ACHIEVING THE 2030 AGENDA AND AGENDA 2063: THE RULE OF LAW AS A DRIVER OF AFRICA'S SUSTAINABLE DEVELOPMENT

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Equality and empowerment through access to justice: views on health

BACKGROUND PAPER

OBJECTIVE

This paper describes the relationship between the rule of law, access to justice and the promotion of health. It addresses the essential role of an enabling legal environment and access to justice to ensure health and well-being for all in Africa. It sets the scene for a discussion on how to strengthen laws and build the capacity of institutions to address health challenges in line with the goals and objectives set in the 2030 UN Agenda for Sustainable Development, the AU Agenda 2063 and the African Health Strategy 2016 – 2030.

CONTEXT

The African Health Strategy 2016-2030 notes that the majority of the world's countries with the worst indicators for maternal and infant mortality are in Africa. Stunting of children remains a major public health problem: factors include socio-cultural barriers, poverty, and insufficient water, sanitation and hygiene, and a lack of safe and nutritious food.

The recent Ebola virus epidemic and the increased risk of large and uncontrolled outbreaks of yellow fever in urban areas demonstrate the need for strengthening national and regional responses to these major public health threats. Antimicrobial resistance to essential medicines is growing, so is the criminal trade in falsified and substandard medicines.

Within a few decades however, the greater burden of illness and death in many African countries will be driven by non-communicable diseases – largely cancer, diabetes, heart and lung diseases, along with mental illness, accidents and injuries. Risk factors for the major non-communicable diseases are tobacco use, physical inactivity, unhealthy diet (high salt, sugar, fat), and the harmful use of alcohol. Young people, and in particular urban youth, are increasingly the targets for advertising for tobacco, alcohol, and high salt/sugar/saturated fat - low nutrition food and beverages.

Women and girls are disproportionately affected, both by disease and also as mothers and caregivers to ill children and other family members.

Almost all barriers to prevention, treatment and care services, including palliative care, have a legal dimension. Yet legislative frameworks to promote health are generally inadequate. National capacities in Africa for health policy development and implementation remain weak. The region has almost 25% of the global burden of disease, yet only 3% of the global health workforce.

National responses to these health and development challenges are guided by multiple global and regional frameworks. In 2015, the 2030 Agenda expanded the global health and development focus beyond infectious diseases (the focus of Millennium Development Goal, MDG, 6). In addition to Sustainable Development Goal (SDG) 3, *Ensure healthy lives and promote well-being for all at all ages*, other SDGs and their respective targets are directly related to health: e.g. SDG2 – nutrition; SDG6 – water and sanitation; SDG11 – cities.

Agenda 2063 notes improved health outcomes under Aspiration 1, goal 3 (healthy and well-nourished citizens), and Aspiration 6 (people-driven development). The Ten Year Implementation Plan 2014-2023 commits African states to reduce malnutrition, maternal, child and neo-natal deaths by half; to ensure universal access to anti-retroviral therapy for HIV; and to halve the deaths attributable to AIDS and malaria, compared with 2013 levels. Agenda 2063 and the Implementation Plan also address the social determinants of health. For example, under the Implementation Plan, by 2023 nine out of ten Africans will have access to safe drinking water and sanitation.

The African Health Strategy 2016-2030 acknowledges these frameworks and guidance, and offers guiding principles for African Union members and key stakeholders. These include health as a human right, equity, accountable health systems, gender equality, cost-effective prevention, and regional cooperation.

International and regional human rights legal frameworks also inform national legislation and other legal and regulatory actions. Detailed technical legal guidance has been developed in key health areas such as HIV.[1] The human rights and legal lessons from HIV are also being considered in response to non-communicable diseases.[2] Donors also increasingly recognize the centrality of law and human rights to achieving health related goals.[3]

The World Health Organization (WHO) has published recommendations to regulate the marketing of food and non-alcoholic beverages to children. There is increasing evidence from other regions of the impact of taxes on sugar sweetened beverages to reduce obesity and diabetes, and improve diets.

DISCUSSION

The rule of law is increasingly understood as a foundational determinant of health, and which underlies other socioeconomic, political and cultural factors associated with health outcomes.[4] Quite simply, strengthened rule of law and related human resource capacity are critical for achieving the health outcomes of the 2030 Agenda, Agenda 2063, the African Health Strategy and other global and regional development frameworks in Africa.

The law and justice sector plays a critical, though often unacknowledged, role in every health challenge. Universal health coverage (UHC) systems can only be established, financed and monitored through processes and structures established by law. Good health systems governance also requires civil society participation, and government transparency and accountability.

