



Statement and Call to Action of the Sustainable Health Equity Movement’s Human Rights and Equity Working Group

June 2022

Context

The COVID-19 pandemic has, in horrific fashion, exposed the vast and long-standing health inequities within and between countries, as people who are poor, marginalized, or otherwise disadvantaged, and who live in poorer countries, experiencing shorter, less healthy, lives. These injustices must not fade into the background as the international community focuses on enhancing pandemic prevention and response – which is significantly undermined by these inequities – or once COVID-19 becomes a less dominating part of life. Now is the time for a concerted global initiative to tackle these inequities, including through the law, and ensure full protection of, respect for, and fulfillment of the human rights that international law guarantees all people, everywhere – including the right to the highest attainable standard of health.

The right to health is already codified in numerous United Nations and regional instruments, such as the International Covenant on Economic, Social and Cultural Rights, the WHO Constitution, and national constitutions, but implementation has fallen tragically short, with insufficient accountability when states fail to meet their obligations, and gaps and ambiguities in human rights treaties that further impede accountability.

Meanwhile, another highly relevant right, the right to development, is captured only in non-binding instruments, most significantly the Declaration on the Right to Development. That Declaration explains the right as one through which “every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development,” and entails states creating “national and international conditions” “in which all human rights and fundamental freedoms can be fully realized.”¹ Thus, such development shall be based on and directed towards the full realization of human rights.

Effective new human rights instruments to advance the rights to health and development, and better implementation of existing instruments, would contribute significantly to the advancing the 2030 Agenda for Sustainable Development. And conversely, achieving the UN Sustainable Development Goals would significantly contribute to realizing both of these rights, among many other rights.

Scope of actions required

We call upon states, working through and with support from the UN and WHO, to codify, establish, and otherwise support the following actions, and for civil society organizations and members of the public who may be able to influence their governments and these institutions to rally behind the following actions to do so. These would further embed the right to health in international law in ways that strengthen accountability and advance implementation of the right to health, improve implementation of existing legally binding standards, and ensure the centrality of health equity in the UN treaty on the right to development that the Inter-governmental Open-ended Working Group on the Right to Development is currently drafting.

The right to health is interrelated with all other rights – economic, social, and cultural, as well as civil and political – requiring thorough accountability within, but also well beyond, the health system itself, including in the political system.

Accordingly, in addition to our specific calls below, it is imperative for democratic states to provide all possible support for advocates for democracy and human rights, including for developing, sustaining, and enhancing mechanisms for health accountability and participation, and accountability and participation more broadly. Such support could – and should – range from vastly expanding funding to the United Nations Democracy Fund, bilateral aid for civil society organizations fighting for democracy and human rights, for independent journalism, and for others struggling for democratic rights, to robust financial and other support for new democracies.

Such state efforts could even extend to bold and innovative reforms to global institutions, democratizing them in such a way that they are driven by the views and voices of people – equally wherever they live, whether directly or through governments that are accountable to them – and does not empower governments that derive their authority through force and intimidation rather than through democratic consent.

Policy actions

I. WHO member states

- WHO member states should commit to following a pandemic treaty (or other international instruments) with a treaty on the right to health, and with health equity at its core, like the proposed Framework Convention on Global Health (FCGH). Such a treaty stands to advance the implementation of and enhance accountability for the right to health. And the FCGH would meet this moment – a time when health inequities are having a catastrophic impact and deep long-existing health inequities are being exposed – with the most powerful instrument

of international law. FCGH standards and mechanisms would enhance the implementation of key human rights principles of accountability, participation, and equality, expand resources for the right to health, and advance the right to health across all actors and sectors, locally to globally.

- WHO member states should incorporate the right to health and health equity throughout the pandemic treaty or similar instrument.^{2,3}
- WHO member states should adopt a resolution to respond to the widespread violation of people's right to health information during COVID-19, including to urge states, in collaboration with civil society organizations, to institute and expand health literacy programs, which should be accessible to all (including, e.g., children, people with disabilities or who do not speak the dominant language) and should encompass social media health literacy and resilience against health misinformation, and to expand the dissemination of evidence-based health information, while protecting people's right to expression, including information that is critical of the government.
- WHO member states should adopt a World Health Assembly resolution to encourage all states to employ tools to support right to health implementation, including right to health impact assessments for all laws, policies, programs, and projects that may significantly affect the right to health, as well as through health equity programs of action.⁴

II. UN Human Rights Council *and* WHO member states or Secretariat

- The UN Human Rights Council should develop a multi-stakeholder working group or other appropriate, inclusive forum to explore possible paths forward for the FCGH or similar right to health-based treaty. The World Health Assembly, WHO Executive Board, or WHO Secretariat should also develop a multi-stakeholder working group with a comparable mandate. (NOTE: The FCGH process could be initiated through WHO, the United Nations, or both, with the organizations collaborating closely.) The FCGH or similar right to health treaty would also yield great benefits for pandemic prevention, preparedness, and response.⁵

