The Framework Convention on Global Health: A Legal Foundation for Sustainable Health Equity

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The Framework Convention on Global Health (FCGH) is a proposed treaty that is based in the right to health and aimed at national and global health equity. It would seek to create a "web of accountability" around the right to health,[1] thus turning the right's mandates, principles, and frameworks into people's lived realities, helping restore people's dignity, so long denied. And in creating accountability to the right to health, the FCGH would be an instrument for health equity. For when people are unable to participate in health-related policymaking, or when health services are riddled with corruption or public health services offer poor quality care, or when funding is inadequate or medicines unaffordable – much less when immigrants or women or members of the LGBTI community are discriminated against, or when governments fail to systematically focus on equity itself – health equity and human dignity suffer.

The FCGH would take a multi-generational perspective to the right to health, recognizing that the right does not permit curtailing the highest attainable standard of health of future generations. Incorporating the principle of sustainable development and standards that could specify the right's requirements in the context of a multi-generational perspective of the right to health, the FCGH could help ensure health equity across generations.

The FCGH would achieve these goals by offering clear standards – clarifying and as needed building on the current right to health framework – and specific mechanisms, backed by a global regime of accountability. It would encompass three major areas: 1) implementing key human rights principles in health, including equality, participation, accountability, and international cooperation and assistance; 2) resourcing the right to health, and; 3) ensuring accountability to the right to health in all sectors and for all actors, and from local to global levels. As the steady and significant progress under the Framework Convention on Tobacco Control has unambiguously demonstrated, a global health treaty with clear requirements and accountability can yield powerful, even transformative, results.

The time for the FCGH is here. The immense health (and other) inequalities that COVID-19 brought to global attention should compel a new, rights-based global health architecture, with the FCGH as its foundation. In her speech at the launch of the Sustainable Health Equity Movement, Michelle Bachelet observed the need to "bring the moral imperative of sustainable health equity, now even more clearly revealed by this COVID-19 pandemic, to an even stronger international legal framework." An FCGH would be just such an international legal framework, and achieve the "quantum leap linking the right to health" that the UN High Commissioner for Human Rights called for.

UN Secretary-General António Guterres has urged that we "recover better" from the pandemic.[2] The FCGH would help us do just that, contributing to a more just, equitable, and sustainable society, helping reverse the pandemic's setbacks towards the health-related Sustainable Development Goals and the 2030 Agenda for Sustainable Development's pledge that "no one will be left behind,"[3] and serving as a necessary complement to the International Health Regulations (IHR) (2005) to improve global health security. And longer-term, the FCGH would establish a post-2030 Agenda framework for health and sustainable development that is rooted in human rights and health equity.

Power of a treaty

A new treaty will take time to achieve. Yet such binding law has the most power to make a difference – and even the negotiating process can be advantageous. A treaty brings at least five significant benefits.

First is the direct legal significance of binding legal norms. Heads of government and legislators will be legally obliged to implement FCGH provisions, and may thus feel obliged to do so. And the binding nature of the FCGH would open additional avenues of enforcement and accountability. National courts can enforce human rights treaties, directly or following domestication of their stipulations. Regional human rights courts may give international treaties particular weight. States may also be open to stronger or more intrusive international monitoring and accountability measures, such as the Joint External Evaluations for the IHR (2005).

Second, the binding nature of a right to health treaty will enable the treaty to compete on equal footing with other international legal regimes that threaten health and are themselves grounded in treaties, such as trade (including intellectual property) and investment treaties. Under rules of treaty interpretation, the FCGH would prevail in a dispute related to potentially competing law involving states that are party to the FCGH.

Third, treaties can create particularly powerful binding norms. The Framework Convention on Tobacco Control is a prime example. Following its mandates, at least 58 countries have implemented comprehensive smoking bans, at least 43 have comprehensive bans on tobacco advertising, sponsorship, and promotion, and at least 129 require pictorial warnings covering at least 30% of tobacco packaging.[4]

Fourth, the FCGH would empower domestic health advocates. Ministers of heath and related sectors will have added power in negotiating with potentially competing sectors (e.g., energy, industry, law enforcement, immigration). And civil society advocates will have an added powerful argument to use in their political advocacy and new avenues for input and advocacy through FCGH participation and accountability mechanisms, along with the possibility of seeking judicial enforcement.

And fifth, the negotiations on the FCGH will yield unprecedented sustained high-level global focus on right to health, along with opportunities for civil society engagement with governments on right to health.

Filling the gaps: Standards and mechanisms

Clear standards and specific mechanisms would be at the heart of FCGH. These would respond to the right to health's greatest shortcoming today, inadequate implementation and accountability. They would establish precise standards to guide states, and empower community and civil society advocates where states fall short.

Standards could include areas such as participation, with clear requirements on ensuring meaningful participation in all health-related policymaking and other decision-making, including systematically and proactively ensuring participation of marginalized populations, and financing, with a national and global funding framework that sets clear expectations on domestic health financing and international assistance. Standards could address health equity directly, including non-discrimination (e.g., encompassing immigrants, regardless of status, prohibiting failing to provide health services used solely or disproportionately by women) and equitable funding. Clarity on the centrality of equity to the right to health could help ensure that national judicial enforcement of the right to health uses an equity lens.

