

## Commentary

# **Commentary on the Need for Traditional, Complementary, and Alternative Medicine Legislation in the Gambia.**

### **ABSTRACT**

**Background:** The Gambia, a country of over two million people with a deep history of traditional medicine in the African Continent still has no legislation to regulate the practice and promotion of traditional medicines. The striking thing is that it is the only country in the African Continent that had a former President, Yahya Jammeh, publicly declare his support for traditional medicines. Yet one will be wondering why his government could not take the practical steps to formulate legislation on traditional medicines.

**Aim:** Though Yahya Jammeh's government promoted traditional medicine, but could not advocate for a legislation to regulate traditional and natural remedies in the Gambia. This is a question that bothers me as a Naturopathic Professor with an interest in African Naturopathy.

Others also argued that his quest for traditional medicine recognition in the Gambia healthcare did not follow standardized protocol. This notwithstanding, the practice of traditional, complementary, and alternative medicine in Gambian healthcare cannot be overlooked as it is a constitutional right.

Hence, this commentary aims to investigate the constitutional and other statutory provisions on traditional medicines in the Gambia and their recognitions.

**Method:** I review several legal documents in the Gambia to evaluate their justifications for traditional medicine recognition and the need for legislation.

**Result:** The Constitution of the Gambia recognizes the customs of the people as part of the laws. The Evidence Act 1994 of the Gambia further notes that custom is admissible in evidence. Hence, traditional medicine is part of the customs of the people of the Gambia.

**Conclusion:** I emphasize that if the customs of the people are recognized by the Constitution and the Evidence Act, then, the trade or businesses of the people are also recognized. It is therefore prudent for the medical business of traditional medicine to be given full recognition in healthcare to improve the lives of the people.

Hence, in this paper, I provide a commentary on the need for legislation on Traditional, Complementary, and Alternative Medicines and Practice in the Gambia.

**Keywords: Traditional Medicine, Complementary medicine, legislation, The Gambia, Statutory regulation**

## **INTRODUCTION**

In Ghana, at the hearing of Traditional Medicine, many people have some kind of skepticism [1, 2]. This, I had assumed pertained to the Ghanaian jurisdiction until I got to the Gambia to pursue the Barrister-at-Law course at the Gambia Law School, Banjul. When I had the admission to go to the Gambia Law School, I brimmed with joy as my research tells me the Gambians are traditional medicine lovers [3]. So it supported my vision to study the law with my interest in shaping African naturopathy.

I found something unique in the Gambia: They are herbal tea lovers; *attaya* and many others are frequently consumed [4]. However, these herbal teas are imported from China and many other countries and in turn, improve the economies of these countries.

Settling in, I had an engagement with the media houses as a medical and science writer with an interest to promote Gambia's natural remedies and delicacies. I further had a meeting with one senior lawyer to introduce myself to him. His perception of traditional medicine is akin to the 'unlettered man'. He showed me one concoction in his fridge that was prescribed by one healer which he failed to take. He was right not to drink. He complained about the administration, storage and production of the concoction. He was scared that it might harm his organs.

I allowed him to talk his heart out about how he feels about the traditional healers in the Gambia. After I discussed with him what traditional, complementary, and

alternative medicine was and how Ghana improves the standard in the practice, he became interested to know more.

I can remember him saying, "The Gambia would need your services to help streamline the profession". He agreed that there is a need for legislation to regulate the traditional healers in the Gambia. Well, I was holding some of the blockbuster articles I had written in the Gambia newspapers on natural remedies and I submitted them to him [5]. He showed more interest and requested that I leave the papers with him to read more.

I left his chambers feeling more positive for the traditional healers in the Gambia. I later engaged the National Traditional Healers Association of The Gambia (TRAHASS) to familiarize myself with them and their challenges at their office in Brikama[6]. Fast-forward, I wrote to the Health Minister to take steps on traditional medicine legislation[7].

I found that the intellectuals have a love for natural medicines in the Gambia, but the problem they are faced with is the credibility of the healers and the scientific aspect of the remedies. I noticed this in the emails I receive anytime my articles are published in the newspapers. I found that the Gambians have a love for natural remedies. And would love it even the more if it is well standardized. However, standardization can only be achieved if legislation is passed.

