



A Rights-Based Framework for the SDGs and Beyond: A Framework Convention on Global Health

April 2018

A growing movement is galvanizing around a proposed Framework Convention on Global Health (FCGH) – a global treaty based in human rights and aimed at national and global health equality. On December 10, 2017 – Human Rights Day – a coalition of supporters formed the FCGH Alliance. UN Secretary-General Ban Ki-moon issued the following call to action in his report in advance of the June 2016 High-Level Meeting on Ending AIDS: “I further encourage the international community to consider and recognize the value of a comprehensive framework convention on global health.”¹ It is now time for the international community, from individual states to the Director-General of the World Health Organization – the organization mandated to lead the world on global health, and with the right to health as a core constitutional principle – to answer this call.

The FCGH Vision

All people, wherever they live, ought to be able to easily access **comprehensive quality universal health coverage** in a health system that does not discriminate, and that equally serves poor and rich. All should be able to readily access other universal needs for good health, such as clean water and nutritious food. The right to health, and the equality, accountability, and participation that are central to it, should be infused throughout the health system and integrated in other sectors and legal regimes, both domestically and internationally.

Filling in gaps in accountability, governance, financing, and human rights, the FCGH would help achieve the health goals and targets of the **Sustainable Development Goals**, while establishing a **rights-based framework for health for the post-SDG era**.

Four Core Global Health Failings: The FCGH Responds

The FCGH would respond to four persisting global health shortcomings:

- **Weak accountability:** States often fail to meet their health commitments, from levels of funding and effective program delivery to the full range of right to health obligation including participation and equality. While states are formally accountable to their people, people often have limited meaningful opportunities to hold their governments to account. At the international level, oversight of state actions that affect health in other countries, and independent oversight of WHO and other UN agencies, is limited. Meanwhile, other entities affecting people’s health, including corporations, foundations, and NGOs, are formally accountable only to themselves.
 - **The FCGH response:** The FCGH would establish a **global health accountability framework**. As part of this framework, governments and civil society could jointly develop **national health accountability strategies** to integrate accountability

¹ UN Secretary-General, *On the Fast-Track to Ending the AIDS Epidemic: Report of the Secretary-General*, UN Doc. A/70/811, April 1, 2016, at para. 74. http://www.un.org/ga/search/view_doc.asp?symbol=A%2F70%2F811&Lang=E.

mechanisms and participatory processes in all health services and governance, from community to national levels, encompassing courts, parliaments, and the executive, with transparency, disaggregated data, and social empowerment. The participation this catalyzes may contribute to **global health security** by building community trust in the health system. International mechanisms, such as peer review and current human rights mechanisms, could further enhance state accountability. The framework could encompass multilateral organizations, corporations, foundations, and NGOs, which could agree to transparency and accountability standards, with their commitments monitored. Ensuring accountability of all health system actors also entails improved mechanisms to ensure that development partners support rights-based **country-led health strategies developed through inclusive, participatory approaches**.

- **Inadequate funding:** Vast global health inequalities persist, including a 17-year gap in life expectancy between high- and low-income countries.² Without greater resources, including through international solidarity, health systems in many countries will remain weak, and health services insufficient to meet people’s needs. Further, global health public goods, such as research and development and global health security, and the WHO itself, remain underfunded.
 - **The FCGH response:** The FCGH would establish a **national and global health financing framework** to enable sufficient funding for **comprehensive universal health coverage**, encompassing health care and the underlying determinants of health (such as clean water, adequate sanitation, and nutritious food), in all countries, as well as equitable health financing within countries. Strengthened health systems will enhance **global health security**. The financing framework could also encompass global health public goods, including WHO, and right to health capacity building.
- **Marginalization and discrimination:** In every country, health inequities leave segments of the population far behind – those who are poor, people living with mental and physical disabilities, indigenous populations, immigrants, remote populations, people who are homeless, and many others. From legally sanctioned discrimination, whether excluding migrants from health insurance schemes or restricting women’s access to needed health services, to fees, transportation costs, mistreatment, language barriers, and other obstacles to quality health services, the core human rights command of non-discrimination is frequently violated.
 - **The FCGH response:** The FCGH would reinforce and clarify the non-discrimination requirement of the right to health, including for voluntary and forced **migrants**. **National health equity strategies** could ensure the equitable distribution of resources a national plan of action for equality across the spectrum of marginalized populations, back by targets, funding, disaggregated data, and participatory processes, and ensuring a gendered approach to health and pro-poor pathways to **universal health coverage**.³ An equitable framework or mechanism for cooperation and shared responsibility for **migrants’ health** could better ensure health services for this vulnerable population.
- **National and global governance against health:** Whether **intellectual property rules** that impede **access to medicines**, **trade and investment treaties** that may limit state power to regulate unhealthy food and beverages, or **active recruitment of health workers** from countries with severe health workforce shortages, international law and action in non-health

² World Health Organization. *World Health Statistics 2015* (2015), at 52. http://who.int/gho/publications/world_health_statistics/EN_WHS2015_Part2.pdf.

