

LETTER TO THE EDITOR

The Rule of Law as a Social Determinant of Health

O. B. K. DINGAKE

This letter to the editor is based on the author's address to the World Justice Forum in The Hague, July 10-13, 2017. The author spoke in his capacity as co-chair of the African Think Tank on HIV, Health, and Social Justice and president of the Africa Judges Forum on HIV, Human Rights, and the Law.

The rule of law is increasingly understood as a foundational determinant of health; one which underlies other socioeconomic, political, and cultural factors associated with health outcomes.¹ 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.² 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.

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 stem the flood of falsified and substandard medicines across Africa. It is also critical that the legal sector understands the international legal obligations to protect intellectual property, in order to ensure access to affordable medicines. Legal capacity to understand trade and investment treaties is vital for national regulation of the importation of unhealthy foods and beverages.

Public health law capacity—broadly understood—is critical to achieving 21st century health goals.³ The scope and depth of public health law capacity needed to achieve these goals is still poorly understood. Few law school graduates have the multidisciplinary perspective and capacity to support government action to achieve these goals.

OAGILE BETHUEL KEY DINGAKE is a judge of the High Court of Botswana and of the Residual Special Court of Sierra Leone. He is co-chair of the African Think-Tank on HIV, Health and Social Justice, and president of the Africa Judges Forum on HIV, Human Rights, and the Law.

Please address correspondence to O. B. K. Dingake. Email: oagiledingake@gmail.com.

Copyright © 2017 Dingake. This is an open access article distributed under the terms of the Creative Commons Attribution Non-Commercial License (<http://creativecommons.org/licenses/by-nc/3.0/>), which permits unrestricted noncommercial use, distribution, and reproduction in any medium, provided the original author and source are credited.

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 building blocks of African health systems.

Access to justice, whether to courts, alternative dispute resolution mechanisms, or traditional justice systems can improve access to health services for girls and women and other vulnerable and marginalized populations.⁴ Court action can challenge overly broad legislation on constitutional grounds, such as inappropriate public health measures to address infectious diseases. Court action may also advance group health rights, such as 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 vulnerable groups fight discrimination. Key populations most at risk of HIV infection are one such group.⁵

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

Effective laws and an enabling legal environment are as critical to a healthy society as clean water. Every public health challenge—from infec-

tious and non-communicable diseases to injuries, from mental illness to universal health coverage—has a legal component. Despite this, in many countries, legislation, policies, and practices are antiquated, contrary to human rights obligations, and hostile to public health goals, threatening the achievements of SDG health targets in those countries and regions.

What are the social determinants of health?

According to the World Health Organization (WHO), the social determinants of health are the conditions in which people are born, grow, live, work, and age. These circumstances are shaped by the distribution of money, power, and resources at global, national, and local levels. Social determinants arguably play the largest role in determining the public's health. Our public health is determined by the policies and practices in place in our homes, schools, workplaces, and communities. Many of these determinants are difficult, if not altogether impossible, to control, such as economic standing, genetic predispositions or proclivities, and the customs, traditions, norms, and attitudes of the community in which we are raised. By developing policies that have a wide-reaching impact and improve both social and economic aspects of communities, social determinants of the public's health can have a positive impact, as well.

There is a great deal of research on the social determinants of health. Most of it points to three overarching factors:

Income inequality. Once a country has reached the point of development where most deaths come not from infectious diseases (tuberculosis, dysentery, cholera, malaria, flu, pneumonia, etc.), but from chronic diseases (heart disease, diabetes, cancer), the economic and social equality within the society is a greater determinant of death rates and average lifespan than the country's position with regard to others. The United States, for instance, lags behind Japan, Sweden, Canada, and many other less affluent countries in the life expectancy of its citizens. The difference seems to be the size of the gap between the most and least affluent segments of the society.

Social connectedness. Many studies indicate that “belonging”—whether to a large extended family, a network of friends, a social or volunteer organization, or a faith community—is related to longer life and better health, as well as to community participation.

Sense of personal or collective efficacy. This refers to people’s sense of control over their lives. People with a higher sense or stronger history of efficacy tend to live longer, maintain better health, and participate more vigorously in civic life.

Although few international laws have been adopted specifically to promote human health, many international laws have possible indirect effects on health as they may impact the social determinants of health (that is, the external conditions in which people live that may affect their health). Examples of social determinants of health include armed conflict, employment, empowerment, environment, finance, human rights, poverty, sanitation, social policies, trade, and water supply.

Social determinants of health can also be understood as the circumstances in which people are born, grow, live, learn, work, and age, which are shaped by a set of forces beyond the control of the individual. These are the intermediate determinants of health, downstream from the structural determinants. They include material circumstances, and psychosocial and behavioral characteristics. They include the living and working conditions of people, such as their pay, access to housing, or medical care.

