Introduction

SUMMARY POINTS

- This report aims to raise awareness about the role that the reform of public health laws can play in advancing the right to health and in creating the conditions for people to live healthy lives. By encouraging a better understanding of how public health law can be used to improve the health of the population, the report aims to encourage and assist governments to reform their public health laws in order to advance the right to health.

- The report highlights important issues that may arise during the process of public health law reform. It provides guidance about issues and requirements to be addressed during the process of developing public health laws. It also includes case studies and examples of legislation from a variety of countries to illustrate effective law reform practices and some features of effective public health legislation.

Purpose and scope of this report

The right to health is a fundamental human right that is indispensable for human well-being, for well-functioning societies and economies, and for the ability to exercise all other human rights. Without a basic level of health, it may be difficult or impossible for people to work, to attend school and obtain an education, to enjoy recreation, to fully participate in society, and to enjoy other basic freedoms. Countries around the world face many challenges that threaten the health of their populations. These include endemic and emerging communicable diseases (e.g. HIV, tuberculosis, malaria, emerging strains of influenza), and noncommunicable diseases (e.g. cancer, cardiovascular disease, respiratory diseases and diabetes). Added to this are intentional and unintentional injuries, global environmental degradation, threats to food safety and security, and trade in harmful products.

Although these challenges have an impact on health in all countries, they disproportionately affect poorer countries, which not only lack the resources to manage them but may also lack the political and economic power to negotiate effective international agreements to achieve better health and justice for their populations. Within countries, poorer segments of the population are disproportionately affected by health risks, and by mortality and disability from disease.\(^1\)

Law is increasingly being recognized and used as a tool for improving the health of populations at global, national and subnational levels. At the national level, governments need functioning health systems that are supported by strong legal frameworks. Public health legislation sets out the responsibilities and functions of governments to coordinate responses to public health risks, to create healthier environments, to promote healthier behaviours, to generate the information base
that is needed for effective action and policies, to manage a competent health workforce, and many other functions.

This report aims to raise awareness about the role that the reform of public health laws can play in advancing the right to health and in creating the conditions for people to live healthy lives. By encouraging a better understanding of how public health law can be used to improve the health of the population, the report aims to encourage and assist governments to reform their public health laws in order to advance the right to health.

Governments may choose to reform their public health laws for many reasons: for example, to modernize old and out-of-date laws, to address neglected issues and to respond to problems that have arisen as a result of the application or enforcement of other laws. The process of revising public health laws will vary significantly according to the historical and constitutional context and the legal tradition of each country. These legal traditions include common law, civil law, tribal laws and customs, and Sharia law. Public health law reform may occur in very different ways at national and subnational levels. For all these reasons, there is no single approach to the reform process, and this report is not intended to be prescriptive.

In order to achieve its aims, this report highlights important issues that may arise during the process of public health law reform. Secondly, it provides guidance about issues and requirements to be addressed during the process of developing public health laws on particular topics, such as access to essential medicines, tobacco control or the regulation of infectious diseases. Thirdly, it includes case studies and examples of legislation from a variety of countries, both large and small, to illustrate effective law reform practices and some features of effective public health legislation.

In this report, public health law refers to the formal set of laws – and to the legal processes for implementing and enforcing them – that seek to ensure the conditions for people to live healthy lives. At the international level, law includes global, regional and bilateral intergovernmental agreements, as well as the rules and regulations made by international bodies (e.g. WHO, the World Trade Organization). At the national level, law includes executive orders and decrees issued by the executive body or under the authority of the head of State or government; legislation passed by Parliaments at national, state and local levels; subsidiary legislation (issued by executive agencies in order to implement or give effect to principal legislation); the judgments and rulings of courts and tribunals, and customary and tribal laws. In addition to legally binding instruments, executive agencies and other government bodies may also issue non-binding guidelines and technical standards: these may have normative effects and may play an important subsidiary role in reducing health risks and creating healthier environments.

Who should read this report?

This report is intended to inform a wide audience, including:

- senior officials working within ministries of health;
• officials of other ministries within government who can significantly influence public health through their actions and policies, and through the laws they administer. The relevant ministries or departments may include: finance, foreign affairs, justice, agriculture, consumer affairs, education, housing, infrastructure, transport, energy, trade, environment, communications and social security;

• members of the legislative, executive and judicial branches of government (including parliamentarians, ministers, judicial officers, and their advisers); and

• other stakeholders, including members of health organizations, philanthropic organizations, the media, industry, academia, employer and labour organizations, and civil society organizations.