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[1] Key programs to reduce stigma and discrimination and increase access to justice in national HIV responses. UNAIDS Guidance note, 2012. http://www.unaids.org/sites/default/files/media_asset/Key_Human_Rights_Programmes_en_May2012_0.pdf
[2] Human rights based approaches and domestic legal responses to NCDs: lessons learned. Report of an expert meeting. IDLO, The Hague, September 2015. http://www.idlo.int/news/highlights/human-rights-approach-non-communicable-diseases
[3] See The Global Fund http://www.theglobalfund.org/en/strategy/
[4] Pinzon-Rondon et al, Association of rule of law and health outcomes : an ecological study. *BMJ Open* 2015;**5**:e007004 doi:10.1136/bmjopen-2014-007004 http://bmjopen.bmj.com/content/5/10/e007004.abstract

Enabling legal environments are essential to reduce the burden of communicable and non-communicable diseases, as well as injuries, and to provide care, treatment and support to people affected. States need legal powers and the human resource capacity to regulate production, marketing and sales of tobacco and other unhealthy products, and to resist spurious legal challenges in national and international courts and tribunals.

A functioning criminal justice sector is essential to stemming the flood of falsified and substandard medicines across the African continent. Capacity to understand international legal obligations to protect intellectual property is essential to ensure access to affordable medicines. Legal capacity to understand trade and investment treaties is essential to national regulation of the importation of unhealthy foods and beverages.

Public health law capacity – broadly understood – is critical to achieving 21st century health goals.[5] The scope and depth of public health law capacity needed to achieve these goals is still poorly understood. Few legal graduates have the multi-disciplinary perspective and capacity to support government action to achieve these goals.

Expanded legal education and partnerships between faculties of law, medicine, economics, and other sectors are urgently needed to support resilient systems for sustainable health. Civil society networks, including advocates for civil and political rights, must be engaged to ensure robust public debates on the allocation of resources for health. Long-term capacity building plans are needed, as well as urgent short-term assistance. Enabling legal environments and public health law capacity must be acknowledged as among the building blocks of African health systems.

Access to justice, whether to courts, alternative dispute resolution mechanisms or traditional justice systems, can help to improve access to health services for girls and women and vulnerable and marginalized populations.[6] Court action can challenge overly broad legislation on constitutional grounds, e.g. inappropriate public health measures to address infectious diseases. Court action may also advance group health rights, e.g. for HIV-positive pregnant women who need medication to prevent HIV transmission to their infants at birth. Conversely, competent and affordable legal advice and representation may help to vulnerable groups to fight discrimination (e.g. key populations most at risk of HIV infection).[7]

Because court action often goes hand in hand with social mobilization, respect for civil rights is essential. The global revolution in drug pricing and access to generic medication began in 2000 in South Africa and it was defended by civil society organizations of patients, communities and legal activists. When the government policy was challenged in court by global pharmaceutical corporations, the court permitted civil society organizations to join the action in support of the government policy. Mass social mobilization resulted in intense global media coverage, and pharmaceutical corporations dropped the case. As a result, many millions of people across Africa and around the world now have access to more affordable essential medicines for HIV and other diseases.

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[5] See e.g. HIV and the Law: Risks, Rights and Health. Report of the Global Commission on HIV and the Law. UNDP, 2012. http://www.hivlawcommission.org/

[6] See e.g. Bringing Justice to Health: The impact of legal empowerment projects on public health. OSF, 2013 https://www.opensocietyfoundations.org/projects/justice-and-development

[7] See e.g. Toolkit: Scaling Up HIV-related Legal Services. IDLO, UNAIDS, UNDP, 2012. http://www.idlo.int/publications/toolkit-scaling-hiv-related-legal-services-english

GUIDING QUESTIONS

1. What lessons can be drawn from Africa's experience about the relationship between the rule of law and effective public health? What are the key barriers to creating an enabling legal environment to ensure health for all in Africa?

2. How can we strengthen access to justice for health through Agenda 2063 and the 2030 Agenda for Sustainable Development?

3. What should be done to implement the guiding principles of the African Health Strategy (health as a human right, equity, accountable health systems, gender equality, cost-effective prevention, and regional cooperation)?

4. What needs to be done from the legal perspective to help African governments to address 21st century health epidemics (e.g. Ebola, Zika, and non-communicable diseases)?

5. How can African countries build legal capacity to address current and future health challenges in Africa at both national and regional levels? Which partners need to be involved – government, academic, civil society, private sector - and how?

BACKGROUND DOCUMENTS

- African Health Strategy 2016-2030. http://www.nepad.org/resource/africa-health-strategy

- The Africa Health Transformation Programme 2015-2020. A Vision for Universal Health Coverage: http://www.afro.who.int/en/publications.html

- Doing justice to sustainable development: Integrating the rule of law into the post-2015 development agenda. IDLO, 2014. http://www.idlo.int/publications/doing-justice-sustainable-development

- Justice Programs for Public Health: A good practice guide. OSF, 2015. https://www.opensocietyfoundations.org/publications/justice-programs-public-health

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