulumyaniswa nobugqwirha. Mayela noku, iKomishoni indulula ukuba kuthiwe gqi nomthetho oya kujongana nezenzo eziyingozi ezinxulumyaniswa nobugqwirha. Kucetyiswa ukuba lo mthetho mawubizwe ngokuba "nguMthetho Wokwalela Izenzo Zobugqwirha Ezinxulumene Nokukholelwa Kubugqwirha", kwaye uya kuba licebo eliphelleleyo lokulungisa iingxaki ezinxulumene nobugqwirha.

4.127 Umthetho ocetywayo uya kulungisa iingxaki ezinjengokunukwa, ukuzingelwa komthakathi, ulwaphulo-mthetho oluqhutywa kukukholelwa kubugqwirha, nokubulawelwa amayeza. Ukuhlolwa koMgaqo-siseko kwesi sahluko kubonisile ukuba zinokuhlengahlengiswa njani iinxalenye ezithile zoMthetho okhoyo, okanye zinokuguqulwa njani ukuze zivisisane noMgaqo-siseko. IKomishoni indulula ukulawulwa kwezenzo ezinjengokutyholwa kwabantu betyholwa ngobugqwirha, izenzo zolwaphulo-mthetho ezinxulumene nobugqwirha nokubulawelwa amayeza. Umthetho ocetywayo uza kukwenza kucace kananjalo ukuba ukukholelwa kubugqwirha akuyondlela yokuzithethelela kumatyala amabi ngolo hlobo, kodwa kunokusetyenziswa ekunyenyiseni isigwebo. Umthetho ocetywayo uya kuxela nezigwebo amabagwetywe zona abantu abenze izenzo eziyingozi ezithintelwayo ngulo Mthetho. Iinkcukacha zomthetho ocetywayo zixutyushwe kwiSahluko 5 ngezantsi.

ISAHLUKO 5

IINDLELA NGEENDLELA ONGAGUQULWA NGAZO UMTHETHO

A Izenzo eziyingozi ezinxulumene nobugqwirha

5.1 Ukuthakatha nezenzo eziyingozi ezinxulumene nako zenza kucace izinto ezifuna ukulungiswa ngokwahlukana. Ukuthakatha kuye kwathiwa kuyindlela yokunqula nenkcubeko. Abo bathakathayo, nokuba bakwenzela unqulo okanye inkcubeko, bangabantu abambalwa ekufuneka bekhuselwe kuMgaqo-siseko. Kwelinye icala, izenzo eziyingozi ezinxulumene nobugqwirha ziyinto efuna ingqalelo ekhethekileyo ngenxa yeziphumo ezimanyumnyezi.

5.2 IKomishoni igxininisa lo mahluko kuba kubalulekile ukuwuqonda kwizinto zobugqwirha. Ukuthakatha, ngendlela okuchazwa ngayo ngabaninzi, kuquka nabaHedeni – abangabathakathi abazichaza ngendlela eyeyabo – asiyonto exhalabisa iKomishoni. Ezona zinto ezixhalabisa iKomishoni zizenzo ezahlula uluntu, ezivumela ukuzingelwa kwabathakathi nezibangela ukuba abantu baphile ngoloyiko.

5.3 IKomishoni ibone (kwiSahluko 4 ngentla) izinto ezifuna ingqwalaselo nokulawulwa. Kukunukwa kwabantu, ukuzingelwa kwabathakathi, izenzo zolwaphulo-mthetho ezinxulumene nobugqwirha, nokubulawelwa amayeza. Ezi zinto ziye zachotshelwa ziinkundla ithuba elide.

B Ukulawulwa kokuthakatha

5.4 Izimvo ezithunyelwe kwiKomishoni zokuqalisa olu phando zibonise izinto ezibalulekileyo emaziqwalaselwe xa kusenziwa inguqu kumthetho. Okokuqala, iingongoma eziveliswe kwiKomishoni ezibekwe phambi kweKomishoni zibonise imicelimngeni ekusajanyelwene nayo ngabantu abaninzi ngenxa yezenzo ezinxulumene nobugqwirha. Okwesibini, kukho izinto ngezinto ezifuna ukuphathwa ngendlela

elinganayo -- ezinjengabantu abathakathayo nabangamakhoba abeva iziphumo zezenzo eziyingozi ezinxulumene nobugqwirha.

5.5 IKomishoni iyaluqonda uxanduva lwayo lokukhusela amalungelo akuMqulu wamaLungelo, ngakumbi ilungelo lenkcubeko nelungelo lokunqula labantu abambalwa. Kodwa ke, iKomishoni iyaqonda ukuba la malungelo akavulwanga uhalala kwaye akanakusetyenziswa ngendlela eyenzakalisa abanye.

