O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

The Framework Convention on Global Health, Health Equity, UHC, and the SDGs

The Rights to Health: Problems, Perspectives, and Progress
Tufts University
February 4, 2016

Eric A. Friedman
eaf74@law.georgetown.edu
O'Neill Institute for National and Global Health Law
Georgetown University Law Center

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

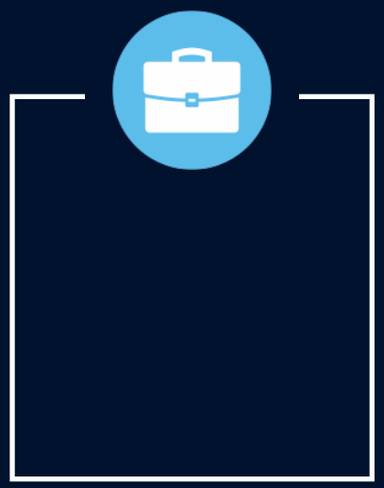
Outline

- Global Health Inequity in the 21st Century
- Towards Equity: A Framework Convention on Global Health (FCGH)
- The FCGH and SDGs
- Towards an FCGH: An Inclusive Campaign

The Joint Action and Learning Initiative on National and Global Responsibilities for Health (JALI)

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

1 Global Health Inequity in the 21st Century



O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Persisting health inequities

- Health inequities
  - Life expectancy in high-income countries (2013): 79 years
    - Japan: 84 years
  - Life expectancy in low-income countries (2013): 62 years
    - Sierra Leone: 46 years
  - Domestic inequities
    - Life expectancy in the United States (2013): 79 years
    - Life expectancy of Native Americans on the Pine Ridge Reservation in South Dakota: upper 40s
    - Average age of death of members of Los Angeles homeless population in 2000s: 48, compared to expected 75
    - Average age of death of transgender women of color in US: 35

    - Under-5 mortality in Guinea – top wealth quintile: 68/1,000
    - Under-5 mortality in Guinea – bottom wealth quintile: 171/1,000

    - Liberia average per capita health spending: $44
    - Liberia per capita health spending in some remote disticts: $0.76

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

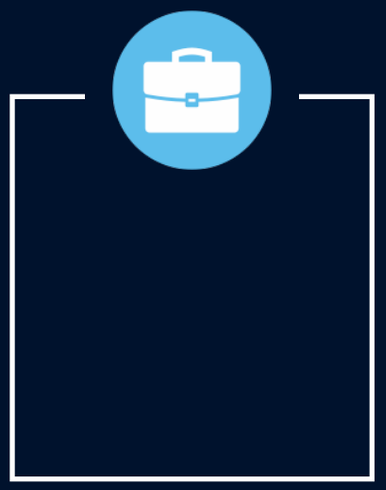
Envisioning national and global health equality

- Everyone should have equal access to quality health services
  - Non-discrimination on any ground whatsoever (including, e.g., undocumented immigrant status)
- Universal health systems
  - Avoid two-tiered health systems, one for poor people, one for economically better off
  - Comprehensive quality health services and underlying determinants of health (nutritious food, etc., for all)
  - Action to reduce health inequalities throughout socioeconomic gradient with extra emphasis on marginalized populations
- Right to health-based, with participation and accountability throughout

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Obstacles to health equity: Overcoming today's shortcomings

- Financing
- Power of non-health sectors
- Health worker migration
- National health disparities



O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Insufficient financing in poor countries

- Per capita government health expenditures (2012)
  - Burma: $5
  - Bangladesh, Central African Republic, DRC, Eritrea, Guinea, Guinea-Bissau, Haiti, Lao, Madagascar, Lao, Niger, South Sudan : $7-9
  - Low-income country average: $13
  - Global average: $615
  - High-income country average: $2,857
- International assistance insufficient, unstable, (dis)favors certain countries for geopolitical/non-health reasons

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Insufficient financing in poor countries (cont'd)

- Untapped domestic resources
- Possible solutions
  - Binding international health financing framework with national and global commitments (plus incentives, sanctions)
  - Remove international pressures and rules that may suppress domestic financing (e.g., tax-free entrepreneurship zones bad for health?)
  - Support for strengthened domestic tax collection including reduced tax avoidance and evasion
  - (Increased) taxes on tobacco, unhealthy foods and beverages
  - Innovative international financing (e.g., financial transaction taxes)
  - Reduce waste (20-40% health financing currently wasted)

