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## Letter to the Editor

## A national call for legislation on traditional medicine in the Gambia

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I write to bring to your attention the need to call on the government of the republic of the Gambia to fast-track legislation to regulate the practice of traditional, complementary, and alternative medicine. The call is necessary as the Gambia is an opportunity hub for the development of natural medicines.

I saw this opportunity as a student Barrister-at-Law at the Gambia Law School, Banjul. The Gambia is blessed with diverse natural therapies which could support the economy, yet untapped.

Besides, when one walks through the principal street of the Gambia, one would see traditional healers unregulated providing services people patronize. Yet, no law proscribes the practice of traditional medicines. So why then leave them to endanger the public?

This prompted me as a Bar professional student, and a Professor of Naturopathy with an interest in African Naturopathy to petition the Minister of Health to legislate traditional medicine in the Gambia.<sup>1</sup>

Besides, Section 4<sup>2</sup> 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 provides the roadmap for the enforcement of the constitution.

Section 7<sup>2</sup> further highlights the laws of the Gambia, and 7(d) embraces the common law and principles of equity. Section 7(e) 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<sup>2</sup> 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<sup>2</sup> 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

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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<sup>3</sup> was established in 2001 under the Department of State for Health 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.

### **Can Custom be Justified in Law?**

Section 2<sup>4</sup> 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<sup>4</sup> 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 loquitur* (It speaks for itself). This is because even the unlettered woman in the Serekunda market could prove that traditional medicine is part of the customs of the people of the Gambia.

The Law of Evidence<sup>5</sup> in the Gambia(2022), a Handout used in teaching Barrister –At-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 Nyang and Others* 1 GR 44.<sup>6</sup>

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)<sup>7</sup> 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<sup>8</sup> 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.

Also, Section 59<sup>4</sup> 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)<sup>4</sup> 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)<sup>4</sup> 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<sup>4</sup> 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.

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. I, therefore, call for national legislation to regulate the practice of traditional medicine in the Gambia.

### About the Author

Prof. Raphael Nyarkotey Obu is a full professor of Naturopathic Healthcare, at Qualzetaoalt University of Veracruz, Mexico. He also maintains an Honorary Professorship with the Vinnystia State Pedagogical University, Ukraine, and the President of Nyarkotey University College of Holistic Medicine & Technology, (NUCHMT), Ghana. He was conferred Professorship at age 36, becoming one of the youngest Professors in recent times in Ghana. He writes columns for many leading newspapers in Ghana and abroad. Currently, pursuing the Barrister-At-Law course at the Gambia Law School, Banjul, The Gambia. In the Gambia, he has authored many blockbuster articles on local naturopathy

and delicacies and pushed for traditional and Alternative Medicine Legislation as a law student. He aims to promote African Naturopathic policies, regulations, and legislation.

### Conflict of Interest

The author is an international law student who produced this work on the behalf of the National Traditional Healers Association of The Gambia (TRAHASS).

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