TRADITIONAL HEALTH PRACTITIONERS REGULATIONS 2024

Commission for Gender Equality Comments

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1. Introduction

The Commission for Gender Equality ('CGE') wishes to express its gratitude for the opportunity to give input on the draft regulations to the Traditional Health Practitioner Act 22 of 2007.

The CGE, as an independent statutory body created in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 ('the Constitution'), is mandated to promote and protect gender equality in government, civil society, and the private sector.

The Commission for Gender Equality Act 39 of 1996, ('the CGE Act'), gives the Commission the power to:

- Monitor and evaluate policies and practices of organs of State at any level.
- Monitor and evaluate statutory bodies and functionaries.
- Monitor public bodies and authorities and private businesses, enterprises, and institutions to promote gender equality.
- Make any recommendations that the CGE deems necessary.

The CGE welcomes the opportunity to make inputs into the draft regulations and shall reiterate the proposed sections of the draft and respond thereto.

2. Background

According to the World Health Organization, traditional medicine, along with associated traditional, indigenous, and ancestral knowledge, has been an integral part of community health for centuries, with over 170 countries around the world reporting the use of such medicine in one form or another.[1]

However, whilst the WHO recognises that traditional medicine can and does exist alongside mainstream healthcare, any integration of these two health systems must be done appropriately, effectively, and safely, based on the latest scientific evidence.[2] Consequently, several stakeholders have called for collaboration between bodies regulating mainstream health care practices and Indigenous health care practitioners, particularly in relation to women's health care services, mental health care, and general health care.

In South Africa, traditional health care practices are an integral part of many South Africans' conception of general health care. According to the World Health Organization, approximately 80% of South African citizens consult traditional health care practitioners as their first contact in seeking health care services. This is in part due to the fact that this aligns with their religious and spiritual beliefs, but another significant

[1] World Health Organization 'Traditional medicine' (2023) Available at https://www.who.int/news-room/questions-and-answers/item/traditional-medicine [Accessed: 30 August 2024]
[2] Ibid.

reason is that traditional healthcare is readily accessible, often more affordable than mainstream healthcare, and has fewer restrictions.

In 2008, the Traditional Practitioners Health Act 22 of 2007 (the Act) was signed into law. The Act sought to create an Interim Traditional Health Practitioners Council, as well as a formal regulatory framework to ensure the efficacy, safety, and quality of traditional health care services. The Act also sought to manage and control the registration, training, and conduct of traditional health practitioners, and traditional health student practitioners.

However, the issue of traditional health practitioners has not been without controversy, and reports of gender-based violence perpetrated by traditional health practitioners are on the rise. One study, for example, raised concerns about the exploitation of women and the killing of pregnant women by unregistered traditional healers in the Mthatha area.[3] Studies such as these only serve to reinforce the importance of regulating traditional medicine, procedures, and practitioners so that members of the communities who rely on traditional health practitioners, who for the most part are already vulnerable due to their economic, rural, and gender characteristics, are placed in significant danger.

[3] MP Thipanyane et al 'The Roles and Challenges of Traditional Health Practitioners in Maternal Health Services in Rural Communities of Mthatha, South Africa' *Int J Environ Res Public Health* 2022 Oct 20;19(20):13597. Available at https://pubmed.ncbi.nlm.nih.gov/36294175/ [Accessed 3 September 2024]

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3. Commission for Gender Equality's submissions

In this submission, the CGE will comment on the content of the draft regulations and input on it.

3.1 *Regulation 2(2): Practitioner Registration Fees Payable*

- There is no clarity in the proposed Regulations on how the funds will be allocated to benefit different categories of traditional health practitioners, particularly addressing the distinct needs of women and other marginalized groups within the sector.

- The proposed fees are impractical and problematic, especially given the unfavourable economic landscape in South Africa, which disproportionately affects women traditional health practitioners. The operational dynamics of practitioners vary based on location and the individuals they assist, often differing by gender. Due to the spiritual nature of traditional healing, many practitioners, face challenges in setting fixed fees for their services. Additionally, not all student practitioners, especially women, have the financial means to pay for their training.

3.2 *Regulation 4: Registration of Students (Amathwasa)*

Similarly, the CGE calls for greater flexibility in the registration requirements to ensure that other constitutional rights, particularly those of women and gender-diverse practitioners, are not unfairly limited. This flexibility is crucial to prevent the exclusion of individuals whose callings manifest differently, ensuring that their rights to freedom of religion, belief, and practice are respected.

