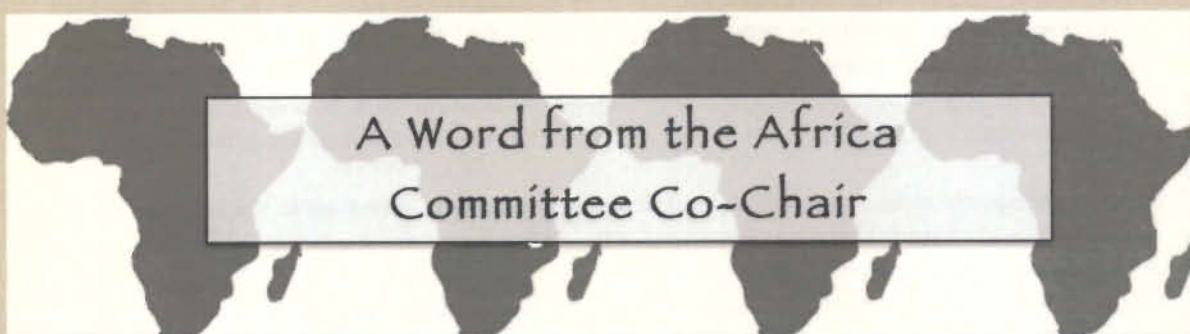




May 2017



Dear ABA/SIL Africa Committee Members:

Welcome to the 2017 Spring edition of Africa Today!

Greetings to the hardest working team dedicated to the improvement of the rule of law and the human condition in Africa. The Africa Committee (AC) is tasked with “fostering increased professional dialogue and efforts for legal professionals with an interest in and ties to the [African] continent.” As a committee, we critically examine legal reform efforts in the African countries, coordinate our efforts with civil society organizations in the continent, and make recommendations that can help these countries deepen and institutionalize democratic rule in their communities. The committee is also interested in the establishment and the sustaining of rule of law regimes in the African countries.

Members of the Africa Committee have long been interested in the improvement of living conditions in Africa. However, it is important to recognize the fact that without peaceful coexistence, it is very difficult for citizens to undertake those productive activities that create wealth and provide the resources that they need to fight poverty and improve their living conditions. The rule of law is the foundation for peaceful coexistence. Hence, our members have long been interested in research activities that address capacity building in public sectors in Africa, as well as those that seek ways to enhance governance and the rule of law.

The Africa Committee continuously seeks ways to improve the way that lawyers and the legal profession can help improve peace and security in the continent. The committee is particularly interested in the protection of human rights, especially those of historically marginalized groups (e.g., women, infants, children, and religious and ethnic minorities). In carrying out these duties, committee members continuously engage colleagues in Africa—this robust dialogue involves, not only seasoned lawyers and legal scholars, but also law students and young lawyers.

With the help of the American Bar Association (ABA), the committee has created opportunities for lawyers, law students, and legal scholars, including especially those in Africa, to participate in the committee and its

activities. The opportunities for involvement and participation include, but are not limited to the following: (1) the Africa Committee Internship Program; (2) publishing opportunities in our newsletter, Africa Law Today; and (3) the committee's monthly phone conferences, which offer participants the opportunity to listen to an address by a guest speaker on a specific issue and then be able to ask questions. For example, during a call early this spring, two senior members of the International Criminal Court (ICC) made presentations on the functioning of the ICC, with specific emphasis on its relationship with Africa and the African Union.

The Africa Committee offers its members and others interested in the rule of law in Africa many opportunities for public service within the framework of the American Bar Association. Service, of course, can significantly enhance one's professional career. Nevertheless, many of our members engage in public service because they want to make a difference in the lives of the peoples of Africa. They work to improve prospects for peaceful coexistence, the protection of human rights, the provision of opportunities for self-actualization, especially for vulnerable groups (e.g., women and girls), and the maintenance of governance systems undergirded by the rule of law.

As Co-Chairs, we invite you to increase your efforts and help us continue to excel as a service organization. We commend all former co-chairs and vice-chairs for the great job that they have done in helping the Africa Committee emerge as one of the most dynamic and active committees in the ABA's Section of International Law (SIL). We also want to thank all the members of our committee for their incessant efforts, not only to advance the interests of our committee, but also to improve the legal environment in the African countries and advance the rule of law throughout the continent. Congratulations and please keep up the good work.

As we challenge our members to continue to work for the betterment of Africa and its peoples, it is important to remind you of some of the major achievements of the recent past and thank and commend those individuals who have contributed to this success. Below, we provide highlights from the last several months: The compilation and editing of the Africa Committee's contribution to the Year-in-Review (YIR) was completed with great efficiency by Vice Chair, Anne Bodley, and submitted in December 2016. The YIR is a survey of the most significant legal changes that have taken place across regions, in our case, across Africa, during the previous year. Contributions are due to the Committee Editor not later than October 31. The Committee Editor then edits the contributions and consolidates them into a final document that is submitted by December 1 to be published. Typically, the YIR has been published by the Dedman School of Law at Southern Methodist University in Dallas, Texas. In preparing its submissions for the year, the committee has usually adopted a regional, country, and institutional focus by highlighting key developments in various countries, regions and institutions in the entire continent of Africa.

As usual, this is a well-written and well-edited issue of Africa Law Today. It contains timely, rigorous, and informative articles on a variety of issues that are very important to the committee and anyone who is interested in peace and security, justice, human development, and the protection of human rights in Africa. These include the assassination of human rights lawyer, Willie Kimani, in Kenya; and human rights for girls in northeast Nigeria.

We send special thanks and commendations to ALT's editor, Beverly Nwanna, and the many contributors who have made this edition of Africa Law Today a very exciting and informative one to read. We look forward to receiving your future contributions to our esteemed journal.

In addition to the co-chairs, Emilia Siwingwa and John Mukum Mbaku, the dynamic leadership team for the ABA/SIL Africa Committee for the 2016/2017 year includes colleagues with a long history of service to the committee and Africa and those who are coming aboard for the first time. We acknowledge immediate past co-chair Yvonne Fladjoe, who is currently serving as an advisor to the committee; vice-chair Anne Bodley (Projects & Year-in-Review); vice-chair Obiamaka Madubuko (Diversity); vice-chair Rose Rameau (Programs); vice-chair Nelson Ogbuanya (Rule of Law); and vice-chair Joyce Williams (Communications).

With warmest regards and best wishes,

Emilia Siwingwa
John Mukum Mbaku

The Death of Human Rights Lawyer Willie Kimani and the Need for Continued Reforms to Prevent Police Abuse in Kenya

by Mason Hubbard and Muthoni Muchiri

On June 30, 2016, Kenyan human rights lawyer Willie Kimani, his client Josephat Mwenda, and their taxi driver Joseph Muiruri, were found dead approximately one week after being reported missing following a court appearance alleging police abuse. Mr. Kimani, who was employed by International Justice Mission, a Non-Government Organization working to combat police brutality in Kenya, was representing Mr. Mwenda in the matter. Mr. Kimani had filed a claim with Kenya's Independent Policing Oversight Authority, an independent supervisory body, alleging that Mr. Mwenda had been wrongfully shot during a routine traffic stop. Subsequent to filing the claim, Mr. Mwenda was charged with various petty crimes, a move Mr. Kimani and the legal team believed was an effort to intimidate and silence their efforts.

[Continue Reading Here](#)

Negotiating Human rights for Girls in Nigeria (Northern Nigeria): The Child Marriage Issue

by Nkeiruka Aduba

Negotiating human rights for girls in Nigeria, focusing particularly on the issue of child marriage, is a complex topic that requires the examination of several issues and different perspectives in order to come up with a holistic approach to end the problem of child marriages in Northern Nigeria. This paper will look at the history of Nigeria; historical views on women's rights in Nigeria; the child marriage issue in Nigeria, its causes and also child marriage as a human rights violation; the legal framework for girls' rights relating specifically to the issue of child marriage; and negotiations on how the child marriage problem may be solved considering various options from collaborations with NGOs, government and international bodies to mobilizing teachers, human rights activists, heads of religious and traditional organizations to utilize tools of education and dialogue to resolve the impending child marriage crisis. This paper would highlight the importance of all these key players in ending child marriage and promoting girls' rights.

[Continue Reading Here](#)

Africa Committee Year in Review

by Englebert Akong, Susan Bishai, Anne Bodley, Michela Cocchi, D. Porpoise Evans, Pamela Fapohunda, Katherine Flannery, Sara Frazão, Rebecca Gerome, David Hofisi, Tyler Holmes, Jennifer Ismat, Alexandra Kerr Meise, Linda Lawson, Anis Mahfoud, Adeshola Mos-Shogbamimu, John Mukum Mbaku, Kelly Newsome, Ivan Allan Ojakol, Kingsley Osei, Danielle Rowland Lindahl, Ricardo Alves Silva, Matthew Snyder, Anna Toubiana, and João Luis Traça

1. Algeria

I. NORTH AFRICA

Constitutional Amendments

Algeria experienced continued political uncertainty under ailing President Abdelaziz Bouteflika. In February, Parliament passed constitutional reforms increasing defendant rights in the criminal justice process, setting two-term presidential limits and, controversially, limiting presidential candidacies to those holding solely Algerian citizenship, disqualifying dual Algerian-French nationals and others.

Investment Code

In July, the country passed an investment code to diversify oil-centric Algeria's economy in the wake of falling oil prices. The laws give incentives to invest in non-oil industries such as communication technology and tourism, and reinforce a rule requiring Algerian residents to hold the majority stake in companies or projects.

[Continue Reading Here](#)

Lex:lead

Africa Law Today is proud to feature winners of the 2014 and 2015 Lex:lead annual student essay competition. Lex:lead is a non-profit, volunteer organization comprised of international lawyers and friends, and is dedicated to tackling the issue of poverty and economic development in the world's least developed countries. Its core program is an annual essay competition on topics of law and development, open to students in the world's least developed countries, and reviewed by a panel of international judges. Each year, the organization makes \$500 USD awards to about ten winning students, as well as internship placements with World Bank-affiliated organizations and other partners. Lex:lead was founded by Africa Committee Vice-Chair Anne Bodley.

2014 Contest Winners:

How can tax law stimulate economic growth and finance development?

[Lulbahri Afeworki Araya*](#)

Baye Tsegaw Asamro

[Bereket Alemayehu Hagos](#)

Nahom Abraham Weldeabzgi

Pius Ntazinda

[Haftu Amare Girmay*](#)

[Lumela M. Lumela](#)

[Walter Mandela](#)

[Mary Musoni](#)

Dieudonne Nzafashwanayo

2015 Contest Winners:

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

[Sara Kiflemariam Abraham*](#)

[Moses Baguma](#)

[Tsidkenu Paul Moono](#)

[Ivan Allan Ojakol](#)

[Nsofwa Puta](#)

[Ftsum Sbhatu Tewolde](#)

[Negese Tujuba Erba*](#)

Binita Pandey

[Tsebaot Getahun Kiflu](#)

Marga Fekdu Angerasa

* *Students' essays were revised to include more Africa-related subject matter.*



Legal News & Insights

Random breath tests illegal, Kenyan court rules

By *BBC World News* – 8 April 2017

A Kenyan court has banned random breathalyser tests as a way to catch drivers who are over the limit. The decision was made following a three-year battle by bar owner Kariuki Ruitha, who complained breathalysers were ruining his business. Mr Ruitha argued they violated Kenyans' constitutional rights to make their own lifestyle decisions - including how much to drink. Kenya has some of the most dangerous roads in the world. In the first half of last year, 1,574 people died in accidents. However, sitting in the Court of Appeal, the three judges said drink drivers could still be charged under traffic laws - after which point a breathalyser can be used.

Read more at:

http://www.bbc.com/news/world-africa-39537446?intlink_from_url=http://www.bbc.com/news/topics/7d7c35fa-f724-4b36-90a0-21f71d99857d/kenya&link_location=live-reporting-story

Fighting in South Sudan's Raga kills at least 14 people

By *Aljazeera News* – 15 April 2017

Violence in eastern South Sudan forces 60 aid workers to flee as new battles erupt in the northwestern town of Raga. At least 14 people have been killed after new fighting erupted between government forces and the main rebel group.

Read more at:

<http://www.aljazeera.com/news/2017/04/fighting-south-sudan-raga-kills-14-people-170415132143449.html>

Uganda Tries to Commit Critic of President to Mental Institution

By *Kimiko de Freytas-Tamura* – 13 April 2017

Uganda's top prosecutor sought this week to crack down further on dissent, trying to use a colonial-era law, once used by the British to quash African resistance, to commit a prominent critic of the president to a mental institution. It was only the second time in recent memory that the law, the Mental Treatment Act of 1938, was invoked in a case over free speech, according to lawyers. The first involved a student who was forcibly taken several times to a psychiatric hospital after lampooning the president on social media. This time, Stella Nyanzi, who until recently was a research fellow at Makerere University in Kampala, the capital, was charged on Monday with "cyberharassment" and "offensive communication" after a series of Facebook posts this year, particularly one in which she described Mr. Museveni as a "pair of buttocks." In addition to the charges, State Attorney Jonathan Muwaganya, a lawyer educated in the United States, submitted an application to commit Ms. Nyanzi to a psychiatric hospital for two weeks so that doctors could "determine" her mental health.

Read more at:

https://www.nytimes.com/2017/04/13/world/africa/uganda-voweri-museveni-protest-mental-institution.html?rref=collection%2Ftimestopic%2FUganda&action=click&contentCollection=world®ion=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection&r=0

Ethiopia rejects UN investigation over protest deaths

By *BBC World News* – 18 April 2017

Ethiopia's prime minister has rejected calls by the UN and EU for independent investigations into the deaths of hundreds of people during months of anti-government protests. Hailemariam Desalegn has said that Ethiopia is able to carry out the investigations itself. Protesters from the Amhara and Oromia regions have been complaining about political and economic marginalisation. The government has imposed a state of emergency in response to the protests. The country was hit by an unprecedented wave of demonstrations, which began in November 2015.

Read more at:

<http://www.bbc.com/news/world-africa-39619979>

Kenya's Olympic marathon champion Jemima Sumgong fails drug test, IAAF confirms

By *BBC World News* – 07 April 2017

Jemima Sumgong, who last year became the first Kenyan woman to win Olympic gold in the marathon, has tested positive for the banned blood-booster EPO in an out-of-competition test carried out by the IAAF, the sport's governing body has confirmed.

Read more at: <http://www.bbc.com/sport/athletics/39522434>

Anti-Zuma protests take place across South Africa

By *BBC Reporters* – 7 April 2017

Protesters have marched in cities across South Africa including Cape Town, Durban, and the capital, Pretoria calling for the removal of President Jacob Zuma. The demonstrations came after Mr Zuma's sacking of a respected finance minister, Pravin Gordhan which led to the country's credit rating being cut to junk status. The move added pressure to South Africa's already embattled economy. But supporters of Mr Zuma also turned out to defend the president. This week Mr Zuma survived calls by powerful groups allied to the governing ANC for him to go. He also got the backing of a major decision-making body within the party. He is not due to leave office until 2019 when his second five-year term comes to an end.

Read more at:

<http://www.bbc.com/news/world-africa-39526313>

S&P downgrades SA to junk status

By *Herald Reporters* – 4 April 2017

Standard and Poor's has placed South Africa's credit outlook at junk status. The agency has downgraded the country to B-B plus – otherwise known as junk status – from Triple B minus. The outlook for the country also remains negative. The agency is citing the latest changes to the country's cabinet as a contributing factor. The changes saw Pravin Gordhan and Mcebisi Jonas being sacked as Finance Minister and deputy minister.

