



Meeting Report **Thematic session on law and the** **prevention and control of** **noncommunicable diseases** ***New York, 9 February 2016***



United Nations Inter-Agency Task Force
 on the Prevention and Control
 of Noncommunicable Diseases
UNIATFF

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Meeting Report

Thematic session on law and the prevention and control of noncommunicable diseases

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Introduction

Almost all of the evidence-based, cost-effective interventions in the Global Action Plan for the Prevention and Control of Noncommunicable Diseases 2013-2020 have substantial legal components. These include the regulation of production, advertising and sales of unhealthy products, excises and taxation, and the establishment of health promotion bodies.

Legal expertise is therefore needed at both international and domestic level. This may include relevant expertise in public international law, international trade law, international investment law, intellectual property law, human rights law, constitutional law, administrative law, and consumer protection law. Yet the relevant legal capacity in relation to NCDs is absent or limited in many countries.

At the 4th meeting of the UN Interagency Task Force on NCD Prevention and Control, the Task Force agreed to hold a thematic day on the rule of law and NCDs, to be hosted by the International Development Law Organization (IDLO) in 2016, in collaboration with UNDP, WHO and other interested Task Force members and invited partners.¹ Because the meeting was not a formal session of the Task Force, participation was extended to include representatives of academic and civil society organizations engaged in the response to NCDs.

The thematic session was held in UN Headquarters on February 9, just prior to the 6th Task Force meeting, February 10-12 2016.

The immediate results of the thematic session are reflected in the decisions of the 6th Task Force meeting, at which the Task Force recommended:²

1. Ensure, where possible, that Joint Programme Missions include a review of the country legal frameworks and international legal obligations in their ToRs and that the teams include relevant legal expertise;
2. The establishment of a community of practice on NCDs and law, under the WHO Global Coordination Mechanism on NCDs;
3. That the Task Force explore, possibly through a study, how to meet the rapidly increasing requests to provide technical assistance, including through capacity building, in the area of NCDs and law.

This document summarizes the presentations and discussions at the thematic session. Chatham House Rules were followed, and only the presentations of the invited speakers are attributed in this report.³

Objectives of the thematic session

The objectives of the thematic session were as follows:

1. Confirm the importance of national legal capacity in responding to NCDs.
2. Identify existing initiatives and gaps, needs and opportunities, including a focus on gender and an enabling legal and policy environment, in strengthening national legal capacity to respond to NCDs.
3. Identify possible actions for the Task Force members, working with partners, in strengthening national legal capacity to respond to NCDs for inclusion in the Task Force work plan for 2016-2017.
4. Identify other possible actions at global, regional and national levels to advance research, capacity building and networking on NCDs and law.

¹ See <http://www.who.int/nmh/ncd-task-force/unitaf-18-march-2015.pdf> page 10 item 20.

² <http://www.who.int/ncds/un-task-force/events/feb-2016-unitaf-sixth-meeting/en/>

³ The views expressed in this publication are the views of the authors and do not necessarily reflect the views or policies of IDLO or its Member Parties, nor of WHO or UNDP. IDLO would like to acknowledge the contribution of Dr. Shamiso Zinzombe for her contribution to this report.

Opening session

Welcome by the Co-hosts

Mr. David Patterson, Senior Legal Expert, Health, Department of Global Initiatives, International Development Law Organization (IDLO) welcomed the participants on behalf of Ms. Irene Khan, Director-General of IDLO. He noted that IDLO is the only intergovernmental organization exclusively devoted to promoting the rule of law. The IDLO health law strategy 2014-2016 included NCDs, with a focus on obesity, diabetes, cardiovascular diseases and healthy diets and physical activity. IDLO is also a member of the UN NCD Interagency Task Force.

Dr. Douglas Webb, United Nations Development Program (UNDP) Team Leader for Health and Innovative Financing in the Health and HIV Development Group, welcomed participants on behalf of Dr. Mandeep Dhaliwal, Director, HIV, Health and Development Practice. He noted that in implementing the Global Action Plan on NCDs, UNDP's role is supportive, geared toward strengthening legal and regulatory environments to address NCDs, including access to medicines. He noted the increase in demand for legal and regulatory work around NCDs, where the field is experiencing a clash between politics and economics affecting the nature and extent of public goods.

"In this battle ground, different actors have very different incentives... the simple act of ingesting a commercial product constitutes a market share for one actor, a consumption behavior for another, a revenue stream for somebody else and a risk factor for somebody else".

Dr. Douglas Webb, UNDP

Dr. Webb noted that the WHO Framework Convention on Tobacco Control (WHO FCTC) has already provided inspiration for action in other development contexts. These include the Addis Ababa Action Agenda Draft Outcome Document 7, July 2015, which proposed the use of tobacco taxation to fund health services (para. 32).⁴ UNDP is also examining the economic aspects of NCDs and their impact. He concluded by noting that UNDP also addresses access to medicines. He anticipated battles will also be fought beyond the health sector, in areas such as finance, trade, and in the courts. This underscores the importance of developing a collective approach, noting the links between Sustainable Development Goals (SDGs) 3 and 16.

"We must be very persistent.... these legal and regulatory components are going to be absolutely critical - they intersect with everything we are doing."

