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Using law to strengthen health professions: frameworks and practice

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Abstract

The lack of sufficient, high-quality health workers is one of the primary barriers to improving health in sub-saharan africa. An approach to address this challenge is for public health practitioners to increase their cooperation with public health lawyers, regulators and other policymakers in order to develop strengthened health workforce laws, regulations, and policies that are vigorously implemented and enforced. Conceptual frameworks can help clarify the meaning of health system governance and the pathways between law and health. International recommendations for policy interventions governing health workers provide countries with valuable guidance for domestic reforms. Monitoring and evaluation of legal, regulatory, and other policy interventions are required to ascertain their public health impact. At the intersection of law and public health, professionals from both fields can collaborate in concrete ways such as those discussed here to improve laws and policies governing health.

Africa is the epicenter of the world's health worker shortage. Of the 57 countries experiencing a crisis in the lack of human resources for health (HRH), 36 are African (Global Health Workforce Alliance, 2007). The Joint Learning Initiative (JLI), a consortium organized to assess the global HRH crisis, estimated that sub-Saharan African countries would need to 'nearly triple their current number of (health) workers by adding the equivalent of one million (health) workers through retention, recruitment, and training if they are to come close to approaching the MDGs for health' (Chen et al, 2004). The Millennium Development Goals (MDGs) address maternal health, child health and HIV/AIDS as well as broader development goals (United Nations General Assembly, 2000). As noted in the JLI report, higher health worker density is strongly associated with reduced population-based mortality for mothers, infants and children globally (Chen et al, 2004).

The lack of sufficient, high-quality health workers greatly complicates efforts to improve health in sub-Saharan Africa. An approach to address this challenge is for public health practitioners to increase their cooperation with public health lawyers, regulators and other policymakers to develop stronger health workforce laws, regulations and policies that are vigorously implemented and enforced.

Conceptual frameworks connecting law and health

To understand how public health professionals can work with lawyers, regulators and other policymakers to strengthen health systems and address the HRH crisis, it may be useful to first consider some basic conceptual frameworks. The first two frameworks reviewed here are from the World Health Organization (WHO). These conceptual frameworks can facilitate understanding of the health system as a whole and of ways to monitor governance, which is a key health system building block.

Governance in health systems

WHO's health systems framework delineates six essential building blocks of a health system:

- Service delivery
- Health workforce
- Health information
- Access to essential medicines
- Financing
- Governance.

'In order to be practicable, the approach of benchmarking national policies against international normative guidance should be adapted to each country's unique national realities.'

Figure 1 Depicts the centrality of leadership and governance to health systems (WHO, 2007). Leadership and governance of the health workforce can be carried out through legislation, subsidiary legislation, rules, regulations and other policies. The common characteristics of such policies are their issuance by government and their mandatory nature, often either requiring or prohibiting actions. Licensure is one example of relevance to the health workforce as it 'reduces the need for punitive means of control by limiting entry into health professions and occupations to people who are properly qualified ... and ... are least likely to endanger the public health, safety, and welfare' (Grad, 2005).

Monitoring health system governance

WHO has also set out a framework to monitor health system governance (WHO, 2010a). It is composed of two types of indicators. Rules-based indicators measure whether countries have appropriate policies. Outcome-based indicators measure whether rules and procedures are being effectively implemented or enforced.

Policies, laws and regulations can be assessed using objective criteria to determine the extent to which they may be considered appropriate. For example, countries often follow normative guidance issued by international bodies such as WHO when reviewing and revising domestic clinical health care policies, such as those for antiretroviral treatment of HIV. In addition to issuing guidelines for clinical care, WHO has issued recommendations on health worker policy interventions, including guidelines on task shifting (i.e.

redistribution of tasks from a smaller number of health workers with more intensive training, such as physicians, to a larger number of health workers with less intensive training, such as nurses) (WHO et al, 2008) and guidelines on retention of health workers in rural areas (WHO, 2010b). Both sets of guidelines were issued after review of peer-reviewed publications and grey literature by WHO-convened experts and stakeholders at a series of international consultations. In addition to WHO, health professional entities such as the International Council of Nursing (ICN) and the International Confederation of Midwives (ICM) issue global recommendations for national legislation and regulation concerning their particular health professions. ICN and ICM global standards complement WHO guidelines on task shifting and retention as the latter apply to various health worker cadres, including (but not limited to) nurses and midwives.

It is against such global standards issued by WHO and other international bodies that national policies may be assessed for 'appropriateness'. However, in order to be practicable, the approach of benchmarking national policies against international normative guidance should be adapted to each country's unique national realities.