Read more at:

<http://www.enca.com/south-africa/sp-downgrades-sa-to-junk-status>

DRC: Anti-Kabila protests banned by police, streets deserted

By *Aislinn Laing* - 10 April 2017

Police in the Democratic Republic of Congo have banned all political protests across the country, the move comes in the wake of opposition plans to hold anti-government demonstrations. The main opposition coalition led by Felix Tshisekedi, had called for nationwide mass action to pile pressure on the government over its failure to implement a peace deal brokered by the Catholic Church. Opposition protesters in the DRC and security forces have a history of violent clashes. Last September, scores were killed during protests calling for Kabila to step down. Similar occurrences were recorded in December 2016 upon the expiration of Kabila's final mandate.

Read more at:

<http://www.africanews.com/2017/04/10/drc-anti-kabila-protests-banned-by-police-streets-deserted/>

Govt squandered diamond revenues

By *Owen Gagare/Obey Munaviti* - 13 April 2017

Zimbabwe was a major diamond producer between 2009 and 2013, yet this resource has not contributed much to national development. Despite complaints from government which make it appear as though Treasury did not receive meaningful remittances from diamond mining companies, it has emerged the fiscus got US\$472 million from one of the leading mining companies, Mbada Diamonds in royalties, dividends and other taxes between 2010 and 2015. Mbada Diamonds generated sales totalling US\$1,2 billion during the period. The company's financials and government payments spreadsheet, seen by the Zimbabwe Independent, reveal Mbada paid US\$472 186 206,84, which was 42% of its sales value. The money however, was largely diverted to fund salaries and recurrent expenditure at the expense of capital projects and the provision of social services. As a result, the Zimbabwean government has nothing to show for the money it received which could have made a huge difference in resuscitating hospitals, schools and other social amenities.

Read more at:

<https://www.theindependent.co.zw/2017/04/13/govt-squandered-diamond-revenues/>

Barclays deal gathers momentum

By *Bernard Mpofo* – 13 April 2017

Malawi-Based First Merchant Bank is conducting due diligence on Barclays Bank Zimbabwe to ensure the affairs of the local financial institution are in order before a US\$60 million purchase deal can be finalised. Should the transaction materialise, the British-headquartered Barclays Bank Plc would become a minority shareholder in Barclays Zimbabwe with a 10% stake. Barclays Bank Plc last year said it was looking to dispose of its African assets to focus on the British and American markets. Barclays Bank Zimbabwe, alongside the Egyptian business, was not part of the 2013 deal that saw Barclays Africa, formerly ABSA, acquire eight African operations from its parent company because of political uncertainty, although it already manages their operations.

Read more at:

<https://www.theindependent.co.zw/2017/04/13/barclays-deal-gathers-momentum/>

AU commits to combat genocide ideology in Africa

By *James Karuhanga* – 18 April 2017

The Peace and Security Council of the African Union (AU) on Monday published a statement in which, after recalling the horror of the 1994 genocide against the Tutsi in Rwanda, reiterated commitment to prevent recurrence of similar mass atrocities, hate crime and genocide ideologies throughout the continent. According to the statement, the PSC had at its 678th meeting, received a briefing on the prevention of hate crimes and

the ideology of genocide in Africa and adopted the decision to convene, annually in April an open meeting on hate crimes and fighting genocide ideology in Africa.

Read more at:

<http://www.newtimes.co.rw/section/article/2017-04-18/210873/>

The Comesa Competition Commission Signs Memorandum of Understanding with the Competition of Mauritius

By *COMESA Competition Commission News* - 03 April 2017

The COMESA Competition Commission ("the Commission") concluded a Memorandum of Understanding ("MOU") with the Competition Commission of Mauritius ("CCM") regarding the Application and Enforcement of their Competition Laws. The signing Ceremony of the MOU was held on 24th March 2017 in Port Louis, Mauritius. The Ceremony was attended by the Permanent Secretary of the Ministry of Financial Services, Good Governance, and Institutional Reforms, Mr Chettandeo Bhugun; Board of Commissioners of the Commission and the CCM; media houses and other Officials. The signatories of the MOU were the Director of the Commission, Mr George Lipmile and the Director of CCM, Mr Deshmuk Kowlesseur. The MOU is expected to facilitate and promote coordination between the Commission and the CCM in the harmonization and implementation of their competition laws and policies and lessen the possibilities or impact of divergent outcomes.

Read more at:

<http://www.comesacompetition.org/?cat=20>

Immigration Sub-Sub Committee & other Experts Consultative Meeting on Free Movement of Persons & implementation of the African Passport

By *SADC News* - 6 April, 2017

The SADC Member States convened a First Consultative Meeting of Experts on free movement of persons in the SADC Region and in Africa at the Grand Palm Hotel, Gaborone, Republic of Botswana, from 28-29 March 2017. The meeting comes at an opportune time to reflect on how SADC can enhance facilitation of movement of persons in the region, pursuant to the SADC Protocol on Free Movement of Persons, and also to support implementation of the African Union Agenda 2063, in relation to free movement of persons in Africa and the African Passport.

Read more at:

<http://www.sadc.int/news-events/news/immigration-sub-sub-committee-other-experts-consultative-meeting-free-movement-persons-implementation-african-passport/>

Egypt Court Acquits Charity Worker Aya Hijazi

By *BBC World News* - 16 April 2017

US-Egyptian charity worker Aya Hijazi has been acquitted by a court in Egypt after almost three years in prison. The charity co-founder was accused of human trafficking and sexually abusing children, but human rights groups called the charges bogus. Supporters cheered as Ms Hijazi, 30, her husband and six others were found not guilty. The high-profile case caused concern in Washington at the highest levels of the Obama and Trump administrations. Activists who have been campaigning for the group's release said the arrests were symptomatic of Egypt's crackdown on civil society.

Read more at:

<http://www.bbc.com/news/world-middle-east-39614870>

South Sudan Takes First Steps to a New Constitution

By *Africa News* - 23 April 2017

South Sudan is racing against time to draw up a new constitution in line with the 2015 Peace Agreement, this comes even as the security situation in the country degenerates. The National Constitution Amendment Committee (NCAC) led by Gichira Kibaara, a former Kenyan Permanent Secretary for Constitutional Affairs, on April 13 presented a draft constitution to the Minister for Justice and Constitutional Affairs, Paulino Wanawilla. But the country is behind schedule, as the agreement required that the country would have a new constitution 18 months after the establishment of the Transitional Government of National Unity.

Read more at:

<http://www.africanews.com/2017/04/23/south-sudan-takes-first-steps-to-a-new-constitution/>

ICC Unseals Warrant for Libya's Gaddafi-era Official

By *Al Jazeera* - 23 April 2017

The International Criminal Court (ICC) has unsealed an arrest warrant for Libya's former security chief, accusing him of carrying out war crimes in 2011 to stop opposition against the country's former leader Muammar Gaddafi. The warrant, first issued in 2013 by the ICC, charged Al-Tuhamy Mohamed Khaled with three charges of war crimes and four crimes against humanity. The prosecutor's office asked for the warrant to be made public as it "may facilitate [his] arrest and surrender as all states will then be aware of its existence", the court said on Tuesday. According to Libyan media, he was arrested in Cairo in April 2012, but was released as there was no warrant against him.

Read more at:

<http://www.aljazeera.com/news/2017/04/icc-unseals-warrant-libya-gaddafi-era-official-170425142925312.html>

Algeria Could Amend Oil Law To Draw Investment

By *Reuters* – 11 April 2017

Algeria could change its hydrocarbons law to boost energy partnerships with foreign firms and draw more investment into its oil and gas sector, Energy Minister Nourredine Bouterfa said in a statement on April 11. Any move to amend its law—criticized by some oil companies as too tough—would be a major shift as Algeria looks to boost production. But changing the law may face resistance from the country's political old guard wary of ending more nationalist policies.

Read more at:

<http://www.epmag.com/algeria-could-amend-oil-law-draw-investment-1492741>

Trial in Tunisia Beach Massacre Set to Begin April 26

By *Middle East Online* – 22 April 2017

The first public hearing into the June 2015 attack in the Tunisian resort of Sousse that killed 38 foreign tourists has been set for next week, the prosecution said Friday. "The trial on the attack at the Imperial Marhaba Hotel will begin on April 26," spokesman Sofiene Sliiti said. A total of 33 people are being prosecuted in the case, including six members of the security forces who are charged with "not assisting people in danger."

Read more at:

<http://www.middle-east-online.com/english/?id=82712>

Nigerian High Court Grants Conditional Bail To Pro-Biafra Leader

By *Ludovica Iaccino* – 25 April 2017

The Federal High Court of Abuja, the capital of Nigeria, has granted bail to the leader of a separatist group on grounds of ill health as long as he meets some conditions, the News Agency of Nigeria reported. Nnamdi Kanu, leader of the Indigenous People of Biafra (Ipub) and director of UK-based Radio Biafra radio station, is standing trial on treasonable felony charges. He was arrested in Lagos on October 14, 2015. Ipub and other Pro-Biafra movements are calling for the independence of contested Biafran territories that were forcibly annexed to Nigeria during British colonization. The territories lie in southeastern Nigeria and are inhabited mainly by the Igbo, one of the country's largest ethnic groups.

Read more at:

<http://www.newsweek.com/nnamdi-kanu-bail-biafra-nigeria-589664>

Outrage Over Military Conviction of Cameroon Journalist

By *Rosy Sadou* – 26 April 2017

THE conviction and ten-year sentence a Cameroonian military court has imposed on a journalist for alleged terrorism has been denounced as a travesty to justice. Radio journalist, Ahmed Abba, has been convicted after torture and a trial deemed unfair by human rights groups. He was also fined a whopping € 84 000 (R1, 2 million) on charges of "non-denunciation of terrorism" and "laundering of the proceeds of terrorist acts." The journalist has been acquitted of the charge of "glorifying acts of terrorism." "Ahmed Abba's conviction, after torture and an unfair trial, is clear evidence that Cameroon's military courts are not competent to try civilians and should not have jurisdiction in these cases," bemoaned Ilaria Allegrozzi, Amnesty International's Lake Chad researcher.

Read more at:

<http://allafrica.com/stories/201704260714.html>

'Time to Harmonize Telecom Regulations in West Africa'

by *David A. Yates* – 26 April 2017

A series of two back-to-back meetings of telecommunications governance bodies, Internet Cooperation for Assigned Names and Numbers (ICANN) and the West Africa Telecommunications Regulators Assembly's (WATRA) 14th annual general meeting of the conference of regulators opened yesterday in Monrovia with a call to harmonize telecommunications polices within the West African region. Madam Angelique Weeks, Chairperson of the Liberia Telecommunications Authority (LTA), stressed that the pace of development in the industry would continue to accelerate and regulatory institutions in developing countries, especially in Africa, need to develop strategies to keep abreast with the trend. "Our intent is to harmonize regulations across the region, so that you can move from one country to another in a similar fashion.

Read more at:

<https://www.liberianobserver.com/news/time-to-harmonize-telecom-regulations-in-west-africa/>

Disorganized Legal Education Could Spell Doom For Ghana – Chief Justice

By *News Ghana* – 26 April 2017

The Chief Justice, Mrs Georgina Theodora Wood has observed that the proliferation of faculties of law in the last decade has not been accompanied by promotion and maintenance of standards. She said while opening of Faculties of law was good thing generally, shambolic legal education could only spell doom for Ghana's young democracy.

"Indeed, it is common knowledge that some of these schools are deprived of teaching faculty that they have had to depend on staff of other schools to teach in their schools on part time basis... simply put they do not have the wherewithal to run a good law programme."

Read more at:

<https://www.newsghana.com.gh/disorganized-legal-education-could-spell-doom-for-ghana-chief-justice/>

Mali Extends State Of Emergency As Jihadist Attacks Persist

By *Daily Nation* – 20 April 2017

A state of emergency that has been in force almost non-stop for 17 months in Mali was extended by 10 days from Thursday, the government said. The measure has been renewed several times since jihadists stormed the Radisson Blu hotel in Bamako in November 2015, killing 20 people in an attack claimed by Al-Qaeda's regional branch. The west African nation's troubled north has witnessed a spate of jihadist strikes despite the emergency. On Tuesday armed men killed five soldiers and injured 10 others in an attack on an army post in the tense Timbuktu region.

Read more at:

<http://www.nation.co.ke/news/africa/Mali-extends-state-of-emergency/1066-3896554-qc6amez/>

AFRICA COMMITTEE LEADERSHIP

Co-Chairs:

Mbaku, John
Siwingwa, Emilia

Vice-Chairs:

Bodley, Anne
Madubuko, Obiamaka
Rameau, Rose

Advisor:

Fiadjoe, Yvonne



Upcoming Committee Calls

Committee calls are always on the second Wednesday of every month at 1pm EDT/EST

- June 14, 2017 @ 1pm EDT/EST
- July 12, 2017 @ 1pm EDT/EST
- August 9, 2017 @ 1pm EDT/EST

Committee Links, Events & Announcements

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Lex:lead

2015 ESSAY QUESTION: HOW DOES POOR ECONOMIC DEVELOPMENT CONTRIBUTE TO HEALTH-RELATED CONCERNS; AND HOW CAN THE LAW CONTROL THESE CONCERNS AND IMPROVE LIVES?

by Sara Kiflemariam*

This essay deals with how poor economic development is connected to health-related concerns and the intervention of law to control these concerns in order to ultimately improve the lives of human beings. To attain its designed purpose, the essay will first try to clarify the concepts of poor economic development and health-related concerns. Secondly the essay will address the relationship that exists between poor economic development and health-related concerns. Finally it will try to see the role of law in improving and fostering the quality of life through the effective control of health-related concerns. At last, a conclusion will be provided.

It makes sense that poverty rates are related to the overall health of the economy. In fact, as the economy grows, so too do opportunities for employment and income. Stronger labor markets and higher income levels tend to help those families living in poverty move above the poverty threshold.¹ Therefore, it is appropriate to first understand the concept of poverty. Poverty is a multidimensional and cross-sectoral phenomenon. To facilitate a comparative analysis of the different poverty profiles across the world, a standard definition of poverty based on daily consumption has been adopted. This definition considers as “poor” anyone who cannot afford a daily consumption of \$1 USD.² Poverty, by its nature, either directly or indirectly negatively affects economic development. Poor economic development mainly results from a high unemployment rate, which generates low income and low productivity.

Health means everyone achieving his or her potential to enjoy complete physical, mental and social wellbeing. Health can also be defined as a personal, social and economic good. A healthy population is essential to allow people to live their lives to their full potential, to create the right environment to sustain jobs, to help restore the economy and to look after the most vulnerable people in society. A healthy population is a major asset for society, and improving the health and wellbeing of the nation is a priority for the Government and the whole society. This means that all sectors of society and the whole Government need to be proactively involved in improving the health and wellbeing of the population.³ A health concern is a health-related matter that is of interest, importance or worry to someone, who may be the patient, the patient's family or the patient's health care provider. The health-related matter is of sufficient interest or importance that someone in the healthcare environment (e.g. patient, family, provider) has identified it as requiring some attention and perhaps tracking. A health concern may be identified from different perspectives:

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¹ See Rob Grunewald, *The Connection between Poverty and the Economy*, FED GAZETTE, FEDERAL RESERVE BANK OF MINNEAPOLIS (Nov. 1, 2006), <https://www.minneapolisfed.org/publications/fedgazette/the-connection-between-poverty-and-the-economy>.