5.6 Uphando olukulo mqulu, ngakumbi amatyala asezinkundleni, lubonisile ukuba kumatyala asezinkundleni apho kubandakanyeke ubugqwirha, ukuthakatha akufane kube yimbambano. Isizathu soku sinokuba bubunzima obukhoyo ekuveliseni ubungqina bokuba umntu okunene uyathakatha. Imbambano idla ngokuba kwizenzo zolwaphulo-mthetho ezinxulumene nobugqwirha.

5.7 IKomishoni iziphulaphule izicelo zokuba benziwe bube lulwaphulo-mthetho ubugqwirha, ezinjengezo zithunyelwe yiRalushai Commission nayeminye imibutho ebalaseleyo. Ezo zimemelelo kufuneka zijongwe kunye nezimemelelo ezivela kubantu abathakatha njengenxalenye yonqulo lwabo okanye inkcubeko. Okudla ngokuba yimbambano *zizenzo eziyingozi* ezinxulumene nokukholelwa kubugqwirha.

5.8 IKomishoni iye yaxakana nengxaki yokuchazwa kwegama elithi “ubugqwirha”, kwaye oku kuchawa kwabo kuye kwalucelomngeni nakwabanye abaninzi. Ukubuchaza ubugqwirha kuye kwaba yimfuneko ukuze kucace ukuba yintoni kanye iKomishoni efuna ukuyilawula. Njengoko ukuchazwa kwabo okucetyiswayo kubonisa into yokuba ubugqwirha obungavumelekanga kubandakanya ukusetyenziswa kweendlela ezingaziwayo zokwenzakalisa umntu, izenzo ezinjengezo zabaHedeni nabanyanga ngokwesintu azinakuqukwa kumthetho ocetywayo.

5.9 Ngezizathu ezixelwe ngentla, iKomishoni indulula ukuba izenzo eziyingozi ezinxulumene nobugqwirha zilawulwe.

C Izenzo zobugqwirha eziyingozi ezingavumelekanga

5.10 Lo mqulu ubonise izenzo eziyingozi ezinxulumene nobugqwirha, neendlela eziluchaphazela ngayo uluntu. Kukho imithetho ngemithetho yokujongana nesibetho sokwenzakaliselwa ubugqwirha, kodwa kude kube namhlanje akufunyanwanga sisombululo. Yonke imithetho ejongene nobugqwirha inezigwebo eziqatha kubantu abamangalelwe ngolwaphulo-mthetho lokuthakatha okuyingozi.

5.11 Emva kokuba kuhlolwe uMgaqo-siseko, lo mqulu ufumanise izenzo ekusafuneka zithintelwe ukuqinisekisa ukuba ukulwa nolwaphulo-mthetho lobugqwirha kuyomelezwa. IKomishoni icebisa ukuba zingavunyelwa izinto ezilandelayo kumthetho ocetywayo:

- ukunukwa;
- ukuzingelwa komthakathi;
- ulwaphulo-mthetho olunxulumene nobugqwirha obuyingozi;
- nokubulawelwa amayeza.

5.12 Ezi zenzo emazingavunyelwa kuthethwa ngazo apha ngezantsi. Iinkcukacha zixelwe kuMthetho Oyilwayo oseluvavanyo opholeka lo mqulu wengxoxo.

1 Ukunukwa

5.13 Uphando olwenziweyo nezimvo ezifunyenweyo zivela kubantu abachaphazelekayo zibonisa ukuba ulwaphulo-mthetho lokunuka umntu lubi kakhulu. Ngokwe *Witchcraft Suppression Act* kukho isigwebo sokuvalelwa entolongweni esingagqithiyo kwiminyaka elishumi. Xa umntu ebulelwe ngenxa yokunukwa, isigwebo siyandiswa siye kuthi xhaxhe ekuvalelweni entolongweni iminyaka engagqithiyo kuma-20.

5.14 Iingxelo zolwaphulo-mthetho olwenzakalisayo, kusenzakaliswa abantu abanukwayo, azinakubethwa ngoyaba. Iyaxhalabisa into yokuba abantu ababa ngamaxhoba ngabantu abazisisulu, ingakumbi abasetyhini – oomakhulu ikakhulu.

