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Legislative landscape for traditional health practitioners in Southern African development community countries: a scoping review

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ABSTRACT

Background and objectives Globally, contemporary legislation surrounding traditional health practitioners (THPs) is limited. This is also true for the member states of the Southern African Development Community (SADC). The main aim of this study is to map and review THP-related legislation among SADC countries. In order to limit the scope of the review, the emphasis is on defining THPs in terms of legal documents.

Methods This scoping review follows the Preferred Reporting Items for Systematic Reviews and Meta-Analyses extension for Scoping Reviews methods. Two independent reviewers reviewed applicable legal definitions of THPs by searching the Southern African Legal Information Institute (SAFLII) database in April 2018 for legislation and bills. To identify additional legislation applicable in countries not listed on SAFLII and/or further relevant SADC legislation, the search engines, Google and PubMed, were used in August 2018 and results were reviewed by two independent reviewers. Full texts of available policy and legal documents were screened to identify policies and legislation relating to the regulation of THPs. Legislation was deemed relevant if it was a draft of or promulgated legislation relating to THPs.

Results Four of 14 Southern African countries have legislation relating to THPs. Three countries, namely South Africa, Namibia and Zimbabwe, have acknowledged the roles and importance of THPs in healthcare delivery by creating a council to register and formalise practices, although they have not operationalised nor registered and defined THPs. In contrast, Tanzania has established a definition couched in terms that acknowledge the context-specific and situational knowledge of THPs, while also outlining methods and the importance of local recognition. Tanzanian legislation; thus, provides a definition of THP that specifically operationalises THPs, whereas legislation in South Africa, Namibia and Zimbabwe allocates the power to a council to decide or recognise who a THP is; this council can prescribe procedures to be followed for the registration of a THP.

Conclusions This review highlights the differences and similarities between the various policies and legislation pertaining to THPs in SADC countries. Legislation regarding THPs is available in four of the 14 SADC countries. While South Africa, Tanzania, Namibia and Zimbabwe have legislation that provides guidance as to THP recognition, registration and practices, THPs continue to be loosely defined in most of these countries. Not having an exact definition for THPs may hamper the promotion and inclusion of THPs in national health systems, but it may also be something that is unavoidable given the tensions between lived practices and rigid legalistic frameworks.

Strengths and limitations of this study

- The Southern African Legal Information Institute (SAFLII, accessible at http://www.saflii.org/) database was used; it includes 14 of the 15 Southern African Development Community (SADC) countries (Democratic Republic of Congo is not included).
- To identify legislation on countries not on SAFLII and/or further relevant SADC legislation, PubMed and Google searches were undertaken; all PubMed results and the full texts of the first 100 Google hits, where applicable, were screened to identify policy and legal documents relating to the regulation of traditional health practitioners (THPs).
- Legislation was deemed relevant if it was a draft or fully executed piece of legislation relating to THPs.
- This scoping review of the literature was compiled with the Preferred Reporting Items for Systematic Reviews and Meta-Analyses extension for Scoping Reviews checklist.
- To gain further insight into academic literature with a focus on THPs and policy in SADC countries, two reviewers independently searched/screened PubMed.

INTRODUCTION

Traditional health practitioners (THPs) are used throughout the world, to varying degrees by millions of people.[1–5] Reasons for THP use and widespread popularity, particularly in rural areas, include the reality that THPs may be the easiest to access or sole providers of healthcare in their community,[6] or may be able to provide care more quickly.[7] In addition, THPs are often (socioculturally) acceptable and able to explain conditions drawing on locally relevant terms, concepts

Box 1 WHO definition of traditional medicine

'The sum total of the knowledge, skill and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness.'

and explanatory frameworks; highlighting the importance of local aetiologies, logics and understandings, not just of interhuman practices, but also in human interactions with their surroundings and local ecological systems (eg, knowledge about healing plants). For some people, affording and accessing THPs is easier than engaging with the state or public health systems.[8] However, while geographical accessibility might be the motivation for many to approach THPs, this does not always mean that such practitioners are more financially accessible, as, in some settings, some practitioners demand more financial resources than biomedical or state healthcare systems.[9]