² WORLD HEALTH ORGANIZATION, *POVERTY AND HEALTH: A STRATEGY FOR THE AFRICAN REGION 1* (2003) [hereinafter *POVERTY & HEALTH*], available at http://www.who.int/hdp/strategy_en.pdf.

³ See generally REPUBLIC OF IRELAND HEALTH SERVICE EXECUTIVE, *HI HEALTHY IRELAND: A FRAMEWORK FOR IMPROVED HEALTH AND WELLBEING 2013-2025* [hereinafter *HEALTHY IRELAND*], available at <http://www.hse.ie/eng/services/publications/corporate/hieng.pdf>.

- Patient
- Family member/carer
- Providers (physician, surgeon, physical therapist, respiratory therapist, nutritionist, health educator, social worker, etc.)⁴

For instance, child deaths, maternal mortality and the spread of HIV/AIDS, malaria and tuberculosis are some health-related concerns. When a person experiences health problems, suffers illness or has a disability, the loss of health and wellbeing affects every part of his or her life and those around him or her. Similarly, adverse trends in the health of the community and the population impact the whole of society.⁵ Developing countries face many of these health-related concerns because of the absence of many determinants of health and wellbeing such as nutrients, a healthy and safe living environment, etc. In fact, a 2003 World Health Report emphasized the magnitude of the work to be done: the gap in life expectancies between rich and poor countries is widening.⁶ A baby born today in Japan can expect to live for eighty-two years, with 92% of that time in good health.⁷ In Sierra Leone, however, average life expectancy at birth is merely thirty-four years, and more than five of those years are spent in ill health.⁸ This clearly shows that in the least developed countries – the countries with poor economic development – the health of individuals is precarious, and hence health-related concerns are comparatively high.

Another illustration that exhibits the interconnectedness between poverty and health could be that of the sad statement uttered by an old Ethiopian man:

Poverty snatched away my wife from me. When she got sick, I tried my best to cure her with xebel [holy water] and woukabi [spirits], for these were the only things a poor person could afford. However, God took her away. My son, too, was killed by malaria. Now I am alone.⁹

I. THE RELATIONSHIP BETWEEN POOR ECONOMIC DEVELOPMENT AND HEALTH-RELATED CONCERNS

The children sometimes get sick for no reason. Sometimes it is because of lack of food. We are poor. We have no money to buy or to feed ourselves . . .

– A woman, Voluntad de Dios, Ecuador ¹⁰

⁴ HL7 Wiki, *Health Concern and Related Concerns*, http://wiki.hl7.org/index.php?title=Health_Concern.

⁵ HEALTHY IRELAND, *supra* note 3.

⁶ Guillem López-Casasnovas, Berta Rivera & Luis Currais, *Health and Economic Growth: Findings and Policy Implications*, 7 (2007) [hereinafter *Health & Economic Growth*], https://www.upf.edu/documents/2911971/2940745/health_economic.pdf/b54b76f1-77ce-4818-9789-bef5579ffaf0.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ WORLD HEALTH ORGANIZATION & WORLD BANK, DYING FOR CHANGE: POOR PEOPLE'S EXPERIENCE OF HEALTH AND ILL-HEALTH 21 (2001) [hereinafter DYING FOR CHANGE], *available at* http://www.who.int/hdp/publications/dying_change.pdf.

¹⁰ *Id.* at 6.

Malnutrition is both a major cause and effect, and a key indicator, of economic poverty and lack of development. Malnutrition and food insecurity have strong implications for health concern. Hunger and malnutrition increase vulnerability to disease and premature death, and reduce people's ability to earn a livelihood and generate income, and this gives rise to lower productivity and lower wages. In a nutshell, the link between poor economic development and health concerns is very clear. Low incomes lead to low consumption, which in turn result in low saving and low lending. This leads to low investment and thus no development.

This notion was illustrated by a discussion group of women and men in Zambia who stated, "Let hunger be ranked first because if you are hungry you cannot work! No, health is number one, because if you are ill you cannot work!"¹¹ This proposition shows the direct link between poor economic development and health issues. In fact, hunger negatively affects work performance as there will be less concentration and energy bestowed to the work than that is normally required. Another illustration could be that of a Nigerian group of women who reported that they were so weakened by hunger, they did not have enough breast milk to feed their babies.¹² Now given the situation, it's clear that neither the mothers nor the babies will be healthy, all due to poverty. If many children are dying before they can attend school and later become productive members of society, the potential for economic growth will remain stagnant. Therefore, the poor economic development of a nation negatively affects the health of its citizens.

This concept was brilliantly illustrated by the landmark report of the WHO Commission of Macroeconomics and Health, which demonstrated that the disease burden or health concern attributable to three diseases (malaria, tuberculosis and HIV/AIDS) annually reduces GDP growth by as much as 1.3%.¹³ Conversely, good health may be justified on purely economic grounds. Good health raises human capital levels and therefore the economic productivity of individuals and a country's economic growth rate. Better health increases workforce productivity by reducing incapacity, debility, and the number of days lost to sick leave, and reduces the opportunities an individual has of obtaining better paid work. Further, good health helps to forge improved levels of education by increasing levels of schooling and scholastic performance.¹⁴

II. ROLE OF LAW IN IMPROVING AND FOSTERING THE QUALITY OF LIFE THROUGH EFFECTIVE CONTROL OF HEALTH-RELATED CONCERNS

The nations of the world have agreed that enjoying the highest attainable standard of health is one of the fundamental rights of every human being, without distinction of race, religion, political belief, economic or social condition. Beyond its intrinsic value to individuals, health is also central to overall human development and to the reduction of poverty.¹⁵ That is why health should be placed at the center of legislation process. Legislation is and will continue to be an important tool and driver in facilitating improvements in the health achievements of the twentieth century, such as

¹¹ *Id.* at 20.

¹² *Id.* at 10.

¹³ POVERTY & HEALTH, *supra* note 2, at 3.

¹⁴ *Health & Economic Growth*, *supra* note 6, at 4.

¹⁵ OECD, POVERTY AND HEALTH: DAC GUIDELINES AND REFERENCE DOCUMENTS 16 (2003) [hereinafter DAC GUIDELINES], available at <http://www.oecd.org/dac/povertyreduction/33965811.pdf>.

control of tobacco products, improvements in road safety, improvements in food, safety, water sanitation, housing and air quality, and the control of infectious diseases.¹⁶

Law can effectively control health-related concerns through various ways. Laws should aim particularly at controlling the governance and workforce of health systems, the accountability mechanisms and the accessibility to health systems. Effective health and wellbeing improvements call for new ways of working. A competent, skilled and multi-disciplinary government and workforce is, for instance, the most important resource for delivering health and wellbeing services.

In Tanzania, rude, humiliating and inappropriate treatments are common complaints. A man in fact, says, “We would rather treat ourselves than go to the hospital where an angry nurse might inject us with the wrong drug.” Elsewhere in Tanzania, men, women and young people say over and over again that they are treated “worse than dogs.” Before they have a chance to describe their symptoms, they are “yelled at, told they smell bad, and [that they are] lazy and good-for-nothing...”¹⁷ In this specific illustration, through law the nurses could be held accountable for the attitudes they exhibit towards the patients. People have the indivisible right to be treated and the health providers, that is, the doctors, nurses, physician and the like, should endeavor with all their capacity to actualize the law into reality. And if they breach this fundamental right, then the punitive aspect of law should come into play.

The principles of accountability and openness require that the formulation of public health policies and laws be open to everybody. The active involvement of communities can be an effective tool for improving performance and strengthening links with health services with remote districts, and can contribute to an overall improvement in governance. Therefore laws and guidelines should play an important role in involving communities and civil society organizations that can also contribute in increasing advocacy on behalf of poor people, who do not have easy or regular access to legal or other formal means of redress. In Zimbabwe, for example, a strong alliance of civil society stakeholders from trade unions, NGOs and informal associations has been involved in monitoring laws and policies and expenditures across the health sector. Ensuring financial, professional and organizational accountability will result in better quality, efficient and cost effective public health policy-making and will also bolster public trust. Moreover, law should ensure that there’s open access to information relating to the providers’ performance, and the costs of health goods and services, as would help poor people make good choices about health services. This could come, for example, through the mandatory and clear posting of prices at facilities; the dissemination of simple and clear information on the quality of local providers; and information campaigns on the safe use of drugs and on distinguishing counterfeit or out-of-date supplies.¹⁸ The disclosure of information can also reform health systems to emphasize preventive approaches rather than curative measures.

Ensuring that the poor have access to effective and affordable health services should also be a central issue that must be addressed efficiently by law. Since in most states’ constitutions, as well as the International Convention on Economic, Social and Cultural Rights (ICESCR), the right to the highest attainable standard of physical and mental health is recognized, there must be an effective way of implementing the law. At the national level, because health is determined by a wide range of

¹⁶ HEALTHY IRELAND, *supra* note 3, at 49.

¹⁷ DYING FOR CHANGE, *supra* note 9, at 26.

¹⁸ DAC GUIDELINES, *supra* note 15, at 43.

factors, including income, educational level, food security and access to water and sanitation, the ministry of health shouldn't be the sole guarantor of effective implementation of the law with regard to accessibility of the poor to health services. Law implementation dialogue must extend to involve other ministries (primarily those dealing with water, sanitation, nutrition and transport).

Usually poor people speak about the lack of safe water as an acute deprivation and cause of ill health. In Eritrea, for instance, in most rural villages people describe their daily struggles to get water from wells and dams for human use. Poor access to improved water and sanitation, particularly in rural areas, is an issue. In 2000, only 42 percent of rural dwellers and 63 percent in urban areas had access to safe water supplies. About one percent of the rural population had access to some form of sanitary facility compared to 66 percent in urban areas.¹⁹ Generally water shortages are most widespread in Africa. To solve this problems the respective ministry, in this case the ministry of Water, Land and Environment, is in charge of analyzing and managing the scarcity of water along with the ministry of Health.

At the international level, the implementation of international conventions with regard to health concerns and issues should be highlighted. For instance, the ICESCR protects the right to the highest attainable standard of physical and mental health, and this directly relates to a state's economic strength and institutional capacity. The implementation is problematic due to the complexity of defining the minimum acceptable standard; that is, what is adequate and acceptable vary among countries and groups within countries. Since state parties have different economic, cultural, social standards, it was not possible to formulate consistent indicators of progressive realization. For example the ICESCR affirms the right to work, the right to medical care, and the right to education. These rights, when being implemented, are directly related to the economic resource of any state party. This implies that the Economic, Social and Cultural Committee is supposed to devise a mechanism and value the incremental changes as to the quality of life of different societal groups.²⁰ It should formulate laws designed to translate abstract legal norms into minimum standards to be followed by state parties. Through this, poverty focus is strengthened, responding better to the needs of the poorest and most vulnerable members of a society with regard to accessibility to health services.

Last but not least, laws should be legislated to address the financing mechanisms. The objective of health financing should be to assure the availability of funding, as well as to set the right incentives for providers, and to ensure that all individuals have access to effective public health and personal health care. Some increases in government spending for health are possible through laws that enable budget reallocation, efficiency savings, and the use of funds released from debt relief.²¹ In a nutshell, outside the health sector, law must be designed to develop and maintain strong advocacy platform and to provide orientations on how other sectors (education, agriculture, transport, housing, sanitation, water and environment) should incorporate health considerations into laws and practices to improve health concerns. Within the health system, law should control governance, the workforce and the openness and accountability systems. This should reform the health system away from an overly curative approach to a more preventive pattern of health interventions through imparting to the public basic information. Lastly, at the implementation level law must be discussed with other sectors focusing on the implementation strategy and

¹⁹ THE WORLD BANK, THE HEALTH SECTOR IN ERITREA XIV (June 2004).

²⁰ *Ibid.*

²¹ SILESHI ZEYOHANNES, CONSTITUTIONAL LAW II TEACHING MATERIAL 235-36 (2009).

internationally the ICESCR, for instance, should formulate laws applicable to each country member on the minimum standard that a state can provide in alleviating health concerns taking into consideration its economic, social and cultural development.

III. CONCLUSION

The creation of healthy generations of children who can enjoy their lives to the full and reach their full potential as they develop into adults, is critical to a country's future. A healthy society and workforce benefits all sectors; one nation's economic recovery will be defined as much by the health and wellbeing profile of the population as by the core economic trends or growth.²² Through law, it's possible to alleviate health concerns that will contribute to the improvement of the quality of life and to the increase of productivity in the economy of one nation.

²² DAC GUIDELINES, *supra* note 15, at 7.

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2015 ESSAY QUESTION: HOW DOES POOR ECONOMIC DEVELOPMENT CONTRIBUTE TO HEALTH-RELATED CONCERNS; AND HOW CAN THE LAW CONTROL THESE CONCERNS AND IMPROVE LIVES?

by Moses Baguma

Economic development may be understood as an increase in the standard of living, improvement in self-esteem needs, and freedom from oppression, as well as a greater choice.¹ Generally, it encompasses changes in the standard of living for the country's citizens. Poor economic development would therefore refer to a decrease in standard of living in a given country. This contributes to health-related concerns in various ways, as illustrated below using Uganda as a case in point, whose healthcare performance is one of the worst in the world according to the World Health Organization, ranking 186th out of 191 nations.²

Uganda lacks the requisite number of medical expertise. The State cannot afford to have medical personnel deployed to all parts of the country, rural and urban. In most cases, when there is an epidemic, doctors have to move from Kampala to various rural areas to handle such epidemics.³ The shortage in the number of health workers could be owing to the increased rates of brain drain in the health sector.⁴ Since they are not paid enough, health workers seek greener pastures outside the country to avail to themselves of a better standard of living. What's more, the government encourages doctors and nurses from public hospitals to work abroad.⁵ Consequently, most hospitals are below par, leaving the people with limited access to quality and effective health care services.

Uganda's poor economy does not permit it to have the advanced medical technology to provide satisfactory health care services. Only the rich can afford access to hospitals abroad which are furnished with more advanced medical technology.⁶ Furthermore, public hospitals are considered inefficient in providing health care services; for instance, they do not have enough medicines and it is believed that private hospitals provide better services.⁷ This is a challenge in the health sector since the poor cannot have the benefit of quality healthcare services. Statistics show that 51 per cent of Ugandans do not have any contact with public healthcare facilities.⁸

Furthermore, some people in Uganda are unaware of their rights in regards to health, especially in rural areas. This is due to, *inter alia*, low literacy levels, which is one of the indicators of

¹ MICHAEL TODARO, *ECONOMIC DEVELOPMENT* (11th ed. 2011).

² Mubatsi, *A Glance at Challenges In Uganda's Health Sector*, FUTURE CHALLENGES (Jan. 3, 2013), <https://futurechallenges.org/local/a-glance-at-challenges-in-ugandas-health-sector>.

³ *Ibid.*

⁴ Alon Mwesigwa, *Uganda Crippled by Medical Brain Drain* (Feb. 10, 2015), <http://www.theguardian.com/global-development/2015/feb/10/uganda-crippled-medical-brain-drain-doctors> (last accessed Dec. 20, 2015).

⁵ *Ibid.*

⁶ Mubatsi, *supra* note 2.

