

# The Traditional Health Practitioners Act No. 22 (2007) of South Africa: Its history, resolutions and implementations in perspective

## (Part 1: History)

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### RESEARCH

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### ABSTRACT

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#### Background

Years of South African legislation on traditional healing practices preceded the Traditional Health Practitioners Act (Act No. 22, 2007). The first laws date as far back as 1895. It seems as if the intention of the pre-1994 legislation was not to promote traditional healing practices, but to limit the power of the traditional healer.

#### Aims

The study aims to describe the history that came before Act No. 22 of 2007.

#### Methods

This is an exploratory and descriptive study in line with the

modern-day historical approach of investigation and reviewing research. The emphasis is on the use of present-day documentation, like articles, books and newspapers, as primary sources to reflect on the development and promulgation of Act No. 22. The findings are offered in narrative format.

#### Results

Various political and legal processes can be identified as contributing to the promulgation of the Act in 2007, especially after the 1994.

#### Conclusion

It had taken more than 45 years of unofficial and seven years of official struggle to get Act No. 22 promulgated in 2007. Today, nearly a decade after promulgation, it has still not been fully enacted.

#### Key Words

Traditional healing, traditional healer, healthcare, constitution, parliament, department health

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#### What this study adds:

##### 1. What is known about this subject?

The history behind South African Act No. 22 (2007) has described sporadically without any in-depth analysis or discussion.

##### 2. What new information is offered in this study?

The study offers an overview of the development of Act No. 22, identifying the most important role players in this history.

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

The article offers a basic overview of the reasons behind the promulgation and the role players that had driven it.

## Background

The Traditional Health Practitioners Act No. 22 (2007) was the end product of various South African laws on traditional healing practices, starting as early as 1895. Various early stages of development can be identified in terms of legislation that had offered traditional healers limited rights of practice. With the emergence of modern healthcare services and systems, traditional healthcare in South Africa has become marginalized and has remained undeveloped as a result. The early European healthcare model, introduced unofficially in 1652 with the settlement of the Dutch in the Cape, also contributed to this marginalization by successfully stigmatizing African traditional healing in general public thinking.<sup>1–6</sup>

It is crucial to understand the history of this Act and the role players that had contributed to its promulgation if one is to understand the focus of the Act, the controversies around it and its possible future impact on healthcare.

The aim of this study is to describe the historical developments related to traditional healing in South Africa that culminated in the promulgation of Act No. 22 (2007).

## Method

The research was done by means of a literature review. This method is aimed at building a viewpoint based on the available evidence as research on the subject developed over time. This approach is often used in modern historical research where there is a paucity of information. The databases used were EBSCOHost, Sabinet online and various contemporary sources like newspapers for the period 2014 to 2015, articles from 1992 to 2014, books for the period 1990 to 2013 and governmental documents covering the period 1974 to 2016. These sources enable reflection on the development and the promulgation of Act No. 22 (2007). The sources also put the thinking and opinions on traditional healing in South Africa in perspective. The research information is presented in narrative format.<sup>7,8</sup>

## Results

### The early legal position of the South African traditional healer

It is said that South Africa's first official traditional healer was appointed by uShaka kaSenzangakhona (popularly called Shaka Zulu), King of the Zulus, when he allowed Nobhiyana Madondo to practise unfettered and to become his official sangoma.<sup>6,9</sup> Gumede<sup>6</sup> initially regarded this event as a unique Zulu Royal Charter to practise as a diviner, but

sadly had to admit that this first distinction only came after Shaka Zulu murdered all but one of Madondo's rivals.

Traditional healers had to be licensed in the Natal Colony and the Union of South Africa between 1895 and 1981. Under White rule this early licensing was only applicable to a specific group, referred to as *healing doctors, Zulu medicine-men (Izinyanga Zokwelapha*, which include midwives, the *Umbelethisi*) and the herbalists (*Izinyanga Zamakhambi*). Their practises for gain were limited to their own Zulu people. The other groups (like the wizards, witches, diviners, skyherds or heaven doctors, rainmakers, etc.) were not licensed and were prohibited from practising for any gain.<sup>6</sup>

The practice rights of these groups of licensed traditional healers were included in several proclamations and Acts of Parliament. The KwaZulu Act No. 6 of 1981 even determined that the provisions of other existing Acts should not be constructed as derogating the KwaZulu act and its registered traditional healers. Such acts include the Homeopaths, Naturopaths, Osteopaths and Herbalists Act of 1974 (No 52), the Medical, Dental and Supplementary Health Services Professions Act of 1974 (No 56) and the Nursing Act of 1978 (No 50).<sup>6</sup>

Early Proclamations and Acts include:<sup>6</sup>

- Proclamation No 7 of 1895: Statutes 1845-1899;
- Act No. 21 of 1988 Section 33: Statutes 1845-1899;
- Act No. 13 of 1928: Union Statutes 1910-1947;
- Act No. 3 of 1957: Statutes 1957;
- KwaZulu Act No. 6 of 1981.