The Alma Ata Declaration (1978) made by the International Conference on Primary Health Care was a significant milestone for traditional healthcare as it was one of the first to recognise the role of traditional medicine and its practitioners in primary healthcare.[10] The term 'traditional medicine' should not be confused with 'complementary medicine' (CAM).[11] 'CAM' (also 'alternative') medicine refers to an overarching set of healthcare practices that fall outside the scope of a country's local (traditional) practices or conventional medicine, which are not fully integrated into the dominant healthcare system but may be used alongside it, for example, acupuncture in a Western setting. In contrast, traditional medicine is indigenous to a particular region, but may not be integrated in the dominant public healthcare system. WHO provides a clear definition of traditional medicine (box 1) and acknowledges that traditional medicine encompasses products, practices and practitioners,[6] but WHO does not provide a globally accepted definition of THP. Notably, one of the key steps recommended by WHO TM Strategy 2014–2023 is for member states to define those who use traditional medicine (including THPs) within their countries.[6]

Increasingly, biomedical practitioners and systems of healthcare draw on the services, knowledge or skills of THPs, from integrated efforts to manage psychosocial illnesses and mental disorders[12 13] to supportive care in TB drug regimens,[14] to task shifting[15] to HIV counselling, support and treatment.[3] Long before these efforts, individuals turned to THPs for all types of healthcare concerns including birthing, dietary advice and emotional support and counselling. In some countries in the past, these practitioners were banned as government public health systems focused on biomedical treatments.[16]

With increasing awareness of the importance and value of THPs, attention has been directed to the financial and social benefits of incorporating THPs in public health systems. Resolutions, declarations and laws on traditional medicine have been made at global, continental and regional levels.[17–21] For example, WHO calls for better integration of traditional medicine into national primary care systems[6 22] and the New Partnership for Africa's Development includes traditional medicine as an important strategy in its plan.[23 24] The inclusion of THPs will make them more visible, and can assist them to engage openly with and within public healthcare systems. As such, much research is needed to understand the contemporary legal landscape for THPs.

African traditional medicine is one of the major traditional healing systems alongside traditional Chinese Medicine and traditional Indian medicine (known as Ayurveda). However, in contrast with the two traditional Asian healing systems, which have written philosophies and pharmacopoeias, African traditional healing systems are on the whole oral traditions with few written records.[25] This oral transfer of skills and knowledge from generation to generation can make it difficult to identify skilled THPs.[6] Renewed political interest by WHO and African leaders has provided a few key regional guideline documents to promote traditional medicine and practitioners in health systems.[26] Despite the declaration by the African Union that 2001–2010 was the decade of Traditional Medicine, progress regarding regulatory frameworks of traditional medicine in Africa has generally been slow. This is also evident on a regional level from the proceedings of the Southern African Development Community (SADC), which formalised in 1992 and consists of 15 Southern African countries (as at April 2018) who share a vision for SADC to be a reputable, efficient and responsive enabler of regional integration and sustainable development (https://www.sadc.int/sadc-secretariat/vision-mandate/). The SADC's Declaration of Health, signed in 1999, includes a section on THPs (article 20), which states that 'State parties shall endeavor to develop mechanisms to regulate the practice of traditional healing and for co-operation with traditional health practitioners.' The SADC is one of the few bodies to define THP (see box 2). With the increasing impetus to regulate the roles and scope of THPs, the main aim of this study is to map THP-related legislation among SADC nations and, where applicable, to unpack and narratively review the legal definitions of THPs.

METHODS

This scoping review followed the protocol that the team developed together in March 2018, and the Preferred Reporting Items for Systematic Reviews and Meta-Analyses extension for Scoping Reviews (PRISMA-ScR) methods, thus, this manuscript was compiled with the PRISMA-ScR checklist.[27] The scoping review question was: What legislation exists that deals with THPs? The inclusion criteria were as follows: SADC country, legislation, relating to THP; while exclusion criteria were non-SADC, and any information that was not a bill or an act, or any bill or

Box 2 Southern African Development Community definition of traditional health practitioner (THP)

'THPs' means people who use the total combination of knowledge and practices, whether explicable or not, in diagnosing, preventing or eliminating a physical, mental or social disease and in this respect may rely exclusively on past experience and observation handed down from generation to generation, verbally or in writing, while bearing in mind the original concept of nature which included the material world, the sociological environment whether living or dead and the metaphysical forces of the universe.'

act that does not address THPs. This paper is limited to publicly available legislation; policy documents are not included in this paper unless they also include an Act, Bill or promulgated Law.

