

Platform for a Framework Convention on Global Health: Realizing the Universal Right to Health

Fundamental Principles and Joining the Platform
May 14, 2014

Preamble

We are committed to the highest attainable standard of physical and mental health as a universal human right. Despite significant health improvements, unconscionable health inequalities within and between countries persist. They extend throughout the socioeconomic gradient, with the health of poor and marginalized populations most seriously compromised. Unequal and unfair power dynamics among states, and varying respect for rights across states, leaves entire populations with life expectancies a generation and more below today's highest attainable standard of health.

Powerful commercial and political interests undermine health. Trade and investment treaties impede access to medicine and are used to challenge tobacco control. Climate change, natural resource extraction, and pollution create immense health burdens. Criminalization of certain populations restricts their access to health services. Important directions in health are incomplete. The Sustainable Development Goals will need powerful accountability mechanisms. Health in All Policies is a principle routinely ignored. Even the movement towards universal health coverage with its renewed promise of health for all risks entrenching divided health systems, with one for the well-off and one for the poor. None of this is inevitable.

We insist upon a new era of health justice and solidarity among all people to eliminate health inequities, ensure sustainable and equal access to social determinants of health,¹ promote rights, establish participatory governance structures involving local, national, and global movements, and help all people to reach their potential.

We call for a Framework Convention on Global Health (FCGH) to further empower people around the world struggling for their health and rights through a binding legal foundation for this new era. It could further empower health, human rights, and other social justice movements, supplementing and not subsuming local campaigns. The treaty would recognize all people need to be equally empowered to shape our common future. It would contribute to human and economic development. An investment in health is an investment in our shared future.

An FCGH would establish a transformative understanding of the right to health. It would comprehensively codify the principles and standards required to realize the universal right to health: participation, accountability, equality and non-discrimination, and a special concern for marginalized people. It would encompass health care and public health, financing for this right, and clearly defined extraterritorial obligations, while ensuring that policies in other sectors are responsive to public health needs. Its obligations would cover inclusive and democratic decision-making, with health delinked from market forces and part of universal social protection.

With the belief that an FCGH has the potential to re-invigorate the right to health and minimize health inequities, we launch this Platform for a Framework Convention on Global Health, and

call upon national, regional, and global social movements to engage with this Platform, looking towards realization of the Convention.

The treaty would be responsive to national and regional differences. As a framework convention, the FCGH would have protocols to address specific issues, such as trade, financing, health workers, and research and development, with greater precision. The FCGH would be adopted by the United Nations General Assembly, the World Health Organization's World Health Assembly, or the World Health Assembly under the mandate of a UN resolution.

The Need for a Framework Convention on Global Health

Existing treaties and other instruments establish commitments to the right to health. Yet vast gaps exist between commitments and realities. Largely absent are effective structures and processes to secure action and accountability – a framework for effective global governance for the right to health.

Equitable health systems

A robust version of universal health coverage should be one foundation of the right to health, with inclusive, equal, and truly universal access to comprehensive health care and public health services, such as nutritious food and safe water, hygiene, and sanitation. The level of care that people access should no longer depend upon a person's wealth or other status. Coverage should not be limited to a basic package of services or unduly constrained by a narrow vision of available resources. An FCGH could set general standards for global health and participatory processes to translate them to national and local levels to create inclusive, equitable, universal health systems.

Financing for health

Domestic and international health financing is insufficient, with health and development financing targets largely unmet. Resources that could be devoted to health and development are lost to inequitable and ineffective tax systems, corruption, mismanagement, and weak international financial regulation and enforcement. Health spending is skewed away from disadvantaged populations. International financing responsibilities are particularly ill defined. Such funding is insufficient and often fails to meet local priorities, to respect country ownership, and to utilize national and community knowledge, processes, culture, and other capacities.

An FCGH could establish clear national and international financing responsibilities, with enforceable norms. It could empower states to mobilize increased funding for health and development, ensure its equitable distribution. The treaty could enable predictable international resources aligned with national strategies, with accountability at country and community levels. It could provide a framework for improved budget tracking, evaluation, and accountability, including through participatory budgeting.