3.3 *Regulation 5: Minimum Standard of Education*

- The CGE is concerned that the Regulations overlook the fact that many women have been systematically excluded from educational opportunities for generations. This exclusion is often rooted in patriarchal cultural norms that prioritize the education of men while relegating women to domestic roles. As a result, women may not have had the same access to formal schooling as their men counterparts, placing them at a significant disadvantage when attempting to meet the new educational standards. By setting a uniform standard without accounting for this inequality, the Regulations further entrench the educational disparities that already exist between men and women.

- Rural women are especially disadvantaged by the minimum educational standards. In many rural areas, girls have faced substantial barriers to education, including long distances to schools, early marriage, and domestic responsibilities. These factors have historically restricted their educational attainment. The Regulations should take into

account these geographic and social disparities and offer tailored solutions.

- There is no provision in the Regulations that offers alternative pathways for women who have not had the opportunity to meet the required educational qualifications. This failure perpetuates the cycle of exclusion, as many women, particularly in rural communities, are unable to access formal education now due to poverty, caregiving responsibilities, or cultural restrictions.

- The Regulations should include mechanisms such as recognition of prior learning (RPL) by acknowledging informal education and traditional knowledge that women may have gained through practical experience in traditional healing practices.

  - Given the prevalence of gender-based violence (GBV) in South Africa, it is essential that traditional health practitioners are trained to identify and respond to GBVF effectively. Traditional health practitioners can play a significant role in combating the scourge of GBVF, as first point of contact for healthcare. This is partly due to the alignment with individual religious and spiritual beliefs.

  - The CGE recommends including a requirement for practitioners to receive training on GBVF, particularly in recognizing signs of abuse and providing appropriate support to victims.

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- In many cases, traditional health practitioners are approached not only for general healthcare consultations but also for cleansing ceremonies by victims and/or survivors of sexual assault, in line with their cultural beliefs. This positions traditional health practitioners uniquely to offer early intervention and emotional support, further highlighting their potential to address GBVF within their communities. Therefore, their training and involvement are essential in the broader effort to combat GBVF.

Additionally, it is crucial to establish clear protocols for reporting and addressing cases of GBVF within traditional health practices, ensuring collaboration with relevant authorities when necessary to provide comprehensive support to survivors. While section 29 of the Act permits a person to lay a complaint with the Council regarding the manner in which they were treated by a practitioner, the section also requires that such a person lay the complaint by following 'the prescribed procedure'. However, the Regulations do not set out what that procedure is, nor does the Act expressly empower the Council to determine the complaints procedure that must be followed. The notion of accountability would require that such a complaints procedure be put in place, either by the Council, or in the Regulations themselves.

3.4 *Regulation 7: Minimum age and Standards of General Education*

The proposed Regulations concerning minimum age and educational standards for traditional health practitioners raise significant concerns, particularly when considering children's rights, gender-related issues,

and the unique nature of spiritual callings in traditional healing. These Regulations impose strict age and education requirements without recognizing that the calling to become a traditional healer is often a spiritual mandate rather than a career choice. This calling, known as "ukuthwasa" in many African cultures, can manifest in childhood as a divine and uncontrollable force. Rigid enforcement of age and education standards may conflict with the spiritual realities of traditional healing, which calls for exceptions to accommodate children experiencing such callings.

- In South Africa, women, particularly mothers, often play the primary caregiving role for children experiencing this spiritual calling. These caregivers bear the responsibility of managing the symptoms of ukuthwasa, which can manifest as physical or emotional distress in the child. However, without proper access to formal mentorship or training, families—especially women—are often left struggling to address their children's spiritual needs. The burden on women as primary caregivers highlights the need for flexibility in these Regulations. Allowing children with spiritual callings to begin training early under proper guidance would relieve some of this caregiving burden, ensuring that both the child's spiritual growth and well-being are supported.

- South African law such as the Children's Act 35 of 2005 and international conventions, such as the United Nations Convention on the Rights of the Child (UNCRC), prioritize the best interests of children.

- Imposing rigid age restrictions could lead to emotional, physical, or spiritual harm by preventing children from receiving proper mentorship and training in response to their calling. This situation can delay their healing journey and exacerbate their suffering. The Regulations should allow for flexibility, accommodating the spiritual needs of children while also ensuring their health and education are prioritized. Flexibility would not only benefit the child but also support the caregiving role of women, who often carry the emotional and physical load of managing a child's spiritual needs.

