

Towards a framework convention on global health

Lawrence O Gostin,^a Eric A Friedman,^a Kent Buse,^b Attiya Waris,^c Moses Mulumba,^d Mayowa Joel,^e Lola Dare,^f Ames Dhai^g & Devi Sridhar^h

Introduction

What will it take to eliminate the gross health inequities that continue to plague the world, the unconscionable health gaps between the rich and poor? The eyes of the global health community are focused on the post-2015 sustainable development goals, with the World Health Organization (WHO) advocating for universal health coverage. Adding healthy life expectancy as an overarching goal would capture the broader determinants of health and offer a richer integration of multiple sectors.¹ Beyond improving health, the United Nations (UN) should focus on equity, human rights, inclusive participation and accountability.² The stage is set for the post-2015 agenda to embrace global health with justice – improving healthy lives for everyone, with particular attention to marginalized communities.

The sustainable development agenda, however, cannot achieve global health with justice without robust global governance. We urge adoption of a legally binding global health treaty – a framework convention on global health grounded in the right to health. What are the purposes and content of a framework convention and how can such a treaty help to achieve global health with justice? And what steps need to be taken to galvanize support for its adoption and implementation? This perspectives paper seeks to spark international dialogue on a framework convention on global health and to explore the pathways towards a global health treaty.

Core purposes and content

The Millennium Development Goals were instrumental in achieving con-

siderable progress in global health, but they failed to close the health gap. The overriding purpose of a framework convention on global health would be to dramatically reduce the health disadvantages experienced by the marginalized and the poor, both within countries and between them, while reducing health injustices across the socioeconomic gradient. Guided by principles underlying the right to health and mutual responsibility, a framework convention would universally ensure three conditions that are essential for a healthy life: a well-functioning health system providing quality health care; a full range of public health services, such as nutritious food, clean water, and a healthy environment; and broader economic and social conditions conducive to good health, such as employment, housing, income support and gender equality.

Substantial improvements in health would be achieved through a population-based strategy centred on the essential conditions for the public's health, ranging from food, water and clean air to hygienic conditions, injury prevention and liveable communities conducive to physical activity and to healthful eating habits. By embedding the conditions for good health within the environment and bringing these benefits to everyone, including the poorest and most remote communities, public health services would give everyone a fair chance for a healthy life. Universal access to all levels of health care (community services and primary, secondary and tertiary care) and to financial protection (to prevent impoverishment and catastrophic health expenditures) would afford everyone the services needed to prevent and treat injury and disease. Importantly, policies

and actions across the full spectrum of government ministries are needed to ensure education, employment, housing, clean energy, transportation, gender equity and all other positive social determinants of health.

A framework convention would establish a health financing framework with clear obligations, and would create an accountability regime with robust standards, monitoring and enforcement. It would advance health justice through engaging marginalized and underserved populations in making and evaluating policies and through comprehensive strategies and targeted interventions designed to overcome the barriers that prevent these populations from enjoying the conditions required for good health. Governments would be held to high standards of good governance, namely inclusive participation, transparency, honesty, accountability and stewardship. The framework convention would empower people to claim their right to health.

A comprehensive strategy to reduce health inequity requires concerted action against the drivers of health disadvantages beyond the health sector. Among these drivers are intellectual property rules that impede access to medicines; migration policies that encourage health worker migration and that fail to ensure health services for all immigrants, or even internal migrants; and regulations and laws that inadequately prevent and mitigate the health harms of environmental hazards such as climate change and pollution, and that collectively cause, exacerbate and change the distribution of disease, alter habitats and contribute to extreme weather. A framework convention would help elevate health and place

^a O'Neill Institute for National and Global Health Law, Georgetown University Law Centre, 600 New Jersey Avenue NW, Washington, DC, 20001, United States of America.

^b Joint United Nations Programme on HIV/AIDS, Geneva, Switzerland.

^c University of Nairobi, Nairobi, Kenya.

^d Center for Health, Human Rights and Development, Kampala, Uganda.

^e Communication for Development Centre, Abuja, Nigeria.

^f Centre for Health Sciences Training, Research and Development, Abuja, Nigeria.

^g Steve Biko Centre for Bioethics, University of the Witwatersrand, Johannesburg, South Africa.