⁷ *Ibid.*; see also Kate Diamond, *Uganda's Demographic and Health Challenges Put Into Perspective With Newfound Oil Discoveries [Part One]*, NEW SECURITY BEAT (Apr. 26, 2012), <http://www.newsecuritybeat.org/2012/04/ugandas-demographic-and-health-challenges-put-into-perspective-with-newfound-oil-discoveries-part-one/> (last accessed Dec. 20, 2015).

⁸ Annie Kelly, *Healthcare a Major Challenge for Uganda*, THE GUARDIAN (Apr. 1, 2009), <http://www.theguardian.com/katine/2009/apr/01/healthcare-in-uganda> (last accessed Dec. 20, 2015).

poor economic development. Only about 73 per cent of Ugandans can read and write.⁹ It follows that the 27 per cent who cannot read and write do not know what remedies are available for them in the face of violations of their rights in relation to health. This encourages health workers to act wantonly and with impunity, hence poor delivery of health services in the country.

An illustration of wanton conduct by medical workers could be drawn from the case *CEHURD v Nakaseke District Local Administration*, in which a pregnant woman died in a hospital while awaiting obstetric care.¹⁰ A nurse who had confirmed signs of obstructed labor called the doctor on duty who did not arrive until the woman had been in labor for about eight hours. She later died of hemorrhage and ruptured uterus.¹¹

However, the challenges discussed above can be controlled with the help of law, and lives can be improved, in various ways discussed below. Litigation of the right to health is one of the ways in which challenges facing the health sector can be controlled. Litigation has been understood as a process through which legal actions are brought before courts to enforce particular rights.¹² Litigation has over time become a recognized mechanism of holding governments accountable to international, regional, and national obligations. For instance, the Center for Health, Human Rights and Development (CEHURD) filed a suit before the Constitutional Court to hold the government accountable for the high number of preventable maternal deaths that occur in public health facilities due to the non-provision of basic essential maternal health commodities to expectant mothers.¹³ This case triggered other cases challenging health rights violations.¹⁴ This has since improved the delivery of maternal health services and it also controls impunities.

Health workers, especially in public hospitals, can be sensitized about the state's obligations under national and international law to avail health services without discrimination against the poor. Immediately noteworthy is the fact that Uganda is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 thereof guarantees the right to health. The committee on economic social and cultural rights in general comment no. 14 explained that a state has core obligations, which include the obligation to ensure the right to access health facilities, goods and services without discrimination, especially against vulnerable groups. This can be read with article 21 of the 1995 Constitution of the Republic of Uganda, which provides for equal protection for all, notwithstanding one's social or economic standing. Furthermore, the committee highlighted that the state has an obligation to protect the right to health in that even in case of privatization, laws must be enacted to ensure that there is equal access to health care.

With regard to the indigent people who neither know their rights nor can afford lawyers, they can be sensitized about their rights in regard to health by public interest lawyers, and they can

⁹ Taddeo Bwambale, *Uganda Falls Short on 2015 Adult Literacy Target*, NEW VISION (Aug. 28, 2013), <http://www.newvision.co.ug/news/646585-uganda-falls-short-on-2015-adult-literacy-target.html> (last accessed 20 Dec. 20, 2015).

¹⁰ Civil suit No. 111 of 2012 (HC).

¹¹ *Ibid.*

¹² *Litigation*, THE LAW DICTIONARY, <http://thelawdictionary.org/search2/?cx=partner-pub-4620319056007131%3A7293005414&cof=FORID%3A11&ie=UTF-8&q=litigation&x=8&y=8>; see also *Litigation*, DICTIONARY.COM, <http://legal-dictionary.com/litigation>.

¹³ *CEHURD v Attorney General*, constitutional petition No. 16 of 2011 (CC).

¹⁴ *CEHURD v Nakaseke District Local Administration*, civil Suit No. 111 of 2012 (HC); *CEHURD v. Attorney General*, constitutional petition no. 64 of 2011 (CC); *CEHURD v Executive Director Mulago Hospital & Attorney General*, civil suit no. 212 of 2013 (HC).

also be represented by the same in court to enforce those rights. For instance, in Uganda, the Public Interest Law Clinic (PILC) has a number of programs such as the Community Law Programme and Mobile Clinic (CLAPMOC) that are purposed to extend legal services to the poor communities and members of vulnerable groups.¹⁵ Such legal services include legal advice. PILAC also engages in public interest litigation, representing such people from indigent communities, thus enforcing their rights.¹⁶

Courts also have a role to play in controlling the challenges faced in the health sector. In Uganda, there had been an impediment of judicial avoidance whereby courts, when presented with a question to do with health, would invoke the political question doctrine. The political question doctrine is a judicial principle that a court should refuse to decide an issue involving the exercise of discretionary power by the executive or legislative branch of government.¹⁷ It was first applied in Uganda in the case of Attorney General v Major General David Tinyefuza.¹⁸ However, in that very case, Justice Kanyeihamba noted that courts may intervene on grounds that the rights or freedoms of individuals are clearly infringed or threatened. In 2015, in the case of CEHURD v Attorney General, the Supreme Court struck down the political question doctrine and the case was referred back to the Constitutional Court to be heard on its merits.¹⁹ The Court highlighted that the Constitutional Court could challenge policy decisions made by the cabinet. If courts can cooperate by hearing cases challenging flaws in the provision of healthcare services, notwithstanding that policy making is a reserve for the executive under article 111(2) of the Constitution of the Republic of Uganda, there will be an improvement in health care delivery.

In a nutshell, there are various challenges facing the health sector cropping out of poor economic development as discussed above. However, most of these challenges can be averted if a holistic approach is employed, with joint efforts from the executive, legislature and judiciary. The executive must formulate policies aimed at bettering the health sector; the legislature must enact laws protecting, respecting and observing health-related rights; and the judiciary must review and challenge such policies by the executive or enactments by the legislature. Lawyers also, as the best placed individuals of the legal fraternity, have a role to play in ensuring that the right to health as enshrined in various national and international laws, is realized, thus improving the health sector in various developing countries.

¹⁵ CLAPMOC, THE PUBLIC INTEREST LAW CLINIC, <http://pilac.mak.ac.ug/node/23>.

¹⁶ PILAC Activities, THE PUBLIC INTEREST LAW CLINIC, <http://pilac.mak.ac.ug/node/4>.

¹⁷ *Black's Law Dictionary* (8th ed. 2004).

¹⁸ Constitutional Appeal No. 1 of 1997 (SC).

¹⁹ Constitutional Appeal No. 1 of 2013 (SC).

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2015 ESSAY QUESTION: HOW DOES POOR ECONOMIC DEVELOPMENT CONTRIBUTE TO HEALTH-RELATED CONCERNS; AND HOW CAN THE LAW CONTROL THESE CONCERNS AND IMPROVE LIVES?

by Tsidkenu Paul Moono

I. INTRODUCTION

The main aim of this essay is to explain how poor economic development contributes to health-related concerns and how the law can be used to control these concerns to improve lives. The essay shall begin by giving an understanding of the two key phrases of the question which are poor economic development and health-related concerns. The essay shall then move on to substantially address the question. The essay shall, for each category of health-related concern raised, provide the possible legal solutions.

II. DEFINITIONS

The phrase poor economic development has no single definition; it follows, therefore, that reliance can be placed on some scholarly work for a working definition. Some scholars define economic development as improvements in material welfare especially for persons with the lowest incomes, and the eradication of mass poverty with its correlates of illiteracy, disease and early death.¹ Economic development therefore is the improvement in people's wealth coupled with reduction or eradication of poverty together with its correlate vices like illiteracy, early death and diseases. If economic development can be defined as such then poor economic development entails little or no improvement in peoples' wealth, thereby subjecting them to mass poverty which has a causal link with vices like early death, illiteracy and diseases. Health is the state of being hale, sound, or whole in body, mind or soul, wellbeing.² Therefore health-related concerns are health problems that endanger lives if they go unchecked.

III. MAIN DISCOURSE

It is well settled that there is a very strong correlation between the magnitudes of health-related concerns and the economic status of each society or nation. The poorer the nation is, so is the health of its population. It is therefore right to say that a country with poor economic development, which is essentially a least developed country, experiences the biggest health problems. However, these health problems can be addressed by law. The following are some of the health-related concerns caused and perpetuated by poor economic development.

The majority of people in countries with poor economic development are uneducated, and their means of survival involve high risks of injury and contraction of occupational diseases, thereby endangering their health as well as their lives.³ Industrial occupations pose the greatest threat to human health through accidents and contraction of certain work-related diseases like cancer and

¹ See generally Robert E. Lucas Jr., *On the Mechanics of Economic Development*, 22 J. MONETARY ECON 3 (1988).

² BLACK'S LAW DICTIONARY 852 (4th ed. 1968).

³ Norman J. Waltzman & Ken R. Smith, *Separate but Lethal: The Effects of Economic Segregation on Mortality in Metropolitan Areas*, 176 MILBANK Q. 342 (1998).

circulatory diseases.⁴ All of these risks are a common feature in countries with poor economic development and come as a result of inadequacy or lack of suitable industrial equipment to ensure the safety of the workers.

Most of these accidental injuries and occupational diseases are caused by negligence of the employer, be it the state or private employer. These health problems can be controlled by using occupational laws and policies. Such laws must ensure that workplaces are free from any potential risks of negligent injuries and contraction of work-related diseases. The degree or standard of safety of the workplaces may, to a greater extent, be set by the international community or the regional bodies so as to oblige state parties to apply the set standards.

Poor economic development is also responsible for environmental pollution, which is one of the greatest health concerns affecting mostly the developing world. It is common to find countries with poor economic development pollute the environment through unsafe discharge of industrial wastes and careless burning of fuel in its various forms.⁵ This is because people in countries with poor economic development are overly poor, thus resorting to exploitation of natural resources. Secondly, industry owners find it cheap to dispose wastes carelessly without any cost incurred through proper disposition of wastes. Thirdly, such countries face huge challenges in implementing health-related environmental laws, as well as lack of horizontal integration of health and environmental legal and institutional frameworks, which undermines the positive health potential of environmental treaties.⁶ Millions of people in developing countries experience ill health, death and disability all because of poor management of the environment.

Although it is very difficult for countries with poor economic development to implement health-related environmental laws, a minimum standard for implementation of such laws must be observed if people as well as other living organisms are to be healthy. The starting point for any country faced with the real challenge of environmental pollution is to realize that as long as its environment remains unhealthy, so shall its people be, and they will take no meaningful or active participation in economic development. The way forward towards eradication of environmental pollution is to enact laws and formulate policies that deter any form of preventable environmental pollution and encourage preservation of environmental purity. A country can also establish various institutional structures to monitor the environment. Laws can also be stiffened to protect communities which are victims of pollution. For instance the High Court of Zambia in *James Nyasalu v. Konkola Copper Mine* held that the court has a duty to strongly protect poor communities from powerful and politically correct perpetrators.⁷

Countries with poor economic development, for instance, Malawi which has one of the highest national prevalence rates of sexually transmitted infections in the world, have a higher rate of

⁴ KAREN PEARSON, BRITISH SAFETY COUNCIL, CAUSES AND INCIDENCE OF OCCUPATIONAL ACCIDENTS AND ILL-HEALTH ACROSS THE GLOBE 6 (2009), available at https://www.britsafe.org/sites/default/files/editor/The_Causes_and_Incidence_of_Occupational_Accidents_and_Ill-Health_Across_the_Globe.sflb.pdf.

⁵ Jinzhu Ma et al., *Sources of Water Pollution and Evolution of Water Quality in the Wuwei Basin of Shiyang River, Northwest China*, 90 J. Envtl. Mgmt. 1168 (2009).

⁶ WORLD HEALTH ORGANIZATION, REGIONAL COMMITTEE FOR AFRICA, ENVIRONMENTAL HEALTH: A STRATEGY FOR THE AFRICAN REGION (2002), available at http://apps.who.int/iris/bitstream/10665/95986/1/AFR_RC52_10.pdf.

⁷ *James Nyasalu v. Konkola Copper Mine*, 2007/HP/1286, available at <http://www.zambialii.org/zm/judgment/high-court/2011/86/129.%20Judgment%20-%20Konkola%20Copper%20Mines.pdf>.

sexual-related diseases as well as deadly airborne diseases like tuberculosis.⁸ This is certainly due to the fact that people in such countries are subjected to high levels of prolonged poverty resulting from lack of education, employment and early marriages. To earn a living, such people have to engage in commercial sex, early marriages and generally live in cheap, unplanned and overcrowded areas.

The law can control sexually transmitted diseases by playing the following roles: prescriptive role, protective role and instrumental role. In its proscriptive role, law is essentially concerned with proscribing certain forms of conduct and imposing sanctions as a consequence of non-compliance.⁹ Prescriptive laws would include laws and policies requiring compulsory screening and compulsory disclosure in certain circumstances. The protective role of law seeks to protect individuals and groups from the adversity consequent upon their sexually contagious disease status.¹⁰ Laws protecting against discrimination, and protecting against publication of health status by authorities are examples of protective laws. The instrumental role of the law seeks more than to just regulate the relationship between individuals and the infected, affected and society broadly.¹¹ This would involve criminalization of willful transmission of sexually transmitted infections. For instance, South Africa has penal laws that criminalize willful transmission of sexually transmitted diseases.¹² With regards to airborne diseases, laws which require certain standards for residential houses may be enacted.

A number of countries with poor economic development have the majority of people who are malnourished. As a result of being malnourished, such people become immune-deficient and vulnerable to infectious diseases.¹³ Malnutrition alone is estimated to account for over half of children's deaths annually.¹⁴ Thus, what would be a small epidemic outbreak in a relatively rich town or country ends up being a large pandemic in a poor society.

The law can also control nutritional health problems in a number of ways. The starting point is to recognize that human rights are universal and interrelated. Article 11 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.¹⁵ A country can enact a law which ensures that economic, social and cultural rights are also justiciable. For instance, the Zambian Parliament included the economic and social rights in the Bill of Rights in its Constitutional Bill.¹⁶ This is in a quest to ensure that everyone enjoys the minimum nutritional standard to promote health.

⁸ UNAIDS, GLOBAL REPORT: REPORT ON THE GLOBAL AIDS EPIDEMIC 6 (2013), available at http://www.unaids.org/sites/default/files/media_asset/UNAIDS_Global_Report_2013_en_1.pdf.

⁹ MUHAMMED TAWFIQ LADAN, THE ROLE OF LAW IN THE HIV/AIDS POLICY: TREND OF CASE LAW IN NIGERIA AND OTHER JURISDICTIONS 15 (2008).

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Support to the HIV/AIDS Response in Zambia, HIV and AIDS Reference Materials for the Judiciary in Zambia 33 (2010), available at http://www.abtassociates.com/attachments/4.Judges_Manual_ALL.pdf.

¹³ John Straus & Duncan Thomas, *Health, Nutrition, and Economic Development*, 36 J. ECON. LITERATURE 766 (1998).

¹⁴ David L. Pelletier & Edward A. Frongillo, *Changes in Child Survival are Strongly Associated with Changes in Malnutrition in Developing Countries*, 133 J. NUTRITION 107 (2003).

¹⁵ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNTS 3, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

¹⁶ DRAFT CONSTITUTION OF ZAMBIA BILL, art. 58 (2014).