Dr. Douglas Bettcher, WHO

Dr. Douglas Bettcher, Director of Prevention of Noncommunicable Diseases for the World Health Organization (WHO), welcomed the meeting as a milestone affirming NCDs on the public health agenda. He noted that almost every health area involves a regulatory or legal framework. He recalled the crucial role of State political will, coupled with the leadership of WHO's Director-General, which shifted the public health legal and regulatory space to include the issue of tobacco control. The WHO Framework Convention on Tobacco Control (WHO FCTC) demonstrates the feasibility of Article 19 of the WHO Constitution, which permits the World Health Assembly (WHA) to adopt binding health treaties⁵. He noted that the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products illustrates

further widespread acceptance of international health legislation⁶. Drawing parallels between other NCDs and the WHO FCTC experience, Dr. Bettcher observed that today we are in the same place as we were with tobacco before the WHO FCTC.

Dr. Bettcher noted that essential, ongoing tobacco control work includes actively defending the WHO FCTC from challenges, such as the law suits against plain packaging. Litigation funds helping to defend tobacco control measures had been established by, among others, the Bill and Melinda Gates Foundation and Bloomberg Philanthropies. He noted that WHO and the Pan American Health Organization (PAHO) had submitted sealed amicus curiae briefs in the Philip Morris International Inc. suit challenging Uruguay's tobacco control laws.

Other relevant initiatives include the MPOWER Initiative (a WHO-Bloomberg Philanthropies collaboration), the Commission on Ending Childhood Obesity, and the Global Strategy on Diet, Physical Activity and Health. He concluded by noting the critical need for new problem solving for mechanisms such as Investor-State Dispute Settlements (ISDS).

⁴ The final document refers to funding development. See http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf

⁵ http://www.who.int/governance/eb/who_constitution_en.pdf

⁶ <http://www.who.int/fctc/protocol/en/>

The UN Interagency NCD Task Force

Mr. Nicholas Banatvala, Senior Advisor, Office of the Assistant Director General, NCDs and Mental Health noted that the Task Force was formed in 2013, and reports to United Nation Economic and Social Council (ECOSOC). Task Force members include about 30 UN agencies, and other intergovernmental organizations with a relevant mandate. The Task Force works on the basis of two-year work plans. The Task Force aims to support action at country level, including through UN country teams, as in Mozambique and India. Similar work is being undertaken through Global Joint Programmes in Thematic Groups such as on areas relating to cancer and the harmful use of alcohol. He noted that civil society, including NGOs and academia, is also critical to moving forward the NCD legal and policy response.

The global coordinating mechanism

Dr. Bente Mikkelsen, Senior Advisor, Office of the Assistant Director General, NCDs and Mental Health, WHO, noted the new UN NCD Global Coordinating Mechanism (GCM) has members from all UN Member States and Agencies, plus some non-state actors. Its broad membership base shows recognition of an understanding for the need for a multi-sectoral approach and stakeholder engagement to address NCDs.

GCM's work plans and activities are determined by its mandate.⁷ Activities include facilitating dialogue through mechanisms such as working groups. The members and co-chairs of these working groups are nominated and selected by States.

Other GCM activities include providing platforms to bring together all GCM participants, and raising awareness of bottlenecks and solutions. Work is underway to create a portal with information on concrete solutions to identified obstacles to scale-up the NCD response. Also, the GCM is testing a new technology for communities of practice. A global communication campaign is also planned.

⁷ <http://www.who.int/global-coordination-mechanism/history/en/>

Law and NCD Prevention and Control

Professor Larry Gostin, Georgetown University, observed there was no clear defining line between communicable and noncommunicable diseases.⁸ While the global epidemiological transition is from infectious diseases to NCDs, prominence was still given to infectious diseases such as Ebola and Zika. WHO has identified major NCDs as diabetes, cardio-vascular disease, cancer and respiratory illnesses. There are major four causes, or pathways, tobacco use, alcohol abuse, poor diets and lack of exercise. Not all NCDs had these four causes – e.g. mental illness.

Professor Gostin noted that an advantage of the rule of law was it addressed problems in society in an orderly way - embracing legislation, regulation and litigation on multiple levels - local, domestic, regional and International. He noted that the rule of law is relevant to NCD prevention, treatment and mitigation. Many legal domains outside health, such as labor law, were also relevant. Legislation regulates human behavior. However, in public health focusing on human behavior is seldom the most effective strategy because individuals are embedded in societies and environments which are not necessarily conducive to healthy life styles.

Even where society is conducive to a healthy environment, it is not always easy to make a healthy choice. For example, a food may be low fat but high in sugar. As a result, we need to focus on the environment and communities in which we are embedded. Manipulation of our ability to choose occurs because unhealthy food items like sugar are addictive, similar to tobacco and alcohol. Pepsi and Coca Cola use marketing strategies learnt from the tobacco industry. Both sell their products claiming to be selling happiness and love.

We tend to think that it's an individual or parental responsibility, and so you can tell a mother... make sure that your kid eats right. But if she doesn't have access to affordable fruits, vegetables, and the education that she needs to prepare those meals for her family and the time; then it's useless giving her that information.

Similarly, telling mothers to make sure their children get enough exercise is futile advice if they live in a neighborhood where it is not safe for children to go out to play. We have to embed health in families, communities and societies.

Prof. Larry Gostin, O'Neill Institute

Prof. Gostin noted that States need to eliminate subsidies on certain foods, like fructose corn syrup. At the moment territories like the European Union (EU) and the United States of America (USA) subsidize the wrong foods, as was the case with tobacco in the past

Prof. Gostin noted the important need for a bottom-up approach, because of concerns raised by some of paternalism - illustrated in use of the term 'nanny state.' Yet industry is allowed to circumvent personal autonomy regularly. Our approach must be evidence based, and requires continuous testing of legal interventions. Finally, he noted that the lesson from HIV and AIDS advocacy is that it is possible to change the world from the bottom up, through social mobilization.