Standards could also build out areas of the right to health that have become increasingly central since the International Covenant on Economic, Social and Cultural Rights (ICESCR) and General Comment 14 were adopted. These include states' extraterritorial right to health obligations (such as with respect to intellectual property rights and the price of and access to medicines, and climate change and other environmental harms) and the responsibilities of businesses and other non-state actors. The FCGH could also incorporate issues that have emerged in the human rights and international law but are not adequately built into the right to health, such as sustainability, requiring ensuring the highest attainable standard of health for both current and future generations.

Specific mechanisms would reinforce these standards. Heath equity programs of action would be systemic, comprehensive, inclusive sets of actions encompassing all determinants of health and all populations, developed through highly inclusive processes. Right to heath impact assessments and standards on remedying shortcomings could better incorporate the right to heath into all sector, as well as precluding actions that may undermine the right to health in other countries. Contracts between state actors and businesses could require respect for the right to health. The FCGH could catalyze accountability mechanisms fitting local and national contexts and preferences, such as adequately funded village health committees with well-prepared community members, right to health ombudspeople, community paralegals, and the use of mobile phones and other digital technologies.

Through these standards and mechanisms, the FCGH could help transform how the right to health is positioned in international law, from an entitlement-focused right to health under article 12 of the ICESCR to a right that entitles everyone to available, accessible, acceptable, quality health services *and* that demands equity, empowerment, and sustainability.

The time is now: The FCGH and global health security

The IHR (2005) are the legal foundation of global health security. Yet their remit is narrow. The IHR are necessary, and need to be enhanced. But the IHR are, in themselves, deeply insufficient for ensuring global health security, which requires a far more expansive approach, one rooted in the right to health.

The FCGH would provide just such an approach, with far-reaching global health security benefits. Treaty measures spanning national participatory target-setting and monitoring, funding, and equity would advance universal, equitable, quality health services. This will improve surveillance and disease detection, improve access to vital health information, and enable people who need care to receive it. The regular interactions with the health system this will enable should also build trust, one of the most important assets in global health security. Greater trust will also come from greater say that people have in health-related policymaking and in accountability measures. Such trust and confidence in the health system and health authorizes should lead to greater adherence to prevention measures and vaccine uptake.

The attention to equity that the FCGH will demand, along with requirements to ensure that marginalized populations participate in pandemic (and other health-related) planning, will ensure that the response takes into account the needs of marginalized populations, protecting both these groups and, by therefore reducing the reservoir of infectious disease, protecting the entire population. Mandates for protecting the right to health in all sectors and health equity programs of action will improve the health of marginalized populations, including through concerted efforts against domestic violence, which economic lockdowns have fueled, and cleaner air and healthier food, meaning fewer underlying conditions that may, as with COVID-19, lead to lethal complications.

The FCGH would also require right to health impact assessments of actions that may harm the right to health extraterritorially, and to take steps to avoid such harm, thus preventing states from hoarding medical equipment, diagnostics, therapies, and vaccines. The FCGH could also require state parties to take measures to ensure the equitable distribution of equipment, diagnostics, therapies, and vaccines, including by participating in any global equitable distribution mechanism.

More on the global health security benefits of the FCGH is at: https://www.thinkglobalhealth.org/article/framework-convention-global-health

The FCGH Alliance

On Human Rights Day 2017, FCGH supporters launched the FCGH Alliance, an NGO registered in Switzerland but operating as a virtual global network. The Alliance is now the focal point of FCGH efforts, with work including treaty drafting and advocacy, using a regional strategy to build understanding of and support for the FCGH globally. More on the Alliance is at: https://fcghalliance.org.

The Alliance has developed, for feedback, a proposed overview of the FCGH, as well as several draft sections, including one focused specifically on equity – even as equity would be an overriding them to which virtually every aspect of the FCGH would contribute. We consider these starting points, with the aim of developing a draft treaty with a much input as possible, an inclusive, bottom-up process, most importantly with input from and reflecting the views and aspirations of people most impact by right to health violations and health inequities. More on the draft is available at: https://fcghalliance.org/about/drafting-the-treaty/.

FCGH-related publications with more information are available at: https://fcghalliance.org/library/publications/. Key principles of the FCGH are at: https://fcghalliance.org/key-principles-of-an-fcgh/.

[1] Paul Hunt, "SDGs and the Importance of Formal Independent Review: An Opportunity for Health to Lead the Way," *Health and Human Rights Journal* blog, September 2, 2015, https://www.hhrjournal.org/2015/09/sdg-series-sdgs-and-the-importance-of-formal-independent-review-an-opportunity-for-health-to-lead-the-way/.

[2] António Guterres, "Remarks on COVID-19: A Call for Solidary," Remarks, March 19, 2020. https://www.un.org/en/un-coronavirus-communications-team/above-all-human-crisis-calls-solidarity.

[3] UN General Assembly, "Transforming Our World: The 2030 Agenda for Sustainable Development," UN G.A. Res. 70/1, UN Doc. A/RES/70/1, September 25, 2015, at para. 4. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1.

[4] Tobacco Free Kids, "WHO Framework Convention on Tobacco Control," https://www.tobaccofreekids.org/what-we-do/global/fctc, accessed October 3, 2020.