### **Traditional and Complementary Medicines**

Traditional Medicine in the Gambia cannot be separated from the people[3]. It is part of their way of life and it is evident when you visit the markets centers. I was at the Serrekunda market, where I interacted with the women selling herbal remedies. I could remember one of my colleagues tried to make a mockery of me that am selling 'koko aduro' to wit, selling medicine for hemorrhoids. But it only made evident

their ignorance of traditional medicines. They see no reason someone in training in the noble profession to become a Legal Practitioner should be involved in the promotion of traditional medicines in the Gambia. But what they forget is that as Potential Legal Practitioners, our duty is to help shape communities and industries. We are to help humanity and promote human rights. Promoting healthcare pluralism is a human right. Shaping the medical and healthcare industry is part of the training of future lawyers. It is not only my country that I need to do this. Wherever these challenges arise; there is a need to provide solutions.

There is a concern that the traditional healers of the Gambia mostly use supernatural ways such as prayers, charms, and incantations to diagnose and cure their patients. Well, this is ubiquitous all over the world, and as a Naturopathic Professor, I know this terrain but with the training in law, I have gained more confidence in handling some of these issues.

I also noticed that just like any part of the African continent: The Gambian healthcare industry has two facets: African culture and European culture. Before human emergence, African traditional practices were in existence. The only difference is colonization influenced the African culture. They were influenced by the Portuguese in 1455. In the late seventeenth century, the Portuguese sold trading rights to the British and the French, and in 1783, the British monopolized the trading rights. The Gambia had its independence in 1965 from the British. However, their European penetration in the Country and the traditional Gambian culture can still be seen and felt.

I have seen interesting things such as German-made Mercedes Benz operating as taxis and donkey carts competing with drivers which are not seen in Ghana. Additionally, Gambians speak Mandinka, Wolof, Fula, Jola, and Serahulie), but the official language is English. The role of traditional healers such as bone setters to mend a broken limb.

Many people wear jujus, a protective charm prepared by a marabout, to keep away evil spirits, bad luck, and even contagious diseases such as malaria

## **Methodology**

I reviewed several legal documents in the Gambia to evaluate their justifications for traditional medicine recognition and the need for legislation.

The inclusion criteria were legal documents that I found to support my commentary subject on traditional medicine practice justification. Legal documents such as the Constitution of the Republic of the Gambia, 1997, Evidence Act, 1994, Company Act, 2019, Criminal Procedure Code, Act No. 26 of 1933, were the major documents. The Gambia National Policy on Traditional Medicine document was evaluated.

Others were students Hand Outs such as the Law of Evidence, and Criminal Procedures used to teach Barrister-At-Law students at the Gambia Law School, Banjul, were all evaluated.

The exclusion criteria were legal documents that had no relation to the subject for analysis.

## **Findings**

I found that though there is no legislation on traditional medicine in the Gambia, the Constitution of the Republic of the Gambia, and the Evidence Act recognizes the customs of the people. Besides, traditional medicine is part of the custom of the people. Finally, no law also proscribes the practice of traditional medicine in the Gambia in the Criminal Procedure Code. Custom is therefore a question of fact and I justify this commentary for the passage of legislation on traditional medicine in the Gambia.

## **Discussion**

### **Traditional Medicine Practice: Constitutional Right?**

Section 4[8] of the Constitution of the Republic of the Gambia asserts that this constitution is the supreme law of the Gambia any other law found to be inconsistent with any provision of this constitution shall, to the extent of the consistency, be void. Section 5 [8] provides the roadmap for the enforcement of the constitution.

Section 7 [8] further highlights the laws of the Gambia, and 7(d) embraces the common law and principles of equity. Section 7(e) [8] further emphasizes customary law as part of the laws of the Gambia. The customary law so far is concerned with members of the communities to which it applies. In this regard, the customs of the people in the communities also include the practice of traditional medicine. Hence, the practice of traditional medicine is a constitutional right.

It is further enhanced in Section 31[8] of the Constitution of the right of culture promotion. It states that every person shall be entitled to enjoy, practice, profess, maintain, and promote any culture, language, tradition, or religion subject to the terms of this constitution and to the condition that the rights protected by this section do not impinge on the rights and freedoms of others or the national interest, especially unity.

Hence, the practice of traditional medicine is a way of life for the people of Gambia; it is part of their culture. Besides, the constitution emphasized that no punishment without law.