Rules-based indicators: comparing a Tanzanian law to international guidance

—To clarify how a rules-based indicator from WHO's health systems monitoring framework could be applied, we used a checklist approach to compare Tanzania's Nursing and Midwifery Act 2010 (United Republic of Tanzania, 2010) to ICN global standards on nursing, specifically the ICN Model Nursing Act. The ICN Model Nursing Act recommends that national legislation governing nursing professional practice address at a minimum the ten elements in *Table 1*. Our review of the text of the Tanzania Nurses and Midwifery Act 2010 found that 9 of 10 elements recommended were present in the Act. Thus, one could consider the Act to be well-aligned (i.e. 90%) with this international guidance document.

Outcome-based indicators: comparing policy to practice—In addition to assessing the strength of national policies using rules-based indicators, assessments of the degree to which national policies are actually implemented or enforced may also be conducted. Actual texts of the written law, regulation, or policy at issue may provide a useful starting point. Often, legislation or regulations call for specific actions from specific bodies. For example, Tanzania's Nursing and Midwifery Act 2010 calls for the Nursing and Midwifery Council to issue and cancel licences for nurses and midwives. Tracking the number of licences the Council has issued and the number it has cancelled as a proportion of the total number of nurses in Tanzania is a straightforward approach to measuring one aspect of enforcement. These data could be disaggregated by gender, age, nurse or midwife category, urban/rural location, cause of cancellation, and other categories considered worthy of investigation.

Programmatic indicators can also be established to measure policy implementation. An example of this would be indicators measuring the implementation of a continuing professional development (CPD) programme required by law or regulation. For example, Malawi's Nurses and Midwives Act (Republic of Malawi, 1995) authorizes the Nurses and Midwives Council of Malawi to implement a CPD programme as a means of ensuring professional competency of nurses and midwives practising in Malawi. In such a context,

quantitative indicators such as the following listed could potentially monitor implementation and enforcement of this legally authorized programme:

- Percentage of nurses and midwives aware of CPD requirements
- Percentage of nurses and midwives in compliance with CPD requirements
- Percentage of nurses and midwives penalized for CPD non-compliance.

Roles and interactions

The following conceptual frameworks may help clarify the roles played by public health professionals and public health lawyers, regulators and policymakers as well as their interactions. *Figure 2* illustrates the progression of laws which originate in government and create entities, authorities, rights and duties that govern health professions and programmes, all with the ultimate goal of improving population health impact. *Figure 3* highlights the roles of public health professionals in collecting, analyzing and conveying health data to policymakers in order to improve health laws and policies.

Conceiving connections from law to public health

Laws are established by governments with varying degrees of civil society participation. Whether referred to as legislation, subsidiary legislation, rules, regulations, or other terms that vary by country, these official acts of government can establish governmental, quasi-governmental, or non-governmental entities and endow them with particular authorities and duties. Laws can also spell out the rights and duties of persons impacted by such entities. For example, Tanzania's Nursing and Midwifery Act 2010 requires that the Nursing and Midwifery Council discipline nurses and midwives for malpractice. This is one way to promote the rights of patients or users of the health system. However, the Act also provides that the accused shall have the rights to be heard, to call evidence in his/her defense, to be defended by legal counsel, and to appeal decisions of the Council to the Minister of Health and if necessary even to the High Court. These entities, authorities, rights and duties play out in the context of health professions and health programmes. The members of the health professions implement health programmes and are therefore on the front lines of health service delivery and health regulation. In sub-Saharan Africa, where doctors are often scarce, the regulatory frameworks in which nurses and midwives function may substantially affect public health.

Conceiving connections from public health to law

Public health revolves around data. These data, whether of services delivered, health outcomes, or more distal factors (attributes of laws) help explain public health. However, the data do not speak for themselves. Public health professionals and programme leaders who convey health and related social data to policymakers in an effective manner can influence legal and policy reforms. Strengthened laws and policies may then lead to improvements in public health practice (*Figure 2*).

Practice

Public health professionals can better coordinate with policy-makers and public health lawyers to improve the state of nursing and midwifery in Africa through productive dialogue which can occur in a myriad of different ways. Such dialogue may lead to improved health policies and implementation, including efforts to increase health worker production, quality, distribution, and retention. Lawyers can prove useful to public health practitioners in researching laws and translating technical legal jargon into language which frontline health workers can understand and put to use. Public health practitioners can seek to learn more about their domestic laws and policies as well as other countries' laws and policies governing health, and they can help lawyers and drafters of relevant legislation understand public health realities on the ground to improve the utility and practicality of government policies. Public health professionals, regulators and lawyers can collaborate on specific projects like the African Health Professions Regulatory Collaborative for Nurses and Midwives (ARC).