"The Framework Convention doesn't allow big tobacco in the room when policy is being made but there is a lot of pressure to allow big alcohol and big food in the room. They are thought of as part of the solution, but they are really powerful forces designed to maintain their profits."

Prof. Larry Gostin, O'Neill Institute

WHO Perspective

Dr. Benn McGrady, Technical Officer (Legal), Prevention of NCDs, outlined the role of WHO in the response to NCDs. WHO has a normative

⁸ Linda D. and Timothy J. O'Neill Professor of Global Health Law, Faculty Director, O'Neil Institute for Global Health Policy, Georgetown University; Professor of Public Health, the Johns Hopkins University.

"We have a matching problem – there is a great opportunity for networking and serious coordination. There are needs internationally and domestically, and there is capacity at certain levels, but globally we have not yet matched the capacity and need well."

Mr. Benn McGrady, WHO

role, such as by providing platforms for different legal instruments such as the WHO FCTC. WHO also has a technical role, which involves activities such as providing training and capacity building on specific regulatory and legal instruments to Member States. WHO also works to create an enabling environment, where laws and regulations to prevent and control NCDs are based on good science. Current activities and priorities in 2016 include working with States on diet and physical activity to introduce legislation and regulation restricting marketing of alcohol and some foods and beverages to children, fiscal measures like tax and price measures, product reformulation, and nutrition labelling. For tobacco, there is a focus on tobacco plain packaging. International trade is a cross cutting issues that relates to prevention and control of NCDs in both these areas.

Perspective from Africa

Dr. Ahmed Ouma, Regional Adviser, WHO/AFRO noted many countries in the region had colonial laws and bilateral agreements, some dating back over 100 years. These laws were generally pro-business, and there is an inadequate understanding of how these laws affect health. The main challenge is building capacity to understand the link between the law and NCDs. The main entry point has been through tobacco control. The McCabe Centre for Law and Cancer is supporting the adoption of laws on tobacco control which minimize the risks of litigation. Non-lawyers can also benefit. WHO/AFRO is also supporting selected countries to develop national NCD plans, including through law, and share domestic experiences, particularly between neighboring States.

Dr. Ouma noted the value in working with sub-regional economic blocks such as the Economic Community of West African States (ECOWAS), as decisions taken by these bodies were observed to have a higher likelihood of implementation. This is the case even where similar decisions had been adopted globally. Country level capacity building is a priority. He noted the value in taking the health agenda to forums where major decisions are made, such as trade and investment arenas, and hence the opportunity to engage with senior ministers from non-health portfolios.

Perspective from The Americas

Dr. Heidi Jiménez, Legal Counsel, Pan American Health Organization (PAHO), WHO/AMRO, noted that experience in this area dates back to resolutions passed in the 1970s on health and law. She noted that while all the resolutions passed in the last 10 years had a legal component, the fragmented nature of the resolutions limited their effectiveness.

To address this fragmentation, three years ago PAHO developed a strategy which includes law as an instrument that affects health. The process involved a comprehensive multi-sectoral multidisciplinary approach, and included government officials, such as ministers of health, and non-state actors such as civil society organizations. In September 2015 a resolution supporting the strategy was approved by the PAHO Council.⁹ It contains five action points, including NCDs. Dr. Jimenez noted States' interest in the overall health system in relation to National Health Codes (NHCs). NHCs have proved an effective entry point on NCDs and law. With the O'Neill Institute for National and Global Health Law, supported by a voluntary contribution from Brazil, PAHO intends to facilitate and strengthen capacity, including by compiling a list of laws that impact on health.

Human rights are already acknowledged as central to achieving health goals – the Inter-American Court of Human Rights is a leading court on this area. The Constitutions of many States protect the right to health, however implementation capacity is needed. Human rights are embedded in the PAHO strategy. There is a human rights advisor within the PAHO team. Implementation of the human rights-based approach remains a challenges.

South East Asia Perspective

Dr. Manisha Shridhar, Regional Advisor, WHO/SEARO noted that regular national meetings on health and trade law have been held in Thailand since 2013. Once trade law and finance experts understand the connection between their work and health there is the opportunity to participate on a common platform with colleagues in the public health sector. However, this applies more to newer trade agreements, where it is more likely that health issues can be accommodated. Dr. Shridhar noted that tobacco has become a driver for all NCDs. A lot of work has been done to develop multi-sectoral plans. In India in 2014 a Task Force mission mapped federal and state legislative provisions on tobacco and identified gaps, noting that health is a state responsibility under the Indian Constitution.

The preliminary findings of the 2014 Task Force mission included the need to: ¹⁰

⁹ http://www.paho.org/hq/index.php?option=com_content&view=article&id=11310&Itemid=41586&lang=en

¹⁰ The key mission findings are available at <http://www.who.int/ncds/un-task-force/country-missions/report-india->

- Address gaps in implementation of existing laws supportive of NCD interventions, including through the harmonization of the numerous duplicate federal laws;
- Clarify both federal and state competence on health, including in the draft national health policy;
- Review outdated laws on the statute books;
- Monitor implementation to measure progress;
- Hold authorities accountable with time-bound results; and
- Address prevention measures which were neglected in comparison to treatment access.