Applicable legal definitions of THPs were reviewed by two independent reviewers (BS and SvE) who searched the database of the Southern African Legal Information Institute (SAFLII, accessible at http://www.saflii.org/). This database includes 14 of the 15 SADC countries (Democratic Republic of Congo is excluded) and was determined the most appropriate search engine because it is a central repository for all southern African legal documents. A simple search with no language or date restriction was undertaken using the search terms 'traditional' AND 'practitioner'. To identify legislation on countries not on SAFLII and/or further relevant SADC legislation, a Google search was undertaken by two independent reviewers (BS and SvE). The Google search made use of the search terms described above and included individual SADC country names (eg, 'traditional' AND 'practitioner' AND 'Angola'). For each Google search, the first 100 hits per country were screened for relevance.

To gain further insight into academic literature with a focus on THPs and policy in SADC countries, and as an effort to confirm that SAFLI and Google searches were exhaustive, two reviewers (BS and ALA) searched PubMed using the following search strategy:

1. search terms that limit the specific region (SADC Search string = 'Africa, Southern[mh] OR Southern Africa*[tiab] OR Angola*[tiab] OR Botswana[tiab] OR Motswana[tiab] or Batswana[tiab] OR Congo*[tiab] OR Democratic Republic of Congo[tiab] OR Lesotho[tiab] OR Mosotho[tiab] or Basotho[tiab] OR Madagascar[tiab] OR Malawi[tiab] OR Mauritius[tiab] OR Mozambique[tiab] OR Mocambique[tiab] OR Mozambican[tiab] OR Namibia[tiab] OR Seychell*[tiab] OR South Africa*[tiab] Swazi[tiab] OR Swaziland[tiab] OR Eswatini[tiab] OR Tanzania*[tiab] OR Zambia*[tiab] OR Zimbabwe*[tiab] OR SADC[tiab]') AND ('legislation' OR 'policy' OR 'legal' OR 'law').
2. AND ('Traditional healers' or 'Traditional health practitioners' or 'local healers' or 'healers' or 'sangoma' 'mugome' 'inyanga' 'bossiesdokter' 'maine' 'witch doctors' 'toordokters').

The search string was piloted to ensure key literature was not overlooked. Cochrane SA provided support with our key search terms. The PubMed search was used to gain further insight into academic literature with a focus on THPs and policy in SADC countries, and as an effort to confirm that SAFLI searches were exhaustive. Additional colloquial key words were used, which would not normally be used in legal documents.

An initial SAFLI search was undertaken in April 2018. Google, PubMed searches and an updated SAFLI search were undertaken in August 2018. After, the titles of all legislation were independently screened by two reviewers for relevance. For the SAFLI search, titles were initially searched and as there are no abstracts available for case law, where needed, content of the laws was examined. For research articles, titles and abstracts were screened for relevance. After identifying the relevant documents, full texts were obtained and screened to identify policy and legal documents relating to the regulation of THPs. Paper tracking was done in excel—two authors did independent extractions for each data set/search engine. Disagreements between the two authors were mediated by a third author via discussion. Extraction was a narrative review of any piece of legislation that discussed, described or delineated the scope of THPs, thus, any definitions for THPs were extracted verbatim, as were all references to THPs' scope of practice. The results of the SAFLII, Google and PubMed searches were analysed for legislation and policies, and then the PubMed search was cross-referenced against SAFLII (the Legal Database) review results (see table in online supplementary appendix 1). Only pieces of legislation were included. Legislation was deemed relevant if it was a draft or fully executed piece of legislation relating to THPs.

Methodological limitations

The methods employed for this scoping review did not present many limitations, however, one central challenge was the unavailability of legal documents pertaining to THPs in SADC. Except for South Africa, where documentation is up to date and fairly easy to obtain, updated information for the other 13 countries was not as readily publicly available. It is thus impossible to say if the documentation outlined in this paper is complete and up to date. The only way to ensure this would entail fieldwork, which falls outside the scope of this review.

Patient/public involvement

There were no patients involved in this research.

