Framework Convention on Global Health

Working Draft of the FCGH: Part I: The Mission of the FCGH

February 2019 (March 2019 update)

The Framework Convention on Global Health (FCGH) Alliance has developed this working draft of the first part of the Framework Convention on Global Health (FCGH). It presents a vision for the opening articles of this future global health treaty grounded in the need to strengthen accountability to the right to health and close unconscionable national and global health inequalities. This draft is meant to serve as a basis for discussion. It remains in early stages of development, and we hope the opportunity to discuss this draft will deepen the possibility for civil society, states, and other stakeholders to constructively engage with the FCGH.

Part I, presented here, includes the principles and objectives of the FCGH, and further elucidation on the right to health as it would be understood under this Convention.

Article 1: Definitions

[Article 1 is not yet drafted.]

Article 2: Interpretation of right to health standards

(1) In order to better protect human health, State Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter human rights safeguards consistent with their provisions and in accordance with international law. Nor shall any provision of the present Convention and its protocols affect any provisions in the law of a State Party or international law in force for that State that are more conducive to the realization of the right to health and other human rights. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention and its protocols do not recognize such rights or freedoms or that it recognizes them to a lesser extent.

(2) The standards contained in this Convention shall be interpreted consistent with evolving international and domestic standards to the extent that they lead to greater protection of the right to health and other human rights.

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Article 3: Objective

The objective of this Convention and its protocols is to end the unconscionable health inequities among people between and within countries by enhancing accountability to capacities to achieve the right of everyone to the highest attainable standard of physical and mental health, including both domestic and extraterritorial obligations. This Convention and its protocols will be based in the right to health in existing international human rights instruments and the evolving understanding of these obligations. It will enhance accountability by establishing specific and enforceable standards and related mechanisms and processes, building capacities of States to realize their right to health obligations, enhancing accountability processes and people's ability to effectively claim their right to health, and providing pathways to elevate right to health and related human rights obligations throughout national and global governance. This Convention will serve as a durable framework with specific obligations that will ensure that extant right to health standards are aligned with global trends since the adoption of the International Bill of Rights, and accelerate action towards the full realization of the right to health in and able to remain adapted to a rapidly changing world, able to address emerging threats to health equity and the right to health, founded on the fundamental recognition of the equal rights of all people regardless of country of residence or status to the highest attainable standard of health in a highly interconnected world, as well as in people's right to participate in the decisions that will affect their health, and advancing towards a state of enduring health equity.

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Article 4: Guiding Principles

The following principles inform the entirety of this Convention and shall inform any protocols developed under it.

(a) All people have the right to the highest attainable standard of physical and mental health, equally and without discrimination based on any status whatsoever.

(b) All people have the right to health services, including mental health services and the underlying determinants of health, that are available, accessible, including economically and geographically, acceptable, including culturally, and of high quality.

(c) The full realization of the right to health depends on and also requires that states respect, protect, and fulfill other economic, social, cultural, civil, and political rights.

(d) The state in which people reside must act to the maximum of its ability to respect, protect, and fulfill their human rights, including the right to health. All states must

also contribute to the universal assurance of the right to health extraterritorially, acting commensurate with their economic, technical, and technological capacities, and through their influence on regional and international processes, with a particular focus on the states and populations among whom health is the poorest and who experience the greatest levels of disadvantage in order to have the greatest effect on reducing health inequities.

(e) All states and people have a shared responsibility for improving global health and achieving universally the right to health. Achieving this right requires solidarity among people everywhere. These values should be directed to closing health inequities within and among countries.

(f) Health systems and actions on public health functions and the social determinants of health should be directed at improving overall health and closing health inequities. These systems should prioritize closing the worst inequities and those experienced by the most disadvantaged people while addressing inequities throughout the socioeconomic gradient, with a scale and intensity that is proportionate to the level of disadvantage.

(g) All people have the right to participate in health-related decisions [decisions that affects people's physical and mental health], regarding their own health and in local, national, and global policymaking processes. This participation should be meaningful, with input being incorporated into decision-making processes with the genuine possibility of influencing decisions, and respected, with the state facilitating people's access to the information needed to increase the effectiveness of their participation. Special efforts should be taken to ensure the opportunity of marginalized and disadvantaged populations to participate.

(h) Governments are accountable to their own residents for fulfilling their right to health and related human rights obligations and related commitments and policies, and to people in other countries for their extraterritorial obligations and related commitments and policies. This requires a continual transparent, and participatory process of monitoring and reporting, identifying and rectifying shortcomings, and remedying right to health violations, including through compensating victims and structural reforms to prevent further violations.