Another great health problem relates to unsafe abortions. It has been noticed that world over nearly all abortions are unsafe, accounting for 97 per cent done in developing countries.¹⁷ Unsafe abortions among ladies in countries with poor economic development are commonplace due to a lack of means to raise their babies, considering the fact that they are usually burdened by high levels of poverty. Secondly, laws regulating abortion procedures are usually relaxed because even officers of the law are normally preoccupied with their means of survival, rather than the precious health and lives of the community at large.

The law can combat unsafe abortions by criminalizing acts of unauthorized abortion in relation to both the person who is aborting and the assistants of abortion. This would significantly reduce the number of health risks associated with abortion. Some countries, such as Italy, have successfully reduced abortion cases due to criminalization of abortion.¹⁸ Ultimately, lives of people would greatly improve with the significant reduction of the abortion rates of countries with poor economic development.

Lastly, the scourge of child marriage and early pregnancies poses one of the greatest health risks to girls due to poor economic development of their countries.¹⁹ Child pregnancy is a health concern because it exposes girl children to various risks associated with delivery of the baby. Early child marriage mostly comes about due to prolonged exposure to poverty, a fact that is true for girl children living in countries with poor economic development. In the Amhara region of Ethiopia for instance, rates of child marriage and early childbearing, as well as the consequences such as obstetric fistula, are among the highest in the world.²⁰ Child marriage violates girls' rights in many ways and seriously jeopardizes their health. In many places, laws do not prohibit marriage before the age of 18.²¹ Even in places where they do, these laws are not enforced. Policy-makers must put in place and enforce laws that ban marriage before 18 years of age. Governments can also enact laws that require compulsory education of children so as to enlighten them as well as delay them so as to give little room for their early marriages.

IV. CONCLUSION

From the discussion above, it can be clearly seen that poor economic development of a country significantly contributes to many health-related concerns. As earlier established, a country with poor economic development is generally poor, implying that its citizens are subjected to prolonged economic hardships. As a result, their health deteriorates as they are held captives of an unbroken circle of health-related concerns. Such health problems include: injuries and diseases contracted from unsafe workplaces, environmental pollution, contracting sexually transmitted

¹⁷ WORLD HEALTH ORGANIZATION, UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF THE INCIDENCE OF UNSAFE ABORTION AND ASSOCIATED MORTALITY IN 2000 4 (4th ed. 2004), *available at* <http://apps.who.int/iris/bitstream/10665/42976/1/9241591803.pdf>.

¹⁸ WORLD HEALTH ORGANIZATION, WOMEN'S AND CHILDREN'S HEALTH: EVIDENCE OF IMPACT ON HUMAN RIGHTS 60 (2013), *available at* http://apps.who.int/iris/bitstream/10665/84203/1/9789241505420_eng.pdf.

¹⁹ WORLD HEALTH ORGANIZATION, WOMEN AND HEALTH: TODAY'S EVIDENCE, TOMORROW'S AGENDA (2009), *available at* http://apps.who.int/iris/bitstream/10665/44168/1/9789241563857_eng.pdf.

²⁰ UNITED NATIONS POPULATION FUND, POPULATION DYNAMICS IN THE LEAST DEVELOPED COUNTRIES: CHALLENGES AND OPPORTUNITIES FOR DEVELOPMENT AND POVERTY REDUCTION 21 (2011), *available at* <https://www.unfpa.org/sites/default/files/pub-pdf/CP51265.pdf>.

²¹ WORLD HEALTH ORGANIZATION, PREVENTING EARLY PREGNANCY AND POOR REPRODUCTIVE OUTCOMES AMONG ADOLESCENTS IN DEVELOPING COUNTRIES: WHAT THE EVIDENCE SAYS 2 (2012), *available at* http://apps.who.int/iris/bitstream/10665/70813/1/WHO_FWC_MCA_12_02_eng.pdf.

diseases, nutrition-related diseases, unsafe abortions and early child pregnancies. In each instance, the law can be a very reliable beacon of hope to significantly reduce or completely eradicate these scourges if carefully enacted, interpreted and enforced.

2015 ESSAY QUESTION: HOW DOES POOR ECONOMIC DEVELOPMENT CONTRIBUTE TO HEALTH-RELATED CONCERNS; AND HOW CAN THE LAW CONTROL THESE CONCERNS AND IMPROVE LIVES?

by Ivan Allan Ojakol

Health, alongside climate change, poverty and terrorism, is one of the greatest challenges of our times. The right to health is recognized as a human right world over. Everyone has the right to the highest attainable standard of physical and mental health. The World Health Organization in its preamble defines this right to health as “a state of complete physical, mental and social well-being, and not merely an absence of disease or infirmity.”¹ It has even been propounded that the promotion of the right to health promotes the right to life.² There are a number of other international instruments that provide for the right to health that many developing countries or countries experiencing poor economic growth are a party to: the Universal Declaration of Human Rights,³ the International Covenant on Economic, Social and Cultural Rights (ICESR),⁴ the Convention on the Rights of The Child,⁵ the Convention on the Elimination of All Forms of Discrimination Against Women,⁶ and the African Charter on Human and People’s Rights.⁷ These international obligations create a responsibility on the governments of countries to adopt policies and legislation that enforces and implements the right to health.

It is in the best interests of governments to provide the best health care and services to their citizenry or to improve the economic development of their countries so as to create conditions that are likely to alleviate health concerns. This is because failure to do so is likely to erode trust. Good health and well-being was part of the defunct Millennium Development Goals and is now one of the seventeen Sustainable Development Goals.⁸ Health and economic development are mutually inclusive. There is a well-established connection between incomes and health. That wealthier countries have healthier populations is undisputed. With economic growth comes better nutrition, safe and clean water, proper sanitation, world class health care and even education which in turn has a positive effect on productivity of a country.⁹

In 2001, African leaders adopted the Abuja Declaration. This Declaration was to the effect that health would come top in the pecking order of the national development plans of the governments of African countries. It was especially a response to HIV/AIDS, TB and

¹ WORLD HEALTH ORGANIZATION, CONSTITUTION (1946), Preamble.

² HUMAN RIGHTS COMMITTEE, General Comment 6, Article 6, 16th Session (1982).

³ UNIVERSAL DECLARATION OF HUMAN RIGHTS, art. 25.

⁴ INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, art. 12.

⁵ CONVENTION ON THE RIGHTS OF THE CHILD, art. 23, 24.

⁶ CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, art. 12(2).

⁷ AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS, art. 16.

⁸ SUSTAINABLE DEVELOPMENT GOALS, No. 3.

⁹ David E. Bloom, *The Shape of Global Health*, 51 FINANCE & DEVELOPMENT (2014) (“The world has come a long way but still has a long way to go”).

other infectious diseases that had engulfed the continent at the time.¹⁰ African leaders made major commitments as far as the health sectors of their respective countries were concerned, including allocating at least 15 per cent of their budgets to health. However, this has not been the case to date with only a handful of African countries managing to hit the target, including Botswana and Gambia. The regional average has stagnated at a miserable 7 per cent,¹¹ the bulk of this being donor funded through projects like GAVI, Melinda and Bill Gates Foundation and Global Fund. To make matters worse, these donor funds have been diverted by unscrupulous government officials. Case in point is Uganda, where approximately 500 billion in Ugandan shillings were misappropriated. A few convictions were commendably secured by the Ugandan government like Teddy Sezi Cheye, who was given a 10 year sentence for diverting 120 million shillings of Global Fund money to his personal account.¹² While this is worth applauding, a lot still remains to be done, as many of the major culprits remain termed as “Big Fish” by sentencing Justice Katutsi remain at large. Therefore corruption and impunity are bottlenecks here. The major excuse that African governments front for failure to meet the 2001 Abuja target is the low level of economic development of their countries, and that because of this, allocating 15 per cent of their national budgets to the health sector would be a major constraint on the other sectors like transport and education among others.

With poor economic development comes shambolic infrastructure. Hospitals and health centers are dilapidated and in a despicable state in many a developing country and have become inadequate to handle the health needs of the ever increasing populace. Let’s take the case of my country, Uganda: on December 29, 2011, the leader of the opposition led a delegation on a fact-finding mission in the state of Mulago National Referral Hospital. It was found in the labor ward that expectant mothers were packed in dilapidated tiny leaked rooms. In one of the wards, patients and their attendants used a single toilet. The Cancer Institute was also in a sorry state, as there were not enough beds, patients got their drips while seated, and there was only one incubator to serve 100 babies daily. In Wandu Health Center III in a district called Amuria, there are only two wards; when the numbers exceed what they can handle, patients are put together in the same ward, and it also has no maternity ward. This is why sixteen women die during child birth everyday in Uganda.

In developing countries and countries with low GDP levels, doctors and medical staff are faced with the debacle of poor remuneration. This poor pay demoralizes and demotivates them, thus they cannot carry out their work effectively. There have been numerous cases of medical staff especially in public health centers who are not responsive when called upon to do their jobs, which has had devastating consequences. An example is Valentine Inziku’s ordeal. He watched his wife bleed to death as he tried to get nurses to attend to her but all in vain: “[T]he only thing the staff did was they came and they told me...to clean the blood.” This has led to things like a brain drain as doctors move to countries where they can be sufficiently remunerated.

¹⁰ Sarah Nakimbowa. *Do African leaders finance health as set in the Abuja Declaration?*, KEY CORRESPONDENTS REPORTING FOR ACTION ON HIV (March 8, 2012), <http://www.keycorrespondents.org/2012/03/08/do-african-leaders-finance-health-as-set-in-the-abuja-declaration/>.

¹¹ Uganda’s allocation to the health sector for the last 5 years before the FY 2014-2015, stagnated at 7-9%.

¹² Frederick M. Masiga, *Bare Knuckles: Why We Failed to Pin Chogm Thieves*, DAILY MONITOR (Apr. 10, 2011).

This poor remuneration has also led to the proliferation of private clinics and hospitals that are more expensive than the public ones as medical personnel try to go out of their way to earn an extra income, thus giving less time to their jobs in public hospitals. Doctors who are paid a fixed salary in Uganda are absent 35 per cent of the time. Due to this, absenteeism of well qualified health workers in public health centers is at an all-time high. This leaves the unsuspecting members of the public at the mercy of unqualified people. In rural India, untrained staff provided health care, 64 per cent of the time.¹³ The private sector being a mix of herbalists, traditionalists, homeopaths and many untrained medical personnel, there is need for its regulation so as to fight unscrupulous people from taking advantage of the public who are largely gullible.

When a country has low incomes and there is widespread poverty, the levels of education are also affected. Due to poor education, many communities in developing countries still believe in and practice backward traditions such as female genital mutilation (FGM) and child marriages. These have drastic effects on health. In Uganda for instance, the statistics are alarming: 20 per cent of girls aged fifteen to nineteen are currently married, 49 per cent of them are married before their eighteenth birthday, and one in every four girls are already mothers or pregnant with their first child.¹⁴ This leaves these young girls exposed to health risks like fistula and HIV/AIDS. The effects of FGM like massive bleeding and extreme pain during sexual intercourse, difficulty in passing urine and other infections are well documented.

At the heart of this economic growth and health debate is a sticky issue called “inequality.” The disparities in health services provision between developed and developing countries speak volumes: the life expectancy in Japan is eighty-three years, while that of Sierra Leone is forty-five years. Life expectancy has increased in every wealthy industrialized country over the past two decades, but has declined in Botswana, Lesotho, South Africa, Swaziland and Zimbabwe, mainly because of HIV-related deaths. 99 per cent of child deaths occur in low and middle income countries. In 2012, Norway spent \$9,055 per capita on health care while Eritrea spent \$15 per capita.¹⁵ The aforementioned statistics are indicators of the inequality that comes with poor economic development as far as health is concerned.

Uganda spends \$150 million annually on the treatment of government officials abroad.¹⁶ So the high and mighty get preferential treatment while the ordinary persons or more aptly in Franz Fanon’s words “The Rugged of the Earth” are subjected to the nation’s health system which is in dire straits. To put this in perspective is the case of a Ugandan eight year old, Emmanuella Anzoyo, who was attacked by a stray dog. Her mother who was unemployed and under the care of some good Samaritans took her to a hospital and was required to pay a certain amount of money, shs 250,000 for the anti-rabies dosage which she

¹³ Jorge Coarasa, et al., *Private v. Public*, 51 FINANCE & DEVELOPMENT (2014) (“In many countries, the debate should not be about the source of primary health care but its quality”).

¹⁴ Elizabeth Amongin, *Child Marriage Increase Spread of HIV Scourge*, DAILY MONITOR (Dec. 1, 2015).

¹⁵ *Ibid.*

¹⁶ Ismail Musa Ladu, *Government Spends Shs380 Billion on Officials’ Treatment Abroad*, DAILY MONITOR (Apr. 24, 2012).

of course could not afford.¹⁷ Therein lies the difference between the “haves” and “have-nots.”

Pharmaceutical companies have also affected the right to health as far as poor countries are concerned. It is true that these companies make a positive contribution to the right to health through their innovations of medicines and drugs; however, they have also negatively affected access to medicines for low income countries. This is by keeping the prices of medicines very high. All countries which are members of the World Trade Organisation (WTO) are party to The Agreement on Trade related Aspects of Intellectual Property (TRIPS) which provides for patent rights that last 20 years for the inventors of the drugs to benefit from their sweat. This means that people have to wait for 20 years in order to access the medicines and drugs and generic companies cannot find a way of inventing around a product so as to come up with a cheaper drug. This is a manifestation of discrimination because poor countries cannot afford these drugs and have to wait for the end of that 20 year period as infectious diseases like Ebola devour their people.

HOW THE LAW CAN ADDRESS THESE CONCERNS AND IMPROVE LIVES

In 2001, The Doha Declaration on The Agreement on Trade-Related Aspects of Intellectual Property and Public Health was adopted. The Doha Declaration is to the effect that the TRIPS Agreement should not prevent member states from taking measures to protect public health. The Doha Declaration acts as a waiver to allow countries producing generic pharmaceutical products to export them to importing countries that are unable to manufacture medicines themselves.¹⁸ In my view, the Doha Declaration should be negotiated into an agreement by the members of the WTO so as to make it legally binding with sanctions thereto in case of failure to abide. It should also have an effective monitoring, review and verification process. The same should be done for the Abuja Declaration because African leaders owe it to their people to ensure that they (the people) are in good health with world class health care.

A health insurance scheme is another option that the law could adopt so as to address health concerns and improve lives in countries experiencing poor economic development. These countries can borrow the Rwanda template: people in Rwanda pay \$2 dollars per year and 10 per cent of their treatment costs and this has increased access to health care.¹⁹ In these poor countries, the law on this national insurance scheme should borrow from the social security model which many of them have, that is to say the employees and their employer contributing a certain monthly percentage say 4 per cent of their earnings. It could also be akin to the Pay As You Earn (PAYE) model. This would go a long way in offsetting this health conundrum.

There is also need for judicial activism if the fight for proper health care is to succeed. The “political question doctrine” limits the judiciary’s reach over matters of a “political” nature, otherwise considered as exclusive functions of the executive or legislative

¹⁷ CEHURD, Emmanuella Anzoyo, suing through next friend, Christine Munduru. and Anor v Wakiso District Local Government and Medical Superintendent Entebbe General Hospital.

¹⁸ THE RIGHT TO HEALTH, FACT SHEET No. 31.

