

# A legal perspective on African traditional medicine in South Africa\*

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## *Abstract*

In this article, the regulation of African Traditional Medicine (ATM) is considered in terms of the law and the national health system of South Africa, and with specific reference to HIV/AIDS. The level of recognition that ATM enjoys in the legal and healthcare systems at present is discussed and juxtaposed against the regulation of traditional medical practices in other African countries. The light in which these practises are viewed by indigenous peoples is also considered. The legal perspective(s) highlighted are analysed against the background of African governments' strategies to promote and preserve indigenous knowledge. Reference will consequently be made to the South African government's efforts to preserve (and promote) indigenous knowledge in the context of traditional medicine. A secondary theme is the existing competing discourses on HIV/AIDS and ATM in sub-Saharan Africa – ie how HIV/AIDS and ATM are generally perceived. It will be shown that specific discourses and perceptions hinder a true realisation of health rights for those infected with HIV/AIDS and also bar the full recognition and regulation of ATM practices. I argue for greater recognition for and regulation of ATM in South Africa's legal and national health systems especially when considering the potential positive impact of ATM therapeutic properties in the context of HIV/AIDS.

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## INTRODUCTION

Anthropological investigations into health care practices the world over have demonstrated that medical pluralism, or the existence and use of many different health care alternatives within a particular society, is the exception rather than the rule.<sup>1</sup> This is also true of South Africa. These health care alternatives represent various branches of medical practice and differing

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<sup>1</sup> Bradley P Stoner 'Understanding medical systems: traditional, modern, and syncretic health care alternatives in medically pluralistic societies' (1986) 17/2 *Medical Anthropology Quarterly* 44.

ideologies, each deriving from a separate historical and philosophical basis and each providing a different form or theory of treatment.<sup>2</sup> African Traditional Medicine (ATM) is one of the health care alternatives available to South Africans. It is also in many instances, the only source of medical care available for a large proportion of the population on the African continent.<sup>3</sup>

As African heads of state have declared the past decade (2001 – 2010) as a period for the development of ATM, it is appropriate to stand back and evaluate how far we have come with regard to the development of traditional medicine in Africa, and specifically how South Africa has fared.<sup>4</sup> I shall consider the social and legal status of ATM and traditional health practitioners in South Africa against the backdrop of the HIV/AIDS pandemic on the African continent. Although there has been progress in the recognition and regulation of ATM practices, adequate concrete measures and a commitment to learn from the knowledge and practices of alternative health care providers – especially in assisting with HIV/AIDS-related illnesses – lag behind.<sup>5</sup>

#### **THE RECOGNITION AND REGULATION OF AFRICAN TRADITIONAL MEDICINE**

The World Health Organisation (WHO) has played a significant role in promoting interest in ATM. In 1977, the thirtieth World Health Assembly of the WHO adopted a resolution promoting the development of training and research into traditional health systems.<sup>6</sup> In 1978 at the International Conference on Primary Health Care held in Alma-Ata, the WHO and UNICEF urged member states to foster collaboration between traditional and allopathic systems of health care as a means through which to achieve the goals of the primary health care initiative.<sup>7</sup> And in 2000, the WHO Regional Committee for Africa adopted a resolution recognising the value and

<sup>2</sup> *Id* at 44.

<sup>3</sup> Nancy Romero-Daza 'Traditional medicine in Africa' (2002) 583 *Annals of the American Academy of Political and Social Science* 173.

<sup>4</sup> AA Elujoba, OM Odeleye & CM Ogunyemi 'Traditional medicine development for medical and dental primary health care delivery system in Africa' (2005) 2/1 *Afr J Trad Complementary and Alternative Medicines* 52; Assembly of Heads of State and Government of the Organization of African Unity (OAU).

<sup>5</sup> Joy Summerton 'The incorporation of African traditional health practitioners into the South African health care system (2006) 38/1 *Acta Academia* 144.

<sup>6</sup> *Id* at 147.

<sup>7</sup> World Health Organisation (WHO) Declaration of Alma-Ata International conference on primary health care, Alma-Ata 6-12 September 1978; Romero-Daza n 3 above at 174; Summerton n 5 above at 147.

potential of ATM for the achievement of health in the region.<sup>8</sup> The joint United Nations Programme on HIV/AIDS (UNAIDS) followed suit and adopted similar policies indicating acceptance of traditional health practices in programmes they financed. The New Partnership for Africa's Development (NEPAD), too, has identified traditional medicine as an important strategy in its 2001 African Union plan.<sup>9</sup>

The WHO has defined four types of health care system in terms of the proposed collaboration between allopathic<sup>10</sup> and ATM:

- An exclusive or monopolistic health care system is said to recognise only the practice of allopathic medicine and to outlaw or severely restrict all other health practices.
- In countries with a tolerant health care system on the other hand, the national health care system is primarily based on allopathic medicine but certain ATM practices are tolerated and/or regulated by law.
- An inclusive health care system recognises ATM but there is no true integration of this branch of medicine into all aspects of health care (including delivery, training, education and regulation). This system is also referred to as a parallel system where ATM may, for example, be only partially regulated; official education and training in traditional health practices may be lacking, and/or health insurance may not cover treatment and other practices performed by traditional health practitioners.
- An integrated health care system is characterised by the true synthesis of all health care systems available in that particular country so as to optimise health care for all. In such a system, ATM is officially recognised and

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<sup>8</sup> World Health Organisation (WHO) Promoting the role of traditional medicine in health systems: a strategy for the African region 2001 – 2010 Harare (2000); Summerton n 5 above at 150; This resolution also recommended the acceleration of the development of locally produced traditional medicines; also see World Health Organization *Report of the Consultation on AIDS and Traditional Medicine: Prospects for Involving Traditional Health Practitioners* (1990) and UNAIDS, Best Practice Collection *Collaborating with Traditional Healers for HIV Prevention and Care in Sub-Saharan Africa: Suggestions for Programme Managers and Field Workers* (2006).