III. UN Human Rights Council *or* WHO member states

- The UN Human Rights Council should a comprehensive global health and human rights accountability framework. This could encompass everything from non-discrimination, local and national mechanisms for health accountability and participation, and ensuring that health information, including on health policies, is accessible to all, to domestic and global health financing and private sector

regulation. Alternatively, WHO member states should direct the WHO Director-General to develop such a framework. If the UN Human Rights Council develops the framework, it should subsequently be approved by the full UN General Assembly. Whichever forum takes the lead, the framework should be developed through a process that includes robust civil society participation. If the framework has not yet been developed, the FCGH could encompass it.

IV. UN General Assembly and WHO member states

- Expand the purposes for which mandated assessments are used beyond the UN and WHO budgets and UN peacekeeping functions to support right to health-related financing through the United Nations and WHO. Such purposes could range from increased financing for the UN Central Emergency Relief Fund, which provides urgently needed humanitarian assistance and funds underfunded emergencies, to new mechanisms, such as to ensure equitable distribution of medical countermeasures during health emergencies and to strengthen health system capacity to meet marginalized and underserved populations.

V. States, civil society organizations, and foundations

- Governments and foundations should support and, following the leadership of and in close collaboration with civil society organizations, should launch a right to health capacity fund⁶ or other mechanisms to fund civil society right to health advocacy. Such a mechanism might also advance the implementation of the right to health in other ways, such as supporting community-based and national mechanisms for participation and accountability.
- Provide funding and technical support, such as through educating judges and lawmakers, to encourage countries that have not yet done so to make the right to health justiciable, and to encourage an equity lens in implementing the right to health, overall and through the courts.

VI. The UN Committee on Economic, Social and Cultural Rights

- The UN Committee on Economic, Social and Cultural Rights should develop a general comment on health equity, and equity throughout the full spectrum of economic, social, and cultural rights, as all are linked to health and health equity, to provide clear guidance to states on actions required under the International Covenant on Economic, Social and Cultural Rights to advance equity, including health equity.

VII. The UN Inter-governmental Open-ended Working Group on the Right to Development

- The Inter-governmental Open-ended Working Group on the Right to Development should expressly incorporate health equity into the next draft of the treaty on the right to development, such as through a specific section on health equity or by integrating health equity throughout the draft.

Please provide any feedback, in particular suggestions for strengthening the proposals in this draft statement (e.g., how to more effectively advance an FCGH), or additional proposals, please email Elham Kateeb (elhame20@gmail.com) and Eric Friedman (eaf74@law.georgetown.edu).

¹ Declaration on the Right to Development, UN G.A. Res. 41/128 (1986), at arts. 1(1), 3(1), 1(1). https://www.ohchr.org/Documents/Issues/Development/DeclarationRightDevelopment_en.pdf

² Leigh Kamore Haynes, Eric A. Friedman, Adam Bertscher, Jingyi Xu and Luiz Galvao, *Addressing Inequity and Advancing the Right to Health to Strengthen Pandemic Prevention, Preparedness, and Response* (Framework Convention on Global Health Alliance and Global Health Centre, Graduate Institute of Geneva, 2021). <https://www.graduateinstitute.ch/sites/internet/files/2021-11/FCGH-v2.pdf>

³ “SHEM and FCGH Alliance Statement to 74th World Health Assembly,” Framework Convention on Global Health Alliance, November 23, 2021, <https://fcghalliance.org/2021/11/shem-and-fcgh-alliance-statement-to-world-health-assembly-special-session/>

⁴ “Health Equity Programs of Action,” O’Neill Institute for National and Global Health Law, Georgetown University Law Center, January 22, 2019, <https://oneill.law.georgetown.edu/publications/health-equity-programs-of-action-an-implementation-framework/>

⁵ Eric A. Friedman and Martín Hevia, “On the Framework Convention on Global Health Alliance, *Think Global Health*, August 25, 2020, <https://fcghalliance.org/2020/08/on-the-framework-convention-on-global-health/>

⁶ Eric A. Friedman, Lawrence O. Gostin, Allan Maleche, Alessandra Nilo, Fogue Foguito, Umunyana Rugege, et al. “Global Health in the Age of COVID-19: Responsive Health Systems Through a Right to Health Fund,” *Health and Human Rights Journal* (2020) 22(1):199-208. <https://www.hhrjournal.org/2020/05/global-health-in-the-age-of-covid-19-responsive-health-systems-through-a-right-to-health-fund/>