Section 211[8] also deals with the principles of State Policy and forms part of the public policy of the Gambia for the establishment of a just, free, and democratic State. Though it is stated that the directives shall not confer legal rights or be enforceable in any court but (a) subject to the limits of the economic capacity and

development of the Gambia, the Executive, the Legislature, and all other organs of the State in taking policy directions, making laws and in the administration of the Gambia, shall according to their respective functions be guided and observe them a view to achieving by legislation or otherwise the full realization of these principles; and (b) the courts are entitled to have regard to these principles in interpreting any laws based on them.

It is worrying that the national policy on traditional medicine drafted in 2008 to develop and use traditional medicine to complement conventional medicine in the Gambia through harnessing all available resources, legislation, research, and promotion was left to sit on the shelves.

### **The Gambia National Policy on Traditional Medicine**

A National programme was established in 2001 under the Department of State for Health[9] to see to the affairs of traditional medicine in the country. In 2002, a national technical working group was formed to guide the development of the programme. No national research, tertiary, or professional school exists for the study of herbal medicine or complementary therapies. Improper and over-harvesting of medicinal plants is endangering various plant species. The national policy programme proposed the establishment of the National Council on Traditional Medicine to provide guidance and mobilize the required financial resources for the development of traditional medicine in The Gambia. No action has been taken on this policy and has become a white elephant.

### **Traditional Medicine: Quackery?**

One of the major issues averting the progress of the development of traditional medicine is the linkage between quackery. The question to ask is whether traditional medicine amounts to quackery. This is a question of law. I provide an answer here:

A locus classicus case is ***Poonam Verma v. Ashwin Patel & Ors*** [10] , which had to do with who is a quack in the medical field. The Indian Supreme Court held that:

*"A person who does not know about a particular System of Medicine but practices in that System is a Quack and a mere pretender to medical knowledge or skill, or to put it differently, a Charlatan."*

The only challenge is that the Supreme Court did not define what constitutes 'knowledge' as it is in vague terms. The fact is that knowledge acquisition could be in a formal or informal context. In traditional and alternative medicine practice, most of the practitioners acquired their knowledge through their forefathers or inherited which is in the category of informal knowledge acquisition. In this regard, the practice of traditional medicine cannot be regarded as quackery unless there is legislation that spells out the requirement for those to be considered quacks or not.

#### **Traditional Medicine Practice as evidence in Customary Law.**

Traditional medicine<sup>[11]</sup> is defined as the total of knowledge and practices, whether explicable or not, used in diagnosing, preventing, or eliminating physical, mental, and social diseases. This knowledge or practice may rely exclusively on experience and observation handed down orally or in writing from generation to generation. These practices are native to the country in which they are practiced.

On the other hand, complementary and alternative medicine refers to diverse healthcare systems that are not part of a country's tradition and are not integrated into the dominant healthcare systems such as Ayurveda, naturopathy, homeopathy, chiropractic, acupuncture or traditional Chinese medicine, holistic medicine and many more<sup>[12]</sup>.

Traditional medicine is as old as humanity itself. From the onset of the garden of Eden, man learns to fend for survival and protect himself against predators, he also had to learn to heal himself. Today's modern medicine emanates from the development of traditional medicine [13]. Before the colonial masters, the people of the Gambia were healing themselves [14]. Even today, traditional birth attendants continue to actively assist in birth delivery. Spiritualists continue to play a very useful role in psychiatrist service; bone setters continue to act as orthopedic surgeons; traditional surgeons continue to perform circumcision in communities and herbalists continue to provide services for a high number of disease conditions[15].

Though there are good mainstream hospitals in the Gambia, a good number of the population still use the traditional healing system. The simple reason is that the system is inextricably linked with the culture and beliefs of the people. Culture is the way of life and customs cannot be abandoned [15].

#### **Can custom be justified in law?**

Section 2 [16] of the Interpretation section of the Evidence Act 1994 of the Gambia defines customs as a rule which, in a particular area, has from long usage, obtained the force of law.