<sup>9</sup> African Union (AU) New Partnership for Africa's Development (NEPAD) Abuja: African Union (2001); Summerton n 5 above at 147.

<sup>10</sup> Allopathic medicine refers to the health model that dominates the Western world, it is also referred to as bio-medicine. All other health care systems are usually described as alternative or complementary health systems. A particular complementary health system like African traditional medicine or traditional Chinese medicine can be referred to as 'traditional medicine' when referring to it as specific/traditional to a specific area/country.

incorporated into all areas of health care provision.<sup>11</sup> No African country has a true integrated health care system.<sup>12</sup>

Since the reiteration of the recommendations and commitment for the recognition and regulation of ATM by the WHO and various other role players, countries on the African continent have initiated programmes for the study of traditional medicine and explored avenues of collaboration.<sup>13</sup> However, there is still considerable variation in national policies on the recognition and regulation of traditional medicine, coupled with a lack of appropriate supporting legislation.<sup>14</sup> During 2001-2002, for example, the national health care systems of Ivory Coast, Comoros, Seychelles and Cape Verde made no provision for the involvement of traditional medical practitioners and also had no framework of regulations in place.<sup>15</sup> In South Africa the 1997 White Paper for the Transformation of the Health System in South Africa expressly provided that 'traditional practitioners and traditional birth attendants should not, *at this stage*, form part of the public health service, but should be recognised as an important *component* of the broader primary health team'.<sup>16</sup> Ghana, on the other hand, exemplified efforts truly to incorporate traditional medicine into primary health care early on and by 2002 it was estimated that seventy per cent of the population in Ghana depended exclusively on the health care provided by 45000 traditional healers.<sup>17</sup> By 2004, it was claimed that an inclusive health care system now exists in African countries like Zimbabwe, Guinea, Nigeria, Mali, Ghana, and South Africa.<sup>18</sup>

Traditional health practitioners in South Africa only started to gain some form of recognition during the late 1990s.<sup>19</sup> It is suggested that this lack of government interest in structuring and regulating ATM in South Africa before 1994 can be attributed to both the daunting number of traditional

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<sup>11</sup> Summerton n 5 above at 145–146; Although many African countries have made attempts for the realisation of a truly integrated system, to date only China, the Democratic People's Republic of Korea, the Republic of Korea and Vietnam have arguably attained integrated health care systems.

<sup>12</sup> Summerton n 5 above at 150.

<sup>13</sup> Romero-Daza n 3 above at 174.

<sup>14</sup> *Ibid*; Summerton n 5 above at 151.

<sup>15</sup> Romero-Daza n 3 above at 174.

<sup>16</sup> Ministry of Health, RSA White paper for the transformation of the health system in South Africa Cape Town: Ministry of Health (1997); Summerton n 5 above 149; Chapter 4 paragraph 4.1.1. (a) vii.

<sup>17</sup> Romero-Daza n 3 above at 174.

<sup>18</sup> Summerton n 5 above at 144.

<sup>19</sup> *Id* at 147.

practitioners and the wide scope of their activities. However despite various initiatives aimed at an integrated health care system for South Africa, the promise of a truly integrated and formally structured system is yet to be actualised. Factors which would advance a truly integrated health care system for South Africa, which recognises and regulates ATM include:

- government's (belated) commitment to provide for an integrated health care system in South Africa;<sup>20</sup>
- the inclusive and collaborative aims and objectives of the country's National Health Act;<sup>21</sup>
- the potential therapeutic advantages such an integrated system will offer to patients;
- the constitutional guarantee of a right to access to traditional health practitioners based on cultural heritage and belief, including the right not to be discriminated against for this reason; and
- the right of traditional health practitioners to choose and practice their trade, occupation or profession freely, provided that they are subject to legal regulation.<sup>22</sup>

In line with these aims and objectives, and after protracted debate spanning twenty-six years, the Traditional Health Practitioners Act 35 of 2004 was assented to on 7 February 2005, with certain provisions operational from 13 January 2006. The constitutionality of this Act was, however, successfully challenged by Doctors for Life International (DFL). The basis for the challenge was that there had been insufficient and/or unreasonable levels of public participation at provincial level. The Constitutional Court's order invalidating the Act was suspended for a period of eighteen months to enable parliament to re-enact the legislation in line with the Constitution. In 2007, the Traditional Health Practitioners Act 22 of 2007 was re-enacted and assented to on 08 January 2008.<sup>23</sup> Before the adoption of this Act, mention of traditional health practitioners could be found – and then indirectly – only in the Witchcraft Suppression Act 3 of 1957.<sup>24</sup>

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<sup>20</sup> 'The regulation and control of traditional healers should be investigated for their legal empowerment. Criteria outlining standards of practice and an ethical code of conduct for traditional practitioners should be developed to facilitate their registration'. The 1997 White Paper for the Transformation of the Health System in South Africa, Chapter 4 par 4.1.1. (a) vii.

