FEATURE

The Effectiveness of Government Institutions in Responding to the Epidemic of NCDs

Moses Mncwabe

Introduction

South Africa has not been spared from the global rise of non-communicable diseases (NCDs). A lack of funding and insufficient human resources to deal with NCDs have caught the international community by surprise. These diseases have increased greatly in various countries, prompting urgent comprehensive government responses. In South Africa, tobacco use, the harmful use of alcohol, unhealthy diets, and physical inactivity have all been identified as key drivers of NCDs. Another factor contributing to the increase of NCDs in South Africa is the pattern of migration from rural to urban areas. This has led to the rapid growth of informal settlements, which have neither recreational facilities nor safe walking paths to encourage physical activity (Juma et al. 2019; Bloom, Chisholm, Llopis et al. 2011).

This article discusses the mandate and functions of the public health sector, and juxtaposes this with the national legislature's mechanism for oversight on the public health sector's remit on NCDs. It also discusses instances where the South African Human Rights Commission (SAHRC) has played its constitutional role in dealing with the health department's shortcoming in dealing with NCDs. The article concludes by highlighting various court judgments in this regard.

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Overview of the world's top NCDs

NCDs are defined as medical conditions or diseases that are non-communicable. NCDs are often chronic diseases of long duration and slow progression, and may result in more rapid death, such as in the case of a sudden stroke (Stuckler 2008).

The World Health Organization (2020) has stated that the world's main killer is ischaemic heart disease, which is responsible for 16 per cent of the world's total mortality. Ischaemic heart disease has increased exponentially over the years. This condition is followed by stroke and chronic obstructive pulmonary (COP) diseases as the second and third leading causes of mortality, being responsible for approximately 11 and 6 per cent of total deaths, respectively. Trachea, bronchus and lung cancers are reported to have risen from 1.2 million to 1.8 million, making them some of the leading causes of mortality globally.

The burden and prevalence of NCDs in South Africa

The burden of disease in South Africa, specifically of NCDs, is concerning, as it contributes to 57 per cent of all mortality in the country. In addition, NCDs lead to various impairments such as amputations, blindness, hemiparesis and speech problems (Abegunde et al. 2007; Richards et al. 2016). Between 2006 and 2015, diabetes, stroke and coronary heart disease caused an estimated loss of $1.88 billion to South Africa's gross domestic product (Richards et al. 2016; Statistics South Africa 2017). This financial burden stems from the direct and indirect costs of high absenteeism and staff turnover as a result of NCDs.

The prevalence of NCD morbidities is higher among the working-age population in South Africa than in some of the developed countries in the West. Low- and middle-income countries, including South Africa, incur considerable expenditure due to lifestyle diseases that place a burden on their revenue-generating ability. This is caused by a combination of health costs and worker benefits, such as sick leave (Patterson, Smith & Hostler 2016). The direct costs incurred by employers include medical referrals, increased absenteeism, presenteeism, medical boarding, as well as hiring workers to replace the deceased and temporary workers to stand in for long-term sick or medically boarded employees (Patterson, Smith & Hostler 2016). South Africa has to respond urgently to the prediction that over the next decade, NCDs are likely to increase and cause more harm (Harikrishnan, Leeder & Jeemon 2014; World Health Organization 2014). To this end,

South Africa's Strategic Plan for the Prevention and Control of Non-Communicable Diseases for 2020-2025 is multifaceted and aimed at reducing harmful drivers of NCDs such as physical non-activity, alcohol abuse, tobacco, and environmental factors (Bloom, Chisholm, Llopis et al. 2011).

Mandate and functions of the public health sector

The National Department of Health (NDOH) is mandated by the country's Constitution to provide health services to all South Africans. Section 27 of the Constitution provides the right of access to health-care services for everyone. Moreover, the National Health Act 2003 (Act 61 of 2003) (NHA) gives effect to section 27, which lays the base of the health-care system. The NHA aims, inter alia, to

- provide a framework for a structured uniform health system within the Republic, taking into account the obligations imposed by the Constitution and other laws of the national, provincial and local governments when it comes to health services; and

- provide for a system of co-operative governance and management of health services, within national guidelines, norms and standards, in which each province, municipality and health district must address questions of health policy and delivery of quality health services.