RESULTS

The SAFLII database search identified 2246 records of which 2228 were excluded because they were not related to THPs policies or legislation. The remaining documents (n=18) were reviewed for eligibility. A further 12 documents were excluded because they were not THPs-related legislation or draft legislation (bills) (see

online supplementary appendix 2: flow diagram). The remaining six documents included three documents from South Africa, and one each from Namibia, Tanzania and Zimbabwe. In addition to identifying six pieces of legislation from four nations within SADC (table 1), the SADC's Protocol on Health was also identified, as it provides a definition of THP (see box 2).

In South Africa, THPs are regulated in terms of the THP Act of 2007 (which replaced the THP Act of 2004). South African THP legislation is similar to the Namibian THP Bill of 2014,[28] which describes a THP as a person 'registered as a THP registered by the registrar.' In Zimbabwe, the Traditional Medical Practitioners Act of 1981[29] indirectly provides a definition by defining the 'practice of traditional medical practitioners', and like the other two countries, sets up a body (council) to register THPs. While Zimbabwe, South Africa and Namibia do not specifically define THPs, the Tanzanian Traditional and Alternatives Medicines Act of 2002 gives a precise definition of THPs. Legislation and the aims of the legislation, including THP definitions, are provided in more detail in table 1.

The titles of publications from PubMed were screened for the relevance regarding THP policy and regulation; 47 titles were generated from the original search of which 30 were deemed eligible for further review (screening) after discussions with review authors. The reference lists of relevant publications were also searched for additional related legislation or policies, which gave rise to further relevant publications. Data were narratively synthesised and a table of results is available in the appendix to this piece, which indicates that while we found no additional legislation beyond that identified in the SAFLII search, the PubMed search identified a number of outdated pieces of legislation, and validated that the SAFLII search was comprehensive.

DISCUSSION

Four of the 14 SADC countries with entries in SAFLI have attempted to regulate THPs by formulating related legislation, however, the tabling of legislation is at various stages of development (table 1). Zimbabwe was one of the first SADC nations to table legislation on a national level for THPs in 1982. It was joined by Tanzania two decades later (2002). A year after Tanzania formalised its THP legislation, the South African THP Bill of 2003 was introduced to Parliament. The Bill was eventually promulgated into the THP Act of 2004 which came into operation on 7 February 2005. However, this Act faced a challenging start as the Constitutional Court in Doctors for Life International v Speaker of the National Assembly 2006 (6) SA 416 (CC) ruled that the 2004 Act was invalid due to flawed legislative processes. A few years later, the THP Act of 2007 was signed into law and this time there were no constitutional challenges brought against it. The THP Act is almost verbatim that of the THP Act of 2004. During 2007, the Namibian government was conceptualising the integration of THPs into Namibian primary healthcare by identifying THPs as home-based care workers.[30 31] In 2014, the Namibian THP Bill was tabled in the National Assembly however it is yet to be promulgated.[32]

A common starting point for the various THP Acts is to establish a THP council as recommended by WHO Afro region.[26] However, the mandate for the THP councils differs between countries. Moreover, the functionality of various THP councils does not seem to be in the public domain. As with South African legislation, rather than specifically operationalising the roles and scope of practices of a THP, the Namibian THP Bill establishes and outlines the objectives of the THP Council to 'control and exercise authority in respect of all matters affecting the education, tuition, training and qualifications of THPs' (Namibian THPs Bill 2007:7).[33] In this way, it defines a 'THP' as 'a person registered as a THP under section 22 of the Act' (ibid). Similarly, the purpose of the Zimbabwean Traditional Medical Practitioners Act is to establish a council (Traditional Medical Practitioners Council) which authorises, and controls the practices of traditional medical practitioners. Again, this Council acts as the oversight body to register and define who qualifies as practitioners, rather than provide a specific definition. This legislation creates a council which retains the right to define THPs on application. Three of the four SADC countries that have THP legislation have, instead of providing a clear definition, established councils that can determine who qualifies as a THP, without clearly operationalising the definition of this form of practitioner.

Notably, unlike some of its neighbouring countries, the legislation in Tanzania defines a 'THP' using local metrics and place-based understanding; 'based on social, cultural and religious background as well as on the knowledge, attitudes and beliefs that are prevalent in the community regarding physical, mental and social well-being and the cause of disease and disability' (Tanzanian Traditional and Alternative Medicines Act of 2002: section 7). Stressing the importance of 'a person who is recognised by the community in which he lives as competent to provide healthcare' Tanzanian legislation also outlines the methods by which such care is provided 'by using plants, animal, mineral substances and other methods' (ibid). The diverse definitions (or lack thereof) of THPs in the legislative documents highlight the complexity of such a term. Further, it is interesting to note that the countries under discussion did not adopt the existing SADC definition.