<sup>21</sup> 61 of 2003.

<sup>22</sup> Summerton n 5 above 149–150.

<sup>23</sup> Jerome Amir Singh 'The ethics and legality of traditional healers performing HIV testing' (2008) *The Southern African Journal of HIV Medicine* 6–10.

<sup>24</sup> Summerton n 5 above at 149–158.

The Traditional Health Practitioners Act provides the much needed recognition of ATM<sup>25</sup> and related practices as an integral part of health care delivery in South Africa. The Act defines traditional health practice as the performance of a function, activity, process or service based on a traditional philosophy<sup>26</sup> which includes the use of traditional medicine or traditional practice. The services to be provided by African traditional healers in terms of the Act include:

- the maintenance or restoration of physical or mental health or function;
- the diagnosis, treatment or prevention of a physical or mental illness;
- the rehabilitation of a person to enable him or her to resume normal functioning within the family or community; and
- the physical or mental preparation of an individual for puberty, adulthood, pregnancy, childbirth and death.<sup>27</sup>

A traditional medical practitioner or traditional healer, in terms of the WHO definition, is a person who is recognised by the community in which he or she lives as competent to provide health care by using vegetable, animal and mineral substances and certain other methods.<sup>28</sup> The Traditional Health Practitioners Act also specifically recognises diviners (*sangomas, izangoma or amagqirha*), herbalists (*inyangas, izinyanga or amaxhwele*), traditional surgeons who mainly perform circumcisions (*ingcibi or iingcibi*), and traditional birth attendants (*ababelekisi, ababelethsi or abazalisi*) as professionals in ATM and requires all traditional health practitioners to register in terms of chapter three of the Act.<sup>29</sup>

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<sup>25</sup> In terms of the Act traditional medicine refers to an object or a substance used in traditional health practice for the diagnosis, treatment or prevention of physical or mental illness or any curative or therapeutic purpose, including the maintenance or restoration of physical or mental health or well-being in human beings, but it does not include a dependence-producing or dangerous substance or drug; The World Health Organisation (WHO) defines traditional medicine as health practices, approaches, knowledge and beliefs incorporating plant, animal and mineral based medicines, spiritual therapies, manual techniques and exercises, applied singularly or in combination to treat, diagnose and prevent illnesses or maintain well-being. See: <http://www.who.int/mediacentrefactsheets/fs134/en/print.html> (accessed on 4 May 2007).

<sup>26</sup> Traditional philosophy is defined in the Act as indigenous African techniques, principles, theories, ideologies, beliefs, opinions and customs and uses of traditional medicines communicated from ancestors to descendants or from generations to generations, with or without written documentation, whether supported by science or not, and which are generally used in traditional health practice.

<sup>27</sup> Winifred Ogana 'Diagnostic practices of Izangoma in Durban, South Africa' (2009) 8/2 *African Journal of Indigenous Knowledge Systems* 116.

<sup>28</sup> WHO 1978b; Elujoba, Odeleye & Ogunyemi n 4 above at 48.

<sup>29</sup> Karl Peltzer 'Traditional health practitioners in South Africa' *The Lancet* at: [www.thelancet.com](http://www.thelancet.com) (accessed on 25 August 2009).

No person may practise as a traditional health practitioner within the Republic unless he or she is registered in terms of the Act.<sup>30</sup> Unfortunately, very few traditional health practitioners are registered with the Traditional Health Practitioners' Association.<sup>31</sup> In 2004 only 584 traditional health practitioners from the Eastern Cape area were registered in terms of the Act. And in 2007 very few of the estimated 190 000 traditional health practitioners were registered.<sup>32</sup> This reluctance to register is mainly due to a lack of knowledge and understanding of the working of the Act, the registration process, and the Traditional Health Practitioners' Association.<sup>33</sup> Other reasons include the prevailing level of mistrust and suspicion among traditional health practitioners towards government's true intention and commitment to ATM and the fear of its being Westernised by allopathic practitioners.<sup>34</sup>

The Act also establishes an interim Traditional Health Practitioners Council in chapter two, as well as a regulatory framework to ensure the efficacy, safety and quality of traditional health care services. For example, section 22 of the Act provides for the Minister of Health, on the recommendation of the Council, to prescribe the minimum qualifications required for purposes of registration in terms of this Act and by virtue of examinations conducted by an accredited institution, educational authority, or other examining authority in the Republic. The Council is also jointly responsible for the management and control of the registration process of traditional health practitioners,<sup>35</sup> their training and conduct, the regulation of students and specified categories in the traditional health practitioners' profession, and all related matters.

Other objectives of the Council include:

- to promote public health awareness;
- to ensure the quality of health services within the traditional health practice;
- to protect and serve the interest of members of the public who use or are affected by the services of traditional health practitioners;
- to promote and maintain appropriate ethical and professional standards required from traditional health practitioners;

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<sup>30</sup> Section 21.

<sup>31</sup> Summerton n 5 above at 160.

<sup>32</sup> Peltzer n 29 above.

<sup>33</sup> Summerton n 5 above at 160.

<sup>34</sup> *Id* at 161.

<sup>35</sup> Chapter three of the Act.