5.15 Ukuhlolisiswa koMgaqo-siseko ekusebenzeni kokusikelwa umda kwamalungelo abantu abatyhola abanye, njengenkululeko yokuthetha namalungelo ekudlelwana ngawo ndawonye, kubonisile ukuba ukusikelwa umda kwamalungelo kungathiwa

kuyathetheleleka. Oku kungenxa yokuba injongo yokwalelwa kukuthintela ukubukulwa nokwenzakaliswa kwabo batyholwa ngobugqwirha. Ngokuvisisana nolu hlohisiso, iKomishoni indulula ukuba isithintelo kwizityholo sisikelwe umda kwezo meko apho injongo ikukubukula okanye ukwenzakalisa (emzimbeni okanye ngokwasengqondweni).

2 Ukuzingelwa kwabathakathi

5.16 Kubonisiwe kuphando olukulo mqulu ukuba abantu kwiindawo ezithile baya emagqirheni ukuya “kunuka” abathakathi. Ngokwangoku i*Witchcraft Suppression Act* iyakwalela ukuzingelwa komthakathi. Makuqondwe ukuba ukuzingelwa kwabathakathi kwenziwa ngenjongo yokubenzakalisa abo banukwayo. Ekuphela komahluko okhoyo phakathi kwezityholo zobugqwirha nokuzingelwa kwabathakathi kukuba ukuzingelwa kwabathakathi maxa wambi kwenziwa ngoncedo lwegqirha. Kwimimandla ethile oku kujongwa njengento embi kakhulu, kwaye kubangela ukwenzakaliswa kwabo balathiweyo. Akufanele kube kuyenzeka oku, kwaye kufuneka kuthintelwe.

5.17 Amatyala asezinkundleni esiwahlolileyo abonise indlela abathi abantu benzakaliswe ngayo xa bethe balathwa njengamagqwirha. Ekuphela kwendlela yokuyiphelisa le nto kukuyenza ingabikho mthethweni kuze kohlwaywe abayenzayo.

5.18 IKomishoni indulula ukuba makube kokungavumelekanga ukuzingelwa kwabathakathi, bezingelwa ngenjongo yokubabukula nokubenzakalisa.

3 Izenzo zolwaphulo-mthetho ezinxulumene nobugqwirha obuyingozi

5.19 Izenzo zolwaphulo-mthetho ezininzi zenziwa ngenxa yokukholelwa kubugqwirha. Liyinyaniso kambe elokuba uninzi lwabantu baseMzantsi-Afrika luyakholelwa kubugqwirha, kunjalonje kusoloko kukho uloyiko lokuthakathwa. Izinto ezifuna ukuqwalaselwa bubukho babantu abazixela ngokwabo ukuba benzakalisa abanye ngokusebenzisa ubugqwirha, kunye nabo aboyika ukuthakathwa, baze bazikhusele.

5.20 Ukuhlolwa kwamatyala asezinkundleni kubonise ukwenzakaliswa ngenkohlakalo kwabantu abaye batyholwa ngobugqwirha. Kula matyala awekho abonise ukuba abamangalelweyo bebengabathakathi ngenene. Umthetho okhoyo uyakwalela ukuthakatha—kubo bonke abathakathayo, kuquka namaWiccan. Umthetho ocetywayo kufuneka ube nesohlwayo kubantu abasebenzisa ubugqwirha obuyingozi okanye aboyikisa abanye ngelithi baza kubathakatha, kodwa ke loo mthetho kufuneka ungakuthinteli ukusetyenziswa kobugqwirha obungenabungozi bamaWiccan okanye abanyanga ngokwesintu.

4 Ukubulawelwa amayeza

5.21 Lo mqulu ubonisile ukuba ukubulawelwa amayeza kwenzeka xa kutheni. Maxa wambi abantu babulawelwa amayeza ngenxa yabo banyanga ngokwesintu ababacebisa ukuba bafumane amalungu omzimba. Abantu ababulawelwa le njongo kuba ngabantwana ebekufanele ukuba bakhuselwe ngokoMgaqo-siseko wethu. Isiqendu 28 soMgaqo-siseko sisifundisa ngokubaluleka kokukhusela amalungelo abantwana.

5.22 Lo Mthetho oqwalaselwa ngokutsha awuthethi nto ngokubulawelwa ukwenza amayeza. Kuthethwa ngalo mkhuba kwi*Sentencing Act*, yona ethi makuwiswe izigwebo eziqatha kwabo babulala ngenjongo yokutyhuthula amalungu omzimba. Okuqulethwe yi*Sentencing Act* akunanto yakwenza nokubulawa okunxulumene nobugqwirha.