^h University of Edinburgh, Edinburgh, Scotland.

Correspondence to Lawrence O Gostin (e-mail: gostin@law.georgetown.edu).

(Submitted: 26 October 2012 – Revised version received: 2 April 2013 – Accepted: 27 May 2013 – Published online: 10 September 2013)

it closer to the centre of the goals and activities of other international legal regimes, including through the establishment of a multisectoral consortium led by WHO.³⁻⁵

Benefits

At present, the understanding of the right to health is shrouded in vagueness. This hinders accountability to international human rights obligations. A framework convention on global health would bring clarity and precision to norms and standards surrounding the right to health, including states' duties to "take steps...to the maximum of [their] available resources, with a view to achieving progressively the full realization" of the right to health.⁶ Precise human rights standards would strengthen civil society's ability to hold governments accountable, while the treaty would require governments and the international community to build civil society's capacity to do so. The treaty would ensure adequate financing and an enabling legal and policy environment for civil society to carry out its many functions, such as engaging policy-makers, analysing how policies are being implemented, and intervening when laws, policies and practices are failing to protect and promote human rights.⁷

The framework convention would also enhance compliance. Along with rigorous monitoring and reporting, a framework convention would facilitate the use of domestic judicial systems for enforcement, as demonstrated by strategic litigation and the training of law enforcement officials as part of the global HIV response, which has also enabled people living with HIV to know and claim their rights.⁸ By embedding its standards in national law, a framework convention would empower civil society to litigate the right to health. Beyond domestic judicial enforcement, a framework convention would create international incentives to encourage compliance. Incentives could include the prestige of gaining international recognition for adhering to health and human rights norms. An international body responsible for hearing and deciding on individual and group complaints could identify states that violate the treaty.

By generating international confidence, a treaty would help overcome enduring challenges in global governance

for health, such as securing adequate funding from both international and domestic actors. The international community would be more willing to provide financing to meet national health needs if it were confident that national governments would invest in health domestically while practicing good governance. And national governments would be more likely to invest in health domestically if they were obligated to do so under international law and if they were confident that they would receive complementary international financing and engage in more equal and genuine partnerships with international partners.

Finally, the human right to health cannot compete with other legal regimes, such as those governing trade and investment, without a similarly robust treaty. A framework convention could require that international bodies incorporate the right to health into their decision-making processes and that they – and critically, individual countries – refrain from taking actions that might undermine the right to health under other regimes.

The time has come

The convergence of opportunity and need makes now the right time for a global health treaty. The opportunity comes from the present attention to global health and human rights in planning the post-2015 development framework. This offers a space within which governments and civil society can debate an innovative new framework and a pathway to its eventual adoption. A framework convention could serve as a unifying platform for civil society campaigns on health priorities such as acquired immunodeficiency syndrome (AIDS) and noncommunicable diseases,⁹ as well as for broader social justice imperatives, such as universal social protection.¹⁰

Perhaps most importantly, the framework convention on global health could build on a progressive post-2015 development framework by putting specific standards and forceful accountability behind the post-2015 global commitments, as well as redressing weaknesses. A well designed framework convention, strongly supported by social movements, could give political force to pledges of equity under the sustainable development agenda. Voluntary pledges

alone are unlikely to halt stubbornly persistent global health disadvantages. A bold new approach encompassing clear targets, monitoring and compliance is needed to dramatically transform prospects for good health among the world's poorest people.

The framework convention could also lead diverse international regimes to place health closer to the centre of their missions. Currently, trade, investment and intellectual property regimes tend to be dominant, but a global health treaty could re-order the international legal environment while shifting the political dynamics. Natural leadership for such a transformation of global priorities would come from those emerging economic powers whose agendas are often more attuned to global solidarity, mutual responsibility and human rights. The political obstacles, of course, are steep, but an imaginative framework convention could catalyse innovative global governance embedded in the right to health.

A response to critics

Although global leaders such as Ban Ki-moon and Michel Sidibé support a framework convention on global health,^{11,12} important stakeholders have expressed thoughtful criticisms – which we welcome. Monumental achievements begin with serious doubts. Certainly, a framework convention entails risks and opportunity costs: the costs of the advocacy that could otherwise be directed to immediate objectives; the costs of the time and expense of treaty negotiations and, later, of monitoring and reporting activities; and the risk of ossifying into place norms and priorities as health needs evolve.