Individuals have a critical role to play in protecting their health and in minimizing risks to their health. Parents also play an important role in protecting their children’s health and in creating a healthy home environment. At the same time, the State bears primary responsibility for realizing the right to health for the population as a whole. Collectively, through the legislature, courts and executive and statutory agencies, the State has the capacity to pass public health laws, to implement them and enforce them, and to balance health with other policy and social goals.

Typically, the health ministry serves as the steward of the health sector, with primary responsibility for health services and for protecting and promoting public health. On the other hand, responsibility for administering laws and for regulating matters that may directly affect the health of the population will be allocated between the health ministry and a range of other ministries, including law and justice, finance and revenue, agriculture, media and communications, housing and infrastructure, and transport. Officials from these sectors will be important stakeholders in the public health law reform process.

States will need to build appropriate executive and legislative structures to facilitate a cooperative approach to health protection spanning different ministries, agencies, and (where applicable) different tiers of government. For these reasons, the audience for this report will extend across a number of government ministries, and may include officials and elected representatives at regional and city levels of government.

In some countries, the impetus for reform of public health legislation may come from non-State actors, rather than from government. Civil society organizations, professional associations and community groups – including patient advocacy groups – make important contributions to public health by advocating for effective policies and laws within their areas of expertise and influence. Meaningful participation by affected communities in the design and implementation of public health laws will help to ensure support for the law within the community, thereby improving its effectiveness.

In summary, this report is intended to support the actions of both governments – as they lead the process of public health law reform – and non-government stakeholders who are involved in advocating for the reform of public health laws and supporting effective public health practices.
The structure of this report

This report aims to encourage a better understanding of how public health law can help governments to discharge their international obligations under the right to health. The structure of the report reflects the consensus reached at the second of two international consultations of experts in public health law, hosted by WHO and the International Development Law Organization, in collaboration with the O’Neill Institute for National and Global Health Law at Georgetown University, Washington (DC) and Sydney Law School, University of Sydney, Australia. The first consultation, held in Rome (27–29 April, 2009), called for the development of this report. The second consultation, held in Cairo (26–28 April, 2010), identified the key topics and issues that this report should include, and strategies for its dissemination.

Part 2 of this report discusses the process of public health law reform. The law reform process refers to the practical steps involved in advancing the political goal of law reform, and the kinds of issues and obstacles that may be encountered along the way. The context in which law reform occurs, and the specific scope of the law reform process, will vary significantly between countries. Nevertheless, there are a number of common reasons for reviewing and updating public health laws, and many of the most important risks to health are shared by most countries. Part 2 identifies some of the actors who may initiate or lead the public health law reform process, discusses principles of good governance during that process, and ways of building a consensus around the need for public health law reform.

As noted earlier, health is frequently shaped by factors and policies that lie outside the operational sphere of the health ministry. On the other hand, the right to health is an obligation of government as a whole. For this reason, Chapter 6 considers the law’s role in achieving an intersectoral, whole-of-government approach to public health law reform.

Part 3 turns from the process of reforming public health laws to the substance or content of those laws. It identifies a number of core areas of public health practice where regulation is essential in order to ensure that governments (at different levels) discharge their basic public health functions. Traditionally, these core areas of public health practice have included: the provision of clean water and sanitation, monitoring and surveillance of public health threats, the management of communicable diseases, and emergency powers. Part 3 also considers the role of law in advancing universal access to quality health services for all members of the population.

Building on these core public health functions, Part 3 goes on to consider a range of other public health priorities where law has a critical role to play. These priorities include tobacco control, access to essential medicines, the migration of health care workers, nutrition, maternal, reproductive and child health, and the role of law in advancing universal access to quality health services for all members of the population. The report includes many examples that illustrate the ways in which different countries have used law to protect the health of their populations in ways that are consistent with their human rights obligations. Countries vary widely in terms of their constitutional structure, size, history and political culture. For these reasons, the examples given are not intended to be prescriptive, but to provide useful comparisons for countries involved in the process of legislative review.
REFERENCE