

The Emerging Role of Public Health Law in the New Health Policy for the 21st Century

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INTRODUCTION

For almost fifty years, the World Health Organization has guided health policy development and action at global and national levels with the overall aim of ensuring that people are able to reach their highest attainable level of health. In the turmoil following the Second World War, visionary leaders of the world community defined the role and priorities of what was to become the World Health Organization. From the outset it became clear that a legal and regulatory basis to health action would be essential at both the national and international levels.

As Mr. Sev Fluss has reported, one of the decisions taken by the Interim Commission of the World Health Organization in 1947 was that the new global health organization, WHO, would report on health legislation in an entirely new journal, the *International Digest of Health Legislation*. The first issue appeared in 1948 (i.e. the year that WHO's Constitution came into force). Included in the WHO Constitution is Article 63, under which each Member State is required to "communicate promptly to the Organization important laws, regulations... pertaining to health which have been published in the State concerned". It is essentially under the terms of that Article that WHO has, during the last 50 years, operated a vigorous and dynamic programme in the health legislation area. Several WHO resolutions have addressed legal or regulatory issues, on such matters as food safety, the use of breast-milk substitutes, substance abuse, blood safety, pharmaceuticals and biologicals, reproductive health, the protection of the human environment, tobacco control, occupational health, organ transplantation and most recently, cloning.

Further, under Article 2 of the Constitution, several functions that directly and indirectly require the application

of legal principles are mentioned. These include :

- (a) to act as the directing and coordinating authority on international health work;•
- (b) to propose conventions, agreements and regulations, make recommendations with respect to international health matters, and to perform such duties as may be assigned thereby to the Organization and are consistent with its objective; and
- (c) to develop, establish and promote international standards with respect to food, biological pharmaceutical and consumer products.

Twenty years after the World Health Assembly, that enunciated the vision of health for all by 2000, and the Alma Ata conference that launched the strategy of primary health care as the means of attaining that vision, WHO is now leading a worldwide consultative process aimed at assessing the degree to which progress has been made in achieving the major targets of Health for All, identifying impediments to the attainment of those targets, and highlighting new threats and challenges as well as opportunities that most to be considered in developing a new global health policy for the 21st century.

In this presentation, I will briefly outline several of the major lessons learnt with respect to the application of Primary Health Care over the last twenty years, and then to identify components of the new draft health policy that give specific attention to public health law. This presentation should be seen as complementary to that of Aude L' hirondelet that focuses on the need to build capacity for public health law particularly in developing countries.

GAINS AND CHALLENGES

The world has seen considerable gains in health over the past fifty years with people living longer and healthier lives. For example, the average life expectancy at birth



has increased 46 years in the 1950s to 65 years in 1995. These gains have not only been due to advances in science, technology, public health and medicine, but also to expanded infrastructure, increased literacy, rising incomes and improved nutrition, sanitation, education and opportunities particularly for women. Many infectious diseases have declined and smallpox has been eradicated. Against this backdrop, one needs to recognize that poverty has increased worldwide in absolute term; in many countries public health systems and services are under-resourced and poorly maintained; and many new demographic and epidemiologic changes will increase the complexity and burden of disease with which health systems will have to contend in future. Overall, health systems and services have not been fully orientated towards health promotion and disease prevention, and still give undue emphasis to curative institutionally-based care.

WHO has completed three major evaluations of its health for all strategy, the last evaluation having been concluded a few months ago. In the evaluation, it was noted that in addition to the above problems, there remained a notable lack of political commitment by governments to implement health for all, a failure to achieve equity in access to all primary health care elements and, that the persistently low status of women retarded progress in health development. Further the slow pace of socioeconomic development hampered the attainment of improved health in many countries, and considerable difficulties have been experienced in achieving intersectoral action for health.

Importantly, many of the new trends that will influence health in the twenty-first century are a continuation of those from the past. For example, widespread absolute and relative poverty, continuing high incidence of infectious diseases, malnutrition and maternal deaths will remain priorities in many countries well into the 21st century. However, many trends will require stronger intersectoral approaches and development of an innovative and supportive legal and regulatory environment at global and national levels. These include for example: policy interventions required to prevent an increase in the causes of noncommunicable diseases; measures to ensure that global environmental health threats are minimized; regulations for the management of new technologies (including information, telehealth and telemedicine services, as well as biotechnology); development of appropriate international instruments to ensure that

globalization of trade and travel does not harm health; and guidelines to facilitate development of partnerships between the public and private sectors and civil society.

HEALTH FOR ALL IN THE 21ST CENTURY

The vision of health for all in the new draft policy documents builds on the experience of the past and the promise of the future. The vision of health for all seeks to create the conditions for people, universally and throughout their lives to have the opportunity to reach and maintain the highest attainable level of health as a fundamental human right. Health for all values underpin and will be incorporated into all aspects of health policy influencing the policy choices made, the way these choices are made and the interests they serve.

The health for all vision is based on the following key values :

1. recognition of the highest attainable standard of health as a fundamental right;
2. continued and strengthened application of ethics to health policy, research and service provision;
3. implementation of equity orientated policies and strategies that emphasize solidarity; and
4. incorporation of a gender perspective into health policies and strategies.