Section 13 [16] further emphasizes the admissibility of customs as evidence in a Court of competent jurisdiction in the Gambia. It states that a custom may be adopted as part of the law governing a particular set of circumstances if it can be proved to exist by evidence. Hence,

***Party alleging has burden of proof of custom, prove by testimony of persons who regard custom as binding on them, may be judicially noticed, not enforced if contrary to public policy, natural justice, equity, and good conscience.***

In this regard can traditional medicine practice be regarded as admissible in evidence? Yes, the practice of traditional medicine is a clear case of *res ipsa*

*loguitor*(Its speaks for itself). This is because even the unlettered woman in the Serrukunda could prove that traditional medicine is part of the customs of the people of the Gambia.

The Law of Evidence in the Gambia[17] , a Handout used in teaching Barrister Law students in the Gambia, based on Hassan Jallow's 'The Law of Evidence' explained that where the issue is whether a particular custom exists or not, any fact which helps to establish the existence or otherwise of the custom is relevant and admissible. The custom may be an ordinary or *business practice* or it may be one of customary law. Whatever it is, it has to be proved by the person who is claiming its existence as held in **Maurel Freres SA v. Alieu Nying and Others**[18] .

Secondly, those who testify as to its existence must be persons who would know of it by virtue of their association with the business practice or with the custom or tradition.

Once a custom has been proved to exist to the satisfaction of the court, the court may take judicial notice of it and therefore dispense with proof of it in subsequent cases. Thus the burden would now shift to those who assert that the custom has changed for them to prove the change.

In this regard, it will very difficult for anyone to say that traditional medicine has no place in the customs of the people of the Gambia. The existence of the National Traditional Healers Association of The Gambia (TRAHASS) demonstrates that traditional medicine is recognized by the laws of the Gambia and is therefore part of the customs of the people.

Besides, the Companies Act, 2013, Section 16 [19] prohibits and restricts names that have national interest from registration if it has nothing to do with the government interest. Hence, the registration and acceptance of the name National Traditional Healers Association of The Gambia (TRAHASS) is *prima facie evidence* that traditional medicine has been accepted as part of the customary laws of the Gambia, and the

association enjoys the patronage of the Government of the Gambia or any Department of Government. Besides, the popularity of traditional medicine in some ways can be attributed to the former president, Alhagi Dr. Yahya A.J.J. Jammeh, who claims to be working to acquire cures of devastating diseases using traditional medicine[3].

Also, Section 59 [16] emphasizes that in deciding questions of custom the opinions of area *Seyfolu* or other persons having special knowledge of custom in any particular area and any book or manuscript recognized by the people in that area as a legal authority are relevant.

Section 62 (1) [16] asserts that when the court has to form an opinion as to the existence of a general custom or right, the opinions, as to the existence of the custom or right, of persons who would be likely to know of its existence if it existed are relevant.

Section 62(2) [16] further cements what constitutes “**general custom or right**” and explained that it includes customs or rights common to a considerable class of persons.

Besides, in evidence, there are certain matters of which by law the courts are obliged or bound to take judicial notice to accept them as established without any proof. For instance, section 74 [16] lays the foundation for such matters including the identity of Heads of Departments at any particular time and many others. They need not be proved by evidence but merely by the production of the relevant document. In this case, there is the existence of the National Department for Traditional Medicine under the Ministry of Health with a history of past Departmental Heads and this is a *prima facie* of traditional medicine recognition in the Gambia[9].

In this regard the court will take judicial notice of all facts which, according to the inevitable course of nature, must have occurred; of customs and practices and rules of customary law once they have been proven as facts.

Additionally, the court also takes judicial notice of science and technology and the general level of human knowledge as it expands. The practice of traditional medicine is well established beyond dispute. Hence, it will be difficult for anyone to say it does not exist as the history of traditional medicine can be traced to the Health Ministry with international donors' support.

### **The Business of Traditional Medicine**

The practice of Traditional Medicine could be an avenue to improve the economy of the people of the Gambia. For instance, one study by Van et al. [20] reports that an estimated 951 tons of crude herbal medicine were sold at Ghana's herbal markets in 2010, with a total value of around US\$ 7.8 million.

Another study, Quiroz et al. [21] also found that about 655 metric tons worth 2.7 million USD are periodically sold in Benin. The Grand Review Research(2023) also examine that the global complementary and alternative medicine market size was valued at USD 117,210.3 million in 2022 and is expected to expand at a compound annual growth rate (CAGR) of 25.1% from 2023 to 2030[22].