¹⁹ Sarah K. Nabukera, et al., *Use of Postpartum Health Services in Rural Uganda: Knowledge, Attitudes, and Barriers*, 31 J. COMMUNITY HEALTH 84 (2006).

branch. The Ugandan case of *CEHURD v. AG* is a good example: the Supreme Court struck down a 2012 ruling by the Constitutional Court which had absolved itself of looking into the matter of the non-provision of maternal health services stating, that it was barred by the “political question doctrine.”²⁰ There was even an earlier decision in *Minister of Health v. Treatment Action Campaign* where the Court forced the South African Government to adopt one of the largest programs in Africa as far as reduction in mother-to-child transmission of HIV/AIDS is concerned.²¹ The judges must exercise judicial power in line with the norms, values and aspirations of the people.

I conclude with Ralph Waldo Emerson’s words, “The first wealth is health.”

²⁰ CONSTITUTIONAL PETITION No.16 of 2011;

²¹ (2002) 5 SA 721 (CC) (South Africa).

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2015 ESSAY QUESTION: HOW DOES POOR ECONOMIC DEVELOPMENT CONTRIBUTE TO HEALTH-RELATED CONCERNS; AND HOW CAN THE LAW CONTROL THESE CONCERNS AND IMPROVE LIVES?

by Nsofwa Puta

The nations of the world have agreed that “[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, or economic or social condition.”¹ However, realization of this right is becoming a global concern, especially for countries experiencing poor economic development. To this end, this essay aims to discuss how poor economic development contributes to health-related concerns and how law can control these concerns and improve lives. To achieve this aim, the essay will first explain poor economic development and health-related concerns. Secondly, the essay will discuss how poor economic development contributes to health-related concerns. Thereafter will be a discussion of how law can control health-related concerns and improve lives.

I. POOR ECONOMIC DEVELOPMENT AND HEALTH-RELATED CONCERNS

To start with it is important to note that there is no agreed definition of economic development. This is evident from the fact that different scholars define economic development differently. Amartya Sen considers economic development to be the strengthening of autonomy and substantive freedoms, which allow individuals to fully participate in economic life.² According to Stephen Smith, economic development is the presumed solution to poverty and many pressing problems in the world such as inequality in the distribution of income and low life expectancy.³ Economic development is also defined as the adoption of new technologies, transitioning from agricultural-based to industrial-based economy, and the general improvement in living standards.⁴

From the above definitions, it is prudent to argue that the following are indicators of economic development: a rise in real per capita income; a rise in quality of life, which means low infant mortality rate, low maternal mortality rate and high life expectancy; a rise in the presence of highly educated professional elites and skilled workers; a substantial reduction in poverty levels; and an improvement in road-network and more infrastructure such as hospitals. Therefore, if there is poor economic development in a country, it means that there is no rise in per capita income, there is poor quality of life, poor road-network and infrastructure, high poverty levels and poor education standards.

The current health-related concerns include malnutrition, high maternal mortality rate, high infant mortality rate, high morbidity rate, low life expectancy, inadequate health facilities, difficulties in accessing health facilities especially for people living in rural areas, poor healthcare services, lack of skilled birth attendance and post-natal care services, inadequate access to essential medicines and vaccinations to cure or treat certain illnesses like polio, malaria, dysentery, cholera, tuberculosis,

¹ *Constitution of WHO: Principles*, WORLD HEALTH ORGANIZATION, <http://www.who.int/about/mission/en>.

² See Amartya Sen, *COMMODITIES AND CAPABILITIES* (Oxford Univ. Press 1999).

³ Stephen Smith, *CASE STUDIES IN ECONOMIC DEVELOPMENT* 3 (3d ed., George Washington Univ. 2003) [hereinafter Smith].

⁴ *Economic Development*, <http://www.businessdictionary.com/definition/economic-development.html>.

HIV/AIDS and sexually transmitted diseases such as syphilis. On the strength of the assertion advanced by De Beer, that there is an interactive relationship between health and the economic development of a country, there is no doubt that poor economic development contributes to the aforementioned health-related concerns.⁵

II. HOW POOR ECONOMIC DEVELOPMENT CONTRIBUTES TO HEALTH-RELATED CONCERNS

Poor economic development is characterized by high levels of poverty. The most common effect of poverty is malnutrition, which happens to be one of the health-related concerns.⁶ Malnutrition is mainly seen in children and elderly persons of poor families. This is because a family on a very small budget is more likely to purchase food that is less nutritious, simply because that is all it can afford. Furthermore, people living in poverty rarely have access to highly nutritious food. Even if they happen to have access to nutritious food, it is unlikely that they are able to purchase them as the healthiest foods are usually the most expensive. Therefore, when there is poor economic development, levels of malnutrition increase as a result of poverty.

Furthermore, when there is poor economic development, the life expectancy reduces and child mortality increases due to high levels of poverty. People living in poverty lack the necessary financial resources to maintain a healthy living environment and life. They are almost always lacking nutritious food, thus decreasing the ability of their bodies to fight off diseases and consequently prolong their lives. In addition, poverty results in poor sanitation conditions, therefore increasing the chance of poor people contracting life threatening diseases like cholera and dysentery, which they cannot treat due to their inability to afford the inappropriate medicines.⁷

While most illnesses, especially infectious diseases like tuberculosis and cholera, are preventable or treatable with existing medicines, poor road networks cause difficulties in accessing health facilities, medical personnel and essential medicines, especially for people living in rural areas who are required to move to a clinic or hospital which is located in town. Therefore, it is sensible to argue that when there is poor economic development, there are difficulties in accessing health facilities, medical personnel and essential medicines because of poor road networks.

When there is poor economic development in a country, the financial resources required to build, maintain and stabilize proper healthcare systems are insufficient because of low per capita income. Furthermore, low per capita income results in problems in purchasing, transportation and distribution of medicines and vaccinations which are not manufactured with the country. Therefore, poor economic development through low capita income contributes to unavailability of essential medicines and inadequate health facilities.

It is important to note that when there is poor economic development, the maternal mortality rate, morbidity rate and infant mortality rate increase because of poor healthcare services such as unskilled birth attendance and post-natal care services. Furthermore, poor economic development is characterized by a lack of necessary infrastructure and poor education standards.⁸

⁵ Frik de Beer & Hennie Swanepoel, INTRODUCTION TO DEVELOPMENT STUDIES 184 (Oxford Univ. Press 2d ed. 2000).

⁶ See, e.g., *5 Effects of Poverty*, THE BORGES PROJECT, <http://www.borgenproject.org>.

⁷ *Ibid.*

⁸ Smith, *supra* note 3, at 3-5.

This means that certain areas do not have health facilities and thus, expectant mothers and newly-born babies die before they can access a clinic or hospital. In addition, when there are poor education standards due to poor economic development, it means that the number of skilled health personnel with a mandate to provide healthcare services such as lawful abortion procedures and operations reduces, thus contributing to high death rates.

III. HOW LAW CAN CONTROL HEALTH-RELATED CONCERNS AND IMPROVE LIVES

Health-related concerns in the least developed countries are created by humans and thus, only solvable by humans. The actions to be taken need to solve the concerns and not exacerbate them or create another set of problems. To this end, the following is how the enactment of law can control health-related concerns and consequently improve the lives of people particularly in least developed countries.

The law can control health-related concerns and improve lives by clearly identifying the roles that all health actors like Non-Governmental Organizations (NGOs), Community-Based Organizations and the private for-profit sector have to play in improving the health of poor people.⁹ In other words, the law can set standards for health service providers such as, that all health providers must provide adequate and quality healthcare to all patients despite their status, age, sex, beliefs and place of origin thus, controlling the concern over lack of quality healthcare services.

The law can also control health-related concerns and improve lives by placing an obligation on the State to endeavor to provide clean and safe water, adequate medical and health facilities, and decent shelter for all persons, and to take measures to constantly improve such facilities and amenities. For example, in Zambia, the right to enjoy the highest attainable standard of health is not justiciable – that is, it cannot be legally enforceable in any court, tribunal or any administrative institution. However, Article 112 of the Constitution of Zambia recognizes this right as a direct principle of State policy, which may be observed only insofar as State resources are able to sustain its realization, or if the general welfare of the public so unavoidably demands, as may be determined by cabinet.¹⁰

Another way in which law can control health-related concerns is by regulating the overall governance and cost of delivery of quality health services in the public and private sectors. This is in order to protect the poor from excessive or unaffordable health care costs, thus controlling the concern of inaccessibility of quality health care services, medicines and vaccinations.

The law can also urge the government to prioritize public health, and improve medical infrastructure so as to enable the provision of adequate health facilities and create an environment conducive to researching certain diseases and the cures or treatment. Furthermore, the law can place an obligation on the State to devote more of its scarce resources to meeting the health needs of the

⁹ OECD, POVERTY AND HEALTH 31 (2003), *available at* http://www.who.int/tobacco/research/economics/publications/oecd_dac_pov_health.pdf.

¹⁰ Const. of Zambia of 1991 (as amended by Act No. 18 of 1996), Art. 112; *id.* at Art. 110(2).

citizens such as proper sanitation, clean and safe drinking water, medical equipment and properly trained health personnel.¹¹

The law can control high maternal mortality and morbidity rates, which are health-related concerns, by criminalizing harmful practices that can contribute to high morbidity and mortality during pregnancy such as drug abuse. The law can also make provisions for steps that can be taken to combat early and unwanted pregnancies, particularly among adolescent girls such as access to modern contraceptives and condoms. In addition, the law can also place an obligation on the State to put in place measures to ensure universal access to lawful abortion services, respectful maternal care and treatment, vaccinations for babies, and medicines and drugs such as ARVs.

The law can also control gender-based violence (GBV) which is a health-related concern by treating all forms of violence on the basis of sex as offences which are punishable. The law can also set out the practical steps that the government must put in place to protect survivors of GBV such as making shelters, and providing survivors with financial support and training to help them begin a new life. Zambia has the Anti-Gender Based Violence Act which prohibits all forms of violence.¹² This Act provides for the protection of victims of gender-based violence, it creates the Anti-Gender-Based Violence Committee and establishes the Anti-Gender-Based Violence Fund.¹³

The Anti-Gender-Based Violence Committee has the following responsibilities: to make recommendations for a national plan of action against GBV; to monitor and report on the progress of the national plan of action; to advise the Minister on policy matters connected with GBV; to propose and promote strategies to prevent and combat GBV; to recommend guidelines for disbursements from the Fund; and to deal with any matter relating to GBV.¹⁴ Furthermore, Section 32(3) of the Anti-gender Based Violence Act provides that the monies of the Anti-Gender Based Violence Fund should be applied to the basic material support of victims and any other matters connected with the counselling and rehabilitation of victims in their best interest.

In conclusion, this essay has discussed how poor economic development contributes to health-related concerns and how the law can control these concerns and improve lives. In doing so, this essay has shown that there is an interactive relationship between health-related concerns, economic development and the law.

¹¹ YASMINE VON SCHIRDLING & CATHERINE MULHOLLAND, WORLD HEALTH ORGANIZATION, HEALTH AND SUSTAINABLE DEVELOPMENT: KEY HEALTH TRENDS, *available at* http://www.who.int/mediacentre/events/HSD_Plaq_02.2_Gb_def1.pdf.

¹² Anti-Gender Based Violence Act of 2011, Cap. 1, *available at* http://www.zambialii.org/zm/legislation/act/2011/1/Anti-Gender-Based_Violence_Act%5B1%5D.pdf.

¹³ *Ibid.*

¹⁴ *Id.* § 31.

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2015 ESSAY QUESTION: HOW DOES POOR ECONOMIC DEVELOPMENT CONTRIBUTE TO HEALTH-RELATED CONCERNS; AND HOW CAN THE LAW CONTROL THESE CONCERNS AND IMPROVE LIVES?

by Ftsum Sbhatu Tewelde

I. INTRODUCTION

This essay tries to address first the situations of health related matters when there is poor economic development and then proceeds to discuss how the law deals with such situations to improve lives. Basically, the general contributions of poor economic development to health-related concerns can be categorized as negative and positive contributions. The negatives are those caused by poor economic development. And the positives are those elements which are beneficial to the poor, simply because of its less complex subjects. Nevertheless, for the purpose of clear and detailed discussion, I prefer to put emphasis on the negative contributions of poor economic development and how these negatives can be controlled or at least minimized by the law to improve lives. In the end, conclusion is delivered.

II. POOR ECONOMIC DEVELOPMENT AND THE HEALTH RELATED CONCERNS

In determining whether a given country has poor economic development or not, the scale of economic development can be perceived relatively. For example, comparing the Indian economy to the United States, the former can be described as having poor economic development. On the other hand, if we see the Eritrean economy in relation to the Indian economy, the latter can be described as having greater economic development. Moreover, if we take it as if we have to consider the average cost of life for citizens, economic development may also be understood in a very different way to measure the actual development and to bring a clear definition to that term. Thus, for the sake of having an identified answer to the question in this essay, I define economic development in terms of real per capita income. Therefore, countries with per capita income less than \$1000 USD per year are countries with poor economic development.¹

As long as health-related concerns demand a vast investment materially and financially, improving the health affairs of a given country requires great capital in order to provide basic services to all the citizens. This is because securing health concerns is one of the primary goals of every nation to evolve socially, economically and culturally, and more importantly, to take care of the well-being of the society. Poor economic development has a tremendous effect on the process of accomplishing the mission and on safeguarding the health related concerns. If a country is not capable of providing needed health services to the public due to economic challenges, then it may be considered a country of poor economic development. Besides, other restraints like mismanagement and the like, internal defects can also play a detrimental role to ensure equal distribution of resources, and at this juncture, a particular nation can face more impediments to fight with its poor economic situation if its internal laws do nothing to detect such negatives. Therefore, what I am

¹ DEVELOPMENT AND POVERTY 1 (last accessed Nov. 11 2015), http://www.globalchange.umich.edu/globalchange2/current/lectures/dev_pov/dev_pov.html.

trying to say is that the law should be very effective and systematic to handle the extra-economic challenges.

Poor economic development may cause various problems with regard to lack of physical capital (roads, structures, bridges, equipment, vehicles, et cetera) and lack of human capital (which is as important as the physical capital). Often the labor force in developing countries is illiterate or lacks the necessary training. At this point, one can come up with an idea that health related concerns are heavily affected by these shortcomings. For a hospital to be built, for instance, efficient and modern physical capital, like infrastructural equipment, is highly needed to establish the health station. This is necessary for the actualization of health services because human capital (the health experts in this case) is the necessary device that realizes and implements the very purposes of such a station. If there are not enough and qualified doctors and other related personalities, providing only the physical capital leaves the health centers with a lot of emptiness. Individuals of poor economic background are the first victims of this emptiness and if the government is not providing some essential resources, the poor citizens are forced to search the scarce and scattered private doctors who charge double what is charged by the government. To minimize the risk of such a situation, the law of a particular developing country should encourage:

- Trade with foreign nations to obtain capital to ultimately use it for the benefit of its citizens in providing health resources.
- Direct investment of private corporations to attract private foreign investment which usually requires social and political stability, good transportation and communications infrastructure, and human capital, all or some of which may be lacking in the developing countries.
- Public international financial institutions, such as, the World Bank and the International Monetary Fund to lend their hands.²

For example, the World Bank provides loans at reduced interest rates to help developing nations acquire capital. And the International Monetary Fund (IMF) lends to countries over the short term to remedy the balance of payments deficits, and requires in exchange rigorous economic policy measures from the borrowing nation to cut internal expenditures and increase exports.