Furthermore, the National Development Plan (Vision 2030), the health sector's Ten Point Plan and the United Nations (UN) Sustainable Development Goals 2030 (SDGs) underscore the role and centrality of the public health sector. In recognition of this mandate, the NDOH compiled a five-year strategic plan (2014-19) to implement its preventative and response plan.

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Domestic, international and continental human rights instruments

South Africa has moved from the fragmented health system it had under apartheid towards a democratic dispensation which recognises health reforms and affirms human rights that were previously disregarded. For example, section 27(1)(a) of the Constitution entrenches the right of access to health-care services, including reproductive health-care services. Section 27(2) and (3) enjoin the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of, among other things, health care rights. It is on this constitutional basis that the state provides health services and prevents harm to the public arising from varied causes, such as NCDs.

In addition, two international human rights instruments underscore that health (and, by implication, the prevention and treatment of NCDs) is a fundamental right:

- The African Charter on Human and People' Rights guarantees civil, political and socio-economic rights as enforceable rights. Importantly, its article 16 guarantees the right to health by providing that every individual shall have the right to enjoy the highest attainable state of physical and mental health.

- The Protocol to the African Charter on Human and People's Rights on the Rights of Women demonstrates the African Union's commitment to the realisation of human rights, particularly for women, whose rights are often trampled upon by men and authorities (Roux 2020).

National oversight mechanisms on NCDs

The national legislature has two houses, namely the National Assembly and National Council of Provinces (NCOP). They have two things in common. First, they have committees comprising members of political parties represented in the legislature. Secondly, they use committees to facilitate public participation and exercise oversight of the executive and state departments and bodies (Juma et al. 2018). The following are examples of laws the legislature has passed to respond to the threat of NCDs:

- The Tobacco Products Control Amendment Act (Act 63 of 2008) was passed to protect children and adolescents from tobacco advertising. The Act also protects the rights of non-smokers by ensuring a smoke-free public environment (Harikrishnan, Leeder & Jeemon 2014).

- The Liquor Act (Act 59 of 2003) was passed to encourage a responsible and sustainable liquor industry through promoting a culture of social responsibility and preventing the advertising of liquor to children (Van Walbeek & Blecher n.d; Roux 2020).

The legislature holds the executive to account on the grounds of under-service or suspicion of dereliction of duty with respect to NCDs. All of these mechanisms are designed to ensure that the public enjoys the best quality of life free of NCDs.

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Legislative mechanisms to engage the executive on NCDs

In fulfilling its responsibility, the legislature uses the following mechanisms to engage the executive on NCDs:

Public submissions: This is where members of the public petition the committee of choice and detail the matter of concern requiring investigation and intervention by the committee. Members of the public can engage with the committee concerning NCDs.

Member statements and executive responses: This is where any matter of importance is raised on the floor of the house to bring it to the attention of the executive. Parliamentary committees: Multiparty committees of 11 to 13 public representatives serve as an extension of the house of the legislature. These committees have constitutional powers to oversee government departments, including the power to summon any person or company for their purposes. The bulk of parliamentary work is done by such committees, which attend to departmental budgets, NCDs and other matters.

Taking parliament to the people (TPTTP): This refers to proactive oversight by the NCOP, such as when it visits a province to consider specific outcomes with mayors, members of executive councils, premiers and ministers. In 2018, the TPTTP was held in Free State and focused on the status of health services.

Oversight visits: These are announced or unannounced oversight visits by Parliament's committees to state organs and health facilities. The intent of oversight visits is to improve service delivery and increase accountability. Concerning NCDs, the Portfolio of Health of the National Assembly and the Select Committee on Social Services of the NCOP prioritise the determinants of health, which are major contributors to the rise of lifestyle diseases.