The Western Pacific Perspective

Dr. Ki-Hyun Hahm, Technical Officer, WHO/WPRO, noted that the regional office was focused on both tobacco control and unhealthy diets. Regarding tobacco litigation, he cited the Korea Health Care Recovery lawsuit. An outcome of which was an increase in tobacco taxes and packaging with graphic health warnings, demonstrating how one initiative can lead to another as part of a comprehensive initiative. He noted, however, the regular almost daily interference from industry. Dr. Hahm noted that in order to get legislation implemented a city or local approach was a good starting point. For example, in China, the successful Beijing smoke-free law is now the impetus for national legislation.

The unhealthy diets program focused on the regulation of marketing of food and non-alcoholic beverages to children, including in school settings. Many tools exist or have been developed, such as nutrient profiling models, and PEARL – the Pathway for Effective Action through Regulation and Legislation, an online regulatory mapping tool for law and NCD risk factors. Dr. Hahm noted the need for a system-based approach and a systemized approach, and the need for a coordinating mechanism. He also noted the opportunities offered by the Asia Pacific Parliamentarian Forum on Global Health, which was formed in 2015.

Presentations

Survey of legal initiatives in law and NCD prevention

David Patterson presented a 2015 survey on the use of law in the prevention of NCDs. The survey was intended to share good practices and help avoid duplication. He noted that although the survey did not cover legal aspects of care and support, this does not detract from the importance of either. The survey was disseminated via the Task Force, and through social media. Some 45 responses were received, with fewer responses from Asia, Africa and Eastern Europe. He noted the need to reach out to law schools and build linkages with medical/public health faculties, as well as linkages with civil society organizations. Greater networking and collaboration can maximize shared resources and avoid duplication. Most reports involved research on tobacco control, thus, these were great models to learn from.

Opportunities for Country Engagement

Dr. Douglas Webb, UNDP, recommended the development of tools for non-health experts to increase their awareness and capacity and on normative issues. He noted that NCDs must be integrated into national development plans, including the UN Development Assistance Framework (UNDAF). The Discussion Paper Addressing the Social Determinants of Noncommunicable Diseases can help to build understanding that NCDs are a development issue.¹¹ This is a challenging task, as many people are not yet aware of the link with various issues, such as trade and environment. In the case of tobacco, there are legal obligations, thus there is a lot of ongoing work using WHO FCTC as a crucial entry point within the UN on development planning. UNDP is taking the SDGs, especially Goals 3 and 16, into national development planning processes through Mainstreaming, Acceleration and Policy Support (MAPS), outlined in the January 2016 Policy Brief UNDP Support to the Implementation of the 2030 Agenda for Sustainable Development.¹²

Dr. Webb highlighted three interconnected steps. First and foremost, it is essential to make the NCD investment case to help States construct their own investment cases for financing NCDs. States were already asking about the cost implications of action and inaction, and the best policy to adopt. For example, Barbados currently spends 2-3% of its gross domestic product

[december2014.pdf?ua=1](#)

¹¹ <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/discussion-paper--addressing-the-social-determinants-of-noncommu.html>

¹² <http://www.undp.org/content/undp/en/home/librarypage/sustainable-development-goals/undp-support-to-the-implementation-of-the-2030-agenda.html>

on NCD control. Rates of diabetes and cardiovascular disease are ranked in the top 20% of States globally. Due to its existing fiscal crisis, Barbados was concerned about further NCD costs. Two thirds of the costs related to economic output are due to sick people underperforming at work, not absenteeism. This is a powerful persuasive tool, particularly in relation to gaining more positive engagement from ministries interested in growth, such as trade.

Second, it is essential to support governments to develop national multi-sectoral NCD mechanisms tailored to country contexts. These should follow an institutional assessment, clarifying mandates and protecting policies from undue influence. The Institutional Context Assessments tool involves comprehensive research on the power relations within a State. It examines the public sector, private sector and civil society to identify the leading policy actors, in addition to the location or source of blockages to better policy making. Many of these battles will be fought around urban spaces and urban planning.

Third, it was essential to develop municipal or local NCD responses, such as by helping cities to map NCD epidemics, reduce risk factors and develop responsive health systems.

Dr. Webb emphasized the importance of identifying synergies between the SDGs, noting how target 3.4 is linked to SDG 16. States are seeking simplified mechanisms with multiple impacts across targets. South-south collaboration is an important area of work. For example, 21 countries have developed 8 projects on tobacco. He noted that the HIV/AIDs experience provides numerous lessons for NCDs. We should also make use of political interest in related areas like pollution.

Lessons from capacity building on NCD and law

Professor Amandine Garde, Liverpool University, UK, noted that legal instruments have to be adapted to specific legal systems, and hence the importance of local legal knowledge. NCD law as such does not exist - rather there is a need to examine the NCD risk factors and adapt multiple laws to address these, including e.g. consumer laws, marketing laws and tax laws. She also noted the need to bring different actors and experts working on NCDs together to build local and global capacity. Securing experts with competence in a given legal system is critical to responding to industry claims. There is a need for a multi-disciplinary approach. Professor Garde noted lawyers can only be effective in tackling NCDs if we engage with other disciplines.