- to promote and develop interest in traditional health practice by encouraging research, education and training;
- to promote contact between the various fields of training within traditional health practice in the Republic and to set standards for such training’;
- to compile and maintain a professional code of conduct for traditional health practice, and
- to ensure that traditional health practice complies with universally accepted health care norms and values.<sup>36</sup>

The functions and general working of the Interim Traditional Health Practitioners Council are set out in great detail in the Act and mirror the functions and general working of similar councils in legislation regulating other health care workers.<sup>37</sup> However, the Act has been in abeyance owing to the lack of consensus amongst stakeholders.<sup>38</sup>

With regard to the recognition and regulation of ATM, the Medicines and Related Substances Control Act 101 of 1965 provides for the registration of all medicines and related substances. This includes complementary medicines such as anthroposophical medicines, aromatherapeutic medicines, ayurvedic medicines, biochemical tissue salts, Chinese medicines, gemmotherapeutic substances, flower and gem essences, herbal medicines, homeopathic medicines, homotoxicological medicines, mineraloid substances, nutraceuticals, nutritional food substances, Unani-Tibb medicines, Sowa-Rigpa medicines, and combinations of these classes of medicines.<sup>39</sup> Complementary or alternative medicines or substances are defined as any medicine or substances or mixture of substances, which originate from plants, minerals or animals including sarcodes, nosodes, allersodes or isodes, and are complementary to the innate healing power of a human being or an animal, and are used or intended to be used for, or manufactured or sold for use in assisting the innate healing power in humans to mitigate, modify, alleviate or prevent illnesses, abnormal physical or mental states, or the symptoms thereof in humans or animals.<sup>40</sup> No mention is, however, made in either the

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<sup>36</sup> Section 5(a)–(h).

<sup>37</sup> For example, the Dental Technicians Act 19 of 1979, the Allied Health Professions Act 63 of 1982, the Nursing Act 50 of 1974, the Health Professions Act 56 of 1974 and the Pharmacy Act 53 of 1974, to name but a few.

<sup>38</sup> Eleanor Ross ‘African spirituality, ethics and traditional healing – implications for indigenous South African social work education and practice’ (2010) 3/1 SAJBL 51.

<sup>39</sup> Regulations relating to complementary and alternative medicines R 861 22 August 2008, GG31334 Regulation 8943 vol 518.

<sup>40</sup> *Ibid.*



Medicines and Related Substances Control Act or the regulations thereto, of traditional African medicines.

Progress towards the development of regulations for the control of ATMs is nevertheless underway and to assist and advise the Minister of Health in this regard, the establishment of the African Traditional Medicines Expert Committee was approved in August 2000.<sup>41</sup> But the regulation of ATM should actually be a matter of high priority as the trade in traditional medicines in South Africa is a large and growing industry.<sup>42</sup> It is suggested that there are approximately twenty-seven million consumers of traditional medicine who contribute an estimated R2,9 billion to the South African economy.<sup>43</sup> Without the appropriate registration and regulation, these medicines are currently sold without any control.<sup>44</sup> This lack of control also hampers the willingness of medical aid schemes to cover African traditional treatments and the prescribing of ATM. It is believed that between sixty and eighty per cent of the South African population use ATM as their first contact for advice and/or treatment. This notwithstanding, only a few medical schemes offer benefits for services provided by traditional healers.<sup>45</sup>

In contrast to the relatively recent developments in the recognition and regulation of ATM in South Africa, In Tanzania, enquiries into traditional medicine and its underlying philosophy were initiated as early as the 1930s.<sup>46</sup> However, at that stage the British Chief Secretary in Dar Es Salaam deferred a decision on registration of traditional doctors — or native doctors as they were then called — as registration of traditional health practitioners would have been tantamount to recognition, and this was inconceivable.<sup>47</sup> Like the situation in South Africa until recently, it was easier to ignore the traditional health practitioner in Tanzania than to accord him or her some form of recognition. However, in 1967 traditional medicine in Tanzania experienced

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<sup>41</sup> National Reference Centre for African Traditional Medicine (NRCATM): A South African Model at <http://www.mrc.ac.za/traditionalmedicines/national.htm>.

<sup>42</sup> Mander Myles, Ntuli Lungile, Diederichs Nicci & Mavundla Khulile 'Economics of the Traditional Medicine Trade in South Africa' at: [http://www.hst.org.za/uploads/files/chap13\\_07.pdf](http://www.hst.org.za/uploads/files/chap13_07.pdf) (accessed 12 July 2010).

<sup>43</sup> *Ibid.*

<sup>44</sup> Nceba Gqaleni Nceba, Indres Moodley, Heidi Kruger, Abigail Ntuli & Heather McLeod 'Traditional and complementary medicine' at: [http://www.hst.org.za/uploads/files/chap12\\_07.pdf](http://www.hst.org.za/uploads/files/chap12_07.pdf) (accessed on 12 July 2010).

<sup>45</sup> KS Caldis, HD McLeod & PR Smith 'The fall of the bamboo curtain: a review of complementary medicine in South Africa' (2001) 1 *South African Actuarial Journal* 83.

<sup>46</sup> Ann Beck 'The traditional healer in Tanzania' (1979) 9/3 *A Quarterly Journal of Africanist Opinion* 2–5.