- Balancing education and spiritual growth is critical. The imposition of general education standards as prerequisites for traditional healing training can be particularly problematic for children from disadvantaged backgrounds, including girls, who may face additional barriers to education due to systemic gender inequality.

- From a human rights perspective, the Regulations must respect the right to freedom of religion, culture, and belief, as enshrined in the South African Constitution.

- While flexibility is key, the Regulations must also ensure that children are protected from exploitation and harm. Some children may be pushed into traditional healing prematurely, sometimes without proper care or support. This is especially concerning for girls, who may be more vulnerable to exploitation due to cultural or societal norms.

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- Safeguards, such as oversight bodies or mentorship programs, should be established to protect these children while allowing them to follow their spiritual calling. These programs should incorporate gender-sensitive approaches that recognize the unique vulnerabilities of both boys and girls.

- Furthermore, the CGE is of the view that in regard to traditional health practices relating to traditional surgical procedures such as circumcision, as set out in section 3 of the Regulations, that the Traditional Health Practitioners Council must be obliged to develop and publish guidelines relating to this practice.

3.5 *FORM THP A1*

- The application for registration form (Form THP A1) prescribed in the Act requires the person applying for registration to set out their various personal details, including race and nationality. However, the form does not require such a person to set out their gender. This would render any analysis of the gender parity of registered Traditional Health Practitioners almost impossible.

- This is particualrly so given that Form THP A2, relating to the registration of student practitioners does include such information. It is difficult to understand the rationale for including this information in one registration form, but not in the other.

Other Comments

i. *Promoting Gender Equality Among Traditional Health Practitioners*

The CGE recommends that the regulations explicitly ensure equal opportunities for men, women and persons of diverse genders to practice as traditional health practitioners. It is crucial that the regulatory framework dismantles any barriers that may exist for women, including those related to cultural biases that limit the roles of womne practitioners.

Provisions should be made for equal access to registration and certification processes for all genders. Gender-neutral language should be used throughout the regulations to avoid perpetuating stereotypes or excluding any group.

ii. *Anti-Discrimination Provisions*

The Regulations should incorporate clear anti-discrimination provisions that protect both traditional health practitioners and patients from gender-based violence and discrimination. This includes ensuring that women and members of the LGBTQIA+ persons are not discriminated against in accessing traditional health services or in their roles as practitioners and introducing penalties for practices that perpetuate harmful gender norms or infringe upon the rights of marginalized gender groups.

iii. *Cultural Sensitivity and Harmful Practices*

While respecting the cultural heritage of traditional health practices, the CGE emphasizes the need to ensure that these practices do not infringe upon the constitutional rights of women and gender-diverse individuals.

The Regulations should prohibit any harmful traditional practices that undermine the dignity and rights of women, such as forced marriage or genital mutilation and advocate for the health, safety, and well-being of women and gender minorities within the framework of traditional healing practices.

iv. *Representation of Women in Leadership and Decision-Making to be included in the regulations*

To promote gender equality within the governance of traditional health practices, the CGE calls for the inclusion of women and gender-diverse individuals in decision-making positions within traditional health councils and other regulatory bodies and quotas or similar measures to ensure that women have a significant voice in shaping the Regulations and the practice of traditional health.

4. Conclusion

The CGE welcomes the opportunity to provide input on the draft Regulations to the Traditional Health Practitioner Act 22 of 2007. It is

essential that the Regulations prioritize gender equality and ensure that women and other marginalized groups are adequately represented and protected within the traditional health sector. This includes addressing the specific challenges faced by women practitioners, students, and patients, many of whom are disproportionately affected by socioeconomic, geographic, and cultural barriers.

The CGE strongly recommends that the final Regulations include provisions that promote gender-sensitive practices, anti-discrimination measures, and equitable access to education, training, and registration. Furthermore, it is crucial that traditional health practitioners receive adequate training to combat gender-based violence and femicide, and that reporting mechanisms are clear and accessible to protect the rights and dignity of all.

Ultimately, these Regulations must strike a balance between respecting the cultural significance of traditional health practices and upholding the constitutional rights of women and gender-diverse individuals. The CGE urges that these considerations be reflected in the final Regulations to ensure that traditional health practices contribute to a more inclusive and equitable health system in South Africa.