Mr Jonathan Liberman, Director, McCabe Centre for Law and Cancer, Australia, noted developments in training on law and NCDs. The McCabe Centre for Law and Cancer covers a broad range of topics in their training courses, including health, trade, investment, sustainable development and human rights. The Centre offers various legal training programs, including a three week intensive program covering a broad range of issues conducted in Melbourne, Australia and a more focused 3-5 day program conducted in other countries and regions. Mr Liberman noted the value in bringing different arms of government together, with differing perspectives. Each benefits from learning from the others. He explained how the courses examine laws, treaties and court and tribunal judgments, noting the importance of encouraging participants to work through issues of priority for them and share their knowledge. After the training, follow-up activities are offered as part of ongoing support; nurturing local and regional leadership is essential.

Lessons from the Global Commission on HIV and the Law

Mr. Tenu Avafia Team Leader on Human Rights, Law and Treatment Access, UNDP, noted UNDP's main focus on NCDs was in the area of intellectual property, trade and access to medicines. He noted UNDP and WHO had taken the lead on enabling, legal and regulatory environments for many years. During this time, WHO and UNDP gave policy and tactical support to States; helping them use flexibilities in the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) and reform their laws, promoting domestic policy coherence. He reiterated the critical value of bringing together various ministries in the same room to develop pro-health, coherent law and policy. UNDP and WHO also provide technical support to countries engaging in free trade or bilateral trade agreements. Assistance also includes advice on the procurement and regulation of medicine and other health technologies. UNDP has published a range of research and policy documents on the above issues.

Mr. Avafia noted the Global Commission on HIV and the Law was created because, despite many UN State Declarations to improve the legal environment in response to HIV, there had been a wave of negative domestic legislation, including the criminalization of certain behavior, and a lack of treatment access for people with HIV and AIDS.¹³ The Commission was tasked to develop action-oriented evidence-based recommendations to protect and promote the rights of people living with HIV. Comparing experiences on HIV and AIDs to NCDs he observed that, as with HIV, NCDs involve a very broad spectrum of legal issues.

¹³ <http://www.hivlawcommission.org/>

The Commission was premised on three mutually reinforcing axes:

- > appointment of 14 multidisciplinary expert commissioners;
- > to augment commissioners' work, by amongst other things informing their findings and recommendations, appointing a 23-member multidisciplinary technical advisory group; and,
- > carrying out a consultation process (seven regional dialogues and input from over 1000 people)

The first meeting of the Commission in October 2010 addressed criminalization, violence experienced by women, children with HIV, and law and treatment access.

Mr. Avafia shared four key findings from the 2012 Commission report *Risks, Rights, and Health*, each applicable to NCDs:

1. An epidemic of bad laws is fueling the spread of HIV and that this is resulting in human rights violations and is costing lives;
2. An epidemic of bad laws is wasting money in already resource constrained settings and we need to address greater efficiency of HIV and health investments;
3. There are good laws and practices that promote human rights and build on evidence, and these must be replicated where they exist; and
4. Although the science exists, scientific tools in themselves are not sufficient to address the AIDs epidemic, and we really need to look at other determinants such as enabling legal and regulatory environments.

Since the report was published many actors have pushed for the implementation of the recommendations. For example, legal environment assessments have been undertaken in 51 countries on the extent to which national legislation mirrored the recommendations. Further, 49 countries had held national dialogues and action planning in the last three years. Mr. Avafia noted that a key recommendation on intellectual property and treatment access led the United Nations Secretary-General to convene the High Level Panel on Access to Medicines, a neutral body of individuals acting in their personal capacity.

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"To bring together those who bear the brunt of the law, those who enforce the law, those who interpret the law, and those who make the law into one room, and to discuss where the law is essentially failing the AIDs response has proven to be a very catalytic and important process for facilitating further law reform."

Mr. Tenu Avafia, UNDP

Lessons from the WHO Framework Convention on Tobacco Control

Dr. Guangyuan Liu, Technical Officer, Governance and International Cooperation, Convention Secretariat, WHO Framework Convention on Tobacco Control (WHO FCTC) noted that the tobacco epidemic is a global problem that requires a global solution. The WHO FCTC now has 180 parties, with 179 countries and the EU. In 1996 the WHA the treaty negotiations, which took four years and involved both States and civil society. The World Health Assembly adopted the treaty in 2003 (WHA 56).

The WHO FCTC contains some unique provisions, such as regarding liability (art. 19), and a ban advertising, which must be implemented in five years following ratification (art. 14). Unfortunately, many countries face delays in meeting their obligations. The WHO FCTC Protocol to Eliminate Trade in Illicit Products has 30 State ratifications, and requires 40 to enter into force. The WHO FCTC has produced successful results when compared with the situation in countries before ratification.

The Conference of the Parties (COP) meets every two years. The next meeting will take place in India November 7-12 2016. The main partners of COP are NGO observers and States. Within the framework of the WHO FCTC, implementation tools have been developed. A Party reporting system has been established, which requires Parties to issue reports every two years.

The Secretariat provides technical support to States. These include country needs assessments, now completed in 30 countries. Ongoing support is offered after the needs assessment, such as organizing meetings with parliaments and ministries of justice. Dr. Liu concluded by noting, 'legislation is one the biggest challenges that the countries are facing!'

¹⁴ <http://www.unsgaccessmeds.org/new-page/>

Discussion

Participants affirmed the critical importance of the appropriate selection of people for legal capacity building, noting the opportunities offered by the convening power of the WHO and the UN. Drawing on parallels between HIV/AIDS and NCDs, participants discussed the value of a possible 'Global Commission on NCDs and Law.' As with HIV/AIDS, States had demonstrated their commitment through a series of supporting declarations designed to address NCDs, but implementation was weak, as there is little clear guidance on how to adapt State laws. The Global Commission was a driving force in global achievements on HIV/AIDS; a similar process could contribute to success in responding to NCDs.