(i) Policies in all sectors can profoundly affect population health and health equity. Accordingly, states should respect, protect, and as far as possible contribute to the fulfillment of the right to health in all sectors through Health in All Policies and all-of-government approaches, and through their extraterritorial activities and the nature of their participation in regional and international processes and agreements.

(j) States are responsible for creating enabling legal, policy, and social environments to advance the right to health, including ensuring civil and political rights. This includes facilitating non-state actors, including businesses, civil society organizations, and individuals, in their respective roles to respect, protect, and fulfill the right to health.

(k) Sustainable development is necessary to achieve health equity, including to avoid undermining the right to health for future generations.

(l) Health spending is an investment in human life, social solidarity, and economic productivity, not a cost.

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Article 5: General obligations of cooperation

States shall cooperate through financial and technical support, including building capacity to achieve the universal realization of the right to health. Towards this end:

1) States shall share laws, policies, strategies, reports, and evidence that support the implementation of this Convention and its protocols.

a. The Secretariat will collect and share this material with state parties and the public at large including through a publicly accessible database that, as far as possible, will enable user contributions of evidence or other relevant material. The functions of the Secretariat are defined in Part [] of this Convention.

i. The Secretariat shall establish a publicly accessible free database on the Internet.

ii. The Secretariat will develop guidelines to facilitate collection and sharing of material under this section.

b. States shall designate a focal point for this purpose.

c. States shall submit relevant material within two years of ratification, and every two years thereafter.

2) States should support officials and civil society in undertaking information exchange visits to share lessons and build capacity for developing and implementing laws, policies, and strategies, and undertaking other actions, to facilitate implementation of the FCGH [and the right to health generally].

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Article 6: Foundational right to health obligations

(1) States shall take steps, individually and through mutual assistance and cooperation, to the maximum of their available resources devoted to this and other human rights, to immediately advance, and progressively achieve the full realization of, the right to everyone of the enjoyment of the highest attainable standard of physical and mental health.

(2) States shall fulfill their commitments under other human rights legal instruments.

(3) States should incorporate the right to health into their legal frameworks.

(4) The obligation to progressively achieve the full realization of the right to health requires states to:

- *(a) avoid retrogressive measures that would reduce the level of realization of the right to health;*
- *(b) move as expeditiously and effectively as possible towards the full realization of the right to health;*
- *(c) take measures immediately to contribute to the full realization of the right to health that do not depend on or require only minimal resources, including but not limited to:*
    - *a. ensuring non-discrimination and equal treatment;*
    - *b. respecting the right to health;*
    - *c. developing and beginning to implement laws, regulations, policies, and strategies to protect the right to health in all sectors and including in both the public and private spheres;*
    - *d. developing and beginning to implement and finance laws, regulations, policies, and strategies needed to fulfill the right to health, including a public health strategy and plan of action, developed through a participatory and transparent process and with particular attention to health equity;*
    - *e. developing and implementing mechanisms for people and civil society organizations to participate in health-related policymaking and for mechanisms to hold governments and other health actors accountable to their right to health obligations and responsibilities;*
    - *~~e.~~f. developing and beginning to implement health care quality improvement strategies to enable the progressive achievement of high quality health services;*
    - *~~f.~~g. …*

(d) take the steps necessary to achieve in a highly expedited manner universal and equitable access to the maximally comprehensive health services and the underlying determinants of health as feasibly within the maximum of available resources;
(e) take measures as a priority to advance health equity, including to address areas and populations suffering from the greatest health inequities and the greatest levels of marginalization, disadvantage, and vulnerability.

(5) States shall use the maximum of available resources towards protecting and fulfilling the right to health and other human rights. States shall consider at least six factors in determining maximum available financial resources:

(1) The proportion of government revenue dedicated to health and other rights;
(2) Overall government revenue;
(3) International assistance;
(4) Debt and deficit financing;
(5) Monetary policy and fiscal regulation, and;
(6) Equitable, efficient, and effective use of resources.

The requirement to use the maximum of a state's available resources towards the right to health and other human rights includes not only financial resources, but also other forms of resources including but not limited to human, information, natural, and technological resources.

(6) The highest attainable standard of physical and mental health is a universal standard for all people, achieved through national action and global cooperation. The full realization of the right to health will entail achieving for all people within a state the highest attainable standard in the national context, while progressively increasing the highest attainable standard domestically towards the highest achievable standard in all states. It entails reducing health disparities and achieving through affirmative measures equitable access to the full range of health services, including underlying determinants of health, irrespective of race, sex, sexual orientation, income, location, or any other status whatsoever. These affirmative measures include giving special protection and support to vulnerable, disadvantaged, or marginalized populations.