### The pre-1994 planning on traditional healthcare for South Africa

It seems that the main driving force behind a reconsideration of the occupation of the traditional leader was, to a certain extent, the early discriminative White decisions, policies and politics related to African cultural beliefs, customs and habits, like traditional healing.<sup>1-4,6,10</sup>

A period of deliberation between various traditional healer groups and the Department of Health (DOH) as role players resulted in the establishment of an *Internal Committee* for traditional healers in 1992, followed by the election of a *National Steering Committee* for traditional healers in 1993. From 1993 onwards, the traditional healers focused their attention on getting formal recognition for their profession from the government. However, as a result of a lack of clear guidelines to formulate policies, the *National Assembly Portfolio Committee on Health*, initiated an inquiry with the main focus on three issues.<sup>1-5,11-13</sup>

These issues were<sup>1-5,11-13</sup>

1. The desirability of a statutory council for traditional healers,
2. The recognition of medical certificates by traditional healers; and
3. The recognition of traditional healers by medical schemes.

Various public hearings on traditional health were held in the Republic in 1997 under the auspices of the *Provincial Standing Committees on Health*. The information obtained was drafted into a report by the *National Council of Provinces*. In 1998, further hearings were conducted by the *Portfolio Committee on Health*, with a final report in December 1998.<sup>5,11</sup>

The following recommendations resulted:<sup>5,11-13</sup>

1. Legal recognition of traditional healers as a health resource; and
2. An interim council to be established for the regulation of the traditional healer as a profession.<sup>5,11</sup>

An interim period of three years (up to 2001/2002) was allowed to the Interim Council of Traditional Healers to report back to Parliament. The objective was that a permanent council would be constituted after 2001/2002 if certain conditions had been met.<sup>12-15</sup>

The general election of 1999 ruled out any input by the Minister of Health in proposed legislation, but various meetings and workshops were still held. In September 2000, the Health Ministry gave the Department of Health (DoH) a mandate to implement the Portfolio Committee's recommendation of establishing an Interim Council for Traditional Healers. During 2001 and 2002 the DOH held a series of road shows countrywide for traditional healers, specifically with the aim of engaging them on the matter of regulating their profession. One outcome was the formation of a forum of traditional health practitioners under the guardianship of the DoH. Its task was to consider legislative proposals and the regulation process.<sup>12-15</sup>

It was decided then to compile a proposed Bill (Bill No 20, 2003) to regulate traditional healers in South Africa.

#### **Traditional Health Practitioners Bill of 2003 (No 20)**

The pre-1994 lobbying by activists and propagandists to regulate traditional healers and to offer them statutory status, was fruitful and led to the proclamation of the Traditional Health Practitioners Bill (2003), introduced in the

National Assembly as a Section 76 Bill and published in Government Gazette No 24751 of 14 April 2003.<sup>12,13</sup>

The Traditional Health Bill of 2003 clearly stated the objective of devising regulation of traditional healers. This is reflected in the *Memorandum of 2003* to the Bill (2003). The different role players since 1994 drove this goal and it was ultimately incorporated into Act No. 22 (2007).<sup>10-13</sup>

The Bill was a first for traditional healers in South Africa, seeing that it includes all the provinces. It therefore goes much further than KwaZulu Act No. 6 of 1981. It had constitutional implications in that it focussed on the regulation of a specific South African profession (traditional healers) that had previously been unregulated. This regulation was subject to the government's interpretation of Section 22 of the Constitution that stipulates that all citizens have the right to choose their trade, occupation or profession freely and that the practise of a trade, occupation or profession may be regulated by law. The DoH, through its legal unit, was content that the Bill was not repugnant to the provisions of the Constitution.<sup>12,13,16</sup>

At the time the DoH and the State Law Advisers were of the opinion that the Bill should be dealt with in accordance with Section 76 of the Constitution, since it fell within a functional area listed in Schedule 4 to the Constitution, namely *Health Services*.<sup>12,13,16</sup>

It was decided that the start-up costs for the Council would be borne by the State. With the passing of time, the Council should achieve a greater degree of financial independence as more and more traditional health practitioners pay registration fees.<sup>12,13</sup>

The Bill was based on other South African Health Acts, like those that regulate the Health Professions (Act No. 56, 1974) and the Allied Health Professions.<sup>17,18</sup>

The Act was to be called the *Traditional Health Practitioners Act, 2003*, and would have come into operation on a date to be determined by the President by proclamation in the Gazette.<sup>12,13</sup>

The above Bill was not proclaimed as an Act in 2003 as intended, but only in 2004. It was signed into law on 7 February 2005.<sup>11,12,19</sup>

The Bill's intention was to provide a regulatory framework to ensure the efficacy, safety and quality of traditional healthcare services; to provide for management and control over registration, training and conduct of traditional health

practitioners, students and specified categories of traditional healthcare workers.<sup>11,19</sup>