National and domestic NCD alliances are emerging; so far four or five exist. These provide another opportunity for collaboration on legal issues. Concerns were expressed about the intersection between trade policy and health, noting that the report on Enhancing Coherence Between Trade Policy and Nutrition Action warns that politically-motivated interest groups may inaccurately frame nutrition actions as counter to trade law.¹⁵ The distinction between hard and soft was noted. For example, it was noted that WHA resolutions are not binding on Member States, whereas the WHO FCTC contained binding obligations. The Framework for Action of the Second International Conference on Nutrition (ICN2), notes the also notes the importance of strengthened legal frameworks.¹⁶

Global Guidance and Commitments

Mr. Menno van Hilten, Technical Officer, External Relations, WHO noted that in moving toward the 2030 the foundations for national action lay in the 2015 Sustainable Development Agenda, the commitments in the 2011 Political Declaration on NCDs, and 2014 Outcome Document on NCDs.¹⁷ He noted that the Outcome Document had four commitments which must be accomplished in 2015 and 2016. The WHO NCD Global Action Plan 2013-2020¹⁸ and Regional Action Plans provide guidance. Together, these documents address critical aspects such as governance requirements, including for example setting targets, health system strengthening, surveillance and risk factors.

Mr. van Hilten noted that the Third UN High Level Meeting on NCDs will take place in 2018, and will measure compliance with the four time-bound commitments; specifically, to set targets, develop national plans, reduce risk factors and enable health systems to respond. He noted concerns that most countries were not doing enough to meet the time-bound commitments in the nine global targets for NCDs adopted for 2025 by WHA, such as ensuring that there was no increase in obesity. He noted the link with the six NCD targets in the Sustainable Development Goals - the most important of which is to reduce premature mortality by one third. In 2018 The General Assembly will adopt another political declaration including 2018 commitments, noting the WHA 2025 commitments.

Discussion groups

The discussion groups all addressed the same three questions. Here is a summary of their reflections:¹⁹

What types of legal networking do you see as useful to prevent NCDs?

Networking is useful to support legal capacity building, and to share evidence of what works, such as legal standards and model legislation. It also encourages collaboration and helps avoid duplication. One issue discussed was whether network focus should be on legal aspects of specific NCDs, or all NCDs. The importance of including various actors from multi-disciplinary and cross sectoral perspectives was noted, for instance lawyers, sociologists, epidemiologists, advocacy experts, representatives from the enforcement sector, and monitoring and evaluation, among others. The importance of including members of affected communities was also noted. It was noted that conflict of interest criteria need to be developed. Different views were expressed on the advantages of informal or formal structures. One model shared was the International Legal Consortium (ILC) for lawyers on tobacco control.²⁰ ILC lawyers could be engaged to address other NCDs.

¹⁵ http://www.unscn.org/files/ICN2_TPM/UNSCN_Discussion_Paper_1_Trade_and_Nutrition_2015rev_en.pdf

¹⁶ See <http://www.fao.org/3/a-mm215e.pdf>

¹⁷ <http://www.who.int/nmh/events/2014/a-res-68-300.pdf>

¹⁸ http://apps.who.int/iris/bitstream/10665/94384/1/9789241506236_eng.pdf

¹⁹ The contributions of the group facilitators and reporters is gratefully acknowledged: David Clark, Amy Eussen, Lynn Gentile, Ki-Hyun Hahm, Heidi Jimenez, Boyan Konstantinov, Sara Roache, Rebekah Thomas.

²⁰ <http://tobaccocontrolaws.org/learn-more/about-us/>

What do you perceive as the need for further capacity building at the intersection of law and NCDs?

There are currently insufficient lawyers in many countries with relevant skills and experience to address NCD-related legal issues. Incentives for lawyers to build skills in this area are lacking, and there are few opportunities to gain these skills. Building the capacity of academic institutions, such as by introducing curricula on health law at undergraduate or post-graduate level, is a longer term goal.

In the short-term, we need to strategically identify legal advisors who can contribute to strengthening the enabling legal environment, to whom immediate training may be offered. These may include staff in ministries of justice and health, academia, civil society organizations, independent legal advisors, and staff in development agencies. Health sector professionals who are not legally trained should be included. Training should be specialized and focused on recommended policy initiatives, such as the regulation of marketing of foods and non-alcoholic beverages to children, and fiscal measures to address over-consumption of sugar-sweetened beverages. Training should include reference to the international commitments, and focus on the evidence for policy initiatives.

Capacity building for health ministers and other health sector personnel on economic and trade issues was proposed.²¹ Capacity building on effective ways of collaborating across sectors is also needed. Guidance is needed on conflicts of interests when engaging with the private sector. Challenges include failure to recognize conflicts of interest, and where these are recognized there is no clear guidance on how to manage them.

Lawyers with good technical skills can still profoundly disagree on complex policy and legal questions. For example, lawyers working on tobacco control need to understand the relevant public law, trade, and investment law, and have skills such as legislative drafting skills.

Example: the US Centers for Disease Control has developed a set of competences for lawyers in public health emergencies. “Competency” in public health law is defined as the level at which public health practitioners have the skills “to access and understand the relevant laws and to actually apply them to given health issues.”²²

What should be priority activities for knowledge generation, management and translation into action at the intersection of law and NCDs?