Perhaps most challenging of all is the political feasibility of this venture. Will states water down ambitious proposals, effectively eviscerating the treaty's bold vision? Some rich states in particular are sceptical about ratifying international law, fearful of incurring financial and normative obligations, while most states shirk genuine accountability. Private actors such as the tobacco, alcohol and food industries would undoubtedly seek to weaken the treaty – arguing that robust regulation imposes higher costs – and to deflect legal obligations in favour of voluntary self-regulation. Finally, there is the perennial challenge inherent in all in-

ternational law – namely, states' failure to comply, as evident in the widespread flouting of human rights treaties.

These criticisms are all powerful, but the risks can be mitigated or even turned into opportunities. The value of engaging communities from the bottom up could counteract the opportunity costs of an arduous treaty process. Civil society coalitions could organize around the framework convention on global health, just as they did in the case of the Framework Convention on Tobacco Control. If civil society is included in formal state delegations – as has been the practice in other progressive treaties – or even as informal advisers, they would have enhanced access to government officials. This would enable them to build stronger relationships that could fortify their domestic advocacy. Monitoring and evaluation under a framework convention would yield information on government compliance that could underpin civil society advocacy. While achieving the framework convention will take considerable time and effort, the process itself has value insofar as it entails inclusive participation, shared research and knowledge, and higher visibility for global health with justice.

The process towards a framework convention can yield results in other vital ways that will yield benefits in the nearer term. Margaret Chan, Director-General of WHO, for example, has championed a “soft” “framework for global health”, which the World Health Assembly could adopt as a code of practice or global strategy under the WHO Constitution. The framework might even take a quasi-legal form, such as a global social contract along the lines of WHO's innovative Pandemic Influenza Preparedness Framework.¹³ It is important not to discount the value of “soft” norms, which could embed creative compliance within a non-binding framework on the path to a binding treaty. For example, a non-binding UN General

Assembly resolution on AIDS achieved 96% state compliance in reporting on commitments by Member States.

The framework convention should encompass evolving dynamic processes. These should be able to adjust to changes in the global burden of disease and to new international structures. An international body charged with modernizing treaty norms and standards – akin to the Intergovernmental Panel on Climate Change – could partner with local stakeholders to highlight health needs. National processes would adapt global standards to local priorities, systems and knowledge, ensuring local ownership and accountability.

Achieving a framework convention will be arduous, but the process will be worth it given the potential to catalyse progress towards global health equity in ways that have escaped the international community.

Social mobilization and movement building

International law can be hard to enforce, as we have seen with climate change and arms control. Although treaty measures should enhance compliance, social mobilization around the treaty would become the primary means of gaining compliance. A framework convention cannot overcome powerful private interests (e.g. tobacco, alcohol and food industries) without social and political advocacy. Nor will many states ratify and implement the convention without domestic political pressure. The criticisms about political feasibility are legitimate and it will take powerful social movements to overcome state reticence.

A united international campaign for a framework convention could create a common platform for advocates of the right to health and would help conjoin – or even transcend – the interests of disparate disease- or issue-specific campaigns. Civil society could incorporate the framework convention into existing

advocacy campaigns, linking shorter-term objectives with longer-term goals. This would reduce the opportunity costs of campaigning for a convention. To succeed in securing a progressive and effective global health treaty, advocates of the convention must welcome and encourage the meaningful engagement of the full spectrum of health and social justice movements, such as labour, women's rights, human rights and the environment.

Pathways to a framework convention

Several legal pathways towards a framework convention are available. Placing WHO at the centre of the convention regime could be achieved through its constitutional mandate to negotiate conventions. Alternatively, the UN General Assembly could lead the treaty process, as it did with the UN Convention on the Rights of Persons with Disabilities. Or, given the deep connection to the right to health, the UN Human Rights Council could spearhead the framework convention. Finally, the treaty could be developed outside the UN system, as was done with the Mine Ban Treaty.¹⁴

Regardless of the pathway, to fulfil its promise the treaty must have rigorous norms, monitoring and compliance, with powerful social movements behind it. The first step is to engage in an inclusive participatory process, research and analysis and sharing of experience and knowledge to ensure that the treaty genuinely responds to the health needs – and demands – of the most marginalized. This process would enable the treaty to build upon and respect local knowledge and priorities. Above all, any pathway will require social action that can turn the framework convention from a promising idea into a powerful instrument for global health with justice. ■

Competing interests: None declared.