<sup>47</sup> *Ibid.*

a renaissance with the institution of a plan to extend medical care beyond the consulting hospitals and to prioritise rural medicine.<sup>48</sup> In May 1968 the law on medical practitioners and dentists officially allowed traditional medical practitioners to operate alongside the Western-based system and it was estimated that in Dar Es Salaam 1 000 traditional healers treated over 20 000 patients daily.<sup>49</sup>

In Nigeria, Western-based and traditional health practices have existed side by side since the late 1970s in an inclusive health care system.<sup>50</sup> In the late 1980s in Ghana, scientific and traditional medical paradigms existed in a mutually independent context with little prospect of one displacing and/or fusing with the other.<sup>51</sup> Today, the Traditional Medicine Practice Act of 2000 regulates traditional medical practices. In reality this co-existence of medical care alternatives without any fusion or integration, means that patients can either be the unsuspecting victims of the contradictions that emerge in the different medical orientations, or in certain instances, the double beneficiary of these contradictions.<sup>52</sup> Specifically patients with pluralistic health care needs, do not receive the optimum health care they require (and are entitled to) in such a parallel system.<sup>53</sup> The need to progress from such parallel or merely tolerant health care systems towards integrated systems of health service delivery is consequently paramount.<sup>54</sup>

However, many also believe that such a parallel system of health service delivery is actually the appropriate system for the collaboration between allopathic and traditional health practices, and that integration is not the answer. This view is based on the fear that one system might be compromised in the process of integration, and that ATM might very well be the system to be suppressed in such a process of integration.<sup>55</sup> This fear is not, however, necessarily well-founded. In the Peoples Republic of China, for example, allopathic medical practices and traditional Chinese medicines

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<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> Daniel A Offiong 'Traditional healers in the Nigerian health care delivery system and the debate over integrating traditional and scientific medicine' (1999) 72/3 *Anthropological Quarterly* 118–130.

<sup>51</sup> Patrick A Twumasi 'A history of pluralistic medical systems: a sociological analysis of the Ghanaian case (1979) 29/3 *A Quarterly Journal of Africanist Opinion* 29–34; Draft Policy for African Traditional Medicine for South Africa GG 31271 vol 517 25 July 2008 19.

<sup>52</sup> Twumasi n 50 above at 29–34.

<sup>53</sup> Summerton n 5 above at 147.

<sup>54</sup> *Id* at 143–169.

<sup>55</sup> *Id* at 146.

exist in a truly integrated system, and all the medical schools in China have departments for both these health systems.<sup>56</sup> Most hospitals also have separate traditional medicine units.<sup>57</sup> The same applies in Thailand, India and Indonesia.<sup>58</sup> In Indonesia, the Health Law Act 23 of 1992 promotes traditional medicine as an integral part of health care delivery and regulates traditional medicines.<sup>59</sup> The Zimbabwean Traditional Medical Practitioners Council Act of 1981 is regarded as the most comprehensive piece of legislation ever enacted to govern the practice of traditional medicine.<sup>60</sup>

In Ghana, the special role of traditional medical practitioners emerges clearly. They are very close to their communities and know exactly what is happening in their areas. They have created and maintained an impressive image in their area of expertise and are in touch with the social reality of the general population's circumstances. It is this close relationship between communities and their traditional medical practitioners — not only in Ghana but also in other African countries — that assists in their healing practices.<sup>61</sup> This special role of trust can also be an important tool in the fight against HIV/AIDS. As HIV and AIDS continue to be one of the most devastating pandemics on the African continent,<sup>62</sup> the search for solutions is becoming increasingly urgent. This requires multidimensional approaches, including the recognition and utilisation of a multiplicity of available medical alternatives.

Unfortunately, the slow pace at which ATM is currently being integrated with existing health systems in South Africa, has created an immense mistrust amongst traditional health practitioners of the government's commitment to their sector, as well as a sense of mistrust towards Western-based medical practitioners and their health system.<sup>63</sup> The resultant despondency amongst traditional health practitioners is not conducive to collaborative endeavours between traditional and Western health practitioners.<sup>64</sup>

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<sup>56</sup> See n 41 above.

<sup>57</sup> Draft Policy for African Traditional Medicine for South Africa n 51 above at 16.

<sup>58</sup> See n 41 above.

<sup>59</sup> Draft Policy for African Traditional Medicine for South Africa n 51 above at 24.

<sup>60</sup> *Id* at 28.

<sup>61</sup> Twumasi n 50 above at 29–34.

<sup>62</sup> ZM Mswela 'Cultural practices and HIV/AIDS in South Africa: a legal perspective' (2009) 12/4 *PER* 172–213.

<sup>63</sup> Summerton n 5 above 156.

<sup>64</sup> *Ibid.*

### **THE INSTITUTIONALISATION OF AFRICAN TRADITIONAL MEDICINE IN HEALTH SYSTEMS**

In addition to the development of national policy and legal and regulatory frameworks,<sup>65</sup> the WHO, in its Traditional Medicine Strategy and Plan of Action 2000–2005 for promoting the inclusion of traditional medicine (WHO 2002), also developed the following model tools for the institutionalisation of ATM in health systems:

Countries are encouraged to promote and conduct relevant scientific research on medicinal plants in collaboration with traditional health practitioners to validate claims made as to the safety, efficacy, and quality of traditional medicines.

Intellectual property rights should be a priority on the agenda in order to protect indigenous knowledge of traditional medicine.