Further research is needed on causal relationships between food, obesity and the impact of treaties, such as the Trans-Pacific Partnership (TPP). It was noted that the TPP excluded tobacco companies from Investor State Dispute Settlement mechanisms (ISDS).

Research is also needed to evaluate the effectiveness of laws and policy implemented to address NCDs. Academics seldom have time for advocacy or community engagement on legal issues due to their research, publishing and teaching obligations. In some contexts, civil society is more skilled at policy advocacy, however greater awareness is sometimes needed on how the legal environment can contribute to NCDs prevention. Therefore, greater links between academics and civil society could benefit the NCD response. More can be done to encourage recent law graduates and other young people to become involved. An example is the United Nations Secretary-General's process to develop a strategy on women, children and adolescent health. This proceeded via widespread consultation, including with young people. Another good example is the work of the Young Professionals Chronic Disease Network on access to NCD medicines.²³

²¹ Note WHO/GCM webinars on trade and NCDs.

²² <http://www.cdc.gov/phlp/publications/topic/phel-competencies.html>

²³ <http://ypchronic.org/>

Lessons from HIV – A Commission on NCDs and the Law?

An approach similar to that adopted by the Global Commission on HIV and the Law could be adopted for the commitments in the 2011 Political Declaration. Research to map national commitments, showing the role of law and existing gaps, is needed. Knowing the gaps makes it possible to propose solutions.

In September 2017 WHO will release the Director-General's report on NCDs, summarizing activities and achievements, and noting gaps. In December 2017 the report will be discussed in the WHA. In January 2018 UN Member States will negotiate the modalities for the High Level Meeting on NCDs later that year, and produce an outcomes document. These negotiations will benefit from the September 2017 report and its recommendations. One of the outcomes from the January 2018 discussions could be a recommendation to the UN Secretary General to convene a high level panel on NCDs and law. There is thus the opportunity to begin thinking now about the content of the 2018 outcomes document.

The merits of and possible terms of reference for a possible Global Commission on NCDs and the Law remain to be explored. We should avoid a large, costly and abstract mapping exercise. Based on the experience in the Latin American and Caribbean region, it should be possible to begin with, for instance, mapping taxation laws, and then broaden to other areas of law and policy.

Philanthropies such as Bloomberg Philanthropies and the Bill and Melinda Gates Foundation are providing some financial support for the response to tobacco. However, in general, OECD country donors are not yet funding the global response to NCDs, stating that funding should come from domestic sources, e.g. through tobacco taxes.²⁴ A Global Commission on NCDs and Law could also help raise the profile of the issues among donors, with concrete examples of successful policies and legislation.

²⁴ The European Union, Luxembourg, Denmark and Germany have supported the NCD response in developing countries.

ANNEXES

Annex 1: Agenda

United Nations Inter-Agency Task Force
on the Prevention and Control
of Noncommunicable Diseases
UNIATF



THEMATIC SESSION ON LAW AND THE PREVENTION AND CONTROL OF NONCOMMUNICABLE DISEASES

Hosted by the International Development Law Organization (IDLO)
in collaboration with the world health organization (WHO)
and the United Nations Development Programme (UNDP)
UN Headquarters, Conference room 9
February 9, 2016

8.30am - 9.00am

Registration

9.00am - 9.15am

Welcome statements

David Patterson, Senior Legal Expert, Health, IDLO

Douglas Webb, Team Leader: Health and Innovative Financing, UNDP

Dr. Douglas Bettcher, Director, Prevention of Noncommunicable Diseases, WHO

9.15am – 10.30am

Review of agenda and overview

Moderator: David Patterson, IDLO

Nicholas Banatvala, Senior Advisor, Office of the Assistant Director General, NCDs and Mental Health, WHO – Overview of the UN NCD Task Force and the Global Coordinating Mechanism

Professor Larry Gostin, Global Health Law, Georgetown University - Relevance of law to NCD prevention and control

WHO – WHO perspective

10.30am - 11.00am

Refreshment Break

11.00am – 12.30pm

Presentations and discussion

Moderator: Nicholas Banatvala, WHO

David Patterson, IDLO - Review of survey of current initiatives in law and NCD prevention

Douglas Webb, Team Leader: Health and Innovative Financing, UNDP - Opportunities for national capacity building

Jonathan Liberman, Director, McCabe Centre for Law and Cancer, Australia, and Professor Amandine Garde, NCDs and Law Centre, Liverpool University, UK - Lessons from NCD and law capacity building to date

Tenu Avafia, Team Leader: Human Rights, Law and Treatment Access, UNDP - Lessons from the HIV and Law Commission

Guangyuan Liu, Technical Officer, Governance and International Cooperation, Convention Secretariat, WHO Framework Convention on Tobacco Control - Lessons from the FCTC

12.30pm – 13.30pm

Lunch

1.30pm – 3pm

Group discussions on key areas for action

1. Networking - What types of networking do you see as useful to prevent and control NCDs?
2. Capacity Building - What do you perceive as the need for further capacity building at the intersection of law and NCDs?
3. Knowledge generation, management and translation into action - What should be priority activities for knowledge generation, management and translation into action at the intersection of law and NCDs?

3.00pm – 3.30pm

Refreshment Break

3.30pm – 4.15pm

Discussion group reports

Moderator: Douglas Webb, UNDP

4.15pm – 5.00pm

Plenary discussion including opportunities for resource mobilization

Moderators: Benn McGrady, David Patterson, Douglas Webb

5.00pm – 5.15pm

Closure

Objectives:

Confirm the importance of national legal capacity in responding to NCDs.