(7) The right to health incorporates obligations of non-discrimination and equal treatment, participation, equity and an emphasis on marginalized and disadvantaged populations, accountability, and respecting, protecting, and as appropriate, contributing to fulfilling the right to health in all policies, including as described in Article 4. States should take measures to ensure the availability of, and enable all people access equally without discrimination, affordable, acceptable, good quality health goods, facilities, and services, including health care and the underlying determinants of health.

(8) Nothing in this article shall be interpreted to limit obligations established elsewhere in this Convention or its protocols.

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Article 7: Public understanding of the right to health

(1) States shall take the measures necessary to enable everyone to be aware of and understand their right to health, including obligations under this Convention, and including in forms and languages accessible to people who do not speak official national languages, who have limited literacy skills, and who are living with disabilities. Such measures may include:

(a) Partnerships with civil society and the media;
(b) Incorporating the right to health into educational curricula;
(c) Conducting public awareness campaigns;
(d) ….

(2) To contribute to public understanding of the right to health, States shall build awareness of this Convention and the rights included herein, including:

(a) Through summary and other easy-to-digest formats, and
(b) In forms and languages accessible to people who do not speak official national languages, who have limited literacy skills, and who are living with disabilities.

(3) States shall undertake particular efforts to ensure awareness of and understanding of the right to health, including this Convention, for people who experience marginalization, disadvantage, and vulnerability.

Article 8: Extraterritorial right to health obligations

(1) States shall respect and, to the maximum extent possible based on their capacities, available resources, and influence, protect and contribute to the fulfillment of the right to health extraterritorially, including through their participation in and influence on regional and international legal regimes and organizations. The failure of any state or states to fulfill these obligations does not affect the obligation of other states to do so.

(a) States shall respect the right to health by not impairing, directly or indirectly, the enjoyment of the right to health extraterritorially.

(b) States shall contribute to the protection of the right to health extraterritorially from being impaired by third parties, including by promulgating and enforcing laws and regulations to prevent non-state actors over which they have effective control or are in a position to regulate from impairing the right to health

extraterritorially and through their influence in regional and international processes.

(c) States shall contribute to the fulfillment of the right to health outside their territory by taking measures to positively advance achieving this right, including by contributing to an international legal, policy, and institutional environment conducive to the fulfillment of the right to health, through their influence in regional and international organizations, through international assistance particularly for states in a position to assist, and through other forms of cooperation.

(d) States shall cooperate to mobilize the maximum possible resources to universally fulfill the right to health and other human rights.

(e) States shall be accountable to the populations extraterritorially to whom they have extraterritorial right to health obligations, and should separately and jointly, including in cooperation with the territorial state, establish and strengthen mechanisms to achieve this accountability, including through effective remedies for violations, and to ensure [wherever possible] the participation of affected populations extraterritorially in decisions and actions that may affect their right to health.

(f) States shall, through their health-related foreign assistance and other actions to contribute to fulfilling the right to health extraterritorially.

a. prioritize populations suffering from the greatest health inequities and the greatest levels of marginalization, disadvantage, and vulnerability, and the areas in which they reside, and;

b. prioritize ensuring universally the most essential levels of the right to health.

(2) States retain their full obligations to respect, protect, and fulfill the right to health and other rights domestically. Extraterritorial obligations in no way reduce these domestic obligations.

(3) States shall make every reasonable effort within the maximum of their available resources to avoid conflicts between their ability to meet their right to health obligations extraterritorially and their domestic human rights obligations. If states nevertheless cannot avoid a conflict between their ability to meet their right to health obligations extraterritorially and their domestic human rights obligations, states shall take the following factors into account in determining their actions, and in any case shall take steps necessary, including through international cooperation, to minimize any

impairment of the right to health and other human rights, domestically or extraterritorially:

a) *How possible actions will affect essential levels of the right to health and other human rights*
b) *The level of any impairments of the right to health and other human rights*
c) *The number of people affected by any impairments of the right to health and other human rights*
d) *The effect of any impairments of the right to health and other human rights on equity, and whether and the extent to which the impairments of the right to health and other human rights fall disproportionately on marginalized, disadvantaged, or vulnerable populations*
e) *The possibility of mitigating, including through international cooperation, any impairment of the right to health and other human rights.*

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