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Power of non-health sectors

- Intellectual property rules can limit access to medicines
- Investment treaties can undermine national regulations to protect public health (e.g., tobacco control)
- Strength of commercial sector that can undermine health ("Big Tobacco," "Big Food")
- Potential solutions
  - Establish privileged position for health in international law
    - Interpret other international obligations consistent with right to health
  - International limits on corporate power to undermine health through investment treaty arbitration
  - Global rules on food production, marketing
  - Right to health assessments

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Health worker migration

- Recruitment of health workers with critical shortages
- Limited impact thus far of WHO Global Code of Practice on the International Recruitment of Health Personnel (2010)
  - By 2013, only 56 countries had even filed progress reports
    - Increased to 60 countries in second round of reporting (2015)
- Potential solutions
  - Greater investments in domestic health workforce to build capacity and respond to "push" factors
  - Transition from voluntary to binding limits on active recruitment of health workers from countries with critical shortages

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

National health disparities

- Immense health inequalities within countries: rich/poor, marginalized populations
- Potential solutions
  - National health equity strategies to assess obstacles to right to health for each marginalized populations, identify solutions, and develop budgets and national and sub-national action plans
  - Adequate funding for reaching hard-to-reach populations, responding to financial obstacles (point-of-service fees, transportation), health worker sensitization on humanity and rights of marginalized populations, widespread human rights education, etc.
  - Processes to ensure participation of marginalized populations in health-related decisions

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

National health disparities (cont'd)

- Potential solutions
  - Enhanced ability for disadvantaged populations to hold governments accountable to health and human rights obligations (including education on rights, legal system capacity building, justiciability of right to health, financing for civil society)
  - Require right to health assessments of health and non-health policies and projects that risk undermining public health
  - Ensure national laws and policies consistent with health and right to health (e.g., reforming discriminatory laws that drive marginalized populations underground)
  - South-South cooperation at government and civil society, national and sub-national levels, to find and adapt best solutions in health inequities

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

2 Towards Equity: A Framework Convention on Global Health (FCGH)

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

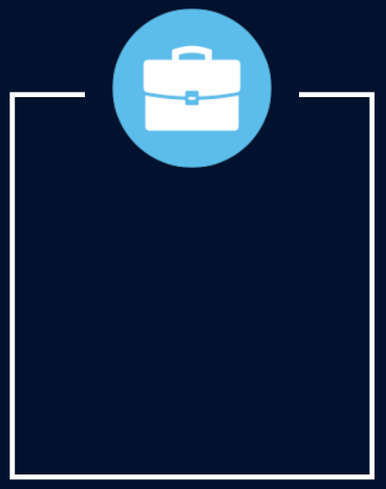
Background to the FCGH: Framework Convention on Tobacco Control as precedent

- 180 countries party to FCTC (adopted 2003, entered into force 2005)
- At least 40 countries with 100% ban on indoor smoking ban (first was in 2004)
- More than 75 countries have enacted or implemented requirement for graphic warning labels that cover at least 30% of tobacco packaging since 2005
- FCTC parties with at least one form of tobacco tax up from 44% in 2010 to 75% in 2014

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Background to the FCGH: Law and the right to health

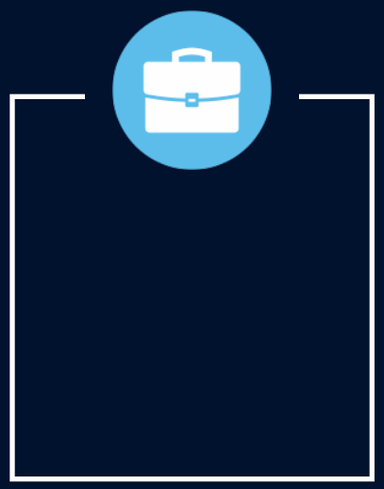
- Power of law
  - Powerful norms
  - Facilitate collective action
  - Binding responsibilities to support local advocacy
- Human rights
  - Agreed global legal framework with shared underlying values and includes right to health
  - Treaty could be guided by human rights (right to health) standards while helping implement them