While the definition of THP is not specifically included in Namibian, South African and Zimbabwean legislation, all four countries specify the categories of traditional healers covered by the legislation. In fact, WHO guideline document on institutionalising of traditional medicine in health systems in WHO African region lists eight possible categories of THPs (see table 2).

The individual countries have selected different categories among those eight categories to include in their legislation. For example, the Namibian THP Bill has six prescribed categories (namely specialist herbalist, faith herbalist, faith healer, diviner herbalist, diviner,

Table 1 SADC nations legislations addressing and definitions of THP

Nation	Date	Title of legislation	Aims of the act	Definition of THP
South Africa	2003	THPs Bill	To establish the Interim Traditional Health Practitioners Council of South Africa; to provide for a regulatory framework to ensure the efficacy, safety and quality of traditional healthcare services; to provide for the management and control over the registration, training and conduct of practitioners, students and specified categories in the THPs profession; and to provide for matters connected therewith.	'THP' means a person registered under this Act in one or more of the categories of THPs;'[40]
South Africa	2004	THPs Act	To establish the Interim Traditional Health Practitioners Council of South Africa; to provide for a regulatory framework to ensure the efficacy, safety and quality of traditional healthcare services; to provide for the management and control over the registration, training and conduct of practitioners, students and specified categories in the THPs profession; and to provide for matters connected therewith.	As with the THPs Bill, this Act (2004)[41] defines THPs with the same wording as the Bill.
South Africa	2007	THPs Act	To establish the Interim Traditional Health Practitioners Council of South Africa; to provide for a regulatory framework to ensure the efficacy, safety and quality of traditional healthcare services; to provide for the management and control over the registration, training and conduct of practitioners, students and specified categories in the THPs profession; and to provide for matters connected therewith.	The language providing definitions for THPs in this Act (2007)[33] is identical to the definitions provided in the 2004 Act.
Namibia	2014	THPs Bill	To provide for the establishment, constitution, powers and functions of the Traditional Health Practitioners Council of Namibia; to regulate the registration of THPs and the practising of traditional healing; to prohibit the practising of traditional healing without being registered; to provide for different categories of traditional healing and different requirements for Namibian citizens and persons who are not Namibian citizens; to provide for the establishment of the Interim Traditional Health Practitioners Council of Namibia; and to provide for incidental matters.	This bill establishes and outlines the objectives of the Traditional Health Practitioners Council of Namibia, giving this body authority to 'control and exercise authority in respect of all matters affecting the education, tuition, training and qualifications of THPs' (pp7). It defines a 'THP' as 'a person registered as a THP under section 22 of the Act' (pp.7).
Tanzania	2002	Traditional and Alternative Medicines Act	An Act to make provisions for promotion, control and regulation of traditional and alternative medicines practice, to establish the Traditional and Alternative Health Practice Council and to provide for related matters.	This act defines a 'THP' as 'a person who is recognised by the community in which he lives as competent to provide healthcare by using plants, animal, mineral substances and other methods based on social, cultural and religious background as well as on the knowledge, attitudes and beliefs that are prevalent in the community regarding physical, mental and social well being and the cause of disease and disability' (2002: 7).

SADC, Southern African Development Community; THPs, traditional health practitioners.

Table 2 WHO-AFRO THP categories, additional definitions and alignment with SADC nations legislative definitions