References

1. The World We Want [Internet]. The high level dialogue on health in the post-2015 development agenda: Gaborone, 4-6 March 2013, meeting report. Mill Valley: WWW; 2013. Available from: <http://www.worldwewant2015.org/file/320271/download/348522> [accessed 18 June 2013].
2. Health and the post-2015 development agenda. *Lancet* 2013;381:699. doi: [http://dx.doi.org/10.1016/S0140-6736\(13\)60562-0](http://dx.doi.org/10.1016/S0140-6736(13)60562-0) PMID:23472904
3. Gostin LO, Friedman EA, Ooms G, Gebauer T, Gupta N, Sridhar D et al. The Joint Action and Learning Initiative: towards a global agreement on national and global responsibilities for health. *PLoS Med* 2011;8:e1001031. doi: <http://dx.doi.org/10.1371/journal.pmed.1001031> PMID:21572991
4. Gostin LO. A framework convention on global health: health for all, justice for all. *JAMA* 2012;307:2087–92. doi: <http://dx.doi.org/10.1001/jama.2012.4395> PMID:22665108

5. Joint Action and Learning Initiative on National and Global Responsibilities for Health [Internet]. Health for all, justice for all: a global campaign for a framework convention on global health. JALI; 2012. Available from: <http://www.jalihealth.org/action/manifesto.html> [accessed 18 June 2013].
6. Human Rights Library [Internet]. International Covenant on Economic, Social and Cultural Rights. Minneapolis: University of Minnesota Human Rights Center; 1966. Available from: <http://www1.umn.edu/humanrts/instreet/b2esc.htm> [accessed 18 June 2013].
7. Friedman EA, Gostin LO, Buse K. Advancing the right to health through global organizations: the potential role of a framework convention on global health. *Health Hum Rights* 2013;15:71–86. Available from <http://www.hhrjournal.org/wp-content/uploads/sites/13/2013/06/Friedman-FINAL.pdf>: [accessed 23 June 2013].
8. *Global AIDS response progress reporting 2012*. Geneva: Joint United Nations Programme on HIV/AIDS; 2011. Available from: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/JC2215_Global_AIDS_Response_Progress_Reporting_en.pdf [accessed 18 June 2013].
9. Resolution A/RES/66/2. *Political Declaration of the High-Level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases*. In: *United Nations resolutions and decisions. Sixty-sixth session of the United Nations General Assembly, New York, 13–18 September 2012*. New York: United Nations; 2013. Available from: http://www.un.org/ga/search/view_doc.asp?symbol=%20A/RES/66/2 [accessed 18 June 2013].
10. World Health Organization [Internet]. Rio Political Declaration on Social Determinants of Health, Rio de Janeiro, Brazil, 21 October 2011. Geneva: WHO; 2011. Available from: <http://www.who.int/sdhconference/declaration> [accessed 18 June 2013].
11. Secretary-General of the United Nations. *Uniting for universal access: towards zero new HIV infections, zero discrimination and zero AIDS-related deaths: report of the Secretary-General*. New York: UN; 2011 (UN Doc A/65/979). Available from: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/A-65-797_English.pdf [accessed 18 June 2013].
12. Sidibé M, Buse K. A framework convention on global health: a catalyst for justice. *Bull World Health Organ* 2012;90:870–870A. PMID:23284188
13. *Pandemic influenza preparedness for the sharing of influenza viruses and access to vaccines and other benefits*. Geneva: World Health Organization; 2011. Available from: http://www.who.int/influenza/resources/pip_framework [accessed 18 June 2013].
14. Short N. The role of NGOs in the Ottawa Process to ban landmines. *Int Negot* 1999;4:483–502. doi: <http://dx.doi.org/10.1163/15718069920848589>