These values are closely interlinked, each serving as a pillar supporting and underpinning the attainment of the goals of health for all and execution of policy directions and strategies. The legal base for the highest attainable standard of health as a fundamental human right is contained in the WHO Constitution, the International Covenant on Economic, Social and Cultural Rights, and the Vienna Declaration. Further it is implied in the Universal Declaration of Human Rights, whose 50th Anniversary will be celebrated next year.

Public Health Law in Support of HFA

Public health law must respond to the values of Health for All and support the attainment of the goals of the Health for All Policy. These are to achieve an increase in life expectancy and in quality of life for all, improve equity in health, and ensure access to health services. These goals of Health for All will be realized through the implementation of two policy objectives, making health central to human development and developing sustainable health systems



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to meet the needs of people.

The first approach places health firmly at the centre of the development agenda to ensure that economic and technological progress is compatible with the protection and promotion of the quality of life for all. Strong empirical evidence indicates that the major gains to health, and the best means of reducing inequities in health status occur through the action of finance, education, agriculture and development sectors. Because of this, in many countries, national health policy and laws include explicit reference to the need for the policies of all sectors that effect health directly or indirectly to be analysed and aligned to maximize opportunities for health promotion and protection. In doing so, multidisciplinary teams are required to assess how particularly agriculture, housing, energy, finance, trade, transport, environment, justice and foreign affairs policies can be orientated towards health protection and promotion.

Sustainable development plans require that when conflict in policy objectives occurs between various sectors, government shoulder on the side of health and the environment. This approach is slowly being applied in the case of major infrastructural programmes, but has been less applied to the action of other sectors and results everyday in divergence of policy initiatives between for example, the ministries of health, trade, finance and defence. A clear legal basis for intersectoral action is a necessary but not sufficient basis for policy alignment. Clearly, other actions are needed. These include better information on how alignment will be mutually beneficial to many sectors.

The goal of government should be to ensure that health is not sacrificed for narrow short-term sectoral or economic gains. Many global environmental issues particularly the long-term effects of chemicals, depletion of the ozone layer, climate change and genetic manipulation of plants and animals individually; and together, threaten the integrity of the human genome and the quality of future generations' health. For that reason, ethical norms and standards many need to be supported and underpinned by appropriate legal principles and legislation.

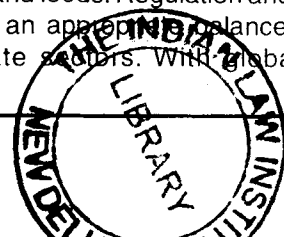
The second major policy objective, developing sustainable health systems, gives explicit attention to defining essential functions of a sustainable health system. This builds upon primary health care services.

These functions include making quality care available across the life span, according to need; preventing and controlling disease and protecting health; promoting legislation and regulations in support of health systems; developing health information systems and ensuring active surveillance; fostering the use of, and innovation in, health-related science and technology; building and maintaining human resources for health; and securing adequate and sustainable health financing. In addition, a socially-sensitive health system will take into account the economic, sociocultural and spiritual values and needs of individuals.

One of the key functions thus identified is to develop regulations and laws in support of sustainable health systems. In doing so public health professionals recognize that national laws set the basis for collective action for health, protect the vulnerable and disadvantaged from adverse economic effects, and define the boundaries and expectations of government with respect to its partners. Laws and regulations must strike a balance between individual freedoms and public needs and interests. Health ministries and departments are responsible for developing policies and priorities that reflect people's needs: by setting standards and norms, by ensuring that supportive legislation and regulations are adopted, and by informing the public about their rights and responsibilities.

Legislation that promotes health includes measures relating to : environmental standards, food safety, bans on tobacco advertising and sponsorship, restrictions on alcohol promotion, ban on access to certain weapons, consumer-protection measures, and the entitlements of people to health care. Environmental health legislation can protect the public against exposure to a wide range of hazardous products. In many of these areas, legislation is underdeveloped or poorly enforced despite the reality that their effective implementation would lead to substantial health gains often in excess of those achieved through health care.

Legislation is also needed to: help control violence and injury; ensure that ethical practices are followed in medical care and research; provide a regulatory framework for private-sector health care and intersectoral action for health; and to ensure the safety of pharmaceuticals and foods. Regulation and oversight are vital to achieving an appropriate balance between the public and private sectors. With globalization and





privatization of the economy, the need for such legislation is increasing. The success of these approaches will depend on political commitment, capacity building in public health law, public support and effective enforcement.

The development of legislation and regulation is in itself a powerful means of advocating for health. The debate among the constituent elements of civil society that precedes development and adoption of legislation, heightens awareness of public health problems and the need for action. This is well illustrated with respect to tobacco control, abortion and motor vehicle laws as but a few examples. Effective enforcement requires strong linkages between the public, law enforcement officers, NGOs, and health authorities. In addition monitoring of legislation is essential to its proper implementation. National and local health information systems are a prerequisite for the development of effective, efficient, equitable and quality health systems. National health information systems should be capable of analysing, validating and distributing information to the extent to which public health laws are implemented and effective in reaching their desired health objectives.