5.23 IKomishoni ikuthatha njengento embi kakhulu ukubulawa ngenjongo yokutyhuthula amalungu omzimba kuze kwenziwe amayeza ngawo. OwayenguMphathiswa Wabasetyhini Nabantwana Nabaneziphene wacela ukuba mawuqwalaselwe umbandela wokubulawa kwabantu bebulawelwa ukwenza amayeza, kuze kwenziwe utshintsho kwimithetho yepalamente.

5.24 Uluvo lweKomishoni ngokubulawelwa amayeza lukukuba makohlwaywe wonk' umtu — abo babulala amaxhoba, nabanyanga ngokwesintu abathuma abanye ukuba babulale baze bafumane amalungu omzimba, kwanabo bawasebenzisayo ekugqibeleni loo malungu. IKomishoni inoluvo lokuba makuthintelwe izenzo zabo bonke abathabathi-nxaxheba, ngethemba lokuba oku kuya kulunciphisa olu lwaphulo-mthetho.

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IRIPHABLIKHI YOMZANTSI-AFRIKA

**UMTHETHO OYILWAYO WOKWALELWA KWEZENZO EZIYINGOZI EZINXULUMENE
NOKUKHOLELWA KUBUGQWIRHA**

(Ngokwemo ongeniswe ukuyo.....)

UMPHATHISWA WOBULUNGISA NOPHUHLISO LOMGAQO-SISEKO

UMTHETHO OYILWAYO

Injongo kukuthintela izenzo eziyingozi ezinxulumene nezityholo zokuba umntu uligqwirha; kukukhusela uluntu ekwenzakalisweni okudla ngokuhambisana nezenzo eziyingozi zobugqwirha; kukuzenza zibe lulwaphulo-mthetho izenzo eziyingozi ezinxulunyaniswa nokukholelwa kubugqwirha; kukwenza ukuba kubekho izohlwayo kwabo benza izenzo eziyingozi; nokulungiselela konke okunye okunxibelelene noku.

KUQULUNQWA UMTHETHO yiPalamente yeRiphabliki yoMzantsi-Afrika ngale ndlela ilandelayo:—

1 Ukuchazwa kwamagama

Kulo Mthetho, ngaphandle kokuba okunye okubhaliweyo kuwo kubonisa ngenye indlela—
“**izenzo zobugqwirha eziyingozi**” zizenzo eziqondwa ngabantu abaNtsundu ezibandakanya ngabom ukusebenzisa amandla angaziwayo ukusongela abanye okanye ukubangela—

(a) ukufa, ukwenzakala, isifo okanye ukugogeka komntu;

- (b) ukutshabalala, ukulahleka okanye ukonakala kwempahla neyaluphi na uhlobo; okanye
- (c) osebenzisa ukukholelwa nezenzo ezinxulumene nobugqwirha ukubangela ukukhathazeka engqondweni okanye ukoyika.

“ukuzingelwa komthakathi” sisenzo esenziwa ngenjongo yokwalatha umntu njengothakathayo;

“iyeza” liyeza lesintu elenziwe ngumntu owazi amayeza esintu;

“ulwaphulo-mthetho lwamayeza” kukwenziwa kwesenzo esingavumelekanga ngenjongo yokutyhuthula ilungu lomzimba ukuze kwenziwe iyeza.

linjongo zalo Mthetho

2. linjongo zalo Mthetho—

- (a) kukwazi izenzo ezinxulumene nobugqwirha obuyingozi nezityholo zokuba umntu wenza ubugqwirha obuyingozi eluntwini;
- (b) kukwalela izenzo eziyingozi ezinxulumene nokuthakatha nezityholo zobugqwirha;
- (c) nokwenza ukuba bohlwaywe abo benza izenzo eziyingozi ezinxulumene nobugqwirha.

Izityholo zobugqwirha

3. (1) Nawuphi na umntu otyhola omnye ngokusebenzisa ubugqwirha obuyingozi okanye obangela isifo okanye ukwenzakala komnye umntu okanye ukonakala kwempahla ngokuthakatha, ngenjongo—

- (a) yokubukula; okanye
- (b) yokwenzakalisa emzimbeni okanye ngokwasemzimbeni;

waphul’ umthetho kwaye esakufunyaniswa enetyala uya kugwetywa ifayini okanye ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka emihlanu.

(2) Xa kubulewe umntu ngenxa yesenzo esikukona esixelwe kwisiqendwana (1), esakufunyaniswa enetyala umbulali uya kugwetywa ukuvalelwa entolongweni isigwebo esingekho ngaphantsi kwesiqingqelwe amatyala okubulala.