WHO-AFRO categories	Namibia	South Africa	Tanzania	Zimbabwe
Herbalist	'Specialist herbalist' and 'faith herbalist'	'Herbalist'	No	No
Traditional bone setter	No	No	No	No
Traditional midwife	'Traditional birth attendant'	'Traditional birth attendant'	Mentioned as key member of Council but not defined or outlined as a category of healer.	No
Traditional surgeon	No	'Traditional surgeon'	No	No
Traditional psychiatrist	No	No	No	No
Diviner	'Diviner' AND 'diviner herbalist'	'Diviner'	No	No
Faith healer	'Faith healer'	No	No	No
Traditional metaphysicist	No	No	No	No
Other (list)	'Any other prescribed category'	Within registered categories one can take on the role of 'traditional tutor', 'student', or 'specialty'.	'THP' is defined, however subcategories are not defined.	'Practice of traditional medical practitioners' means every act, the object of which is to treat, identify, analyse or diagnose, without the application of operative surgery, any illness of body or mind by traditional method.
Notes on definitions	The Namibian Bill outlines specific categories of practice, but does not provide definitions of each.	The 2003 South African Bill defines 'traditional birth attendant*'; 'traditional health practice†' 'traditional medicine‡'; 'traditional philosophy§'; 'traditional surgeon¶'; 'diviner**'; 'herbalist††'; and 'master‡‡'. The 2004 South African Traditional Health Practitioner's Act additionally defines 'traditional tutor§§' replacing the definition of 'master'.	The Tanzanian Act provides a definition of THP, but does not define any other healer categories.	The Zimbabwean Act does not define specific categories of practice nor does it provide a definition of THP.

Continued

Table 2 Continued

WHO-AFRO categories	Namibia	South Africa	Tanzania	Zimbabwe

According to WHO-AFRO, 'THPs in countries of the African region may be classified into the following categories: (1) herbalist (2) traditional bone setter (3) traditional midwife (4) traditional surgeon (5) traditional psychiatrist (6) diviner (7) faith healer (8) traditional metaphysicist'—this table provides comparison for those listed in each THP legislation against WHO-AFRO's listed categories for THPs, where available we provide footnotes with the definitions of each as provided in the legislation.
*'Traditional birth attendant' defined as a person who engages in traditional health practice and is registered as a traditional birth attendant under this Act; (THP Bill 2003, p.4).
†'Traditional health practice' means the performance of a function, activity, process or service based on a traditional philosophy that includes the utilisation of traditional medicine or traditional practice and which has as its object (1) the maintenance or restoration of physical or mental health or function; or (2) the diagnosis, treatment or prevention of a physical or mental illness; or (3) the rehabilitation of a person to enable that person to resume normal functioning within the family or community; or (4) the physical or mental preparation of an individual for puberty, adulthood, pregnancy, childbirth and death, but excludes the professional activities of a person practising any of the professions contemplated in the Pharmacy Act, 1974 (Act No. 53 of 1974), the Health Professions Act, 1974 (Act No. 56 of 1974), the Nursing Act, 1974 (Act No. 50 of 1974), the Allied Health Professions Act, 1982 (Act No. 63 of 1982), or the Dental Technicians Act, 1979 (Act No. 19 of 1979), and any other activity not based on traditional philosophy (THP Bill 2003, p.4).
‡'Traditional medicine' means an object or substance used in traditional health practice for (1) the diagnosis, treatment or prevention of a physical or mental illness; or (2) any curative or therapeutic purpose, including the maintenance or restoration of physical or mental health or well-being in human beings, but does not include a dependence-producing or dangerous substance or drug (THP Bill 2003, p.4).
§'Traditional philosophy' means 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 (THP Bill 2003, p.4).
¶'Traditional surgeon' means a person registered as a traditional surgeon under this Act (THP Bill 2003, p.4).
**'Diviner' means a person who engages in traditional health practice and is registered as diviner under this Act (THP Bill 2003, p.3).
††'Herbalist' means a person who engages in traditional health practice and is registered a herbalist under this Act (THP Bill 2003, p.4).
‡‡'Master' means a person registered under any of the prescribed categories of traditional health practice who has been accredited by the Council to teach traditional health practice or any aspect thereof (THP Bill 2003, p.4).
§§'Traditional tutor' is defined as a person registered under any of the prescribed categories of traditional health practice who has been accredited by the Council to teach traditional health practice or any aspect thereof (Act No. 25, 2004 pg 8).
SADC, Southern African Development Community; THP, traditional health practitioner; WHO-AFRO, WHO Africa.

traditional birth attendant) with a seventh open category for 'any other prescribed category', that would, as with many aspects of the THP practices, be at the discretion of the THP Council. This differs slightly from the South African legislation, which has four categories of practice, namely diviner, herbalist, birth attendant and traditional surgeon, with no general provision to include other categories of THPs, however 'students,' 'tutors' and 'specialists' are named roles that fall within each category and are specifically acknowledged in the legislation as being able to register as THPs.