O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Bringing the right to health into the 21st century

- A globalized world
  - Clarify international responsibilities
    - International assistance obligations
  - Respecting right to health abroad including in global legal regimes (environment and climate change, health worker migration, investment treaties, intellectual property)
  - Ensuring respect of right to health by transnational corporations



O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Bringing the right to health into the 21st century (cont'd)

- Learning from experience
  - Implement measures to enhance accountability for the right to health
    - Justiciability of right to health
    - Education for public, media, government, lawyers, judges, health workers
    - Ensure access to courts
    - Community and national social accountability strategies
- Clarify meaning of key elements of right to health
  - "maximum of…available resources," progressive realization, "highest attainable standard of physical and mental health"
  - Make binding key elements in authoritative but not legally binding General Comment 14 of Committee on Economic, Social and Cultural Rights
    - equal access, participation, emphasis on marginalized populations, accountability, health services that are available, accessible, acceptable, and of good quality

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Framework convention approach

- Therefore, proposal for a Framework Convention on Global Health (FCGH)
  - Right to health
  - Health equity, global and domestic
- Legally binding global treaty
- Framework convention/protocol approach
  - Initial framework convention establishes key principles, goals, processes of the legal regime
    - Would also include precise commitments
  - Protocols (require separate ratification) provide additional detail on commitments or address issues not adequately addressed in initial convention
  - Useful approach for complex and evolving field of global health

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Central FCGH elements

- Universal coverage of conditions required for health
  - Standards for health systems, public health interventions/ underlying determinants of health, social determinants of health
    - How decide what minimum standards (health interventions, underlying determinants of health)?
      - One possibility: Global list with national opt-out, changes, and additions based on inclusive processes
      - Another possibility: Leave to inclusive national processes, based on principles of equity
    - Require comprehensive public health strategy including social determinants
- Financing framework covering domestic and global health funding

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Central FCGH elements

- Right to health grounding, including accountability, participation, equity
  - Participatory processes throughout
  - Absolute prohibition on all discrimination in right to health
  - National health equity and accountability strategies
  - Right to health education and access to courts
  - Social accountability mechanisms
- Elevate health in other regimes (e.g., trade, financing, agriculture)
- Alignment with national health strategies and systems
- Strong mechanisms of monitoring, evaluation, and compliance
  - Disaggregated data
  - Committee to review compliance, hear cases (like current human rights system)
  - Regional special rapporteurs? Global health leadership position incentives? Peer review?

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

More FCGH possibilities

- Right to health capacity-building funding mechanism (to support NGOs, government institutions, and others building public understanding of and advocating for the right to health) > Enhance accountability
- Multi-sector forum with strong civil society participation to help integrate the right to health into various international legal regimes > Elevate health in other regimes
- Right to health-based code of practice for global health organizations > Improve equity, accountability, participation
- Ways to strengthen WHO leadership?
- Anticipate protocols (e.g., financing, R&D, health workers)

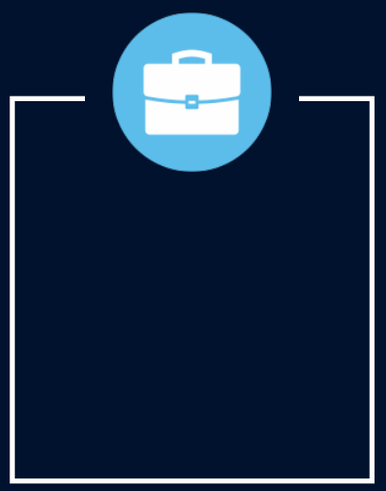
O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Challenges

- Mobilizing social movements to support FCGH
  - Needed for adoption, ratification, implementation
  - How to ensure the process and substance of treaty will contribute to efforts of local right to health campaign priorities
  - How to enable inclusive process in developing long and complex treaty
- Building political support
- Funding for FCGH development and advocacy
- Treaty contents
  - Ensure relevance across diverse country circumstances
  - Balance bold vision with political realities
  - Include effective regimes of accountability and compliance, including incentives and sanctions
  - Difficult questions (e.g., what are the appropriate financial commitments? how to address international financing levels when not all countries participate?)

