

Can we achieve the SDG health targets without the rule of law? Advancing the Right to Health: The Vital Role of Law

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I would like to begin with an **example from the Ebola epidemic**. In October 2014 a West African journalist, Mr David Tam Baryoh, went on radio to criticise his government's handling of the Ebola outbreak. He was reportedly beaten then jailed without charge for 11 days under national Ebola emergency laws. Amnesty International later declared Mr Tam Baryoh was a prisoner of conscience, arrested solely for exercising his right to freedom of expression.¹

The example illustrates the familiar distinction between the rule *of* law, delivered through a transparent and accountable legal system, and rule *by* law.²

The development economist Amartya Sen famously asserted that famines do not occur in functioning democracies. He claimed this is because democratic governments have to win elections and face public criticism, and have strong incentives to undertake measures to avert famines and other catastrophes.³

Clearly widespread starvation, if not famine, still occurs in democracies. But the inconvenient truth is that we cannot achieve the SDG health targets and sustain this achievement without broad respect for the rule of law – this includes respect for human rights such as freedoms of speech and association. I say 'inconvenient' because there are no short cuts to global health. We have to approach these challenges holistically.

My **second example** is the central role of human rights in the global response to HIV and AIDS. The United Nations response to HIV has been explicitly rights-based for more than two decades. In 1998 the UN Office of the High Commissioner for Human Rights and UNAIDS published 'International Guidelines on HIV/AIDS and Human Rights' – a blue print for State

¹ UK Government FCO: A case study from the 2014 Human Rights and Democracy Report.

<https://www.gov.uk/government/case-studies/ebola-human-rights-in-west-africa>

² See e.g. <http://worldjusticeproject.org/what-rule-law>

³ *Development as Freedom* (Anchor, 1999)

action for rights-based law and policy reforms to end the HIV epidemic. From its inception in 1996, UNAIDS adopted human rights and gender as cross-cutting themes.

For twenty years, people living with HIV and representatives of vulnerable populations have sat on the UNAIDS governing board. Their involvement in the development and implementation of HIV policies and programs has been essential to scaling up HIV prevention and treatment. As a result of this broad engagement, HIV was framed as a social and development challenge, not only a medical issue. Hundreds of millions of HIV infections and deaths have been avoided.

The Global Fund to Fight AIDS, Tuberculosis and malaria has adopted human rights as a pillar of its global strategy. In 2015 some \$19 billion was invested in the AIDS response in low and middle income countries.⁴ The HIV movement has driven down the price of medications and broken the myth that new treatments for HIV and other diseases must be beyond the reach of the global poor. As of 2016, over 18 million people were accessing HIV treatment. This is largely because of the early efforts of HIV activists and lawyers in South Africa, who challenged prevailing approaches to intellectual property law, patents and prices.

Nonetheless, hostile legal frameworks and discrimination are still deterring people from HIV testing and treatment. About 2 million people are newly infected every year – this figure has not declined since 2010. For example, in several West Africa countries a model law on HIV led to the criminalization of HIV transmission, which drives people away from HIV testing and treatment.⁵

The correlation between poor governance and HIV prevalence was identified over a decade ago.⁶ The World Bank definition at that time included measures for voice and accountability, political stability, government effectiveness, regulatory quality, rule of law and corruption. Again, the lesson is that we cannot advance public health beyond a certain point unless we also tackle broader governance and rule of law concerns.

My **third example** comes from non-communicable diseases, and specifically the global obesity epidemic. As you may know, we are not on track to meet the global target of stopping the global increase in obesity. Rather, if trends continue, by 2025, global obesity prevalence will reach 18% in men and surpass 21% in women.⁷ This means about one in five

⁴ UNAIDS Fact Sheet (November 2016) <http://www.unaids.org/en/resources/fact-sheet>

⁵ Kazatchkine, C. 'Criminalizing HIV transmission or exposure: the context of francophone West and Central Africa' *HIV/AIDS Policy and Law Review* 14(3) June 2010. http://www.aidslaw.ca/site/wp-content/uploads/2013/04/Crim-francoAfrica_143-EN.pdf

⁶ Menon-Johansson, A. S. (2005). Good governance and good health: The role of societal structures in the human immunodeficiency virus pandemic. *BMC International Health and Human Rights*, 5, 4. <http://doi.org/10.1186/1472-698X-5-4> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1112596/>

⁷ Ezzati M., Trends in body mass index in 200 countries from 1975 to 2014. *The Lancet* vol 387, 1377 (April 2, 2016)

people may face serious health issues such as diabetes, with dire implications for national health budgets.

From the Mexico experience we know that taxes on sugar-sweetened beverages reduce consumption. But, as we have seen with tobacco, unless we engage fully with communities in the process of introducing such taxes, we risk a backlash and failure. The sugar industry will frame the measure as a regressive tax on poor communities. It is important that health advocates understand that this is not just a communication exercise to explain health policies once they have been adopted. To be sustainable, the demand for reform must come from communities themselves. Governments need to engage directly with civil society networks such as the Healthy Caribbean Coalition and the NCD Alliance at country level in the development of health policies.

For many, this may be a new way of working. However, imagine what we could do in response to NCDs and other global health challenges if we had similar resources and commitment as was generated in the response to HIV.

Advancing the Right to Health: The Vital Role of Law is the first WHO publication to bring an explicit human rights approach to such a wide range of global health challenges. Chapter 1 sets the tone and makes extensive reference to General Comment 14 of the United Nations Committee on Economic, Social and Cultural Rights. Everyone working in global health should be familiar with this UN guidance, just as we should all be familiar with the Alma Ata Declaration and the Ottawa Charter.

To conclude, what **opportunities** are there to address the lack of health law capacity in many countries?

- We can all use the public health law report and other resources to develop rights-based training packages on public health law for government and civil society, drawing on lessons from HIV and tobacco control.
- We can all take steps to ensure civil society participates meaningfully in the process of public health law and policy reform.
- We can broaden university legal education – integrating examples from public health into courses on administrative law, discrimination, criminal law, and family law. This will deliver a new generation of law graduates who understand public health and law.
- We can encourage dialogue between faculties of law and medicine and public health – including the establishment of multi-disciplinary institutes, such as the O’Neill Institute for National and Global Public Health Law at Georgetown University.

- We can request the UN human rights agencies and treaty body mechanisms to develop rights-based guidance on specific issues such as obesity, as they have done for HIV and AIDS.⁸
- We can support the call for a framework convention on global health, which would further clarify State obligations to address public health challenges.⁹

Advancing the Right to Health: The Vital Role of Law is a tool for everyone engaged in these efforts. In the coming months the four co-publishers will develop a short guide to the online report. We very much welcome your interest and support as we take this work forward.

My thanks again to the Graduate Institute for the opportunity to speak to you today.

⁸ See e.g. Committee on the Rights of the Child, General Comment 3 (2003). HIV/AIDS and the Rights of the Child. https://www.unicef.org/aids/files/UNHCHR_HIV_and_childrens_rights_2003.pdf

⁹ <http://www.globalhealthtreaty.org/>