Initially in 2003, South African legislation outlined the same list of categories but used the term 'master' to refer to someone 'who has been accredited by the Council to teach traditional health practice or any aspect thereof (THP Bill of 2003: clause 1)'. In 2004, the THP Act replaced the term 'master' with 'traditional tutor' (with the definition unchanged) and the term 'traditional tutor' remained in the THP Act of 2007. Two differences between South African and Namibian definitions are worth mentioning. Unlike in Namibia, a faith healer is not included in the South African THP Act while 'traditional surgeon' is not included in the Namibian THP Bill.

Noteworthy similarities between the various legislations are found in the sections regarding registration of practitioners. First, the South African THP Act of 2007 stipulates that 'no person may practise as a THP' within South Africa unless he or she is registered in terms of the Act (section 21(1)). To date, not a single THP has been registered by the THP Council, and they are strictly speaking, practising without state authority. Similarly in Zimbabwe, if a THP practices without registering, such practice is unlawful in terms of section 31(2) and (3) (this provision commenced on 1 June 2000).

An important difference with regard to THP registration is the registration of non-citizens. WHO Africa (WHO-Afro) 'Tools for institutionalising traditional medicine in health system in WHO African region' supports that in 'order to promote the transfer of indigenous or other knowledge among countries, a person who is not a citizen of the country of residence shall, on request, temporarily or permanently registered as a practitioner, subject to fulfilment of relevant conditions such as proof of qualification as well as other conditions laid down for the registration and licensing of a practitioner who is a citizen.' In contrast, South African legislation states that non-citizens are not eligible to join the Council, nor are they eligible to register as practitioners. The Namibian legislation provides different criteria for citizens and non-citizens but allows both to practise and join the Council as long as they are permanent residents. In Tanzania, non-citizens who wish to practise as a traditional or alternative health practitioners 'may apply and be issued with a temporary registration certificate if: (1) he has fulfilled all requirements for full registration; and (2) he has affiliated himself with a local institution' (Tanzania Traditional and Alternative Medicines Act of 2002: section 13).[34] The legislation in Zimbabwe makes no mention of citizenship or permanent residence.

This study focuses on key national legislation around THPs and did not review territorial legislation. However, a significant aspect of the South African setting is the continued existence of a former homeland statute in the province of KwaZulu-Natal, which predates any national legislation addressing THPs. The KwaZulu Act[35] on the Code of Zulu Law (16 of 1985, section 83) provides for the registration of THPs in the province of KwaZulu-Natal and makes it a criminal offence for anyone to practise as such without a valid licence. The Allied Health Professions Act (63 of 1982, section 41) recognises this Act by stipulating that it and the Health Professions Act (56 of 1974) 'shall not be construed as derogating from the right which an herbalist contemplated in the Code of Zulu Law may have to practise his or her profession.[36] In other words, when focusing strictly on which legislation exists, this statute established THPs long before any other national South African legislation. The KwaZulu Act[35] on the Code of Zulu Law is still in operation in the province of KwaZulu-Natal and has not been repealed yet, which may create uncertainties if it conflicts with the THP Act of 2007.

This review specifically explored legislation surrounding THPs, highlighting that currently four SADC member-countries have legislation that covers the regulation of such practitioners. This paper aspires to compare and contrast legislation available that addresses the definition of THPs, and acknowledges that such an approach is limited in scope. Moreover, the findings of this review do not mean that other countries do not have THPs working in their healthcare system, as for example, in Zambia there exists the Traditional Health Practitioners Association of Zambia who is active in WHO-AFRO and other regional activities. While legislation is available for only four countries, this should not be understood as the only places where THPs are active or engaged in public health systems, highlighting once again, potential gaps in THP-related legislation. At the same time, it should be understood that while the four SADC countries covered in this review have legislation that specifically addresses THPs, in some places, legislation specifically denies THPs the right to practise in certain contexts. This is true, for example, in Zambia, where legislation exists that specifically states that THPs are not permitted to take part in abortions.[37] The prohibition can be understood to mean that despite having no legal framework for THPs, and while the presence of THPs may be socially acceptable, they are in fact legally prevented from performing certain functions.