Structural determinants

Structural determinants are the root causes of health inequities, because they shape the quality of the social determinants of health that people experience in their neighborhoods and communities. Structural determinants include the governing process, economic and social policies that affect pay, working conditions, housing, and education. The structural determinants affect whether the resources necessary for health are distributed equally in society, or whether they are unjustly distributed

according to race, gender, social class, geography, sexual identity, or another socially defined group of people.

Good governance and health

While many public policies contribute to health and health equity, improving population health is not the sole purpose of societies and their governments. A lack of policy coherence across government can result in one part of government supporting the implementation of national strategies on malnutrition or non-communicable diseases, or international treaties such as the WHO Framework Convention on Tobacco Control, while other parts of the government promote trade, industrial development, and initiatives that can be harmful to health and well-being. One reason that these inconsistencies arise is a lack of understanding across sectors about the linkages between health and quality of life, and the broader health determinants such as economic growth. They also arise because policies that appear to be unrelated may have unintended impacts that go unmeasured and unaddressed. These linkages are particularly important in understanding how these health inequities arise between population groups.

To contribute to policy coherence across government in order to address the social determinants of health equity, the health sector needs to understand the imperatives of other sectors and form common understanding of health, its determinants, and broader societal well-being or quality of life. This requires political will, as well as innovative solutions and structures that build channels for dialogue and decision-making across traditional government policy siloes.

In practice, this means engaging in several actions, including:

- coordinating support to a network of trainers implementing the WHO training manual on health in all policies in countries, regions, and WHO programs;
- supporting and implementing workshops for improving the skills of government policy-makers, program leaders, and health provider groups

to ensure coherence across sectors in policies, services, and programs responding to disadvantaged groups' needs; and

- supporting dissemination of information on intersectoral governance for determinants of health equity and exchange of evaluated case studies through the Intersectoral Action Case Study Database for Health Equity (ISACS).

The rule of law as a social determinant of health

Whether embodied in constitutions, statutes, regulations, executive orders, administrative agency decisions, or court decisions, the law plays a profound role in shaping life circumstances and, in turn, health. The ways in which this occurs can be broken down into four categories.

The law can be used to design and perpetuate social conditions that can have terrible physical, mental, and emotional effects on individuals and populations. One obvious example in this category is the “separate but equal” constitutional doctrine that allowed racial segregation in housing, health care, education, employment, transportation, and more.

The law can be a mechanism through which behaviors and prejudices are transformed into distributions of well-being among populations. Health care discrimination and bias can take many forms: it can be based on race, ethnicity, disability, age, gender, or class (or socioeconomic status). Class-related health care discrimination alone can take multiple forms.

Laws can be determinative of health through their under-enforcement. For example, a perfectly good set of housing regulations aimed at keeping housing units safe, clean, and quiet are of little value to individual and group health if there is neither the will nor the resources to enforce them. Substandard housing conditions, including the presence of rodents, mold, peeling lead paint, exposed wires, and insufficient heat—all of which are common among low-income housing units—can cause or exacerbate asthma, skin rashes, lead poisoning, fires, and common illnesses, yet a clinical encounter cannot “cure” these housing problems. While their consequences can be treated medically, the

causes require robust enforcement of existing laws.

Finally, the law can be used to structure direct responses to health-harming social needs that result from factors like impoverishment, illness, market failure, and individual behavior that harms others.

References

1. A.M. Pinzon-Rondon, A. Attaran, J.C. Botero, and A.M. Ruiz-Sternberg, “Association of rule of law and health outcomes: an ecological study.” *BMJ Open* 2015;5:e007004 doi:10.1136/bmjopen-2014-007004 (2015). Available at: <http://bmjopen.bmj.com/content/bmjopen/5/10/e007004.full.pdf>.
2. African Health Strategy 2016-2030. New Partnership for Africa's Development NEPAD, Midrand, South Africa. Available at www.nepad.org/resource/africa-health-strategy.
3. See, for example, HIV and the Law: Risks, Rights and Health. Report of the Global Commission on HIV and the Law. UNDP, 2012. <http://www.hivlawcommission.org>
4. See, for example, *Bringing justice to health: The impact of legal empowerment projects on public health*. OSF, 2013. Available at https://www.opensocietyfoundations.org/.../bringing-justice-health-20130923_0.pdf.
5. See, for example, Toolkit: Scaling Up HIV-related Legal Services. IDLO, UNAIDS, UNDP, 2012. Available at <http://www.idlo.int/publications/toolkitscaling-hiv-related-legal-services-english>.