Countries should also establish an enabling economic, regulatory and political environment for local production of traditional medicines as well as develop industries that can produce standardised remedies to increase access.

Provision should be made for the registration of traditional medicines. Information should be disseminated to the general public to empower them with knowledge and skills in the proper use of traditional medicines.

Countries should aim to build human and material resource capacity in order to accomplish institutionalisation strategies for the development of ATM in orthodox health systems.<sup>66</sup>

The Draft Policy for African Traditional Medicine for South Africa<sup>67</sup> mirrors these objectives. The policy makes provision for a transformation process for the formal recognition of ATM to acknowledge South Africa's heritage and to empower and protect traditional health practitioners and users of ATM. It also aims to protect ATM knowledge and thereby strengthen the current national health system. In the policy, government's commitment to the institutionalisation of ATM in the South African health care system is also expressly confirmed and said to provide a framework for the

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<sup>65</sup> For example, the Traditional Health Practitioners Act of South Africa discussed above.

<sup>66</sup> World Health Organisation (WHO) Declaration of Alma-Ata International Conference on Primary Health Care Alma-Ata 6–12 September 1978; Elujoba, Odeleye & Ogunyemi n 4 above at 54; Summerton n 5 above at 151.

<sup>67</sup> Draft Policy for African Traditional Medicine for South Africa n 51 above.

institutionalisation of ATM. It is suggested that the institutionalisation of ATM, coupled with its incorporation and use in the national health care system, will increase the delivery of cost effective medical treatment and accessibility to health care alternatives.<sup>68</sup> However, the policy document also expressly states that it does not aim at providing an integrated health care system in South Africa, but merely at allowing for a system parallel to the existing national health care system.<sup>69</sup>

In line with the above, traditional medicine has been factored into policies aimed at combating certain priority diseases such as tuberculosis, sexually transmitted diseases and HIV/AIDS.<sup>70</sup> The STD/HIV/AIDS Strategic Plan for South Africa 2000–2005,<sup>71</sup> and the Operational Plan for Comprehensive HIV and AIDS Care, Management and Treatment for South Africa 2003,<sup>72</sup> refer to traditional health practitioners as partners in the national response to the HIV/AIDS pandemic.<sup>73</sup> This recognition of the role that traditional health practitioners play in the lives of those affected by HIV/AIDS is central in the Operational Plan, especially as it is estimated that seventy to eighty per cent of South Africans consult traditional health practitioners, and up to ninety-seven per cent of people living with HIV/AIDS first use complementary or traditional medicines.<sup>74</sup>

With regard to the Operational and Strategic Plans, the Department of Health suggested in 2003 that traditional health practitioners should assist in the mobilisation of communities, and the motivation of patients to take part in test programmes and to adhere to drug regimens. They would also assist in monitoring the side effects of the drugs, sharing expertise in patient communication with biomedical health practitioners and in the continuous enhancement of patients' well-being and quality of life.<sup>75</sup> It should be noted that the work of traditional health practitioners cannot only be to assist biomedical practitioners, they should be regarded as equal partners and

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<sup>68</sup> *Id* at 9.

<sup>69</sup> *Id* at 10.

<sup>70</sup> Summerton n 5 above at 146.

<sup>71</sup> Department of Health, RSA HIV/AIDS and STD Strategic Plan for South Africa 2000–2005 Pretoria: Department of Health (2000).

<sup>72</sup> Department of Health, RSA Operational Plan for comprehensive HIV and AIDS care, management and treatment for South Africa Pretoria: Department of Health (2003).

<sup>73</sup> Summerton n 5 above at 154.

<sup>74</sup> *Ibid.*

<sup>75</sup> Department of Health, Medical Research Council & Centre for Scientific & Industrial Research (2003) 'National reference centre for African traditional medicines: a South African model' Pretoria: Department of Health; Summerton n 5 above 154–155.

providers in South Africa's health care system.<sup>76</sup> However, efforts to recognise and foster the use of traditional medicine in national health systems are not always without problems. The mutual mistrust between allopathic and traditional health practitioners, as well as the difficulties in regulating traditional medical practices, are said to be due in part to the wide variation in the health traditions included in the generic term ATM. These problems may also be laid at the door of the secrecy that often surrounds the practice of traditional medicine and the lack of resources for an in-depth examination and assessment of its methods, remedies and efficacy.<sup>77</sup> In particular, the heterogeneity and lack of organisation amongst traditional health practitioners are highlighted as major obstacles to collaboration.<sup>78</sup>

To address some of these difficulties, the Operational Plan notes the need to promote true collaboration between traditional health practitioners and their Western-based counterparts. It provides some guidance as to the nature of this collaboration, and specifically addresses the needs of people living with HIV/AIDS. It is submitted that the role of traditional health practitioners, as well as their interest in participating in the programme, should be defined more clearly. Community infrastructure and needs must be assessed in terms of the special skills offered by traditional health practitioners. Their expectations and those of Western-based medical practitioners as regards collaboration should be assessed and communicated, methods of quality assurance for traditional health practices should be formalised, and training should be provided for each of these two class of practitioner in their respective health system's basic approach to the HIV/AIDS pandemic.<sup>79</sup>

#### **ARGUMENTS IN FAVOUR OF GREATER RECOGNITION AND REGULATION OF AFRICAN TRADITIONAL MEDICINE IN BOTH THE SOUTH AFRICAN LEGAL NATIONAL HEALTH SYSTEMS**

Here I evaluate two arguments in favour of greater recognition and regulation of ATM in both the South African legal and national health systems. The arguments are specifically set against the background of the HIV/AIDS pandemic.