ARC is an example of midwifery and nursing leaders joining forces to strengthen regulation of health professions; it is funded by the United States President's Emergency Plan for AIDS Relief (PEPFAR) and designed by the Centers for Disease Control and Prevention in conjunction with Emory University. ARC has convened nursing and midwifery leaders from fourteen countries in East, Central and Southern Africa to share technical expertise and promote south-to-south learning in an effort to strengthen health laws, policies, regulations, and mandated programmes such as those for continuing professional development of nurses and midwives. As depicted in *Figure 4*, ARC's unique model brings together representatives from four key constituent groups within each of these countries to jointly develop and implement proposals to strengthen nursing and midwifery regulation and practice. These four groups are:

- Ministries of health, represented by chief nursing officers
- Nursing/midwifery training institutions
- Nursing/midwifery regulatory councils
- Nursing/midwifery professional associations.

Conclusions

Law is a profession, but it is also a powerful tool that can be utilized not only by lawyers, but also by public health practitioners and policymakers to strengthen health professions. To use law and policy as a means to improve public health requires the user to have a basic understanding of the status of existing laws and policymaking procedures as well as knowledge of the scientific evidence base underlying existing or proposed laws. Increased dialogue between public health practitioners and policymakers may lead to improved regulation of health professions, more appropriate laws, and better implementation. Ensuring minimum standards of education, experience, ethics and clinical competence for entry into and continuation in health professions are some of the critical functions of such laws, regulations, and policies.

When enforced, laws can change societies. Monitoring and evaluation of laws and policies, the extent of their implementation, and their associations with health can help identify and close the gap between written policies and the practice of public health. At the intersection of law and public health, professionals from both fields can collaborate to improve laws and policies governing public health. **AJM**

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Key Points

- Health professions require strengthening, particularly in sub-saharan Africa where health workers such as doctors, nurses, and midwives are in short supply
- Improving laws, regulations, policies and their implementation can strengthen health professions
- Dialogue between public health practitioners and lawyers can help catalyze such improvements
- Monitoring and evaluation can be applied to: (1) assess the quality of laws; (2) assess the degree to which laws are implemented and enforced; (3) assess the law's impact on health; (4) provide public health data for improvement of existing laws and policies

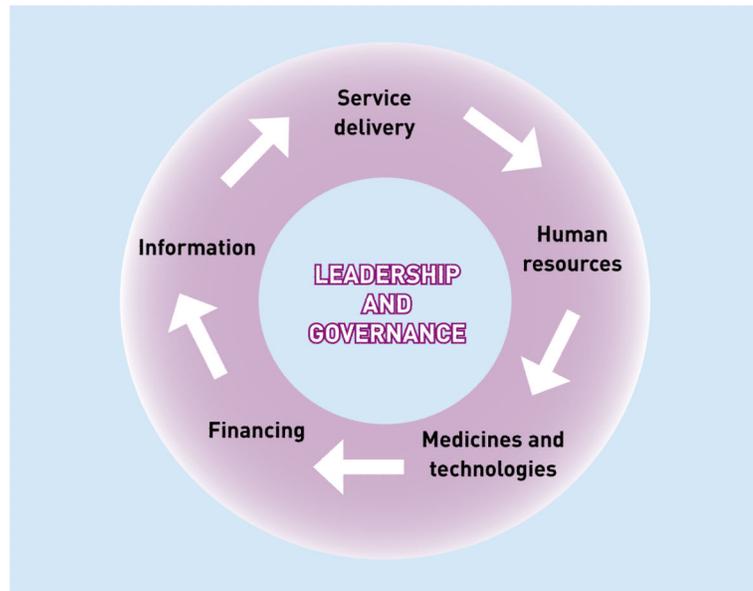


Figure 1. Governance is central in WHO health system framework (WHO, 2007).