In developing and maintaining human resources for health the role of professional bodies becomes paramount. A fine line exists between the use of legislation and the encouragement of professional autonomy. The experience of many countries indicates that when national legislation is introduced to promote measures perceived as draconian by health professionals (e.g., to require serving in underserved areas without adequate training, support or financial remuneration), the perverse effects, such as an increase in the brain drain, tend to outweigh the intended benefits to the public. There is a need however for regulations and legislation in some areas to define the boundaries of existing public health and medical disciplines, the licensing of institutions to train health personnel, and increasingly to focus on the transnational movement of health professionals including the need for international harmonization of education and service standards.

Government actions and regulations are needed to clearly secure an adequate level of financing through public or private sources, to promote cost containment and fiscal discipline, to provide essential drug and technology lists and to ensure that national resources are utilized equitably to meet health needs. Laws need to be

drawn up in close collaboration between health, finance, planning and other departments in order to achieve these objectives. There is strong and emerging evidence that when the government has the major mandate for, or is the main funder of health systems, there is more likely to be equity of access, cost containment and a stronger emphasis on preventive and promotive services.

The experience of health reform in many countries however has been that the legislative support to design appropriate laws acceptable to all key partners, and the enforcement of existing legislation is lacking. Further, in many countries progress in health reform is being severely hampered by the lack of expertise in public health law. This will be described more fully by Aude L'hirondel.

GLOEALIZATION, LEGISLATION AND HEALTH

National and local decisions are affected as never before by global forces and policies. The global trends in trade, travel, migration, technology, communications, and marketing have grown dramatically over the past two decades, particularly since the end of the Cold War. This has resulted in substantial gains for some groups and severe marginalization for others. The spread of information technologies and advances in biotechnology worldwide will increasingly help to detect, prevent, and mitigate the impact of disease outbreaks, famine and environmental health threats, and to bring health services and education to many more people. However, there is concern that increased trade in products harmful to health and the environment, threatens, particularly, the health of populations in low-income countries. Increased transnational trade in food and the mass movement of people constitute additional global threats to health.

The health of the world's citizens is inextricably linked; it is less and less confined to geographical boundaries. Countries are forced to acknowledge their interdependence because of the fragility of our shared environment, an increasingly global economic system, and the potential for rapid spread of infectious diseases. There is concern that globalization will threaten the survival of cultural and ethnic diversity in many countries.

National action in isolation cannot ensure that the highest level of health can be universally attained, or that inequalities in health are reduced. Global action and cooperation between countries is also necessary. This action should aim at securing the benefits of globalization



for the health of all on an equitable basis and preventing or minimizing threats. For this to be successful, the full mobilization and support of international and intergovernmental organizations involved in health and development for HFA will be decisive.

Global public health action must be universally relevant, constituting a global public health good, where the benefit to individual countries may be low, but the benefit to all is high. Such global public health action includes development of global ethical and scientific norms and standards. It is generally recognized that the need for global norms and commitments, sometimes reflected in legally binding instruments, will become more important not only in health but in all aspects of development as global interdependence accelerates. It is thus ironic that international public health law instruments are so poorly developed, and that educational capacity is only at a rudimentary stage of development. International legal experts, and more recently, participants in a WHO meeting in Finland on "Building sustainable health systems", have observed that the better use of international legal instruments would encourage the development of national health legislation, thereby helping to achieve global health outcome in the twenty-first century.

Examples of current international instruments either being applied or under development include the international health regulations, which has developed well over a century for the control of communicable diseases. It is a binding international instrument that is currently being updated in the light of globalization of travel. The Codex codes of practice and guidance, jointly executed through the joint FAO/WHO Codex Alimentarius Commission, provides standards and recommendations with regard to food safety. The Codex is increasingly becoming important in WTO and European Commission rulings. The international code on the marketing of breast-milk substitutes is nonbinding and was adopted by the World Health Assembly in 1981. It has had a significant moral and international advocacy role in promoting breast-feeding and regulating the marketing of breast-milk substitutes. Finally, under development is an International Framework Tobacco Convention to facilitate national and international tobacco control. This will be developed in stages eventually leading to a binding multilateral convention: the first effort to do so by WHO!

CONCLUSION

While national public health law should remain the firm basis for public health law action, we need to develop a vision, and move towards a reality of common global and enforceable rules, that together with other interventions and policies will help us realize the goal of health for all.

Among the keys to successful implementation of health for all in the 21st century is the requirement that governments need to have a strong policy-making capacity to address the challenges they confront. In addition to developing strategic management expertise, and minimizing outmoded bureaucratic procedures and rules, the establishment of a regulatory framework that facilitates a legal basis for reform is essential.

Health for All will only become a reality when all potential partners act together. Thus WHO at a global level will work closely with its UN partners, all Member States, NGOs and academics to develop and implement appropriate international instruments for health. This paper indicates that the role of public health law and of public health lawyers will be decisive in the process of Health for All.

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