Section 215(1) [8] of the Constitution of the Republic of the Gambia, 1997, states that the State shall endeavor to create an economic environment that maximizes the rate of economic growth and employment and secures the maximum welfare and prosperity for all persons in The Gambia.

In this regard, the government of the Gambia could help improve the economy with legislation on Traditional Medicine looking at the global economic potential of traditional remedies. It may also help improve the agricultural sector. This tends to reduce the unemployment rate in the Gambia. For instance, Market Research. Com [23] reports that the tea market in Gambia was equal to 18.40 million USD (calculated in retail prices) in 2015. By 2025, the tea market in the Gambia is

expected to get to 48.18 million USD (in retail prices), thus increasing at a CAGR of 9.01% per annum for the period 2020-2025. This is a decrease, compared to the growth of about 11.46% per year, registered in 2015-2019.

### **Legislation and Regulations: Why does it matter for the Gambia**

Customary law is regarded as a question of fact. But not all customs practices are to be accepted. This is why a custom can only be accepted in a judicial proceeding if it is not contrary to public, natural, equity, and good conscience. See *Musa Dibba v Baboucarr Gassama GCA CR. APP.* [24] .

In this regard, traditional medicine practice as part of the customs of the people of the Gambia has to be regulated to protect the public from harmful practices in the need of traditional medicine.

The Parliament, UK[25] notes that legislation is a law or a set of laws that have been passed by Parliament. The word is also used to describe the act of making a new law. On the other hand, the Collins dictionary[26] defines regulation as the controlling of an activity or process, usually by means of rules. Hence, the legislation provides the roadmap for effective regulation of activities.

Countries with effective legislation and regulatory framework have benefited immensely from traditional Medicines. The likes of India, China, North America, Australia, and many more.

In Africa, countries like Benin, Cote d'Ivoire, Ethiopia, Ghana, South Africa, and Tanzania have developed a National policy, as well as laws and regulations on traditional medicine, Gakuya et al. [27] .

In the case of Ghana, there are currently over 55 Government hospitals with Traditional Medicine Department manned by qualified Medical Herbalists trained

from the Kwame Nkrumah University of Science and Technology(KNUST). Currently, a new draft of the legislation is pending to incorporate alternative medicine as well into the healthcare sector. There are also national occupational standards on Naturopathic and Holistic Medicine at the tertiary level to train physicians, Obu and Bluwey [28].

Recently, Uganda has also developed national laws on traditional and complementary medicine, [29]. Additionally, Namibia and Zimbabwe, have a council to register and formalize practices in the practice of Traditional and Alternative Medicine, Abrams et al[30] .

In the case of Tanzania, Ghana has a good definition of traditional and alternative medicine. In the case of South Africa, Namibia, and Zimbabwe, the act leaves what constitutes traditional and alternative medicine at the discretion of the council[30].

The importance of legislative regulation cannot be underestimated in the profession of traditional and alternative medicine. This is because, even in advanced countries where there are effective regulations, the risk associated with natural healthcare has been reported. The health of the patient should be a major priority, thus unregulated practitioners such as in the Gambia appear to have higher risk profiles. For instance, the court in other jurisdictions had to step in to deal with practitioners for causing harm to the patient.

In the ***United States v Dr. Mazi 3:21-mj-71156 MAG[31]***, a California-based naturopathic doctor was prosecuted for spreading false information on COVID vaccine and prescribing a fake covid natural vaccine.

Also, in the ***United States v. Feingold, 416 F. Supp. 627[32]*** , a Naturopathic Doctor was also convicted for prescribing a pharmaceutical drug that was out of the scope of practice.

Thus, this commentary calls on policymakers to initiate the roadmap for legislation on traditional and alternative medicine in the Gambia. Due to the absence of legislation, it will be difficult to regulate the practitioners. Also, due to the absence of legislation and poor regulation, the industry is faced with the tag of quackery, witch doctors, and sorcerers and discouraged the learned and religious from patronizing their services.

Though, some traditional healers see legislation and regulations as a means to take over their businesses by the government. I emphasize that traditional healers in the Gambia, should look at the bigger picture of their industry and push for legislation to enhance their industry. This is because, in the case of India and China, Ayurveda, and Chinese Traditional medicines which started somewhere between the 8th and 10th Centuries BC have stood the test of time with regulation.