Moreover, countries with poor economic development should strength their international social networks with the developed countries pertaining to different health services. This can help them cope with their shortcomings to fund and provide enough and adequate materials to be used in the process of maintaining and improving the health conditions of the poor society. Such a situation may require assistance from international organizations or other nations to be resolved. For example, there are a group of German health professionals who annually visit Eritrea and play a crucial role in fulfilling the gaps in relation to diseases which cannot be cured by Eritrean capability. Likewise, the Department for International Development (DFID) works

² *Id.* at 6 (How can less developed countries acquire capital?).

for inclusive growth through a number of programs and continues to spend heavily on health related concerns, which have a major impact on poor people's ability to take part in growth opportunities to improve their lives.³ With regard to the question of how can law govern the health related concerns, I would like to say that the host country (for example, Eritrea in this case) should have laws which draw the diplomatic relations safely to create a close socio-economic tie with developed nations like Germany. If your diplomatic relation with others is friendly, you are always secured to fight your drawbacks, and since it is a generally accepted truth that the developed nations' experience is deeper and longer, developing countries should not be reluctant to welcome the same and strive for the interest of their people in order to end with an improvement in the lives of their citizens.

III. HOW CAN LAW REGULATE HEALTH RELATED CONCERNS AND IMPROVE LIVES?

Here it is important to identify what the health related concerns are. As per my understanding, such concerns are those which are related to health rights. In order to discuss this question, therefore, it is necessary to define the health rights protected under the law, and discuss how the law should govern them to improve lives of the people under poor economic development. The health related concerns are one of the main socio-economic rights of human beings with the widest and most extensive human rights that may be had in relation to their socioeconomic lives. Therefore, the rights on such aspects are those rights which give power to society to freely enjoy their socio-economic lives. Nonetheless, there are difficulties as to their enforcement and implementation as long as they are to be implemented progressively based on the economic level of development of a particular nation. Thus, there is no uniformity with regard to their enforcement worldwide. This is true where there are discrepancies with reference to the developed and underdeveloped countries as to the means of enforcement.

The right to health is recognized and protected in various international human rights instruments. Moreover, a state also has a legal obligation to respect, protect and fulfill these rights and is expected to take progressive action towards their fulfillment. The Universal Declaration on Human Rights recognizes a number of health related rights under article 25. And the International Covenant on Economic, Social and Cultural Rights, pursuant to its article 12, guarantees the "right of everyone to the enjoyment of the highest attainable standard of Health," and calls for the "provision for the reductions of...infant mortality and for the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational, and other diseases; and the creation of conditions which could assure to all medical service and medical attention in the event of sickness."⁴ Having poor economic development is the main obstacle to fulfilling such provisional calls of municipal and international legal instruments. In fact, some of them (like that of reducing infant mortality) may not demand prosperous economic development because they can simply be managed with less capital and by arranging regular health campaigns and promotional announcements through the mass media. For instance, though Eritrea has poor

³ GROWTH: BUILDING JOBS AND PROSPERITY IN DEVELOPING COUNTRIES 2 (2008), <http://www.oecd.org/derec/unitedkingdom/40700982.pdf>.

⁴ UNIVERSAL DECLARATION ON HUMAN RIGHTS, art. 25; INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS, art. 12.

economic development, it has come to effectively control the infant mortality rate during the last twenty years.

Lawyers and academics continue to debate whether and how these rights should be enumerated in constitutions. The socio-economic rights like health are considered second generation, less important rights. These scholars say that second generation rights do not belong in a constitution and that they should either be left to the legislature or should be included in constitution as non-justiciable directives or fundamental principles.⁵ If constitutions don't expressly state them, then health related concerns are always in jeopardy to enjoy their implementation. Indeed, a given state may not be undermined for its failure to enforce the health rights of individuals because of poor economic development. However, the inclusion of such rights as non-fundamental elements of human rights may cause some psychological and confidential deterioration among those who consider health indisputable, in the sense that it is the basis for the ultimate goals of progression that the society wants to achieve. In point of fact, as far as the permanent sovereignty of a state is concerned, it is the state that enjoys actual control over the available resources within the country; and it is the mouth of that state (the government) that tells the citizens (who want to enforce their rights) what the law says "within the limit of its resources."

Now, if the law is consistently worded like that, it gives absolute discretion to the government which may misuse its power. Therefore, I would aver that any law should consider health related concerns fundamental and enforceable; and that the language of the law dealing with such rights would need to be crafted with the goal of inspiring citizens that they have the right to enforce their health related concerns. Additionally, the law should also effectively regulate the behavior of society to harmonize them so that they can flourish when given the opportunity to enhance these rights under certain circumstances. That is to say that the law should create an encouraging situation of unity and similarity in the way the society thinks to overcome the poor economic condition. For example, if there is no problem as to religion and ethnicity that had to be addressed, all ethnic groups of a given country would feel included in the process and would develop a stake in the bringing up of their country in every manner (save that improving lives through the best health missions is one among the many).

IV. THE DIFFICULTY TO ENFORCE THE HEALTH RELATED CONCERNS

Even if the law can include the list of substantive aspects of such concerns, it is always difficult to have a detailed procedure as to how these rights are to be exercised and enforced. This is simply because the health related concerns are resource incentive concerns. Therefore, individuals can exercise these rights not only because such rights are incorporated within the law, but there also must be resources as well as endeavor from the government. Of course, for the government to show the maximum effort to implement these rights, the law should be able to effectively regulate government accountability and transparency; to ultimately wipe out any kind of corruption that can cause deterioration of such rights beyond the **poor economic development** (which adversely results from limited resources).

We cannot conclude that it is impractical to enforce such rights. For example, let say that some people have petitioned that the government failed to establish a hospital in their surrounding

⁵ LEA BRIL MAYER & CATHERIN ADCKOCK, 2 SELECTED TOPICS IN COMPARATIVE CONSTITUTIONAL LAW 89 (N.Y. Sch. of Law, 1994).

area. The government cannot have a law which says “Let the hospital be in place X or in place Y, et cetera.” But, the government, the Ministry of Health in this case, might have a vision or a plan about what requirements and criteria are needed to decide where and how a hospital should be provided for in a given community. For instance, the ministry may say, “If we are to establish a hospital, the area must be with a population of not less than 10, 000 and it should be able to provide service to three zone areas, et cetera.” Here, if one area has fulfilled the prima facie requirements listed by the ministry (government), it can challenge the government, when the government provided a hospital to another place by disregarding its demands, based on the law. Therefore, when it is said that it is difficult to implement such rights, it means that the government has to take into account the resources if they can afford such capability of enforcing the said rights

One illustration I would like to discuss here is the right to be treated. A person may have the right to be treated, and this is his socioeconomic right which is protected by the different laws (constitution and statutes). However, in this case, one may contend that “having right is one thing and its practicability is another thing.” That is to say that it is the economic status of the needy person which determines whether he will be treated or not. For example, let us say that there is one Eritrean child named Jonathan with a grave health problem (blood cancer), and he is ten years of age. This child is from a poor family and his parents could not afford the medical expenses incurred by the professionals. This is because the doctors from the Hospital told them that they have to make every effort for the child in taking him to a foreign country for higher medical care, otherwise there is no way that he can be treated in Eritrea because the health centers in Eritrea do not have any capability and experience of handling such sicknesses. At this point, it is clear that the parents have no legal basis to go to the judiciary and pray before the court to order for the child to be treated inside Eritrea.

Eritrea has no way of treating blood cancer. At the same time, the parents have no right to compel the doctors to cure their child. Therefore, what we understand here is that, Jonathan is being left with an unfulfilled right of treatment not because of his exclusion to enjoy the same, but because of limited resources and simultaneously, because of his poor economic background for he has no economic capacity to afford his treatment fees. To connect this illustration with the basic question of this essay, the poor economic development of Eritrea is directly or indirectly contributing the same with Jonathan’s story. And the possible solution of the law in relation to Jonathan’s case is to reserve a branch of law which concerns such issues. The only option for Jonathan to maintain his health is to move outside of Eritrea. Still, he cannot afford the transportation fees and that of foreign hospital fees. Under such circumstances, the aviation law of poor countries should specially favor persons like Jonathan to fix their disability to pay transportation fees, and international law should effectively regulate international health programs to aid such individuals in their treatment charges.

V. CONCLUSION

If we are saying that the realization of health related concerns is directly linked to the level of economic development of a given nation, it can be argued that one should not expect the full enforcement of his health rights in a country of poor economic development where its national economy is at the infancy stage. Thus, if we are to speak strictly about such a case, the observance of such rights requires a large amount of resources as they are resource incentive rights, and not cost-free rights. Therefore, the law improves does not improve lives by bypassing this phenomenon; meaning, the law can only regulate the devices on how

the government should distribute the available resources equally to safeguard the health related concerns of the citizens. Other than this, the law should place various powers upon the people to enforce their health and health related rights not only within the limits of their national resources but also with the aid of the different international programs. Thus, in order to realize such public power, the internal laws of the poor countries should be designed so that the citizens are free to enjoy the fruits of international cooperation so that they can improve their lives.

2015 ESSAY QUESTION: HOW DOES POOR ECONOMIC DEVELOPMENT CONTRIBUTE TO HEALTH-RELATED CONCERNS; AND HOW CAN THE LAW CONTROL THESE CONCERNS AND IMPROVE LIVES?

by Negese Tujuba Erba

I. INTRODUCTION

In this short essay, the effect of poor economic development on health and the role of the law to control these effects and improve lives will be discussed briefly. I start by the definition of key terms of the essay, i.e. poor economic development, health and law. Then, I will identify issues to be discussed under the essay. After the identification of the issues, there will be a brief discussion on the effects of poor economic development on health and the role of the law in controlling these effects and how the law can improve lives in poor economic development. Finally, the conclusion on the finding of the essay will be addressed.

II. DEFINITIONS

Poor economic development means the economy of the country in which the people live under poverty and where the economy is not yet developed to afford people sufficient means for living. It might not mean poor economic growth. The poor economic development may depend on the high progress of economic growth.

Health as defined in the preamble to the Constitution of WHO is a state of complete physical, mental and social well-being. The international covenant on economic, social and cultural rights defines it as the highest attainable standard of physical and mental health¹ Black's Law Dictionary also defines health as "the state of being sound or whole in body, mind, or soul, or freedom from pain or sickness."² We understand from these definitions that health is about being in a convenient condition to the nature of human being.

It is difficult to find a single universal definition for law. However, when we look at different dictionaries and the writings of scholars, it can be defined as a body of rules which are mostly made by the government for the purpose of guiding the activities of the government and society towards creating certain norms according to which the government and the society will behave.³ It is an instrument by which the government enforces its policies and strategies in different sectors, including the health sector.

III. ISSUES

- How does poor economic development contribute to health related concerns?
- How can the law control the adverse effects of poor economic development on health?

¹ International Covenant on Economic, Social and Cultural Rights, art. 12(1) (1976).

² *Black's Law Dictionary* (9th ed. 2009).

³ ANN SEIDMAN, ET AL. LEGISLATIVE DRAFTING FOR DEMOCRATIC SOCIAL CHANGE: A MANUAL FOR DRAFTERS 10 (2001) [hereinafter SEIDMAN, ET AL.]; see also *Black's Law Dictionary* (9th ed. 2009).

- How can the law improve the health condition or lives of the people in poor economic development?

IV. THE EFFECTS OF POOR ECONOMIC DEVELOPMENT ON HEALTH AND HEALTH AS A HUMAN RIGHT

The economy and health are two variables that feed each other. Where there is a developed economy, there will be sound health condition, and where there is good health condition there will be high economic growth, as a result of which the economic development will come.⁴ The “wealthier is healthier”⁵ and the healthier will be wealthier. In general, poor economic development has a negative effect on the health of the people in a given country. This being the reality, it is the role of the government to look for possibilities of affording the best attainable health conditions to the people. One of these possibilities may be the control of adverse effects of poverty on health. The control is conducted through the law.⁶

The need for protection of the right to health is necessitated by the nature of the right. The right to health is the core of all human rights, such as the right to life, liberty, the right to education, the right to movement, et cetera, to mention a few. If the right to health is not protected an individual with ill-health cannot properly exercise other human rights.

The right to health is a human right that is recognized under international conventions such as UDHR, ICESCR, CCR, et cetera, and under the domestic legislation of different countries like constitutions and other subordinate health laws.⁷ The government of a given country is duty bound to afford the best attainable state of health to its citizens because it is a human right and this requires state enforcement. Poverty cannot be a justification for denial of the right to health. However, this does not mean that the government is duty bound to answer all health-related questions of the people. The resources the country has may determine the extent of its health protection.

V. HOW THE LAW CAN CONTROL THE EFFECTS OF POOR ECONOMIC DEVELOPMENT ON HEALTH?

As it is defined above, law is an instrument by which the government controls and administers the affairs of the peoples in the country. The law is enacted in order to implement the policies and strategies of the government in specific areas. As a result, the government uses the law to implement its health policies and strategies.

The effectiveness of the control of the law on the effects of poor economic development on health may be determined by the health policies and strategies of the government. Nevertheless, the government can control the adverse effects of poor economic development on health by enacting laws that will prevent the causes of disease and promote the health condition of the people. In this case, the government is required to be wise, to give firsthand to the interest of the vulnerable

⁴ CHRONIC POVERTY RESEARCH CENTER, HEALTH AND POVERTY LINKAGES: PERSPECTIVES OF THE CHRONICALLY POOR, BACKGROUND PAPER FOR THE CHRONIC POVERTY REPORT 4 (2008-09).

⁵ See generally Lucy Barnes, et al., *Why is Wealthier Healthier?*, 39 PERSPECTIVES ON EUR. 4 (2009).

⁶ Lawrence O. Gostin, *Mapping the Issues: Public Health, Law and Ethics*, PUBLIC HEALTH LAW AND ETHICS: A READER 5 (2010).

⁷ CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA (1995), art. 41(4), 42(2), & 44(1) (1995); CONSTITUTION OF KENYA, art. 42.

majority part of society, such as children, women, marginalized groups, and indigenous people. It is also advisable to focus on preventive measures since the cost of prevention is less than the cost of cure.

For instance, when we see the practice of Ethiopia, many laws were enacted to promote health conditions of the people. Few among these are consumer protection laws, social health insurance laws, food and medicine control laws and environmental protection laws. These laws are focused on prevention of diseases and mitigating risks of diseases by providing mechanisms of control of diseases, and legal remedies for acts of individuals which negatively affects the public health. The preventive measures can be taken by environmental protection, providing vaccinations, controlling food adulteration and use and transaction of drugs, fair food supply, providing health-related education or awareness creation, et cetera. These preventive measures can be effective by enacting a law that will help their implementation.⁸

VI. MAKING EFFECTIVE LAW TO CONTROL THE ADVERSE EFFECTS OF POOR ECONOMIC DEVELOPMENT ON HEALTH AND IMPROVE LIVES

The purpose of health legislation is to promote the health and wellbeing of the society and to prevent disease in the country. The legislation helps to implement the health strategies of the government to ensure sound health conditions for all the peoples of the country. In order to attain this purpose, the legislation is required to be effective, comprehensive and enforceable. The effectiveness of legislations is determined by its contents. The contents of laws are required to be full and comprehensive to address all matters or questions that will potentially arise in relation to them. Therefore, health laws are required to be clear as to “who does what” under that specific legislation.⁹ They should clearly set out the rights and duties of peoples addressed by the legislation, i.e. ordinary peoples and health professionals. They should clearly determine the powers and duties of the implementing organ; procedural issues, such as how to implement the legislation; the manner of resolving disputes that will arise in relation to the legislation or the effect of non-compliance with the provisions of the legislation; the manner of interpretation of the legislation in a friendly way to society; and the sources of funds for the implementation of the legislation.¹⁰ In the absence or insufficiency of the above six qualities of effective legislation, the legislation that is made for the purpose of controlling and improving health conditions will not be properly applied and the goals of such legislation will not be attained.