Identify existing initiatives and gaps, needs and opportunities, including a focus on gender and an enabling legal and policy environment, in strengthening national legal capacity to respond to NCDs.

Identify possible actions for the Task Force members, working with partners, in strengthening national legal capacity to respond to NCDs for inclusion in the Task Force work plan for 2016-2017.

Identify other possible actions at global, regional and national levels to advance research, capacity building and networking on NCDs and law.

Outputs:

Recommendations for possible actions for the Task Force, working with partners, in strengthening national legal capacity to respond to NCDs for inclusion in the Task Force work plan 2016-2017.

Meeting report with above plus other possible actions at global and regional levels to advance research, capacity building and networking on NCDs and law, including establishment of a Task Force working group on law and NCDs.

Annex 2: Participant List

Participants – United Nations and other Intergovernmental Organizations

Family Name	First Name	Title	Organization	Country of residence
Aginam	Obijiofor	Senior Research Fellow Head, Governance for Global Health	United Nations University- International Institute for Global Health	Malaysia
Avafia	Tenu	Team Leader: Human Rights, Law and Treatment Access	UNDP	USA
Banatvala	Nick	Senior Advisor, Office of the Assistant Director-General, NCDs and Mental Health	WHO	Switzerland
Bettcher	Douglas	Director, Prevention of Noncommunicable Diseases	WHO	Switzerland
Blanco	Adriana	Adviser, Tobacco Control	WHO/PAHO	USA
Brumana	Luisa	Regional Health Advisor, America and Caribbean Office	UNICEF	Panama
Clark	David	HQ focal point for obesity nutrition section	UNICEF	USA
Gentile	Lynn	Human Rights Officer	OHCHR	Switzerland
Grammatikaki	Evangelia	Focal point for obesity	UNICEF	USA
Hahm	Ki-Hyun	Technical Officer (Legislation & Regulation) NCD Unit	WHO/WPRO	Philippines
Huikuri	Suvi	Technical Officer	WHO	USA
Jimenez	Heidi	Legal Counsel	PAHO	USA
Konstantinov	Boyan	Policy Specialist	UNDP	USA
Kulikov	Alexey	External Relations Officer / UNIATF	WHO	USA
Liu	Guangyuan	Technical Officer, Governance and International Cooperation, Convention Secretariat	WHO Framework Convention on Tobacco Control	Switzerland
Lehtimäki	Susanna	Health Section	UNICEF	USA
Longcroft	Lucinda	Head, New York Office	WIPO	USA
Mahy	Lina	Technical Officer	WHO	Switzerland
McDaniels	Devin	Economic Affairs Officer, Trade and Environment Division	WTO	Switzerland
McGrady	Benn	Technical Officer (Legal) Prevention of Noncommunicable Diseases (PND)	WHO	Switzerland
Mikkelsen	Bente	Senior Advisor, NCD Global Coordination Mechanism	WHO	Switzerland
Ogwell Ouma	Ahmed	Regional Adviser, Tobacco Control	WHO/AFRO	Congo
Patterson	David	Senior Legal Expert, Health	IDLO	Netherlands
Shridhar	Manisha	Regional Advisor, Intellectual Property Rights and Trade and Health	WHO/SEARO	India
Small	Roy	Health Consultant	UNDP	USA
Thomas	Rebekah	Gender, Equity and Human Rights	WHO	Switzerland
Van Hilten	Menno	Technical Officer (External Relations), Office of the Assistant	WHO	Switzerland

Family Name	First Name	Title	Organization	Country of residence
		Director-General, Cluster for NCDs and Mental Health		
Waqanivalu	Temo	Team Leader, Population-based Prevention, Department of Prevention and NCD	WHO	Switzerland
Webb	Douglas	Team Leader: Health and Innovative Financing	UNDP	USA
Wiklund	Josefin	Advisor to the Director and Executive Officer	UNAIDS	USA

Participants – Academia and Civil Society

Family Name	First Name	Title	Organization	Country of residence
Blanke	Doug	Director	Public Health Law Center, Mitchell Hamline School of Law	USA
Burris	Scott	Professor of Law and Co-Director	Center for Health Law, Policy and Practice Temple University Beasley School of Law	USA
Cabrera	Oscar	Executive Director	O'Neill Institute for National and Global Health Law at Georgetown University	USA
Carballo	Juan	Legal Consultant for Latin America	Campaign for Tobacco Free Kids	USA
Dain	Katie	Executive Director	The NCD Alliance	UK
Eussen	Amy	Human Rights and Legal Advisor (pro bono)	NCD Child	Netherlands
Foster	Nicole	Attorney-at-law	Healthy Caribbean Coalition	Barbados
Garde	Amandine	Professor of Law	Liverpool University, NCDs and Law Centre	UK
Gostin	Larry	Professor of Global Health Law	Georgetown University, Washington, DC	USA
Jeffery	Bill	Executive Director	Centre for Health Science and Law (CHSL)	Canada
Lambert	Patricia	Director	International Legal Consortium, Tobacco Free Kids	USA
Lawrence-Samuel	Tamar	Associate Research Director	Corporate Accountability International	USA
Liberman	Jonathan	Director	McCabe Centre for Law and Cancer	Australia
Rios	Belén	Directora de Área Legal	Fundación Interamericana del Corazón Argentina	Argentina
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Swinburn	Boyd	Co-Director	WHO Collaborating Centre for Obesity Prevention, Deakin University	Australia