Also, the disclosures and documentation by the generations of herbalists that came before have improved their industry and China and India have seen the economic aspect of the practice.

The World Health Organisation in its report on the 'Legal Status of Traditional Medicine and Complementary/Alternative Medicine: A Worldwide Review' 2001,

***. 'National policies are the basis for defining the role of traditional and complementary/alternative medicine in national health care programmes, ensuring that the necessary regulatory and legal mechanisms are created for promoting and maintaining good practice; assuring authenticity, safety, and efficacy of traditional and complementary/alternative therapies; and providing equitable access to health care resources and information about those resources.'***

Though the Gambia has a national policy under the Ministry of Health, a national policy cannot be effective without legislation. Traditional healers are the first point of call for the public when they are faced with illness.

The Market Research Future [MRF] [33] reports that the Herbal Medicine Market Value will exceed USD 129 Billion in Revenue Mark by 2023. The research team further posits that hospitals and retail pharmacies account for 55.82% of the global market followed by Ecommerce. Europe will still lead as the largest share of the market value. This is because western medicine is still the standard. However, due to the many side effects, many people have shifted to natural remedies. As we push for legislation and regulatory framework, the question traditional healers in the Gambia should be pondering is whether they can compete at the global level. In the case of the government, what revenue benefits are being lost due to the absence of an effective regulatory framework?

### **Recommendations**

The Gambia stands a better chance to benefit from national legislation to promote traditional and complementary medicine. Countries such as China, India, and Ghana are far advanced in the practice of pluralist healthcare. Over 55 government Hospitals in Ghana have Herbal Medicine Department with qualified practitioners. This has led to integrative medical practice.

India and China are global major benchmarks to follow. Today, India has started issuing AYUSH visas for people who would want to visit India for traditional medical treatment.

There is also AYUSH, a ministry of the Government of India responsible for developing education, research, and propagation of traditional medicine systems in India. Ayush is a name devised from the names of the alternative healthcare systems covered by the ministry: Ayurveda, Yoga & Naturopathy, Unani, Siddha, and Homeopathy. There are government Ayush hospitals. China and India are improving their economies with their traditional remedies.

I hereby recommend the following:

1. Set up a technical Committee to advance the drafting of legislation for traditional and Alternative Medicines;
2. The legislation should not only focus on traditional medicine but should cement on complementary and alternative medicine as well;
  - a. The reason is that traditional and complementary therapies are siblings and leaving complementary therapies will leave a gap and could create future challenges.
3. Legislation should protect titles for practitioners to aid prosecution of those who arrogate to themselves titles they do not have in the profession;
4. The legislation should prove a clear definition of traditional, complementary, and alternative medicines and practitioners' qualifications; and
5. The legislation should also provide a clear roadmap for integrative practices, especially for Medical Persons who would want to do crosopathy practices.

## **Conclusion**

The practice of traditional medicine in the Gambia is a constitutional right as it is part of the customs of the people. The Evidence Act recognizes the admissibility of customs in evidence. In this regard, as a Professor of Naturopathy with an interest in African Naturopathy and a student Barrister in Law at the Gambia Law School, I emphasize that it is time for policymakers, Lawyers, health professionals, and government leaders to have a different view on herbal medicine.

The Gambia, being a smiling Coast of Africa, is naturally gifted. Hence, there is a need to recognize and harness the benefits that come from our biodiversity. We need to disregard the negative perception of herbal and natural remedies at the basic level and look at how to improve our natural remedies to benefit the country for commercial purposes. This will not only boast our economic growth but will also promote good health.

I, therefore, entreat policymakers, legislators, lawyers, the President of the Republic of the Gambia to initiate steps to provide legislation and regulatory framework on Traditional and Complementary Medicines.

Though, I know it will be hard; that the road will be muddy, and rough. But Heavens know how traditional healers will get there to get this law passed in the Gambia. I therefore urged them to move on, for a vision without provisions lead to the revision of the vision. But I know this vision shall not be thwarted.

I, therefore, end with this philosophy: "the future, you picture is the future you will feature, the 'YOU' you see is the 'YOU' you will become. Therefore picture a great future to feature and desire a great 'YOU' to become and the almighty God will see to it that you have featured in the future you have pictured and have become the YOU, you have desired.

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