National and global governance for health

In the non-health sectors, global rules and national policies alike frequently undermine or fail to promote health. State failure to protect against unemployment and unsafe working conditions, unsafe water, poor quality education, chronic hunger, homelessness, and dangerous roads are

only several examples. Discrimination and inequalities outside the health sector against women, migrants, and minorities, along with vast disparities in wealth and income, harm physical and mental health. Industrial and other policies displace populations and destroy livelihoods, thrusting people into conditions that erode their health. Climate change, pollution, and other environmental degradation cause extensive death and illness; health justice requires environmental justice.

An FCGH could establish accountability around well-defined obligations for the social determinants of health, at the least creating obligations to give force to Health in All Policies and advancing the “do no harm” principle embedded in the right to health, respecting this right in all contexts. The treaty could creatively intersect with international law in other sectors to ensure a higher priority for the right to health. It could empower WHO and catalyze national and global platforms for multi-sector strategies and processes to secure health and human rights for all. The FCGH would also strengthen a bottom-up mode of global governance that involves local, regional, and global social movements into setting the agenda, implementing, and monitoring health politics and health policies.

Human rights implementation and enforcement

The right to health and related rights are often poorly implemented and enforced. Avenues for effective remedies to right to health violations may be few. Many people are uninformed of their rights and how to claim them. Some governments limit rather than empower civil society, resist transparency and accountability, and dismiss the voices and needs of marginalized populations. The right to health itself poorly captures the global forces that partially determine its realization, such as economic, migration, and intellectual property regimes, along with the importance of global cooperation in achieving this right. Imprecise requirements impede enforcement. Global mechanisms to hold governments accountable to the right to health lack the power to be effective where governments are not interested in complying.

An FCGH could bring the right to health into the 21st century by clarifying international responsibility with respect to ensuring that other regimes do not impinge the right to health and that global cooperation is required to secure this right. It would establish precise, enforceable human rights obligations and empower people and civil society to assert and secure the right to health and related rights, from facilitating human rights education to ensuring the justiciability of the right to health. It would clarify ways in which the right is immediately enforceable how to measure and monitor progressive realization. It could ensure that today’s excluded populations can participate in tomorrow’s policy development, monitoring, and enforcement. The treaty could enhance the right to health to respond to global forces and the need for global cooperation, and develop democratic, inclusive, participatory forms of accountability and enforcement.

Key Principles of a Framework Convention on Global Health

An FCGH could codify a renewed and reinforced commitment to the right to health and related rights. Building on international treaties, national constitutions, civil society proclamation, and global declarations and other key instruments and commitments,² grounded in the right to health and aimed at closing health inequities, and in the spirit of global solidarity, an FCGH should:

Universal equitable health systems

- a) Set standards for all countries to achieve universal and equitable quality health systems to meet the physical and mental health needs of the whole population. Such health systems should provide the same level of services for all segments of the population, be based on principles including equality and non-discrimination, equity, participation, and accountability; protect against catastrophic and impoverishing payments; encompass public health services; have sufficient numbers of motivated, skilled, and equitably distributed health workers; ensure patient and health worker rights, and; extend to areas of insecurity and conflict.
- b) Empower governments to regulate corporate health actors based on evidence from health systems that are equitable, effective, efficient, and universal.

Social determinants of health and global governance for health

- c) Establish principles and the mandate for health and other sectors to collaborate to establish standards promoting positive determinants of health, such as education and housing.
- d) Advance Health in All Policies and policy coherence for health, such as through right to health assessments, comprehensive multi-sector public health strategies, and multi-sector and inter-country collaboration, ensuring that policies of trade, energy, migration, agriculture, transportation, the economy, and other sectors do not undermine the right to health.
- e) Require needs-based planning and budgeting for determinants of health, developed through equitable and inclusive processes.
- f) Ensure safe and healthy workplaces for all workers, without discrimination.
- g) Regulate unhealthy products and practices of private actors that undermine health.
- h) Ensure that international law in non-health sectors is interpreted consistent with the right to health and protect against measures in treaties in other sectors, including trade and investment, that undermine health.
- i) Empower WHO to effectively achieve its mandate of global health leadership.
- j) Facilitate sharing lessons and evidence for implementing policies on effective approaches to improve health and health equity.