(3) Xa umntu omangalelwe ngokuthakatha evuma ukuba uyathakatha, oko kuya kusebenza ekumnyenyiseleni isigwebo.

Ukuzingelwa komthakathi

4. (1) Nawuphi na umntu ocela uncedo lomntu onyanga ngokwesintu okanye lomnye umntu, ngenjongo yokwalatha omnye umntu njengegqwirha okanye ngenjongo yokumtyhola ngobugqwirha, aze abangele isifo, ukwenzakala kuloo mntu okanye ukonakalelwa yimpahla yakhe ngokusebenzisa ubugqwirha obuyingozi, waphul' umthetho kwaye esakufunyaniswa enetyala uya kugwetywa (**NB: NO SENTENCE MENTIONED HERE**) ukuba injongo—

- (a) ibikukubukula; okanye
- (b) ukwenzakalisa emzimbeni okanye ngokwasengqondweni.

(2) Umntu onyanga ngokwesintu, okanye nawuphi na umntu osebenzisa amandla angaziwayo akavumelekanga ukunceda omnye umntu ngenjongo yokwalatha umntu njengegqwirha okanye ukutyhola ngelithi umntu othile uyathakatha aze abangele isifo okanye ukwenzakala kuloo mntu okanye ukonakalelwa yimpahla yakhe ngokusebenzisa ubugqwirha.

(3) Umntu owenza okuxelwe kwisiqendwana (1) nesesi-(2) waphul' umthetho, kwaye esakufunyaniswa enetyala, uya kugwetywa ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka emihlanu, kuze kuthi ukuba kufe umntu ngenxa yokwalathwa, agwetywe isigwebo esingekho ngaphantsi kwesokubulala.

Ulwaphulo-mthetho olunxulumene nobugqwirha obuyingozi

5. (1) Nawuphi na umntu ozibonakalisa ukuba usebenzisa ubugqwirha obuyingozi waphul' umthetho.

(2) Xa umntu efunyaniswe enetyala lokwenza okuxelwe kwisiqendwana (1) uya kugwetywa ifayini okanye ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka emibini entolongweni.

Ulwaphulo-mthetho lwamayeza

6. (1) Nawuphi na umntu—

- (a) oba nenxaxheba ekubulaweni komntu ngenjongo ukuze atyhuthule ilungu lomzimba kuloo mntu;

- (b) oba nenxaxheba kwisenzo esikhokelela ekutyhuthulweni kwelungu lomzimba womntu; okanye
- (c) oba nenxaxheba ekurhwebeni ngamalungu omzimba womntu ngenjongo yokwenza amayeza, waphul' umthetho.
- (2) Kungakhathaliseki ukuba uthini na omnye umthetho, umntu—
- (a) ofunyaniswe enetyala lokwenza okuxelwe kwisiqendwana (1)(a) uya kugwetywa isigwebo esingekho ngaphantsi kwesokubulala;
- (b) ofunyaniswe enetyala lokwenza okuxelwe kwisiqendwana (1)(b) uya kugwetywa ifayini okanye ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka elishumi; aze
- (c) ofunyaniswe enetyala lokwenza okuxelwe kwisiqendwana (1)(c) uya kugwetywa ifayini okanye ukuvalelwa entolongweni ixesha elingagqithiyo kwiminyaka emihlanu.

Ukutshitshiswa kwemithetho nokulondolozwa kweminye

7. (1) Ngokulawulwa koko kutshiwo kwisiqendwana (2), umthetho oxelwe kwiSihlomelo 2 uyatshitshiswa, kwaye indawo etshitshiswayo ixelwe kumhlathi wesithathu weSihlomelo.

(2) Nasiphi na isenzo esikukona esenziwe okanye ekuthathwa ngokuthi senziwe ngokomthetho otshitshisiweyo sisiqendwana (1), nesinokwenziwa ngokwawo nawuphi na omnye uMthetho, sithathwa ngokuthi senziwe ngokwalo uMthetho.

8. Igama lawo nokuqalisa kwawo ukusebenza

Lo Mthetho ubizwa ngokuba nguMthetho Wokwalela Izenzo Eziyingozi Ezinxulumene Nokukholelwa Kubugqwirha, kwaye uqalisa ukusebenza ngomhla oqingqwe nguMongameli ngokwenz' isihlokomiso ku *Shicilelo-Mithetho*.

ISihlomelo

IMITHETHO ETSHITSHISWAYO

Inombolo yoMthetho nonyaka wawo	Igama lawo	Indawo etshitshiswayo
UMthetho 57	<i>i-Witchcraft Suppression Act</i>	wonke

ka-1957		
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