The Bill incorporated comprehensive descriptions, definitions and rules to make effective its implementation (if it became an active Act). It offered precise guidelines on how to establish a council and how to manage the traditional healers in terms of profession registration and rules, offences, and fees to pay. It offered a sound foundation on which traditional healers could develop their trade as a profession. However, some of the Bill's definitions are vague. Especially controversial are the regulations that give the traditional healers certain practice rights and privileges on the same level as the existing regulated professions of the Health Professional Council of South Africa (HPCSA). The Bill also makes them full members of the health establishment. Specifically, their competence to practise as a healthcare professional in terms of their present training and educational levels, is still a point of criticism by the accredited healthcare professionals.<sup>10,19</sup>

The Traditional Health Practitioners Bill of 2003 was modelled on first-world health legislation applicable to and meant for the start-up of a well-established and well-organized profession, one with existing excellent management styles, learning programmes, a training model, and one that already has some kind of official recognition. Traditional healers did not meet these prerequisites in 2003.

#### **Traditional Health Practitioners Act No. 35 of 2004**

Act No. 35 of 2004, signed into law on 7 February 2005, was based on the Bill of 2003, with a few new inscriptions to make the Act's contents more clear and precise.<sup>12,13,19</sup>

This Act was put on the shelf for a short time after the Constitutional Court ruled, after intervention by the Doctors for Life (DFL), that the Act be returned to Parliament, as it was improperly processed by the National Council of Provinces (NCOP). The Act was further opposed by the DFL as they argued that a medical practice that is not based on the allopathic system is potentially harmful to the public and can only lead to a waste of their money.<sup>11,20-23</sup>

#### **Traditional Health Practitioners Act No. 22 of 2007**

After the government re-traced their steps and held public meetings in all provinces in 2007, the Traditional Health Practitioners Bill of 2007 (Bill 20 of 2007) was approved and the Traditional Health Practitioners Act of 2007 (No 22 of 2007) was signed into law in 2008. Act No. 22 (2007) was precisely the same in content as Act No. 35 (2004).<sup>10,19</sup>

## **Discussion**

The primary intention of Act No. 22 (2007) is to regulate traditional healers and to establish an Interim Traditional Health Practitioners Council.<sup>10,24</sup>

It took 11 years of parliamentary struggle and 45 years of informal agitation from 1969 to reach the inauguration of the Interim Council in 2013.

The reason why the establishment of the Interim Council was delayed from 2003 to 2013 is unclear. It is problematic to attribute it to the modern Western medical sector of the country, as post-1994 politicians try to do, seeing that the Medical Association of South Africa (MASA) had as early as 1995 offered written guidelines for cooperation between modern and traditional healers. It rather seems as if the in-fights among the 100 or more traditional healer organizations and the many different types of traditional healers, as well as a lack in governmental support to guide and advise them on the process, played a negative role.<sup>11,25</sup>

Research suggests that events inside in the ANC government also played a role, for instance the expulsion of Mbeki as president of the Republic of South Africa. Mbeki, who signed the Act into law on 7 January 2008, was recalled by the ANC in 2009, leading to the resignation of the Mbeki cabinet. Thereafter, an acting Minister of Health, under the then acting President Motlanthe, was appointed. The ANC elective conference of 2009 was followed by national elections and the appointment of a new Minister of Health by the new president, president Zuma.<sup>11</sup>

The new government did not regard the Interim Council for Traditional Health Practitioners as a priority and it was not high on the priority list of the 10-point plan of the Department of Health. This led to frustration among traditional healers, which resulted in a march to the Union Buildings in Pretoria in 2011. In a petition the traditional healers raised various points of dissatisfaction. They alleged that they were treated badly by the Minister of Health and that there was lack of official action to activate the Interim Council. It was only in December 2011 that the National Department of Health took action and opened nominations for seats on the Interim Council-to-be. Health spokesperson Joe Maila informed the public and traditional healers in the media in October 2012 that the DoH aimed to have the Council up and running by the end of 2012. The Council was eventually inaugurated on 12 February 2013, while the formal establishment of the Council took place on 1 May 2014 by President Jacob Zuma in terms of Section 52 of Act No. 22 (2007). A period of three years (up to 2016/2017)

was prescribed for the Council to become operative and to report back to the Minister of Health.<sup>11,21,23,26-29</sup>

### Strength and limitations

The study makes a contribution to an understanding of the intentions of the Act, where it comes from and the various role players in its promulgation.

This is vital considering the fact that Act No. 22 (2007) is a controversial Act that clearly elicits negative reaction from the established healthcare fraternity.

The fact that the Act has not been fully enacted at this stage puts a limitation on the evaluation and discussion of its practical efficiency.

### Conclusion

It is clear that Act No. 22 (2007) is still, in 2016, nearly a decade after its promulgation, not functioning fully and that it is beset with many shortcomings and inexplicit definitions and descriptions. Although some of these shortcomings have in the meantime been corrected in 2015 with amendments to the Act by the promulgation of Regulations No 1052, further correction is needed to make it work effectively. If one considers the history of the Act, it seems that much more time may well elapse before it becomes functional.<sup>30,31</sup>

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