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<sup>76</sup> Summerton n 5 above at 155.

<sup>77</sup> Romero-Daza n 3 above at 174; Summerton n 5 above at 156.

<sup>78</sup> Summerton n 5 above at 157.

<sup>79</sup> Summerton n 5 above at 154; Department of Health 2003 87–92.

**Western-based medical care alone is not designed to cope with the demands of an African environment**

While good health is universally valued, coping with health problems and health related difficulties forms a significant part of the lives of many, especially on the African continent.<sup>80</sup> This is due not only to the prevalence of pandemics like HIV/AIDS and other communicable diseases, but also because health related problems are so closely intertwined with other structural and socio-economic problems facing the populace. For example, lack of infrastructure, including lack of housing, water supply, sanitation, accessible health clinics, unemployment, and poor nutrition are but a few of the challenges rife on the African continent.<sup>81</sup> Good suggests that Western-based medical care<sup>82</sup> is 'inefficiently designed to [truly] cope with the[se] demands of the African environment', as Western-based medical care shows little relevance to and understanding for the condition of people living in such dire conditions.<sup>83</sup>

In terms of Good's argument, the biomedical model of Western-based medical care is generally regarded as underpinning Western medical science and focuses on ever decreasing fragments of the human body for diagnosis and treatment. In the process it loses sight of the patient as a unique individual within his/her individual context.<sup>84</sup> Traditionally, this biomedical approach also requires that all authority and responsibility be surrendered to the medical practitioner, thereby ignoring the pivotal role the patient can play in his/her own healing process.<sup>85</sup> In addition, Western-based medical practitioners are technically well-trained and generally need sophisticated hospitals and apparatus, facilities and equipment to deliver their services. In other words, the methodology of Western-based medical care requires a certain type of environment and a particular social organisation.<sup>86</sup>

ATM, on the other hand, is defined as the

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<sup>80</sup> Catherine Francis Botha 'The Sangoma and the MD: the clash of Western medical science and traditional medicine in South Africa' (2004) 5/2 *Phronimon*, 39.

<sup>81</sup> *Ibid.*

<sup>82</sup> For a critique on the use of the term Western-based medical care see Peter Worsley 'Non-Western medical systems' (1982) 11 *Annual Review of Anthropology* 348.

<sup>83</sup> This distinction between traditional (folk) medical practices and beliefs and modern biomedicine can be found in literature as early as the 1950s. Botha n 78 above 39; Stoner n 1 above at 44.

<sup>84</sup> Botha n 80 above at 39.

<sup>85</sup> This paternalistic attitude has, however, fallen into disrepute but has not been eradicated from general medical practice. Botha n 78 above at 41.

<sup>86</sup> Twumasi n 50 above at 32.

... total body of knowledge and techniques for the preparation and use of substances, measures and practices in use, whether explicable or not, that are based on ... personal experience and observations handed down from generation to generation, either verbally or in writing, and are used for the diagnosis, prevention or elimination of imbalances in physical, mental or social well-being.<sup>87</sup>

African ontology is further said to be underpinned by the principles of communalism and *ubuntu*.<sup>88</sup> Consequently, healing in terms of traditional African medical principles is all-inclusive, taking into account the person as a whole, as well as that person's social and physical environment.<sup>89</sup> While symptoms are important for diagnosis in the Western medicine paradigm, causes of illness predominate in ATM, and these causes may be social and linked to the patient's physical environment.<sup>90</sup>

In the context of HIV/AIDS, it is of the utmost importance that health care attitudes and practices take people's philosophical and cultural concepts of disease and health into account.<sup>91</sup> It is well-known that medical systems have wide-ranging links to cosmology and lifestyle. Therefore, it often happens, for example, that patients who are used to the method employed by the African traditional healers in their community are reluctant to 'accept' and follow the medical advice and treatment provided by Western-based medical practitioners. This is primarily because these patients are not familiar with the 'different' approach of Western-based medical practitioners. These role expectations and differential role perceptions may raise a serious barrier to communication between a Western doctor and an indigenous patient.<sup>92</sup> This inter-cultural facet of the doctor-patient relationship '...lies not in the rational/irrational, but in the foundation of hope, expectations and faith of the patient' in their health service provider. It is therefore inevitable that as the indigenous patient has expectations of the doctor that do not correspond to his/her own conception of the doctor's role as health care provider, tensions and conflicts arise.<sup>93</sup>

<sup>87</sup> Botha n 80 above at 41–42; Draft Policy for African Traditional Medicine for South Africa GG 31271 vol 517 25 July 2008.

<sup>88</sup> *Ubuntu* is a Zulu word referring to the Zulu maxim *umuntu ngumuntu ngabantu*, ie 'a person is a person through other persons'; Botha n 66 above at 42; Romero-Daza n 3 above at 174.

<sup>89</sup> Botha n 80 above at 42.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Id* at 41–46.

<sup>92</sup> G Jansen *The doctor-patient relationship in an African tribal society* (1973) 60; Twumasi n 50 above at 29–34.

<sup>93</sup> Jansen n 92 above at 61.