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

3



The Framework Convention on Global Health and the Sustainable Development Goals

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

The FCGH and the Sustainable Development Goals

- Sustainable Development Goals
  - Goals on reducing poverty, improving health and education, protecting the environment, reducing climate change, enhancing equity, enhancing access to justice and reducing violence
  - UN adopted in September 2015 to follow the Millennium Development Goals
- FCGH addresses multiple expected SDGs
  - Universal health care, clean water, adequate sanitation, nutritious food, adequate housing
  - Themes of equity, participation, accountability, human rights
  - Social determinants of health
  - Other areas including include domestic violence

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Need for an FCGH in the context of the SDGs: Governance and accountability

- Legally binding agreement with treaty compliance and national accountability measures would enhance SDG accountability, including independent review
- Capacity building measures for the right to health empowering people to claim the right and governments to implement it would advance health aspects of the SDGs
  - Right to Health Capacity Fund
- FCGH would fill in SDG gaps in global governance for health, using the power of binding law
  - Intellectual property law and access to medicine and other medical innovations
  - Trade, such as in cheap and unhealthy foods that can displace healthier, local alternatives
  - Health worker migration
  - Research and development
  - Investment treaties and protecting national health regulations
- Right to health assessments and other measures would protect and promote health outside health sector > Health in All Policies

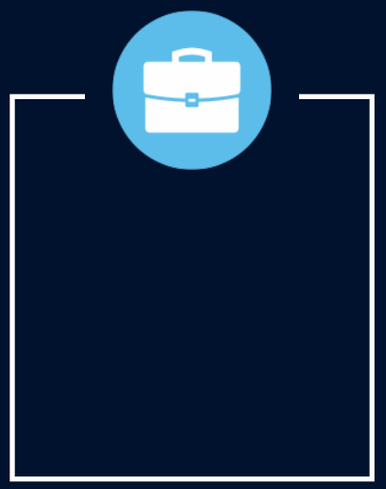
O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Need for an FCGH in the context of the SDGs: Equity and financing

- Equity and true universal health coverage
  - Ensuring universal health coverage is non-discriminatory with respect to all populations, including frequently excluded (e.g., irregular migrants)
  - Population-specific health equity strategies, participatory requirements, etc., would enhance health equity
  - Universal health coverage that does not depend on level of a person's wealth
- Financing
  - Develop binding domestic and international financing framework, ensuring funds to support health-related SDGs
  - Ensure equitable distribution of health financing
  - Taxation, capital flight measures, innovative financing, capacity building to increase resources for health and development

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

4 Towards an FCGH



O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

Platform for an FCGH

- A global Platform for an FCGH launched April 2014
  - Build support and advocate for an FCGH
  - Contribute to developing contents of the FCGH
  - Advance principles of the FCGH through other forums
- Aim of regional coordination and national platforms
- Inclusive – NGOs, academics, health workers, governments, intergovernmental organizations
- Aim for bottom-up strategy
  - Building awareness
  - Building political support

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

FCGH supporters and our next steps

- FCGH supporters include UNAIDS, Save the Children UK, Partners In Health, BRAC, Lawyers Collective, BRAC, leading health NGOs in Uganda, Ghana, Liberia, Argentina, Kenya, South Africa, Zimbabwe
- Next steps
  - Seek in 2017 World Health Assembly action (part of SDG resolution) to direct WHO Director-General to establish working group including strong civil society and community participation to report on potential benefits, principles, and parameters of an FCGH
  - Continue drafting preliminary working discussion pre-draft of FCGH
  - Deepen engagement with communities and states
  - Respond to central questions about the FCGH
  - Continue advocacy and awareness-building

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

"Do not let the perfect be the enemy of the good"

- Non-binding legal framework (WHO code?) to precede treaty?
- Regional action (frameworks, conventions)?
- Committee of Economic, Social and Cultural Rights General Comment(s) elucidating on extra-territorial responsibilities, national responsibilities (esp. equity, accountability)?
- Independent popularization of FCGH-based ideas
  - Human Rights (Right to Health) Capacity Fund
  - National health equity and accountability strategies
  - Regional RTH special rapporteurs

O'NEILL INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW

For more information

- Learn more: http://www.globalhealthtreaty.org