Moreover, the legislature is mandated to represent the interests of South Africans in the global arena on issues such as politics, the economy, the environment, tourism, culture and health (including, by implication, NCDs). The platforms where the legislature shares with, and learns from, its peers on the management of and responses to NCDs are:

- the Pan African Parliament;
- the Inter-Parliamentary Union;
- the Commonwealth Parliamentary Association; and
- the Southern African Development Community Parliamentary Forum.

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The SAHRC's involvement in NCDs

The South African Human Rights Commission (SAHRC, or the Commission) is mandated by section 184 of the Constitution to monitor, protect and promote human rights as set out in the bill of rights of South Africa's Constitution. As part of its mandate, the Commission received a complaint alleging that cancer patients in KwaZulu-Natal were not being treated due to a shortage of radiotherapy equipment and to out-of-service machinery at Addington Hospital (Parliamentary Monitoring Group 2017).

The Commission's assessment established that the allegations related to the right to access health-care services, as enshrined in section 27 of the Constitution. In this regard, the Commission found that the KwaZulu-Natal Health Department had violated the rights of oncology patients at the Addington and Inkosi Albert

Luthuli Central Hospitals to have access to health-care services, given the hospitals' failure to comply with norms and standards set out in legislation and policies. In terms of section 13(1)(a)(i) of the SAHRC Act, the Commission released binding recommendations for the respondents to implement immediately (Parliamentary Monitoring Group 2017).

Another intervention by the Commission on NCDs was prompted by the Life Esidimeni tragedy that claimed the lives of at least 144 psychiatric patients. These patients were removed in haste to under-equipped and ill-resourced non-governmental organisations (NGOs) in Gauteng. The relocation affected a total number of 1,711 mentally ill patients. In its investigation, the Commission found, first, that mental health is a neglected condition and characterised by violations of rights in the form of cruel, degrading and inhumane treatment that places mental health patients at greater risks. Secondly, it found that there was a bed deficit in existing facilities for children and adolescents with intellectual and psychosocial disabilities (Parliamentary Monitoring Group 2017). This shows the intersection of the Commission and the legislature in championing the right to quality health care and ensuring that dereliction of duty by the government is corrected and health-care services rendered effectively.

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Examples of court judgments on NCDs

Despite the public health sector's aim to provide quality health care, there have been court cases that have been adjudicated in favour of the litigants. With respect to NCDs, cancer, diabetes and high blood pressure appear to be the main illnesses at issue in cases of medical negligence. For example, in September 2010, the High Court of South Africa issued a judgment (case no. 1037/2007) against the Eastern Cape member of the executive council for health and the superintendent of Dora Nginza Hospital. The Court found that the litigant's clinical records showed that the facility was aware of the litigant's condition, but contravened best practices – hence the judgment given against the defendants.

In another case, the High Court and Supreme Court of Appeal ruled in favour of mining companies alleged to have been complicit in the spread of an occupational disease, silicosis, among their former employees. This matter was ventilated at the Constitutional Court. The judgment was against the mines and found that the Compensation for Occupational Injuries and Diseases (COIDA) Act 1993 is not an impediment for employees to sue their employers. This judgment paved the way for a class action, which was instituted, certified and settled with a settlement of R5 billion, approved by the court, to compensate affected former employees (Constitutional Court of South Africa 2011).

Conclusion

This article highlighted the roles that different organs of state play in ensuring a life for all, including those with NCDs. It illustrated how the legislature, in its totality and through different branches such as committees and TPTTP, exercise their remit to scrutinise departmental budgets, assess expenditure and demand proactive responses to NCDs. Similarly, the SAHRC and the courts have played their part in ensuring that the state corrects its shortcomings concerning NCDs. Though it is not ideal for the state to be ordered by the court to fulfil its remit, in this imperfect world both the SAHRC and courts have an important role to play in ensuring that the state fulfils its constitutional obligation towards the full realisation of health rights by the public. However, the continued accessibility of tobacco and alcohol, particularly by young people, demonstrates a gap in enforcement, as does the absence of clear communication by the government discouraging excessive intake of alcohol.

Moses Mncwabe is a researcher for the Parliamentary Committee on Health, Research Unit of the South African Parliament.

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