**Discourses of ATM and the obligation to promote and protect indigenous knowledge**

ATM has often been described as suspect, scientifically unfounded, backward, superstitious or a dangerous relic of the past.<sup>94</sup> Indigenous knowledge within the context of ATM has further been viewed as uncivilised. These unfounded and negative perceptions have led to a general lack of interest in this branch of our cultural heritage as Africans.<sup>95</sup> These negative perceptions are reinforced by the lack of true integration of ATM in the health care system of South Africa. The current haphazard recognition and regulation of ATM merely opens the door to charlatans who give traditional healing a bad name and reinforce negative perceptions.<sup>96</sup> The Draft Policy on Indigenous Knowledge Systems (November 2004) recognises that under apartheid, indigenous knowledge systems and those practising them were marginalised, suppressed and subjected to ridicule. This resulted in the distortion of the social, cultural and economic development of the vast majority of people practising this form of healing. It is for this reason that ATM should be re-affirmed as a socio-cultural heritage of the African continent, and our obligation to study and document ATM as a medico-cultural endowment for the benefit of all Africans, be affirmed.<sup>97</sup>

Indigenous knowledge, like ATM, can be defined as a local body of knowledge that is common to a certain group of people.<sup>98</sup> This knowledge is usually embedded in the culture of the people and conveyed from one generation to another orally through apprentice and/or spiritual guidance. It is also seldom documented and few written texts or other writings exist.<sup>99</sup> ATM is certainly one of the African continents' most prized indigenous knowledge systems, pervading the lives and belief systems of a large proportion of the continent's population.<sup>100</sup>

It is vitally important that indigenous knowledge in the context of ATM be promoted and protected. This will involve the protection of traditional health practitioners as people who create, originate, innovate, develop and practice traditional knowledge related to medicine in a traditional setting and

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<sup>94</sup> Botha n 80 above at 39; Elujoba, Odeleye & Ogunyemi n 4 above at 53.

<sup>95</sup> Esther Klbuka-Sebltosi 'Protecting indigenous knowledge and the rights and interests of indigenous medicine practitioners in Africa' (2008) 7/1 *African Journal of Indigenous Knowledge Systems* 75.

<sup>96</sup> Peltzer n 29 above.

<sup>97</sup> Elujoba, Odeleye & Ogunyemi n 4 above at 47.

<sup>98</sup> Klbuka-Sebltosi n 93 above at 72–86.

<sup>99</sup> *Ibid.*.

<sup>100</sup> Indigenous Knowledge Systems Policy November 2004, Chapter 1.

context.<sup>101</sup> These practitioners are also the gate keepers of medical knowledge related to plants and animals, as well as non-tangible knowledge relating to medicine, consequently, their needs and interests are important.<sup>102</sup>

The following needs and interests should also be promoted and protected:

- The heritage of ATM – this includes all properties, objects and knowledge that have been passed from generation to generation and that are unique to a particular indigenous group or territory in Africa.
- Knowledge concerning medicines and their use, including knowledge of medicinal plants.
- Methods used in traditional medicine.
- Ancient traditions and medicines.
- Indigenous knowledge as a body of knowledge.<sup>103</sup>

It is suggested that only an holistic approach, involving a combination of laws and policy integrated with indigenous knowledge systems and practices will ensure that ATM will be promoted and protected as part of our cultural endowment. Such an approach should include more stringent regulation and committed recognition of the contributions made by traditional health practitioners. The integration and celebration of African perspectives in the legal and national health systems of South Africa, will furthermore not only be a matter of redress, but will create new research paradigms and attitudes and enrich existing ones.<sup>104</sup>

## CONCLUSION

South Africa has made great strides in the recognition and regulation of ATM and in the integration of this health system into the national health system which is in the main based on allopathic medicine. Examples of the work done so far include the establishment of a traditional medicine directorate within the Department of Health, the valuable contribution being made by the traditional medicine research institute under the auspices of the Medical Research Council, the availability of postgraduate courses in herbal science, and the introduction of a draft policy for the institutionalisation of ATM.<sup>105</sup>

However, the South African health care delivery system needs to shift from a system dominated by Western-based health practices to a network of shared

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<sup>101</sup> Klbuka-Sebltosi n 93 above at 72–86.

<sup>102</sup> *Ibid.*

<sup>103</sup> Klbuka-Sebltosi n 93 above at 77–78.

<sup>104</sup> Indigenous Knowledge Systems Policy November 2004, Chapter 1.

<sup>105</sup> Peltzer n 29 above.

responsibilities; an integrated health care system in which traditional medical practices also serve in the provision of health care.<sup>106</sup> Traditional health practitioners are respected by their communities, and in the absence of Western-based medical personnel and facilities, they fulfil an important function and act as a stabilising force. This is because they represent the continuity of generations with whose customs and histories they are comfortable.<sup>107</sup> Further, the effective delivery of comprehensive HIV/AIDS treatment and care, is the responsibility of and is dependent on the collaborative effort of the South African health care system as a whole.<sup>108</sup>

It is submitted that indifference and a non-committal attitude to the important role that ATM can play in the fight against HIV/AIDS, is actually a reflection of the structure of values and power that dominates the current national health system. It preserves ideologies of the past that can no longer be part of our new constitutional dispensation.

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<sup>106</sup> Twumasi n 50 above at 33.

<sup>107</sup> Beck n 45 above 2–5.

<sup>108</sup> Summerton n 5 above at 165.