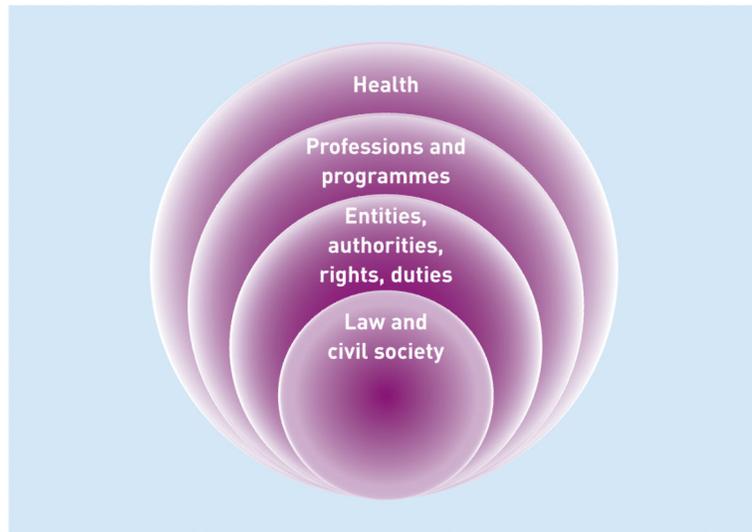


Figure 2.
Conceiving connections from law to public health.

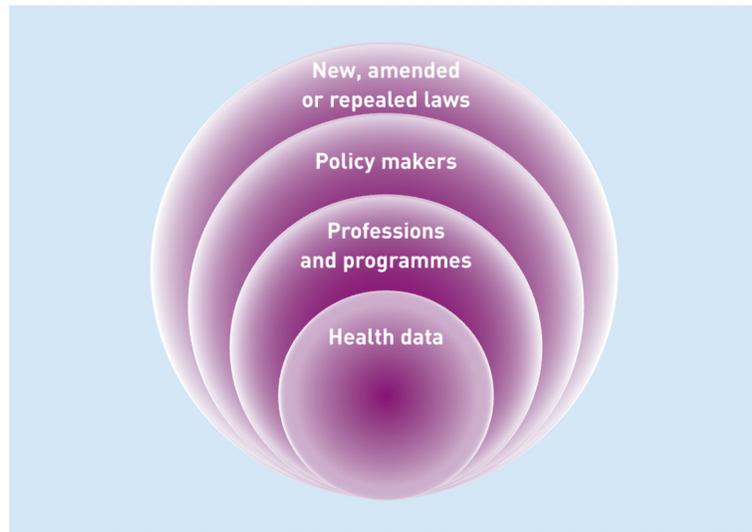


Figure 3.
Conceiving connections from public health to law.

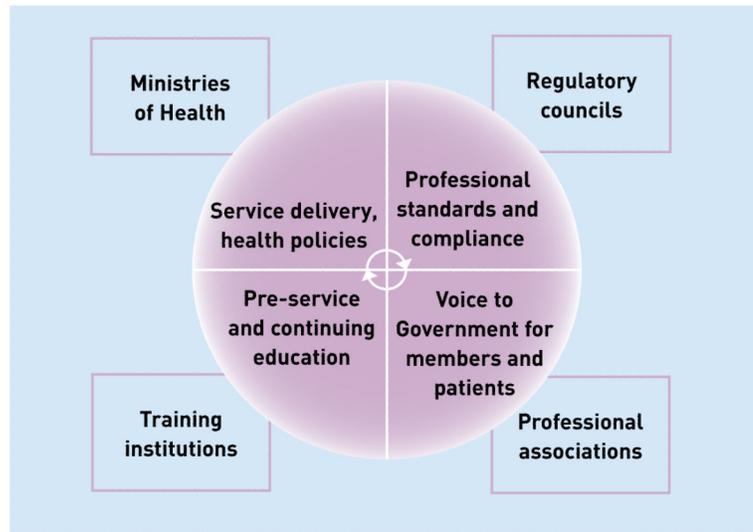


Figure 4. African Health Professions Regulatory Collaborative for Nurses and Midwives (ARC).

Table 1

Tanzania Nursing and Midwifery Act 2010 compared to ICN standards delineated in Model Nursing Act

Element from ICN Model Nursing Act (2007)	Tanzania Act aligned with element (Yes/No)
1. Purpose and scope of regulatory body described	Yes
2. Establishment of regulatory body	Yes
3. Composition of regulatory body	Yes
4. Functions of regulatory body	Yes
5. Nursing defined	Yes
6. Nursing role defined	Yes
7. Categories/types of nurses defined	Yes
8. Standards for registration or licensure	Yes
9. Standards for maintaining registration or licensure	Yes
10. Position of those not covered by the Act	No
Number of elements = 10	Number aligned with element = 9 (90%)

Source: United Republic of Tanzania (2010).