Funding for universal health systems and the social determinants of health

- k) Establish a national and global health financing framework with clearly delineated responsibilities to raise sufficient resources to achieve equitable and effective health systems, including public health function, such as ensuring clean water and nutritious food.
- l) Raise additional domestic and international resources for health and ensure accountable and equitable use of these resources.
- m) Equitably distribute financing within countries, including ensuring needed resources for underserved and marginalized communities and populations.

n) Improve international health assistance harmonization and alignment with national health strategies, with mutual accountability, particularly to affected populations.

Human rights

o) Define state responsibilities for the health of all its inhabitants on an equal basis, regardless of gender, race, nationality, ethnicity, religion, age, sexual orientation, gender identity and expression, or socioeconomic, migration, disability, disease, or other status, and to promote equality through equity, ensuring equal access to good quality and responsive health services, including by removing financial barriers and ensuring physical accessibility and dignified treatment.

p) Remove all discrimination and other barriers in law, policy, and practice that undermine the right to health.

q) Protect sexual and reproductive rights; meet specific health needs of women and other populations with special needs, and; respond to gender-based violence.

r) Empower people to claim the right to health and other rights, including through effective enforcement and remedies; build capacities to realize this right among all stakeholders and sectors, including for the public, civil society, communities, health workers, and the media to hold governments and other health actors to account; educate health workers, legal and judicial personnel, government officials, and the public on the right to health and other rights; require health accountability strategies at all levels; ensure community and civil society participation in all stages of health decision-making, and; assure funding for right to health capacity building.

s) Ensure effective mechanisms exist to remedy individual and systematic violations of the right to health and related rights, including legal procedures, structured and effective community engagement, and regular reporting on obstacles to fulfilling these rights, with action plans to overcome them.

t) Ensure the immediate enforceability, including judicial enforcement, of the right to health in all states, including the obligations and understandings of the right contained in the FCGH.

u) Define the responsibilities of states to health of people beyond their borders to include avoiding harm to health of people in other countries (such as due to pollution, impeding access to medicine, or actively recruiting health workers from countries facing shortages).

v) Protect the rights of health workers and individuals seeking care in situations of conflict and insecurity, including access to care regardless of political or other affiliation; ensuring their security and unimpeded movement, and; refraining from attacking or interfering with people seeking care and health personnel, facilities, and transport.

w) Establish clear right to health responsibilities of non-state entities, including transnational corporations, with state regulation and enforcement.

x) Strengthen global leadership on the right to health, including that of WHO.

Compliance with the FCGH

y) Ensure accountability including through timelines, indicators, benchmarks, and targets; rigorous and transparent reporting, monitoring, and evaluation, including recommendations on actions to improve implementation, with regular follow-up; community participation in treaty monitoring; inclusive platforms that engage governments and other stakeholders to remedy non-compliance, and; effective incentives and sanctions. These might include a mechanism for bringing claims under the FCGH.

Joining the Platform

We invite individuals, civil society organizations, and other state and non-state entities that share this vision to join this Platform.

To join this Platform and learn more, please contact the FCGH Secretariat (info@globalhealthtreaty.org or eaf74@law.georgetown.edu).

¹ In using the term “social determinants of health,” we refer to the comprehensive definition of WHO, “the societal conditions in which people are born, grow, live, work, and age,” including social, economic, political, and environmental conditions.

² Among the key civil society proclamations upon which the FCGH would build are the People’s Health Charter and the declarations from the World Social Forum on Health and Social Security. Global commitments, declarations, and other key instruments that would inform the FCGH include the Declaration of Alma-Ata on Primary Health Care, the International Conference on Population and Development’s Program of Action, the UN Millennium Development Goals, the Rio Political Declaration on Social Determinants of Health, the Helsinki Statement on Health in All Policies, WHO’s Comprehensive Mental Health Action Plan, the Convention on the Rights of Persons with Disabilities, the 2008 World Health Assembly resolution on the health of migrants, the WHO Global NCD Plan of Action 2013-2020, and CEDAW General Recommendation 24.