It is important to note that while having legislation to regulate THPs is valuable, it is not sufficient to ensure that they are incorporated, or for that matter, legally registered. One of the key performance indicators for WHO global traditional medicine strategy is the number of member states reporting regulation and/or registration of practitioners. In the case of South Africa, over a decade has passed since the relevant legislation has been put in place to register THPs, however, to our knowledge, not a single THP has been registered to date. In contrast to this lack of legally recognised THP registration in southern Africa, which may be a barrier to formal integration with public health systems, in other parts of the world progress with regard to THP inclusion is gaining momentum. However, what is clear across the globe is that within regional areas, consistency in policy and practice is lacking—described, for example, across Europe an 'extraordinary diversity' in the legal status and regulation of Complementary (CAM) and Alternative Medicine is practised.[38] This creates challenges for the practitioners who may, for example, practise across national borders. The differences in legislation across borders may complicate their tasks, as for example, permissible scope of practice may vary. As such, researchers advising WHO have suggested that evidence-informed integrative care should be considered as the way forward.[39] This should take into account the local diversity in healing practices while making space to legitimise such practice across regions.

This raises other important and related issues; for example, one limitation of this paper is that a strictly legislative review obscures the challenges of codifying and regulating a set of practices that incorporate more-than-human, spiritual and relational/social components, particularly in the varied African contexts where THPs conduct their practices. In developing this paper, tensions arose with regard to the reality that in outlining the ways in which THPs are legislatively defined might obfuscate the very real dilemmas inherent in trying to define such practices. It is thus worth considering that while the councils created to register THPs may vaguely define or operationalise THPs, this is not necessarily a legislative shortcoming; this might very well align with the reality that failing to create a strict or clear definition is a practical necessity. In this context, there is thus a need to take great care in what we mean when we discuss 'definitions', and, especially when claiming that some countries do not define THPs. Thus, in interpreting a lack of legislation in a specific country, we may be misunderstanding and misinterpreting careful negotiations that actively strive not to define THPs for valid reasons.

Another limitation of this strictly legalistic descriptive analysis, which raises an important future research topic, is the consideration that what we report as 'delays' in the time it has taken for legislation to be enacted—for example, for Namibia who has taken a long time to transform their bill into law—may actually be necessary given the complexity of the consultative process. In other words, negotiations, back and forth discussions and delays in decision making may take time, but may be necessary given the complexity of the issues at hand. Careful consideration of the issues, even if time-consuming, may better reflect the pace of processes in the context of healers, their knowledge and their practices. In addition, such delays may have nothing to do with THPs themselves, and may in fact reflect budget constraints, or a lack of political will—two factors that are often not transparently conveyed in the public domain, but are pressing areas for future research.

While we have endeavoured to provide a few insights into the ways in which the legislation has been developed, in some cases, like South Africa, a major limitation due to the focused scope of this review is the lack of an in-depth discussion of the historical factors affecting the legislation (and the differences in these factors between countries). Research exploring these historical factors, and detailed discussions of THPs practices in these countries with these contexts in mind, are important and pressing areas for future research. These contextual details might better clarify the reality that the roles and identities of THPs form the basis for legislation, rather than legislation informing THPs roles.

CONCLUSION

This paper reviews existing legislation among SADC countries; it also broadly outlines what this legislation covers, and focuses specifically on definitions, and classifications of THPs. In addition, we analysed what is known about the progress of implementing existing legislative in these countries. However, it is important to note that THPs have been practising in these countries long before any legislation was developed; thus, this paper raises tensions that highlight the reality that it is difficult to legislate established practices that existed long before legislation. As with the allied (complementary and alternative) health professions, the broad spectrum of approaches to traditional medicine and attempts to define and classify have revealed complex terminology, historical antecedents and diverse cultural meaning. This review has revealed that THPs continue to be loosely defined, which may hamper the promotion of THPs in national health systems, but in turn, may be something which is unavoidable given the tensions between lived practice and more rigid legalistic frameworks.

Legal definitions of THPs remain a work in progress in many countries where traditional healing exists alongside conventional health practices. It is also worth noting that although certain countries have existing legislation, compliance of such legislation needs to be monitored. THPs will continue to exist regardless of efforts to place them in neat legislative boxes. Legislation that does not reflect or consider the special circumstances, in which THPs operate has the potential to become mere paper law.

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