³ O’Neill Institute for National and Global Health Law, “National Health Equity Strategy,” <http://www.law.georgetown.edu/oneillinstitute/research/national-health-equity-strategy.cfm>.

regimes can undermine the right to health. Domestically, policies and actions outside the health sector – for example, weak environmental standards, economic and industrial policies that lead to excessive pollution, and responses to substance abuse that focus on punishment rather than treatment – may conflict with the right to health.

- **The FCGH response:** The FCGH would clarify states’ obligation to respect the right to health in all policies, extraterritorially and domestically, contributing to true **global governance for health** and **Health in All Policies**. The obligation could be backed by transparency, participation, and coordination, and institutionalized **right to health impact assessments**. Akin to environmental impact statements, these would anticipate the effects of policies, programs, and projects across sectors and legal regimes that may significantly affect the right to health, domestically or abroad, so that they can be adjusted to prevent harms and to maximize synergies with the right to health.

Precedents to Learn From

The FCGH can learn from recent global treaties and agreements.

- *The WHO Framework Convention on Tobacco Control* (FCTC) is a treaty adopted by the World Health Assembly, using a framework-protocol approach. The FCTC establishes broad principles and specific standards, along the protocols to cover emerging issues of importance.
- *The Paris Agreement*, adopted under the auspices of the UN Framework Convention on Climate Change, includes a mix of binding and non-binding elements. A central innovation is that each country determines its own contributions to greenhouse gas emission reductions, targets that are to be progressively enhanced. States are accountable for their progress and agree to a transparency framework that includes independent technical review.
- *Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and Other Benefits* (PIP Framework), a WHO framework, includes the creative use of contract law to bring companies within its scope. Under the PIP Framework, WHO-designated laboratories agree to share influenza virus samples only with pharmaceutical and biotechnology companies that enter into a contract with WHO to take measures to increase availability of vaccines, treatments, and diagnostics in developing countries.
- *The Convention on the Rights of Persons with Disabilities* (CRPD), a UN treaty, stands out as the first human rights treaty where NGOs were directly involved in formulating the treaty, with delegates from NGOs, along with governments, national human rights institutions, and international organizations, active in the drafting process, with governments and civil society alike agreeing to the final text.⁴

The FCGH could combine elements of each model. Like the FCTC, it might be adopted through WHO under the framework-protocol approach, reinforcing WHO’s global health leadership and mandate to engage other sectors, from human rights to trade, in support of the right to health. It could borrow from the Paris Agreement the idea of nationally determined and progressively strengthening

⁴ United Nations, “Frequently Asked Questions regarding the Convention on the Rights of Persons with Disabilities,” <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/frequently-asked-questions-regarding-the-convention-on-the-rights-of-persons-with-disabilities.html>.

targets, with national strategies and targets – such as on universal health coverage – developed through inclusive, participatory national processes, along with multifaceted measures for accountability and compliance. Also like the Paris Agreement, the FCGH could include a carefully calibrated mix of binding and non-binding elements. And although only states would be parties to the FCGH, the treaty may include ways, like the PIP Framework, to directly apply its mandates to corporations, and possibly other non-state actors as well. Critically, like the CRPD, civil society organizations, including grassroots organizations and marginalized communities, should be directly involved in developing the FCGH.

Through a combination of these approaches and possibly other innovations, and developed through an inclusive, participatory process, the FCGH could be an **innovative 21st century instrument for 21st century governance**.

The FCGH Alliance

The FCGH Alliance is a Geneva-based global network formed as an NGO under the Swiss civil code to advocate for, and ensure inclusive participation in the process of developing, the FCGH. A key principle of the FCGH Alliance will be broad engagement. The Alliance seeks individuals and organizations around the world to join in our membership and partner in our efforts, with a special emphasis on ensuring the participation of community-based and other civil society organizations, and of populations who suffer most from health inequities. The FCGH must, above all, be a treaty that speaks to their needs, meets their expectations, and secures their right to health. Learn more, and join us: <https://www.fcghalliance.org>.

A Call to Action

As the global health leader, WHO should steer the global response in answering the UN Secretary-General's call to action, establishing a working group that includes strong civil society and community participation to examine and report to the World Health Assembly on the potential benefits, principles, parameters of, and path towards the FCGH. This would provide a platform for further progress towards the FCGH. WHO regional committees and other intergovernmental forum should also begin discussions of the FCGH, as the treaty will need to speak to countries and people in every region.

In addition, we will deepen our own efforts to engage civil society and community-based organizations, and populations who suffer most from health inequities, as the FCGH must, above all, be a treaty that speaks to their needs, meets their expectations, and secures their right to health.