The other requirement is that health legislation be clear and understandable to everyone, irrespective of profession and level of education. Since the issue of health concerns every individual in the country, it is required to be accessible to them free of ambiguity, equivocality and with the least degree of vagueness.¹¹ Health legislations are also required to be made in a way that promotes the freedom of individuals to determine their health-related affairs and to protect them from external intervention in their health affairs. It is also required to provide equal opportunity of

⁸ FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, NATIONAL HYGIENE AND SANITATION STRATEGY (2005); FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, MINISTRY OF HEALTH, HEALTH SECTOR DEVELOPMENT PROGRAM IV, 2010/11–2014/15, at 8 (2010).

⁹ SEIDMAN, ET AL., *supra* note 3, at 234.

¹⁰ *Id.* at 210.

¹¹ REED DICKERSON, FUNDAMENTALS OF LEGAL DRAFTING 101 (2nd ed. 1986).

healthcare to everybody.¹² Health-related legislation should ensure equality between the poor and the rich by providing health care facilities in a cost-effective manner and avoid any discrimination on the basis of economic, political, social or any other status among individuals.

They should guarantee:

1. The availability of health care facilities;
2. The accessibility of health care facilities, which means non-discrimination, physical presence of health care facilities, accessibility to information and economic affordability of health care facilities;
3. The acceptability (compliance with human nature); and
4. The quality of health care.¹³

It is better to make health-related laws accessible to the people through printed copies and mass media like radio and television. This helps the implementation of the law because when people properly know their rights and duties, they will behave accordingly and the purpose of the law will be achieved easily.

VII. CONCLUSION

Poor economic development has adverse effects on health conditions of the people unless controlled by effective, comprehensive and easily enforceable law. The effective law improves the lives of people in addition to controlling the negative effects of poor economic development on health. Therefore, at the beginning, the law that will regulate the health-related affairs of the country must exist. Then, the laws must be enforced, and in a complete and comprehensive manner, in which they will be able to answer all legal questions that will arise in relation them. They must be easily accessible, understandable and enforceable law.

¹² UN Committee On Economic, Social and Cultural Rights, 22nd Session Geneva, April 25 – May 12, 2000, Agenda item 3, General Comment no. 14 (2000).

¹³ *Ibid.*

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2015 ESSAY QUESTION: HOW DOES POOR ECONOMIC DEVELOPMENT CONTRIBUTE TO HEALTH-RELATED CONCERNS; AND HOW CAN THE LAW CONTROL THESE CONCERNS AND IMPROVE LIVES?

by Tsebaot Getahun Kiflu

At least once in our lives, we all may have experienced a sudden urge for food or thirst for a drink that could be luckily quenched after a few walks toward a refrigerator. Or perhaps one may have once been a college kid with a maxed out credit card, stuck in debilitating anguish, waiting for the transfer of money from the parents' bank account. In both cases, there seems to be an almost automatic solution at hand. But suppose the hunger and thirst subsists and it requires more than a daring effort to be fulfilled, or suppose the awaited money never materializes. That state of misery and torment for a very long period of time is what it feels like to be in poverty and ultimately what it feels like to have a poor economic status. In the simplest of terms, poverty amounts to the experience of getting broke, except with more intensity and for a much longer time.

According to the World Health Organization (WHO), poverty can be defined in absolute terms, such as earning low income – less than \$2 USD a day.¹ A country is thus presumed to be categorized as having a poor economic status if it fulfills the elements described in the Human Poverty Index (HPI). According to the illustration of the HPI, there are three elements for considering a given country as a developing one.

1. Longevity, which is defined as the probability of not surviving to the age of 40.
2. Knowledge, which is assessed by looking at the adult literacy rate.
3. A decent standard of living – failure to achieve this is identified by the percentage of the population not using an improved water resource, and the percentage of children under weight for their age.²

As such, Ethiopia falls into this frame of assumption. Although it appears necessary to go by the book so as to determine the current status of the country, it seems easy to label it as such by simply taking a glimpse at the living standard of the people. What it means to be poor is such a well understood phenomenon in this section of the world, that perhaps many could build a solid career out of it by simply giving lectures on this specific subject matter.

Being poor has its spiteful consequences, some more severe than others. Among the impacts it drags upon an individual, the first and foremost is that it prevents that person from fulfilling the basic human needs for the sustainment of life. As the list goes on, it hampers, or makes impossible, the full enjoyment of health, education and prosperity in life. Furthermore, as Aristotle has said, "Poverty is the parent of revolution and crime." Poverty causes a deeper level of frustration than any

¹ *Poverty*, WORLD HEALTH ORGANIZATION, <http://www.who.int/topics/poverty/en> (last visited Dec. 28, 2015).

² *Poverty*, ECONOMICS ONLINE, http://www.economicsonline.co.uk/Global_economics/Poverty.html (last visited Dec. 28, 2015).

other circumstance, for it fuels an individual to rebel against an existing system so as to find a rescue from such misery. So, to end the bondage of poverty, it is quite common to witness individuals entering a lifestyle born out of desperation. This newly born lifestyle constitutes a mentality that approves crime as the ultimate resort. With this mentality at his disposal, the individual enters a cycle that continues on and develops into a set of guidelines for life. As the followers of this guideline increase, it develops into a culture that strengthens its root as it passes to the new generation. As such, the effect of poverty has these chains of consequences that perpetuate it for a long time. This is because the so developed culture takes a form of rigid corruption characteristic at a national level, which then becomes an agenda to tackle. Of course, by then, it would be merely superfluous to expect economic development within such a corruptive nation. The consequences do not end here; rather, they further lead to the migration of people to other parts of the world. The migrating people are usually the young and working people of the population in search of a better alternative. With this workforce of the country being exiled away, a country would escalate into economical jeopardy in need of immediate attention.

Of all the consequences, the impact poverty has on health is highly detrimental, for it contributes much to low life expectancy, high infant mortality rate, malnutrition, et cetera, facilitating the rate of infection by various diseases. So, poverty stretches its dimension by more than just making life a living hell, but also by taking away lives altogether. In addition, living in poverty results in a low literacy rate. This means that where ignorance is the prevailing way of approaching things, it doubles the impact by stagnating the level of awareness only to the few privileged. To this end, poverty becomes an equation with too many variables.

In Ethiopia, which has yet the long road of development to march ahead, the circumstances that shackle the overall welfare of society is real in every sense of the word. Generally speaking, in a country with poor economic development, the very basic essentials that are the foundations for the formulation of a welfare society are either being misused or being inadequately used. As such, every potential sector that is a component of the entirety of the welfare system needs to be worked on in order to see some tangible changes that enhance the capacity and quality of each concerned area. Among these potential sectors that may have a big return if invested on are areas like the health and education sector.

To minimize the adverse effects of a poor economic status, Ethiopia was one of the 189 member states that adopted the Millennium Development Goals (MDGs) in 2010 to reach the eight goals by 2015. The MDGs contained within them a vision of inclusive development that expands the choices of people in all segments of society, and prioritizes the elimination of structural, institutional and cultural obstacles to participation in development. They provide a roadmap and vision of a world free from poverty and hunger, with universal education, better health, environmental sustainability, freedom, justice and equality for all.³

Singling out the health sector in relation to the prevailing poor economic status, the contribution of the status quo is crystal clear. The poorer the economic development of a country, the worse off any component sector of a welfare system is, be it health or any other. As Kofi Annan rightly expressed, “The biggest enemy of health in the developing world is poverty.” This is mainly true because poverty creates a profound resentment in the lives of people that forces them to

³ See generally *Millenium Development Goals*, United Nations Development Program, http://www.undp.org/content/undp/en/home/sdgoverview/mdg_goals.html (last visited Dec. 26, 2015).

succumb to things that they normally would not have even considered. So it is not in vain that some say desperate times call for desperate measures; rather, it is because in that state of vulnerability, it would be much easier to resort to tempting shortcuts. Among the shortcuts people take, some people may end up eating out of a rotten trash-can and risk infection by deadly bacteria. Others may end up working as prostitutes with a higher probability of carrying the HIV virus. Hence, the claws of poverty are so malicious that they suck out the dignity of humankind to nonexistence!

However, this overwhelming enemy of humankind can be overcome by enhancing the economic status of a country. By so enhancing the country, it would be apt to expect a better and well-established welfare system as well. The link between healthcare performance and the economy should therefore not be underestimated. With better economic strength, a nation can be able to attain the following objectives in relation to a healthcare system:

- Better provision of quality healthcare with sufficient geographical coverage;
- Better access to clean water and environment, education and decent living standard;
- Better financial empowerment of citizens, giving them the ability to choose what is best for their health.

Thus, with better economic development, it would be possible to progress until eradication of poverty is complete. However, in the journey of progress to the attainment of these objectives, it does not necessarily mean that there would be no gaps that may falter the strategy for betterment. The gaps may materialize in different forms; some may appear during the implementation phase, while others may substantiate in other forms. At this juncture, the role of law comes into frame by filling these gaps and shielding areas of concern that facilitate such progress.

HOW DOES THE LAW PLAY ITS ROLE IN THE IMPROVEMENT OF THE ECONOMY AND HEALTH CARE SYSTEM?

The law is the basis for establishing, organizing, and managing all functions of society. No organ, institution, or other entity can be created, financed, or maintained by the State unless the constitution or law authorizes that body's creation. Therefore, the State asserts its own significant effect which necessitates an immediate compliance to its stipulations. This however could only hold true if there is the principle of the rule of law in that particular state. In the absence of this principle, it would be futile to expect that the law has any role to play in the overall advancement of the economy. This is because the existence of the rule of law ensures that any stipulation is legislated to have an immediate compliance within society.

This being said, the first and prominent role that the law could play in advancing the economy is making sure that the enactment of laws is economically sound, and that laws are implemented. This means that there should be strict application of the provisions of the law, and particularly those that facilitate economic progress. Private laws like contract law and tort law for instance play a huge part in being an adequate lubricant to business. In fact, without the existence of these laws, any business person with the potential to invest in any sector of the economy (potentially the health sector) would be too skeptical and hesitant to risk his assets for fear that there is no

guarantee of a safe, fair and smooth business transaction. Hence the law, by becoming a trustworthy bridge between individuals, makes sure the entrepreneurial venture is conducted virtuously.

Second, the law yet again plays its decisive role for the whole creation, development and sustenance of the economic sector by ensuring peace and order. This objective can be attained by the public laws such as constitutional law and criminal law. Of all the attributes of the law, perhaps this could be recognized as the most fundamental one, because throughout history a lot has been sacrificed for attaining one of the most precious elements of a civilized world – peace and order. Constitutional law adheres to maintain order through the mechanism of the principle of the rule of law, and by giving a structural as well as functional separation of powers to the respective organs which ultimately give birth to the notion of a government. Criminal law strives to regulate the behavior of the public by taking deterring measures which by their nature are destructive to the wellbeing of the people. Therefore, the law by creating the needed stability within a country becomes a means of attraction for potential investors apart from making sure that there exists a smooth transaction.

Third, as one's development objective could take the nature of national policies that are to be enacted by states and therewith implemented, the state would have to use one of its means to communicate and impose its plan on the people through enacted rules and regulations. Therefore, the State, by using its legislative mechanisms that have the capability of implementing policies and programs without much delay, may create legitimate institutions that have as their sole mission an economic facilitating aspect. For instance, according to sources, health in Ethiopia has improved markedly in the last decade, with government leadership playing a key role in mobilizing resources and ensuring that they are used effectively. Ethiopia has demonstrated that low income countries can achieve improvements in health and access to services if policies, programs and strategies are underpinned by ingenuity, innovativeness, political will and sustained commitment at all levels. An example is the development and rapid implementation of the Ethiopian Health Extension Program.⁴ The law therefore could be used as a means to an end. As such, it could help in making strategies and policies that have been formulated by the respective experts to have an uncompromising effect. While the law would otherwise make a pretty good constituent to the general pile of unbinding drafts, it now has the automatic effect of having a critical influence on the working of the system. To this end, the policies, strategies and other programs which have as their primary objective the overall development of the country would be redeemed from unnecessary delay that may encumber them from attaining an effective result.

Fourth, the law can make a particular impact on the health sector. Through its legislative organ, the state may create a favorable instance whereby this area of concern could get extra support through subsidies, exempted or lower tax rates et cetera, for the creation of a well-developed and established healthcare system. Moreover, the law could help make a difference by encouraging and giving recognition to proficient medical practitioners, by maintaining strict assessment of entry exams for medical students, and by creating a regulation that's pro-medical care system resulting in better investment towards it.

⁴ GOOD HEALTH AT LOW COST, 25 YEARS ON, WHAT MAKES A SUCCESSFUL HEALTH SYSTEM? 38-39 (London Sch. of Hygiene & Tropical Med. 2011).

At the very heart of the law is the priority given to the people who are to be protected and secured by the stipulated provisions which enshrine their collective will. As such, placing a high emphasis on the health sector seems to complement the crucial aspect of the law, which is the very lives of the people. Consequently, supporting this concerned area in a way gives a practical stimulation to the spirit of the law, which adheres on the intensive wellbeing of society. Therefore, the action taken by the state for health-related issues will do much to exemplify and give life to the words of the law.

Fifth, in contrast to the previously mentioned role of the law, instead of encouragement, the law could further regulate the code of conduct of the practitioners by adhering to a strictly punitive measure that highly discourages any activity of the practitioner which inclines to abuse or inspires negligence. This is supposed to make the service more attentive to the demands of the patients and not take anything lightly.

The sixth way that the law can make a contribution is by enforcing the empowerment of women through policies such as affirmative action and by creating awareness around issues such as female genital mutilation (FGM) so as to criminalize related harmful traditional practices that have scientifically been proven to be detrimental to health in general. And so, by empowering women, it would ultimately be possible to create a huge impact. This is because in most cases, women are the caregivers who look after the wellbeing of the entire family. To this effect, one could imagine how humongous the change would be if such empowerment took place on a large scale.

The law could further play its seventh role by actively creating legitimate institutions that protect water and pasture lands from contamination. This proactive role of the law accomplishes two missions at once. The first one relates to the fact that by solely protecting water and pasture lands from contamination, the law on the one hand ensures the existence of a healthy environment that in turn avoids all causes of catching a disease that is caused by an unhealthy atmosphere. Second, by ensuring such protection, it could be said that it avoids additional costs that would have been incurred. And as such, it may contribute to the economy by conserving these precious resources diligently.

To summarize, the law can enhance the economy of the society, and that in effect would imply a better health care system. Nevertheless, it must be kept in mind that there are other attributing factors that cannot directly be addressed by the law to have an immediate effect. With this consideration in mind, it can be said that, the law can ensure, with all the areas it touches, the eradication of social mishaps to a great extent. As a result, it would be possible to empty the contents of poverty and poor economic progress so as to benchmark the fate of Ethiopia with one of the most prosperous. After all, the future is ours to change, so long as we make sure today that we work on our blueprint, which is found in the form of laws and legislations, to create a better tomorrow.

